

# LOTTO (AMENDMENT) ACT 1988 No. 72

NEW SOUTH WALES



## TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Lotto Act 1979 No. 53
4. Validation of certain lotto transactions

SCHEDULE 1—AMENDMENTS

SCHEDULE 2—VALIDATION OF CERTAIN LOTTO TRANSACTIONS

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**LOTTO (AMENDMENT) ACT 1988 No. 72**

NEW SOUTH WALES



**Act No. 72, 1988**

An Act to amend the Lotto Act 1979 to provide for the introduction of other forms of lotto and for other purposes; and to validate certain matters.  
[Assented to 23 November 1988]

*Lotto (Amendment) 1988***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Lotto (Amendment) Act 1988.

**Commencement**

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Section 4 and Schedule 2 commence on the date of assent.

**Amendment of Lotto Act 1979 No. 53**

3. The Lotto Act 1979 is amended as set out in Schedule 1.

**Validation of certain lotto transactions**

4. Schedule 2 has effect.

**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

**(1) Section 2 (Definitions)—**

- (a) Section 2 (1), definition of “Lotto Prize Fund Account”—  
Omit the definition.

- (b) Section 2 (1), definition of “prize fund”—  
Omit the definition, insert instead:

“prize fund” means an account established for the purposes of section 14 in respect of a licensee;

- (c) Section 2 (2)—

After “game” where secondly occurring, insert “(whether known as lotto or keno or by any other name)”.

- (d) Section 2 (3)—

After section 2 (2), insert:

- (3) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and

- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

**(2) Section 3 (Conduct of lotto)—**

Omit “Penalty: \$2,000.”, insert instead:

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 SCHEDULE 1—AMENDMENTS—*continued*

(2) A licensee shall not conduct a game of lotto while the licensee's licence is suspended.

Maximum penalty: 20 penalty units.

(3) Section 5 (**Grant of licence**)—

(a) Section 5 (2)—

Omit “, not less than 5 years,”.

(b) Section 5 (3)—

Omit the subsection.

(4) Section 6 (**Conditions of licence**)—

(a) Section 6—

After “may include”, insert “(in addition to the conditions referred to in section 13)”.

(b) Section 6 (r)—

Omit “and” where lastly occurring.

(c) Section 6 (s)–(v)—

Omit section 6 (s), insert instead:

(s) the approval by the Minister of contracts or arrangements, entered into by the licensee or the licensee's employees or agents, or by any other person, for the purpose of conducting games of lotto;

(t) the approval by the Minister of persons engaged in the repair or maintenance of any device or equipment used in relation to the conduct of games of lotto;

(u) the security requirements in respect of games of lotto; and

(v) such other matters as the Minister thinks fit.

(5) Section 9 (**Unlawful conduct of lotto by licensee**)—

Omit “and the conditions of his licence”, insert instead “, the conditions of the licence and any directions given under section 9A or 9B”.

(6) Sections 9A–9C—

After section 9, insert:

**Directions to licensees**

9A. (1) If the Minister is of the opinion that the integrity or apparent integrity of a game or games of lotto conducted by a licensee is likely to be seriously prejudiced—

(a) by any irregularity or alleged irregularity of any kind; or

*Lotto (Amendment) 1988*SCHEDULE 1—AMENDMENTS—*continued*

(b) by the character or reputation of any person concerned in the management or supervision of the game or games; or  
 (c) by any other fact or circumstance reported to the Minister, the Minister, for the purpose of avoiding any such prejudice, may by notice in writing direct—

(d) the licensee; or

(e) any other person engaged, in whatever capacity, in the conduct of a game of lotto on the licensee's behalf,

to take (or to refrain from taking) such action as may be specified in the notice in relation to all or any specified games of lotto conducted by the licensee.

(2) A licensee or other person shall comply with any such direction.

