



New South Wales

Totalizator Legislation Amendment Act 1997 No 151

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New South Wales

Totalizator Legislation Amendment Act 1997 No 151

Act No 151, 1997

An Act to amend the *Totalizator Agency Board Privatisation Act 1999*, the *Totalizator Act 1997*, the *Liquor Act 1982* and the *Registered Clubs Act 1976* to make further provision with respect to licences to conduct totalizator betting, centralised monitoring of gaming devices and linked gaming systems; and for other purposes. [Assented to 17 December 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Totalizator Legislation Amendment Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Totalizator Agency Board Privatisation Act 1997 No 43

The *Totalizator Agency Board Privatisation Act 1997* is amended as set out in Schedule 1.

4 Amendment of Totalizator Act 1997 No 45

The *Totalizator Act 1997* is amended as set out in Schedule 2.

5 Amendment of Liquor Act 1982 No 147

The *Liquor Act 1982* is amended as set out in Schedule 3.

6 Amendment of Registered Clubs Act 1976 No 31

The *Registered Clubs Act 1976* is amended as set out in Schedule 4.

Schedule 1 Amendment of Totalizator Agency Board Privatisation Act 1997

(Section 3)

[1] Section 3 Objects of Act

Omit “on the conversion” from section 3 (d).

[2] Section 16 Minister may act for State as shareholder

Omit “that were issued to the State under Part 2”.

Insert instead “issued to the State”.

[3] Section 27 Time when transfers may be effected

Omit “(being the shares issued under Part 2)” from section 27 (2).

[4] Section 29 Time when exclusion may be effected

Omit “(being the shares issued under Part 2)” from section 29 (2).

[5] Section 32 Sale of TAB Limited by public float

Omit “shares issued to the State of New South Wales under Part 2”
from section 32 (1).

Insert instead “shares held by the State of New South Wales”.

[6] Section 32 (3)–(5)

Insert after section 32 (2):

- (3) The Auditor-General is to examine the sale of TAB Limited as he considers appropriate and is to report as soon as practicable after the sale to both Houses of Parliament.
- (4) The Minister is to ensure that the Auditor-General is given access to such information and resources as may be necessary to enable the Auditor-General to exercise the functions conferred by this section.

- (5) The Auditor-General's examination under this section is to accommodate the timetable for the sale of TAB Limited determined by the Minister.

[7] Section 36 Definitions

Omit from section 36 (2) (b):

- (b) whether the primary person is in a position to exercise certain powers in relation to a body corporate.

Insert instead:

- (b) the primary person's entitlement, as provided by section 609, to shares in a body corporate.

[8] Section 36 (4)

Omit "section 33". Insert instead "sections 33 and 35 (c)".

[9] Section 36 (5)

Omit "as if a reference in section 609 (1) (a) of that Law".

Insert instead "as if in that section a reference to an associate were a reference to an associate for the purposes of this Division and a reference".

[10] Section 37 Application of Division

Omit "whenever TAB Limited".

Insert instead "whenever TAB Limited or a TAB Limited subsidiary".

[11] Section 38 Prohibited shareholding interest

Omit section 38 (3).

Insert instead:

- (3) A person must not have a prohibited shareholding interest in TAB Limited. A person who contravenes this subsection is guilty of an offence.

Maximum penalty: 100 penalty units.

[12] Section 39 Power to require information relating to entitlement to shares in TAB Limited

Insert after section 39 (3):

- (3A) A declaration under subsection (3) has effect according to its tenor for the purposes of this Division.

[13] Section 39 (5)–(7)

Omit section 39 (5). Insert instead:

- (5) A person who fails to comply with a requirement of a notice under this section, or in purported compliance with such a requirement furnishes information that is false or misleading in a material particular, is guilty of an offence.

Maximum penalty: 100 penalty units.

- (6) It is a defence to a prosecution of a person for an offence under subsection (5) if it is proved that, at the time the information was furnished, the person believed, on reasonable grounds:
- (a) in the case of false information—that the information was true, or
- (b) in the case of misleading information—that the information was not misleading.
- (7) A person is not liable to be convicted of both an offence under subsection (5) and an offence under Chapter 4 (Perjury, false statements etc) of Part 7 of the Crimes Act 1900 in respect of the same incident.

[14] Section 41 Disposal, forfeiture etc of shares where prohibited shareholding interest

Insert “the offender or” after “otherwise than to” in section 41 (1).

[15] Section 41 (2)

Omit “otherwise than to an associate of the offender”.

[16] Section 41 (5)

Omit “, but for this subsection,” wherever occurring.

[17] Section 41 (5)

Omit “the transaction is illegal and void”.

Insert instead “the transaction is not illegal or void as a result of this Division but the voting shares in TAB Limited that were the subject of the transaction are subject to forfeiture under subsection (6)”.

[18] Section 41 (6), (6A)

Omit section 41 (6). Insert instead:

(6) The Minister may by written notice served on the parties to a transaction referred to in subsection (5) declare that the voting shares in TAB Limited that were the subject of the transaction are forfeited to the State.

(6A) A declaration under subsection (6) takes effect when the notices required in respect of the declaration by subsections (6) and (7) are served (or, if they are served at different times, when the one that is served latest is served).

[19] Section 41 (8), (9)

Omit the subsections.

[20] Section 42 Effect of prohibited shareholding on voting and dividend rights

Omit “provides for” from section 42 (1).

[21] Section 42 (1) (a)

Insert “provides for” before “the suspension of”.

[22] Section 42 (1) (b)

Omit “to refuse or defer payment”.