**Key employees**

9B. (1) In this section, "key employee" means a person who is—

(a) employed by a licensee or agent in a managerial or supervisory capacity in relation to the conduct of games of lotto; or

(b) authorised to make decisions, involving the exercise of his or her discretion, that regulate the operations of a licensee or agent; or

(c) concerned, in any manner prescribed by the regulations, in the conduct of games of lotto by a licensee.

(2) If the Minister is of the opinion that the integrity or apparent integrity of a game or games of lotto conducted by a licensee is likely to be seriously prejudiced—

(a) because of the criminal record of a key employee of the licensee or a key employee of any agent of the licensee; or

(b) because of the character or reputation of any such key employee,

the Minister may, by notice in writing served on the licensee, direct that the employment or association of that person—

(c) in any capacity specified in the notice; or

(d) in any capacity other than the capacity specified in the notice,

be terminated immediately and not be renewed.

(3) A licensee shall comply with any such direction.

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 SCHEDULE 1—AMENDMENTS—*continued*

(4) It shall be deemed to be a condition of any agreement entered into between a licensee and an agent that the licensee has, in relation to the agent, such rights as may be necessary to enable the licensee to give effect to a direction given to the licensee under this section.

(5) The termination of an employment or association in accordance with this section may be effected notwithstanding any other Act or any law, award or industrial or other agreement, and the Crown does not incur any liability because of such a termination.

(6) The Minister may, by notice in writing served on the licensee, revoke or vary a direction given under this section.

(7) For the purposes of this section, a licensee or agent shall, at such times as the Minister may require by notice in writing served on the licensee or agent, furnish to the Minister returns containing—

- (a) the names of the key employees of the licensee or agent and the positions held by them; and
- (b) any other relevant particulars specified in the notice in relation to those key employees.

(8) Nothing in this section limits the operation of section 9A.

**Approved lotto equipment**

9C. A licensee or agent shall not use, in relation to the conduct of any game of lotto, any electrical or mechanical device or equipment—

- (a) in connection with the registration or processing of any person's entry in the game; or
- (b) that affects the outcome of the game,

unless the device or equipment is of a design and type, and is operated in a location, approved for the time being by the Minister.

(7) Section 10 (**Revocation or suspension of licence**)—

(a) Section 10 (1) (c)—

After “licence”, insert “or any direction given to the licensee under section 9A or 9B”.

(b) Section 10 (1)—

Omit “the licence” where lastly occurring, insert instead “or suspend the licence, as the Minister considers appropriate”.

*Lotto (Amendment) 1988*SCHEDULE 1—AMENDMENTS—*continued*

- (c) Section 10 (2) (a) (ii)—  
Omit the subparagraph, insert instead:
- (ii) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
- (d) Section 10 (3A)—  
After section 10 (3), insert:
- (3A) If the Minister considers it necessary or expedient in order to secure compliance by a licensee with a direction given by a notice under section 9A or 9B, the Minister may, by that or a subsequent notice, suspend the licensee's licence—
- (a) until a date specified in the notice of suspension; or
- (b) if the notice so specifies—until the Minister, being satisfied that the relevant direction has been complied with, further notifies the licensee.
- (e) Section 10 (4)—  
After "revocation" wherever occurring, insert "or suspension".
- (f) Section 10 (4)—  
Omit "or (2)", insert instead ", (2) or (3A)".
- (g) Section 10 (5)—  
After "revoked" where secondly occurring, insert ", or is suspended".
- (h) Section 10 (5)—  
After "revoked" where fourthly occurring, insert ", or was suspended,".
- (i) Section 10 (5) (a), (b)—  
After "revoked" wherever occurring, insert "or suspended".
- (8) Section 13—  
Omit the section, insert instead:
- Application of subscriptions**
13. (1) Out of the subscriptions received by a licensee in respect of a game of lotto conducted by the licensee, the licensee shall—
- (a) pay into the prize fund kept in respect of the licensee an amount equal to a percentage, prescribed by the conditions of the licence, of the subscriptions for that game; and

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**SCHEDULE 1—AMENDMENTS—*continued***

(b) pay to the Minister, as duty, an amount equal to a percentage, prescribed by the conditions of the licence, of the subscriptions for that game.