Insert instead “to refuse payment, defer payment or suspend any entitlement to payment”.

[23] Section 42 (2)

Insert “or a TAB Limited subsidiary” after “that TAB Limited”.

[24] Section 42 (2)

Omit “cannot”. Insert instead “must not”.

[25] Section 42 (2A)

Insert after section 42 (2):

(2A) The contravention of a condition of a licence imposed by subsection (2) is grounds for disciplinary action in relation to the licence concerned (including a licence held by a TAB Limited subsidiary) for the purposes of section 47 of the *Totalizator Act 1997*.

[26] Section 45 Sale of forfeited shares

Omit “that was illegal and void by virtue of” from section 45 (3) (a).

Insert instead “referred to in”.

[27] Section 46 Immunity of Minister and TAB Limited and its officers and auditors

Insert “, the State” after “Minister”.

[28] Section 48 Proceeds of the sale

In section 48 (1) insert “so as to reduce net budget sector debt” after “Consolidated Fund”.

[29] Section 55 Subsidiary companies

Insert “Limited” after “TAB” in section 55 (4) wherever occurring.

[30] Section 56 Protection of contractual and other obligations

Insert after section 56 (1) (b):

- (b1) the payment (whether or not by the issue of shares) of any consideration or fee for a licence issued to TAB or a TAB subsidiary under the *Totalizator Act 1997*, the *Liquor Act 1982* or the *Registered Clubs Act 1976*, before the sale of TAB Limited as authorised by this Act,

[31] Section 56 (4)

Omit the subsection.

[32] Section 58 Exemptions from tax for conversion documents and other documents

Omit “under Part 2” from paragraph (a) of the definition of *exempt matter* in section 58 (1).

Insert instead “to the State”.

[33] Schedule 3 Amendment of Totalizator (Off-course Betting) Act 1964 to take effect on conversion of TAB to company

Omit Schedule 3 [10]. Insert instead:

[10] Section 16

Omit the section. Insert instead:

16 Company to hold residue in trust

Money held by the Company pending payment pursuant to section 14 (3) (c) to the NSW Thoroughbred Racing Board, the Greyhound Racing Authority (NSW), Harness Racing New South Wales or approved racing clubs is to be so held in trust for those bodies.

[34] Schedule 5 Savings, transitional and other provisions

Omit “Part 2” from clause 2 (1). Insert instead “Part 3”.

[35] Schedule 5, clause 4 (1)

Omit “(being the shares issued to the State under Part 2)”.

Schedule 2 Amendment of Totalizator Act 1997

(Section 4)

[1] Section 5 Definitions

Insert in alphabetical order in section 5 (1):

controlling bodies is defined in section 6A.

major racing bodies is defined in section 6B.

[2] Section 5 (1), definition of “racing club”

Omit the definition. Insert instead:

racing club means a club, association or other body of persons (whether incorporated or unincorporated) that is registered by a controlling body as a racing club.

[3] Section 5 (1), definition of “racecourse”

Omit the definition. Insert instead:

racecourse means:

- (a) land in New South Wales that is licensed as a racecourse under the *Gaming and Betting Act 1912*, or
- (b) land outside New South Wales (including outside Australia) used for race meetings.

[4] Sections 6A, 6B

Insert after section 6:

6A Controlling bodies

- (1) For the purposes of this Act, the *controlling bodies* are the NSW Thoroughbred Racing Board, Harness Racing New South Wales and the Greyhound Racing Authority (NSW).

- (2) For the purposes of this Act, the racing clubs for which a controlling body is responsible are:
 - (a) in the case of the NSW Thoroughbred Racing Board—racing clubs that promote, conduct or control horse racing, and
 - (b) in the case of Harness Racing New South Wales—racing clubs that promote, conduct or control harness racing, and
 - (c) in the case of the Greyhound Racing Authority (NSW)—racing clubs that promote, conduct or control greyhound racing.
- (3) If a controlling body ceases to exist, its functions under this Act are conferred on its successor and its successor becomes a controlling body in its place (including for the purposes of the operation of this section).
- (4) The successor of a controlling body is the body nominated by the Minister by order published in the Gazette.
- (5) The Minister cannot nominate a body as successor of a controlling body except with the approval of both a majority of the racing clubs for which the controlling body is responsible and of the principal racing club or clubs (as the case may be) for which the controlling body is responsible.
- (6) If a successor of a controlling body cannot be nominated, there is no successor of that body for the purposes of this section.

6B Major racing bodies

- (1) For the purposes of this Act, the *major racing bodies* are the following bodies:
 - (a) Australian Jockey Club,
 - (b) Sydney Turf Club,
 - (c) Provincial Association of New South Wales,
 - (d) Country Racing Council Limited,
 - (e) New South Wales Harness Racing Club Limited,

- (f) NSW Greyhound Breeders, Owners & Trainers Association Limited,
 - (g) New South Wales National Coursing Association Limited.
- (2) If a major racing body ceases to exist, its functions under this Act are conferred on its successor and its successor becomes a major racing body in its place (including for the purposes of the operation of this section).
 - (3) The successor of a major racing body is the body nominated by the Minister by order published in the Gazette.
 - (4) The Minister cannot nominate a body as successor of a major racing body except with the approval of a majority of the racing clubs whose interests the major racing body represented or, where the major racing body did not represent the interests of any racing club, with the approval of a majority of the persons who were members of the major racing body immediately before it ceased to exist.
 - (5) If a successor of a major racing body cannot be nominated, there is no successor of that body for the purposes of this section.

[5] Section 11 Meaning of “exclusivity period”

Omit “*exclusive licence period*”.
Insert instead “*exclusivity period*”.

[6] Section 12 Licences may be granted to conduct totalizators of various kinds

Omit section 12 (1). Insert instead:

- (1) A licence may be granted under this Act for the conduct of a totalizator in respect of betting on any one or more of the following events and contingencies:
 - (a) events and contingencies scheduled to be held at a race meeting on any racecourse within or outside Australia (being horse racing, harness racing or greyhound racing events or contingencies),

- (b) any event declared for the time being under section 57EA of the *Gaming and Betting Act 1912* to be a sports betting event for the purposes of that Act.

[7] Section 13 Licensee can be approved to conduct other betting activities

Omit section 13 (2). Insert instead:

- (2) A betting activity may be approved under this section in respect of any of the following events and contingencies:
 - (a) events and contingencies scheduled to be held at a race meeting on any racecourse within or outside Australia (being horse racing, harness racing or greyhound racing events or contingencies),
 - (b) any event declared for the time being under section 57EA of the *Gaming and Betting Act 1912* to be a sports betting event for the purposes of that Act.

[8] Sections 14–16

Omit the sections. Insert instead:

14 TAB entitled to exclusive off-course totalizator licence

- (1) TAB or a wholly owned subsidiary of TAB is entitled to be granted a licence (the *TAB off-course licence*) to conduct an off-course totalizator during the exclusivity period in respect of betting on the following events and contingencies:
 - (a) events and contingencies scheduled to be held at a race meeting on any racecourse within or outside Australia (being horse racing, harness racing or greyhound racing events or contingencies),
 - (b) any event declared for the time being under section 57EA of the *Gaming and Betting Act 1912* to be a sports betting event for the purposes of that Act.

- (2) No other person may be granted a licence for the conduct, during the exclusivity period, of an off-course totalizator in respect of an event or contingency referred to in subsection (1).
- (3) The Minister may, in the Minister's absolute discretion, grant the TAB off-course licence for a term that is longer than the exclusivity period.
Note. The TAB off-course licence is only "exclusive" for the exclusivity period, even if it is granted for a longer period.
- (4) This section ceases to apply if the exclusive licence is cancelled or otherwise ceases to have effect under this Act.
- (5) No application under this Act is required for the purposes of the grant pursuant to this section of the TAB off-course licence (whether it is granted for the exclusivity period or for a longer period).

15 TAB and racing clubs entitled to exclusive on-course totalizator licences

- (1) TAB or a wholly owned subsidiary of TAB is entitled to be granted a licence (the *TAB on-course licence*) to conduct an on-course totalizator during the exclusivity period in respect of betting on the following events and contingencies:
 - (a) events and contingencies scheduled to be held at a race meeting on any racecourse within or outside Australia (being horse racing, harness racing or greyhound racing events or contingencies),
 - (b) any event declared for the time being under section 57EA of the *Gaming and Betting Act 1912* to be a sports betting event for the purposes of that Act.
- (2) Each racing club (whether or not in existence on the commencement of this section) is also entitled to a licence (a *club on-course licence*) to conduct an on-course totalizator during the exclusivity period in respect of betting on any event or contingency scheduled to be held at a race meeting on any racecourse within or outside Australia.

- (3) No other person or body may be granted a licence for the conduct, during the exclusivity period, of an on-course totalizator in respect of an event or contingency to which an entitlement under subsection (1) or (2) applies.
- (4) The Minister may, in the Minister's absolute discretion, grant any of the licences to which this section applies for a term that is longer than the exclusivity period.
Note. A licence is only "exclusive" for the exclusivity period, even if it is granted for a longer period.
- (5) Subsection (1) ceases to apply if the TAB on-course licence is cancelled or otherwise ceases to have effect under this Act. Subsection (2) ceases to apply to a racing club if its club on-course licence is cancelled or otherwise ceases to have effect under this Act.
- (6) The Minister can cancel the TAB on-course licence if the TAB off-course licence under section 14 is cancelled or otherwise ceases to have effect. Such a cancellation can be effected by notice in writing to the licensee under the TAB on-course licence and is not subject to the other requirements of this Act regarding cancellation of a licence.
- (7) No application under this Act is required for the purposes of the grant pursuant to this section of the TAB on-course licence or a club on-course licence, whether it is granted for the exclusivity period or for a longer period.

15A Consideration and fees for licences

- (1) The Minister may determine that an amount is payable as consideration for the grant of a licence under this Act, except a licence granted to a racing club to authorise the operation of an on-course totalizator. Different amounts may be determined for different licences.
- (2) The Minister may determine a periodic licence fee for a licence under this Act, except a licence granted to a racing club to authorise the operation of an on-course totalizator and a licence granted to TAB or a wholly owned subsidiary of TAB under section 14 or 15. Any such fee is payable in accordance with the regulations. Different fees may be determined for different licences.

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- (3) The Minister can require payment of an amount of consideration payable under this section by payment in money or by the issue of shares to the State or as the Minister may otherwise direct.
 - (4) A licence for which an amount of consideration has been determined to be payable under this section is not to be granted until the amount has been paid or arrangements satisfactory to the Minister have been made for its payment.
 - (5) The regulations may make provision for or with respect to any fee payable under this section and in particular may provide for any of the following:
 - (a) the periods in respect of which a fee is payable,
 - (b) times for payments of fees,
 - (c) payment by instalments,
 - (d) penalties for late payment,
 - (e) suspension or cancellation of a licence for failing to pay a fee,
 - (f) the circumstances in which a fee (or part of a fee) may be refunded.