(2) Until percentages are prescribed by the conditions of a licence, the percentages for the purposes of subsection (1) (a) and subsection (1) (b) are 60 per cent and 31 per cent respectively.

(9) Section 14—

Omit the section, insert instead:

**Prize funds**

14. (1) Amounts paid by a licensee pursuant to section 13 (1) (a) shall be paid into a bank account nominated by the Treasurer, to be known as a prize fund, which shall be kept by the corporation in respect of the licensee.

(2) A licensee may draw on the licensee's prize fund—

- (a) in order to apply money from the fund in accordance with subsection (7); or
- (b) in order to make payments in respect of unclaimed money in accordance with subsection (8),

unless the corporation has by notice in writing directed the bank at which the prize fund is kept not to accommodate drawings by the licensee on the fund.

(3) If the corporation has directed a bank in the manner referred to in subsection (2), the corporation may draw on the prize fund of a licensee—

- (a) in order to enable the completion of any game of lotto commenced by the licensee; or
- (b) in order to apply money from the fund in accordance with subsection (7) (b) towards the reimbursement of the licensee; or
- (c) in order to make payments in respect of unclaimed money, in accordance with subsection (8), which the licensee is unable to make from the fund by reason of the direction.

(4) Money for the time being credited to a prize fund and not immediately required for the payment of prizes may be invested in such manner as the corporation, at the request of the licensee concerned, may in writing approve.

(5) The proceeds of an investment, or of any realisation of an investment, under subsection (4) shall be paid into the relevant prize fund and shall form part of the fund.



*Lotto (Amendment) 1988*SCHEDULE 1—AMENDMENTS—*continued*

(6) At the request of the licensee, the corporation shall (unless it considers that there are special circumstances that warrant its not doing so) realise any investment made from the prize fund of the licensee.

(7) Apart from investment under subsection (4), money forming part of a licensee's prize fund may be applied only—

- (a) towards the payment by the licensee of prizes won in games of lotto conducted by the licensee; and
- (b) to the extent that the conditions of the licence require any subsidy, of the kind described in section 6 (n), to be made by the licensee in respect of the prize fund—towards the reimbursement of the licensee.

(8) The regulations may make provision for or with respect to the disposal of unclaimed prizes or of money as to which any dispute has arisen.

(10) Section 14A (**Minister to be a corporation sole for certain purposes**)—

Section 14A (1)—

Omit "Lotto Prize Fund Account referred to in section 14 (1)", insert instead "prize funds of any licensees".

(11) Section 15 (**Payment of duty**)—

(a) Section 15 (1)—

After "close", insert ", or within such other period as the regulations may prescribe".

(b) Section 15 (1)—

Omit "specified", insert instead "referred to".

(c) Section 15 (1)—

Omit "13 (b)", insert instead "13 (1) (b)".

(d) Section 15 (2)—

Omit "specified in" wherever occurring, insert instead "specified by or under".

(e) Section 15 (2)—

After "cent", insert "(or, if another percentage is prescribed by the regulations, the percentage so prescribed)".

(f) Section 15 (4)—

Omit "Revenue".

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 SCHEDULE 1—AMENDMENTS—*continued*

- (12) Section 15A (**Sharing of duty with participating areas**)—
- (a) Section 15A (1)—  
 Before “means”, insert “, in relation to any class or description of lotto,”.
- (b) Section 15A (1)—  
 After “section” where secondly occurring, insert “in relation to games of that class or description”.
- (c) Section 15A (2)—  
 After “lotto”, insert “of any class or description”.
- (d) Section 15A (3) (a)—  
 Omit “conducted under this Act”, insert instead “in relation to which the area concerned is a participating area”.
- (13) Section 15B—  
 After section 15A, insert:  
**Delegation**  
 15B. The Minister may delegate to any officer or person all or any of the functions conferred or imposed on the Minister by or under this Act, other than this power of delegation.
- (14) Section 16 (**Inspectors**)—
- (a) Section 16 (1)—  
 Omit “an officer employed under the Public Service Act, 1902,”, insert instead “a public servant”.
- (b) Section 16 (2) (e)—  
 Omit “registers, books, records or” wherever occurring.
- (c) Section 16 (2) (f)—  
 Omit “register, book, record or”.
- (d) Section 16 (2) (g)–(m)—  
 After section 16 (2) (f), insert:
- (g) require any licensee, agent or other person whom the inspector reasonably suspects of having the custody, possession or control of any device or equipment that is, or appears to the inspector to be, used in relation to the conduct of any game of lotto—
- (i) to produce the device or equipment for inspection;  
 and
- (ii) to answer any question with respect to the device or equipment,  
 within such reasonable time as may be specified in the requirement;