16 Eligibility for further licence

The provisions of this Part are not intended to prevent TAB or a racing club (assuming that they are otherwise qualified) from applying for and being granted further licences in respect of any period beyond the period for which they hold licences granted pursuant to section 14 or 15.

[9] Section 17A

Insert after section 17:

17A Trade Practices exemption

- (1) The following conduct is specifically authorised by this Act for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*:

- (a) the grant of the TAB off-course licence, the TAB on-course licence and a club on-course licence referred to in sections 14 and 15 of this Act,
 - (b) conduct authorised or required by or under the terms or conditions of a licence referred to in paragraph (a),
 - (c) entering into an arrangement or proposed arrangement approved under this section,
 - (d) giving effect to an arrangement approved under this section,
 - (e) the giving of a direction pursuant to clause 15 (Power of controlling bodies to give directions) of Schedule 2 and any conduct engaged in in compliance with any such direction.
- (2) The Minister may by order published in the Gazette approve of the following for the purposes of this section:
- (a) any arrangement or proposed arrangement entered into or to be entered into for the purposes of section 21A (Commercial arrangements with the racing industry) or 43 (2),
 - (b) any arrangement or proposed arrangement that in the opinion of the Minister is associated with and necessary or convenient for giving effect to a licence referred to in subsection (1) or an arrangement or proposed arrangement referred to in paragraph (a).
- (3) An approval under this section must identify the parties to the arrangements concerned.
- (4) Conduct authorised by this section is authorised only to the extent (if any) that it would otherwise contravene Part IV of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*.
- (5) In this section:
arrangement includes agreement and understanding.

giving effect to an arrangement includes:

- (a) complying with any obligation under the arrangement, and
- (b) exercising or enforcing any right or power under the arrangement.

Note. Section 51 of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales* provide that anything that is authorised by an Act is to be disregarded in deciding whether a person has contravened Part IV of the *Trade Practices Act 1974* and the *Competition Code* (which relates to restrictive trade practices).

[10] Section 21 Suitability of applicant and close associates of applicant

Omit section 21 (3).

[11] Section 21A

Insert after section 21:

21A Commercial arrangements with the racing industry

- (1) The Minister must not grant a licence (including a licence to TAB under section 14 or 15, but not including a licence to authorise a racing club to operate an on-course totalizator) unless:
 - (a) the Minister is satisfied that the applicant has made commercial arrangements with the racing industry in respect of the licence and the conduct of activities authorised by the licence, and
 - (b) the racing industry has provided the Minister with a written acknowledgment to the effect that the racing industry is satisfied with those arrangements, and
 - (c) the Minister has been provided with a copy of any agreement or other instrument that those arrangements involve.

- (2) For the purposes of this section, *the racing industry* comprises such one or more persons as the controlling bodies and major racing bodies nominate in writing to the Minister for the purposes of the licence concerned. A nomination in respect of a particular licence cannot be changed after it is made unless the Minister consents.

[12] Section 31 Definitions

Omit from section 31 (2) (b):

- (b) whether the primary person is in a position to exercise certain powers in relation to a body corporate.

Insert instead:

- (b) the primary person's entitlement, as provided by section 609, to shares in a body corporate.

[13] Section 31 (4)

Omit "section 33". Insert instead "sections 33 and 35 (c)".

[14] Section 31 (5)

Omit "as if a reference in section 609 (1) (a) of that Law".

Insert instead "as if in that section a reference to an associate were a reference to an associate for the purposes of this Division and a reference".

[15] Section 33 Prohibited shareholding interest

Omit section 33 (3).

Insert instead:

- (3) A person must not have a prohibited shareholding interest in a licensee. A person who contravenes this subsection is guilty of an offence.

Maximum penalty: 100 penalty units.

[16] Section 34 Power to require information relating to entitlement to shares in licensee

Insert after section 34 (3):

- (3A) A declaration under subsection (3) has effect according to its tenor for the purposes of this Division.

[17] Section 34 (5), (6)

Omit section 34 (5). Insert instead:

- (5) A person who fails to comply with a requirement of a notice under this section, or in purported compliance with such a requirement furnishes information that is false or misleading in a material particular, is guilty of an offence.

Maximum penalty: 100 penalty units.

- (6) It is a defence to a prosecution of a person for an offence under subsection (5) if it is proved that, at the time the information was furnished, the person believed, on reasonable grounds:
- (a) in the case of false information—that the information was true, or
- (b) in the case of misleading information—that the information was not misleading.
- (7) A person is not liable to be convicted of both an offence under subsection (5) and an offence under Chapter 4 (Perjury, false statements etc) of Part 7 of the *Crimes Act 1900* in respect of the same incident. Section 112 (False or misleading information) does not apply to the furnishing of information under this section.

[18] Section 36 Disposal, forfeiture etc of shares where prohibited shareholding interest

Insert “the offender or” after “otherwise than to” in section 36 (1).

[19] Section 36 (2)

Omit “otherwise than to an associate of the offender”.

[20] Section 36 (5)

Omit “, but for this subsection,” wherever occurring.

[21] Section 36 (5)

Omit “the transaction is illegal and void”.

Insert instead “the transaction is not illegal or void as a result of this Division but the shares in the licensee that were the subject of the transaction are subject to forfeiture under subsection (6)”.