*Lotto (Amendment) 1988*SCHEDULE 1—AMENDMENTS—*continued*

- (h) inspect and test any device or equipment in the custody, possession or control of a licensee, agent or other person that is, or appears to the inspector to be, used in relation to the conduct of any game of lotto;
  - (i) for the purpose of any such inspection or testing—
    - (i) require the licensee, agent or other person to provide the inspector with such assistance as the inspector may reasonably require; or
    - (ii) where practicable, remove the device or equipment, for such time as may for that purpose be reasonably necessary, to another place;
  - (j) where the inspector considers it to be necessary to do so for the purpose of obtaining evidence of the commission of an offence—seize any document or any device or equipment inspected or tested under this subsection;
  - (k) by notice in writing require any licensee, agent or other person concerned, in whatever capacity, in the conduct of any game of lotto, to attend before the inspector at a specified time or place and answer any question with respect to the conduct of any such game;
  - (l) call to his or her aid—
    - (i) another inspector, or a member of the police force, if he or she is obstructed, or believes on reasonable grounds that he or she will be obstructed, in the exercise of his or her functions; or
    - (ii) a person considered by the inspector to be competent for the purpose;
  - (m) exercise any other functions prescribed by the regulations as functions of an inspector.
- (e) Section 16 (3) (c)—  
Omit “subsection (2) (e)”, insert instead “subsection (2)”.
- (f) Section 16 (4), (6)—  
After “subsection (2) (e) (ii)” wherever occurring, insert “, (g) (ii) or (k)”.
- (g) Section 16 (5)—  
Omit the subsection, insert instead:  
(5) A person is not required by this section to answer a question that might incriminate the person.

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 SCHEDULE 1—AMENDMENTS—*continued*

## (h) Section 16 (6)—

Omit “Companies Act, 1961,” insert instead “Companies (New South Wales) Code”.

## (i) Section 16 (7)–(10)—

After section 16 (6), insert:

(7) If, under this section, an inspector seizes any document, device or equipment, it may be retained by the inspector for such period prior to the completion of any proceedings (including proceedings on appeal) in which it may be evidence but only if, in the case of documents, the person from whom the documents were seized is provided, within a reasonable time after the seizure, with a copy of the documents certified by an inspector as a true copy.

(8) Subsection (7) ceases to have effect in relation to anything seized if, on the application of a person aggrieved by the seizure, the court in which proceedings referred to in that subsection are instituted so orders.

(9) A copy of documents provided under subsection (7) is, as evidence, of equal validity to the documents of which it is certified to be a true copy.

(10) A person has, while acting in aid of an inspector under this section, the functions of an inspector.

## (15) Sections 17–17c—

Omit section 17, insert instead:

**Information relating to licensee or agent**

17. (1) A licensee or agent shall, where any change (being a change of a kind prescribed by the regulations) occurs in the circumstances existing in relation to the licensee or agent at the time the licensee obtained a licence, notify the Minister in writing, not later than 14 days after the occurrence of the change, of such particulars as the regulations may require in relation to it.

Maximum penalty: 20 penalty units.