[22] Section 36 (6), (6A)

Omit section 36 (6). Insert instead:

(6) The Minister may by written notice served on the parties to a transaction referred to in subsection (5) declare that the shares in the licensee that were the subject of the transaction are forfeited to the State.

(6A) A declaration under subsection (6) takes effect when the notices required in respect of the declaration by subsections (6) and (7) are served (or, if they are served at different times, when the one that is served latest is served).

[23] Section 36 (8), (9)

Omit the subsections.

[24] Section 37 Effect of prohibited shareholding on voting and dividend rights

Omit “to refuse or defer payment” from section 37 (1) (b).

Insert instead “to refuse payment, defer payment or suspend any entitlement to payment”.

[25] Section 40 Sale of forfeited shares

Omit “that was illegal and void by virtue of” from section 40 (3) (a).

Insert instead “referred to in”.

[26] Section 41 Immunity of Minister and licensees, officers and auditors

Insert “or the State” after “Minister”.

[27] Section 43 Conditions of licence

Omit section 43 (2). Insert instead:

- (2) Every licence (other than a licence that authorises a racing club to operate an on-course totalizator) is subject to a condition that the licensee must have in place and must give effect to commercial arrangements with the racing industry in respect of the licence and the conduct of activities authorised by the licence, being arrangements that the racing industry has acknowledged in writing to the Minister are to the satisfaction of the racing industry.

[28] Section 43 (2A)

Insert after section 43 (2):

- (2A) For the purposes of subsection (2), *the racing industry* comprises such one or more persons as the controlling bodies and major racing bodies nominated under section 21A for the purposes of the licence concerned. That nomination may be changed for the purposes of this section by fresh nomination in writing to the Minister, but only if the licensee consents to the fresh nomination.

[29] Section 58 Transitional provision—TAB to make rules while it holds exclusive licence

Omit section 58 (1). Insert instead:

- (1) While TAB or a wholly owned subsidiary of TAB holds a licence during the exclusivity period under Division 1 of Part 3, the rules for the conduct of totalizators are to be made, in accordance with this Part, by TAB.

[30] Section 77

Omit the section. Insert instead:

77 Rebate of tax to racing clubs

- (1) The Minister may, with the approval of the Treasurer, by order published in the Gazette give directions for the allowance of a rebate in respect of the betting tax payable by a licensee that is a racing club in relation to a race meeting when the race meeting turnover does not exceed an amount specified in and calculated in accordance with the provisions of the direction.
- (2) The total amount of betting tax required to be paid by a racing club in relation to a race meeting is reduced by the amount of any rebate to which the club is entitled under such a direction.
- (3) A direction under this section cannot make provision for the allowance of a rebate in respect of any betting tax payable on bets made with the racing club that section 17 (Requirements for conduct of on-course totalizators by racing clubs) provides are to be received by the racing club as agent for TAB.
- (4) In this section:
race meeting means a race meeting held by one racing club on one racecourse.
race meeting turnover means the amount calculated in accordance with the relevant direction of the Minister as race meeting turnover.

[31] Schedule 2 Savings, transitional and other provisions, Clause 11 Continuation of Racecourse Development Fund

Omit clause 11 (1) and (8). Insert instead:

- (1) The Racecourse Development Fund under the *Totalizator Act 1916* is continued under this Act and the following provisions apply:
 - (a) the assets and liabilities of the fund under the *Totalizator Act 1916* become assets and liabilities of the fund (the RDF) under this Act, and

- (b) a reference in any instrument made or entered into before the commencement of this clause to the Racecourse Development Fund under the *Totalizator Act 1916* is taken to be a reference to the RDF under this Act.

[32] Schedule 2, clause 11A

Insert after clause 11:

11A Distribution of Racecourse Development Fund

- (1) In this clause:

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

instrument means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

liabilities means any liabilities, debts and obligations (whether present or future and whether vested or contingent).

rights means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent).

the RDF means the fund continued by clause 11 as the RDF under this Act.

- (2) On a day appointed by proclamation for the purposes of this clause, the RDF is wound up and the assets, rights and liabilities of the RDF are transferred to such person or persons (as transferee) as the Minister directs by order in writing published in the Gazette.

- (3) When assets, rights and liabilities are transferred under this clause, the following provisions apply:
- (a) the assets transferred vest in the transferee by force of this clause and without the need for any conveyance, transfer, assignment or assurance,
 - (b) the rights and liabilities transferred become by force of this clause the rights and liabilities of the transferee,
 - (c) all proceedings pending in relation to the transferred assets, rights and liabilities immediately before the transfer are taken to be proceedings pending by or against the transferee,
 - (d) anything done or omitted to be done in relation to the transferred assets, rights or liabilities is (to the extent that it has any force or effect) taken to have been done or omitted to be done by, to or in respect of the transferee,
 - (e) a reference in any instrument (except an instrument exempted from this paragraph by direction of the Minister) made or entered into before the day appointed for the purposes of this clause to the Racecourse Development Fund under the *Totalizator Act 1916* or to the RDF under this Act is taken to be a reference to any fund to which the assets, rights and liabilities were transferred,
 - (f) any instrument executed only for a purpose ancillary to or consequential on the operation of this clause or the purpose of giving effect to this clause is not chargeable with stamp duty and is exempt from payment of any fee or charge that would otherwise be payable under any other Act in respect of the registration of the instrument.