(2) The Minister may, by notice in writing, require a licensee or agent or a person who, in the opinion of the Minister, has a direct or indirect association with a licensee or agent—

- (a) to provide the Minister or an inspector, in accordance with directions in the notice, with such information relevant to the licensee or agent or that association (or relevant to any matter prescribed by the regulations) as is specified in the notice; or

*Lotto (Amendment) 1988*SCHEDULE 1—AMENDMENTS—*continued*

- (b) to produce to the Minister or an inspector, in accordance with directions in the notice, such documents relevant to the licensee or agent or that association (or relevant to any matter prescribed by the regulations) as are specified in the notice and to permit examination of the documents, the taking of extracts from the documents and the making of copies of the documents; or
- (c) to attend before the Minister or an inspector for examination in relation to any matters relevant to the licensee or agent or that association (or relevant to any matter prescribed by the regulations) and to answer any question relating to those matters.

Maximum penalty: 20 penalty units.

(3) A person is not excused from complying with a notice under this section on the ground that compliance might tend to incriminate the person but, where the person claims, before complying with the notice, that compliance might tend to incriminate the person, information provided in compliance with the notice is not admissible in evidence against the person in criminal proceedings other than proceedings under this Act.

(4) Where documents are produced under this section, the Minister or inspector to whom they are produced may retain possession of the documents for such period as may reasonably be necessary to permit examination of the documents, the taking of extracts from the documents and the making of copies of the documents.

(5) At any reasonable times during the period for which documents are retained under subsection (4), the Minister or inspector shall permit inspection of the documents by a person who would be entitled to inspect them if they were not in the possession of the Minister or an inspector.

(6) A person who complies with a requirement of a notice under this section does not on that account incur a liability to another person.

(7) Where the Minister is satisfied that a person has, without reasonable excuse, refused or failed to comply with a requirement of a notice under this section, the Minister may certify the failure to the Supreme Court.

(8) Where the Minister gives a certificate under subsection (7), the Supreme Court may inquire into the case and—

- (a) order the person to comply with the requirement within a period specified by the Court; or

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 SCHEDULE 1—AMENDMENTS—*continued*

- (b) if the Court is satisfied that the person failed, without reasonable excuse, to comply with the requirement—punish the person as if the person were in contempt of the Court and, if it thinks fit, also make an order under paragraph (a).

**Investigations**

17A. (1) The Minister may appoint a person to investigate and report upon such matters and circumstances as are specified by the Minister and relate to—

- (a) the conduct of any game of lotto; or
- (b) a licensee or agent or a person who, in the opinion of the Minister, is an associate of a licensee or agent; or
- (c) a specified person who, or a specified class of persons which includes persons who, in the opinion of the Minister, could affect the conduct of a game of lotto; or
- (d) a specified person who, or a specified class of persons which includes persons who, in the opinion of the Minister, could be in a position to exercise direct or indirect control over a licensee or agent, or an associate of a licensee or agent, in relation to the conduct of a game of lotto.

(2) A person appointed to carry out an investigation may, for the purposes of the investigation, exercise—

- (a) the functions conferred by section 17 on the Minister; and
- (b) such other functions of the Minister as are specified by the Minister in the instrument of appointment.

as if the person were the Minister.

(3) The exercise of functions under subsection (2) by a person other than the Minister has effect as if the functions had been exercised by the Minister.

**Termination of certain contracts**

17B. (1) The Minister may serve on each party to a prescribed contract a notice in writing affording the party an opportunity to show cause within 14 days why the contract should not be terminated on the ground that, for reasons specified in the notice, it is no longer in the public interest that the contract should remain in force.

(2) A person served with such a notice may, within the period of 14 days specified in the notice, arrange with the Minister for the making of oral or written submissions as to why the contract should not be terminated.

*Lotto (Amendment) 1988*SCHEDULE 1—AMENDMENTS—*continued*

(3) If—

(a) no arrangements are made, or no submissions are received in accordance with arrangements made, under subsection (2); or

(b) submissions are received but, in the opinion of the Minister, do not warrant continuation of the contract, the Minister may, by notice in writing served on each party to the contract, require the contract to be terminated within a time specified in the notice.