[33] Schedule 2, clause 14

Omit the clause. Insert instead:

14 Commercial arrangements with racing bodies

Each controlling body has such additional powers, authorities, duties and functions as may be necessary or convenient for enabling it to enter into and perform its obligations under the following arrangements:

- (a) commercial arrangements for facilitating the conduct of totalizator betting and other betting activities authorised by this Act and arrangements ancillary to those arrangements,
- (b) commercial arrangements referred to in sections 200D (2A) and 207 (2A) of the *Liquor Act 1982* and section 140 (2A) of the *Registered Clubs Act 1976*,
- (c) arrangements for the giving of financial assistance and support to the racing industry or individual racing clubs, and arrangements ancillary to those arrangements,
- (d) arrangements for the distribution of moneys payable under the arrangements referred to in paragraphs (a) and (b);
- (e) arrangements with the State in connection with the restructuring and reorganisation of the racing industry consequent on the enactment of this Act and the *Totalizator Agency Board Privatisation Act 1997*.

[34] Schedule 2, clauses 15 and 16

Insert after clause 14:

15 Power of controlling bodies to give directions

- (1) Each controlling body has power to give the racing clubs for which it is responsible such directions as the controlling body considers to be necessary or desirable for the purpose of enabling it to exercise its rights and perform its obligations under, and otherwise to give effect to, arrangements referred to in clause 14.

- (2) A contract under seal is taken to exist between each controlling body and the racing clubs for which it is responsible, under which each racing club agrees to comply with the directions given to the racing club under this clause.
- (3) Each controlling body must exercise its powers under this clause to give directions to the racing clubs for which it is responsible so as to ensure that the arrangements referred to in clause 14 are carried into effect.

16 Exemption from stamp duty and registration fees and charges

- (1) The Minister may, by direction in writing, grant an exemption under this clause for any instrument that the Minister is satisfied has been executed only for the purpose of or in the course of giving effect to arrangements referred to in clause 14 for facilitating the restructuring and reorganisation of the racing industry consequent on the enactment of this Act and the *Totalizator Agency Board Privatisation Act 1997*.
- (2) An exemption under this clause has the effect that the instrument for which it is granted is not chargeable with stamp duty and is exempt from payment of any fee or charge that would otherwise be payable under any other Act in respect of the registration of the instrument.
- (3) An exemption is not to be granted under this clause except with the approval of the Treasurer.

Schedule 3 Amendment of Liquor Act 1982

(Section 5)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

connected (in the context of connection to an authorised CMS) is defined in section 200AA.

[2] Section 86JC Collection of duty on approved gaming machines (as inserted by the Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Act 1997)

Omit section 86JC (1). Insert instead:

- (1) This section applies to the following approved gaming devices:
 - (a) approved gaming devices that are connected to an authorised CMS (except those that the regulations provide are not subject to this section),
 - (b) such other approved gaming devices as the regulations may provide are subject to this section.

[3] Section 86JC (1A)

Insert after section 86JC (1):

- (1A) The regulations may provide that particular approved gaming devices or approved gaming devices of a particular class or description are approved gaming devices to which this section applies. The regulations can provide for example that an approved gaming device is one to which this section applies if it is kept, used or operated in a hotel in which any approved gaming device that is connected to an authorised CMS is kept, used or operated.

[4] Section 155A Secrecy

Omit section 155A (1A) (as inserted by the *Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Act 1997*).

[5] Section 155A (2) (as amended by the Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Act 1997)

Omit “subsections (1) and (1A)”. Insert instead “subsection (1)”.

[6] Section 155B Transfer of Board’s functions under this Act relating to approved gaming devices (as inserted by the Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Act 1997)

Omit section 155B (1). Insert instead:

- (1) The regulations may provide that any function of the Board under this Act relating to approved gaming devices may be exercised by a person other than the Board.

[7] Section 155C

Insert after section 155B (as inserted by the *Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Act 1997*):

155C Control of information obtained by CMS licensee

- (1) A CMS licensee and any director, officer, employee or agent of a CMS licensee who acquires CMS information must not make use of CMS information or directly or indirectly make a record of or divulge it to another person except:
 - (a) in the course of and for the purposes of the operation of an authorised CMS, or
 - (b) as may be authorised by the regulations.

Maximum penalty: 50 penalty units.

- (2) A CMS licensee must not use or divulge any CMS information (whether or not in the course of or for the purposes of the operation of an authorised CMS) in contravention of the regulations.

Maximum penalty: 100 penalty units.

- (3) The regulations may make provision for or with respect to the following:

(a) authorising the recording, divulging and use of CMS information,

(b) imposing restrictions, including prohibitions, on the use of CMS information by a CMS licensee (whether or not that use is in the course of or for the purposes of the operation of an authorised CMS),

(c) requiring the payment of fees in connection with the use or divulging of CMS information, and providing for the person to whom any such fee is to be paid (including the State) and for the recovery of any unpaid fees.

- (4) The provisions of section 155A (2)–(7) extend to information to which this section applies as if they formed part of this section, but with subsection (4) of that section modified to read as follows:

(4) An authority or person to which or to whom information is divulged under this section, and a person or employee under the control of that authority or person, are, in respect of that information, subject to the same rights, privileges and duties under this section as the authority or person would be if that authority, person or employee were an employee of a CMS licensee and had acquired the information in the course of the operation of an authorised CMS.

- (5) In this section:

CMS information means information acquired in the course of the operation of an authorised CMS.