(4) If a contract is not terminated as required by a notice under subsection (3), it is terminated by this Act.

(5) No right of compensation enforceable against the State arises because an agreement is terminated in accordance with a notice under subsection (3) or by this Act.

(6) A party to a prescribed contract terminated in accordance with a notice under subsection (3) or by this Act shall not give effect to any part of the contract.

Maximum penalty: 50 penalty units.

(7) Section 17 (which relates to the powers of the Minister to obtain information) applies in relation to a party to a prescribed contract in the same way as it applies in relation to a licensee.

(8) In this section—

“contract” includes any kind of agreement or arrangement;

“prescribed contract” means—

(a) a contract relating to the supply of goods or services to a licensee or agent in connection with the conduct of any game of lotto; or

(b) a contract within a class of contracts specified by the regulations as being prescribed contracts for the purposes of this section,

not being—

(c) a contract relating to the construction or alteration of premises of a licensee or agent; or

(d) a contract within a class of contracts specified by the regulations as not being prescribed contracts for the purposes of this section.

**False statements as to revenue**

17C. A person shall not, with respect to subscriptions received or revenue derived from conducting games of lotto, knowingly furnish or make to an inspector or other person exercising any functions under this Act a report, return or statement that is false or misleading in a material particular.

*Lotto (Amendment) 1988***SCHEDULE 1—AMENDMENTS—*continued***

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

**(16) Section 18 (Service of notices and orders on licensees)—**

Section 18 (2)—

After “licensees”, insert “holding the same licence”.

**(17) Section 20 (Proceedings and penalties)—**

Section 20 (2)—

Omit “stipendiary magistrate sitting alone in petty sessions”, insert instead “Local Court constituted by a Magistrate sitting alone”.

**SCHEDULE 2—VALIDATION OF CERTAIN LOTTO TRANSACTIONS**

(Sec. 4)

**Definitions**

## 1. In this Schedule—

“original licence” means the licence granted under the Principal Act on 10 August 1979 to the Director of State Lotteries and Lotto Management Services Pty. Limited as joint licensees;

“renewed licence” means the licence granted under the Principal Act on 27 July 1988 to the State Lotteries Office and Lotto Management Services Pty. Limited as joint licensees;

“Principal Act” means the Lotto Act 1979;

“variation agreement” means the agreement entitled “Variation of Lotto Licence” entered into on 31 October 1986 between the State Lotteries Office, Lotto Management Services Pty. Limited and the then Minister for Finance.

**Extension of original licence**

## 2. (1) The original licence—

(a) shall be deemed to have been granted for a term ending on 31 January 1989; and

(b) shall be deemed to have continued in force from its commencement until the commencement of this Schedule and shall, subject to the Principal Act, continue in force until 31 January 1989.

(2) Nothing in this clause affects the operation of Schedule 3 to the State Lotteries (Amendment) Act 1984.

**Effect of variation agreement**

3. (1) The variation agreement, to the extent that it purported to effect an alteration of the conditions (but not the term) of the original licence, shall be deemed to have been an alteration made in accordance with section 7 of the Principal Act and to have altered the conditions of the original licence accordingly.



*Lotto (Amendment) 1988*

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SCHEDULE 2—VALIDATION OF CERTAIN LOTTO TRANSACTIONS—  
*continued*

(2) Nothing in this clause affects any right or obligation validly created by the variation agreement or any collateral agreement.

(3) A right or obligation—

- (a) which the variation agreement or any collateral agreement purported to create; and
- (b) which, as a consequence of any invalidity of the variation agreement (in so far as it purported to extend the term of the original licence), would not have bound the parties to the agreement concerned,

is valid and binding, and shall be deemed to have been so from the commencement of the agreement.

**Avoidance of renewed licence**

4. The renewed licence is void, and shall be deemed to have been void from its commencement.

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[*Minister's second reading speech made in—  
Legislative Assembly on 20 September 1988  
Legislative Council on 15 November 1988*]

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