[8] Section 200AA

Insert after section 200A (as inserted by the *Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Act 1997*):

200AA Meaning of “connected” to an authorised CMS

- (1) For the purposes of this Act and the *Registered Clubs Act 1976*, an approved gaming device is **connected** to an authorised CMS if arrangements of a kind approved by the Minister are in place for the provision to the CMS licensee of information in respect of the approved gaming device that enables the functions of the authorised CMS to be performed in relation to the device.
- (2) The arrangements that the Minister approves for the purposes of this section can involve the provision of information by any means, such as (for example, and without limiting the generality of subsection (1)) by means of any of the following:
 - (a) the direct provision of information by electronic data transfer,
 - (b) the provision of information by means of the lodgment of reports or returns (whether or not electronically),
 - (c) the provision of information by persons acting as information collectors and processors for hoteliers.
- (3) Different arrangements can be approved under this section in respect of different premises or classes of premises or different approved gaming machines or classes of approved gaming machines.

[9] Section 200D Grant of licence (as inserted by the *Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Act 1997*)

Insert after section 200D (2):

- (2A) Every licence is subject to a condition that the licensee must have in place and must give effect to commercial arrangements with the racing industry in respect of the

licence and the conduct of activities authorised by the licence, being arrangements that are both:

- (a) approved by the Minister, having regard to the interests of the racing industry, hotels and registered clubs, and
- (b) acknowledged by the racing industry in writing to the Minister to be to the satisfaction of the racing industry.

- (2B) For the purposes of subsection (2A), *the racing industry* comprises such one or more persons as the controlling bodies and major racing bodies (within the meaning of the *Totalizator Act 1997*) nominate in writing to the Minister for the purposes of the licence concerned. The nomination can be changed by fresh nomination in writing to the Minister, but only if the licensee consents to the fresh nomination.

[10] Section 200D (5)

Omit section 200D (5). Insert instead:

- (5) A licence remains in force for the period for which it was granted, as specified by the Minister in the licence, unless sooner cancelled or surrendered.

[11] Section 200EA

Insert after section 200E (as inserted by the *Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Act 1997*):

200EA Trade Practices exemption

- (1) The following conduct is specifically authorised by this Act for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*:
 - (a) the grant of the exclusive licence referred to in section 200E,
 - (b) conduct authorised or required by or under the terms or conditions of that licence.

- (2) Conduct authorised by this section is authorised only to the extent (if any) that it would otherwise contravene Part IV of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*.

[12] Section 200G Monitoring fee payable by hoteliers to licensee (as inserted by the Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Act 1997)

Omit section 200G (2). Insert instead:

- (2) The monitoring fee is payable by the hotelier in accordance with the regulations.

[13] Section 200G (4)

Insert at the end of section 200G (4):

In particular, the regulations can provide for the manner and frequency of the payment of the fee, to whom the fee is payable and the collection and recovery of the fee. The regulations can provide for example that the fee is recoverable as a debt owed to the person to whom the fee is payable.

[14] Section 200H (as inserted by the Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Act 1997)

Omit the section. Insert instead:

200H Consideration and fees for licences

- (1) The Minister may determine that an amount is payable as consideration for the grant of a licence. Different amounts may be determined for different licences.
- (2) The Minister may determine a periodic licence fee for a licence. Any such fee is payable in accordance with the regulations.
- (3) The Minister can accept payment of an amount of consideration payable under this section by payment in money or by the issue of shares.

- (4) A licence for which an amount of consideration has been determined to be payable under this section is not to be granted until the amount has been paid or arrangements satisfactory to the Minister have been made for its payment.
- (5) The regulations may make provision for or with respect to any fee payable under this section and in particular may provide for any of the following:
 - (a) the periods in respect of which a fee is payable,
 - (b) times for payments of fees,
 - (c) payment by instalments,
 - (d) penalties for late payment,
 - (e) suspension or cancellation of a licence for failing to pay a fee,
 - (f) the circumstances in which a fee (or part of a fee) may be refunded.

[15] Section 200J Disciplinary action against licensee (as inserted by the Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Act 1997)

Omit “this Act or the regulations” from section 200J (1) (a).

Insert instead “this Act or the *Registered Clubs Act 1976* or the regulations under either Act”.

[16] Section 200Q Search warrant (as inserted by the Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Act 1997)

Omit “this Act, or the regulations made under this Act” from section 200Q (1).

Insert instead “this Act or the *Registered Clubs Act 1976*, or the regulations under either Act”.

[17] Section 207 Grant of licence (as inserted by the Liquor and Registered Clubs Legislation Further Amendment Act 1996)

Insert after section 207 (2):

- (2A) Every licence is subject to a condition that the licensee must have in place and must give effect to commercial arrangements with the racing industry in respect of the licence and the conduct of activities authorised by the licence, being arrangements that are both:
 - (a) approved by the Minister, having regard to the interests of the racing industry, hotels and registered clubs, and
 - (b) acknowledged by the racing industry in writing to the Minister to be to the satisfaction of the racing industry.
- (2B) For the purposes of subsection (2A), *the racing industry* comprises such one or more persons as the controlling bodies and major racing bodies (within the meaning of the *Totalizator Act 1997*) nominate in writing to the Minister for the purposes of the licence concerned. The nomination can be changed by fresh nomination in writing to the Minister, but only if the licensee consents to the fresh nomination.

[18] Section 207AA

Insert after section 207A (as inserted by the *Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Act 1997*):

207AA Trade Practices exemption

- (1) The following conduct is specifically authorised by this Act for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*:
 - (a) the grant of the exclusive licence referred to in section 207A,
 - (b) conduct authorised or required by or under the terms or conditions of that licence.

- (2) Conduct authorised by this section is authorised only to the extent (if any) that it would otherwise contravene Part IV of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*.

[19] Section 210 (as inserted by the Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Act 1997)

Omit the section. Insert instead:

210 Consideration and fees for licences

- (1) The Minister may determine that an amount is payable as consideration for the grant of a licence. Different amounts may be determined for different licences.
- (2) The Minister may determine a periodic licence fee for a licence. Any such fee is payable in accordance with the regulations.
- (3) The Minister can accept payment of an amount of consideration payable under this section by payment in money or by the issue of shares.
- (4) A licence for which an amount of consideration has been determined to be payable under this section is not to be granted until the amount has been paid or arrangements satisfactory to the Minister have been made for its payment.
- (5) The regulations may make provision for or with respect to any fee payable under this section and in particular may provide for any of the following:
 - (a) the periods in respect of which a fee is payable,
 - (b) times for payments of fees,
 - (c) payment by instalments,
 - (d) penalties for late payment,
 - (e) suspension or cancellation of a licence for failing to pay a fee,
 - (f) the circumstances in which a fee (or part of a fee) may be refunded.

[20] Section 211 (as inserted by the Liquor and Registered Clubs Legislation Further Amendment Act 1996)

Omit the section. Insert instead:

211 Term of licence

A licence remains in force for the period specified by the Minister in the licence, unless it is sooner cancelled or surrendered.

Schedule 4 Amendment of Registered Clubs Act 1976

(Section 6)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

connected (in the context of connection to an authorised CMS) is defined in section 200AA of the *Liquor Act 1982*.

[2] Section 86A Collection of duty on approved gaming devices (as inserted by the Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Act 1997)

Insert “and to such other approved gaming devices as the regulations may provide” after “system” in section 86A (1).

[3] Section 86A (IA)

Insert after section 86A (1):

(1A) The regulations may provide that particular approved gaming devices or approved gaming devices of a particular class or description are approved gaming devices to which this section applies. The regulations can provide for example that an approved gaming device is one to which this section applies if it is kept, used or operated in a registered club in which any approved gaming device that is connected to an authorised CMS is kept, used or operated.

[4] Section 87HB (as inserted by the Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Act 1997)

Omit section 87HB (2). Insert instead:

(2) The monitoring fee is payable by the registered club in accordance with the regulations.

[5] Section 87HB (4)

Insert at the end of section 87HB (4):

In particular, the regulations can provide for the manner and frequency of the payment of the fee, to whom the fee is payable and the collection and recovery of the fee. The regulations can provide for example that the fee is recoverable as a debt owed to the person to whom the fee is payable.

[6] Section 133A Transfer of Board's functions under this Act relating to approved gaming devices (as inserted by the Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Act 1997)

Omit section 133A (1). Insert instead:

- (1) The regulations may provide that any function of the Board under this Act relating to approved gaming devices may be exercised by a person other than the Board.

[7] Section 140 Grant of licence (as inserted by the Liquor and Registered Clubs Legislation Further Amendment Act 1996)

Insert after section 140 (2):

- (2A) Every licence is subject to a condition that the licensee must have in place and must give effect to commercial arrangements with the racing industry in respect of the licence and the conduct of activities authorised by the licence, being arrangements that are both:
 - (a) approved by the Minister, having regard to the interests of the racing industry, hotels and registered clubs, and

-
- (b) acknowledged by the racing industry in writing to the Minister to be to the satisfaction of the racing industry.
- (2B) For the purposes of subsection (2A), *the racing industry* comprises such one or more persons as the controlling bodies and major racing bodies (within the meaning of the *Totalizator Act 1997*) nominate in writing to the Minister for the purposes of the licence concerned. The nomination can be changed by fresh nomination in writing to the Minister, but only if the licensee consents to the fresh nomination.

[8] Section 140AA

Insert after section 140A (as inserted by the *Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Act 1997*):

140AA Trade Practices exemption

- (1) The following conduct is specifically authorised by this Act for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*:
- (a) the grant of the exclusive licence referred to in section 140A,
- (b) conduct authorised or required by or under the terms or conditions of that licence.
- (2) Conduct authorised by this section is authorised only to the extent (if any) that it would otherwise contravene Part IV of the *Trade Practices Act 1994* of the Commonwealth and the *Competition Code of New South Wales*.

[9] Section 143 (as inserted by the Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Act 1997)

Omit the section. Insert instead:

143 Consideration and fees for licences

- (1) The Minister may determine that an amount is payable as consideration for the grant of a licence. Different amounts may be determined for different licences.
- (2) The Minister may determine a periodic licence fee for a licence. Any such fee is payable in accordance with the regulations.
- (3) The Minister can accept payment of an amount of consideration payable under this section by payment in money or by the issue of shares.
- (4) A licence for which an amount of consideration has been determined to be payable under this section is not to be granted until the amount has been paid or arrangements satisfactory to the Minister have been made for its payment.
- (5) The regulations may make provision for or with respect to any fee payable under this section and in particular may provide for any of the following:
 - (a) the periods in respect of which a fee is payable,
 - (b) times for payments of fees,
 - (c) payment by instalments,
 - (d) penalties for late payment,
 - (e) suspension or cancellation of a licence for failing to pay a fee,
 - (f) the circumstances in which a fee (or part of a fee) may be refunded.

[10] Section 144 (as inserted by the Liquor and Registered Clubs Legislation Further Amendment Act 1996)

Omit the section. Insert instead:

144 Term of licence

A licence remains in force for the period specified by the Minister in the licence, unless it is sooner cancelled or surrendered.

[Minister's second reading speech made in—
Legislative Assembly on 25 November 1997
Legislative Council on 3 December 1997]