



New South Wales

Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Act 1997 No 44

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Liquor Act 1982 No 147	2
4 Amendment of Registered Clubs Act 1976 No 31	2

Schedules

1 Amendments to Liquor Act 1982 relating to monitoring of gaming devices	3
2 Amendments to Liquor Act 1982 relating to inter-hotel linked gaming systems	21
3 Amendments to Registered Clubs Act 1976 relating to monitoring of gaming devices	29
4 Amendments to Registered Clubs Act 1976 relating to inter-club linked gaming systems	34



New South Wales

Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Act 1997 No 44

Act No 44, 1997

An Act to amend the *Liquor Act 1982* and the *Registered Clubs Act 1976* to provide for the centralised monitoring of gaming devices kept in hotels and registered clubs, and to make further provision with respect to linked gaming systems between venues; and for other purposes. [Assented to 1 July 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Act 1997*.

2 Commencement

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

3 Amendment of Liquor Act 1982 No 147

The *Liquor Act 1982* is amended as set out in Schedules 1 and 2.

4 Amendment of Registered Clubs Act 1976 No 31

The *Registered Clubs Act 1976* is amended as set out in Schedules 3 and 4.

Schedule 1 Amendments to Liquor Act 1982 relating to monitoring of gaming devices

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

authorised CMS means a CMS that is operated under the authority of a licence in force under Division 4 of Part 11.

centralised monitoring system (CMS) means a system that:

- (a) monitors the operation and performance of approved gaming devices, and
- (b) facilitates the calculation and collection of duty (if any) that is payable in respect of approved gaming devices, and
- (c) is capable of performing other related functions.

CMS licensee means the holder of a licence in force under Division 4 of Part 11.

TAB means the Totalizator Agency Board constituted by the *Totalizator (Off-course Betting) Act 1964*, and includes the company known as TAB Limited established by the *Totalizator Agency Board Privatisation Act 1997*, and a *subsidiary* of TAB means a body corporate that is a subsidiary of TAB by virtue of Division 6 of Part 1.2 of the *Corporations Law*.

[2] Section 20 Conditions of licences

Omit section 20 (2) (c1). Insert instead:

- (c1) any conditions imposed under this Act in relation to an approved gaming device or an authorised CMS, and

[3] Section 86JC

Insert after section 86JB:

86JC Collection of duty on approved gaming devices

- (1) This section applies to approved gaming devices that are connected to an authorised CMS.
- (2) A CMS licensee is authorised to collect the duty imposed by this Division that is payable to the Board in respect of each approved gaming device to which this section applies. It is a condition of the licence of the CMS licensee that any amount of duty collected by the licensee is paid to the Board in accordance with the arrangements approved by the Minister.
- (3) The regulations may make provision for or in respect of the collection of duty by a CMS licensee.
- (4) In this section, *duty* includes any penalty that is payable to the Board in relation to the duty.

[4] Section 155A Secrecy

Insert after section 155A (1):

- (1A) A CMS licensee who, in the course of operating an authorised CMS:
 - (a) acquires information relating to approved gaming devices that are kept, used or operated in a hotel or a registered club, and
 - (b) directly or indirectly makes a record of the information or divulges it to another person,

is guilty of an offence under this Act unless the information is recorded or divulged in accordance with the exercise of the functions of the CMS licensee under the licence concerned.

Maximum penalty: 50 penalty units.

[5] Section 155A (2)

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

[6] Section 155B

Insert after section 155A:

155B Transfer of Board’s functions under this Act relating to approved gaming devices

- (1) The regulations may provide that any function of the Board under this Act relating to approved gaming devices that are, or are capable of being, connected to an authorised CMS may be exercised by a person other than the Board.
- (2) Any such regulation is to specify:
 - (a) the function of the Board that is to be exercised, and
 - (b) the person who may exercise the function concerned.
- (3) The regulations may make provision with respect to any matter that is relevant to the exercising of a function of the Board by a person other than the Board.
- (4) A delegation by the Board under section 75 has no effect if it is inconsistent with a regulation made in accordance with this section.

[7] Section 156 Regulations

Insert after section 156 (1A) (t):

- (ta) any matter relevant to the operation of an authorised CMS,
- (tb) CMS licensees and licences under Division 4 of Part 11,

[8] Section 194 Approved amusement device access register

Insert before section 194 (1):

- (1A) Nothing in this section applies to or in respect of an approved gaming device that is connected to an authorised CMS.

[9] Part 11, Division 4

Insert after Division 3:

Division 4 Monitoring of approved gaming devices

200A Definitions

In this Division:

authorised person means a special inspector, a police officer or a person prescribed as an authorised person for the purposes of this Division.

disciplinary action means any one or more of the following actions in relation to a licence:

- (a) the cancellation or suspension of the licence,
- (b) the imposition on the licensee of a monetary penalty (not exceeding \$250,000),
- (c) the alteration of the conditions of the licence by the Minister,
- (d) the service of a letter of reprimand by the Minister on the licensee.

exclusive licence period means the period that begins on the commencement of this Division and ends 15 years after a date declared by the Minister by order published in the Gazette to be the operative date for the purposes of this Division. The date declared by the Minister as the operative date must not be earlier than the commencement of this Division.

licence means a licence in force under this Division.

licensee means the holder of a licence.

200B Unlawful operation of CMS by licensee

A licensee who operates a CMS is guilty of an offence if the CMS is operated in contravention of a requirement made under this Act, the regulations or the conditions of the licence.

Maximum penalty: 100 penalty units.

200C Application for licence

- (1) An application for a licence to operate a CMS may be made to the Minister by any one or more persons.
- (2) An application must:
 - (a) be in the form approved by the Minister, and
 - (b) be accompanied by such information as the Minister requires, and
 - (c) be accompanied by the fee prescribed by the regulations.
- (3) An application for a licence may not be made by:
 - (a) a person who is under 18 years of age, or is within a class of persons prescribed by the regulations as being ineligible to apply for a licence, or
 - (b) a person who is disqualified from holding a gaming-related licence, or
 - (c) a person who is the holder of a suspended gaming-related licence.

200D Grant of licence

- (1) The Minister may, after considering an application for a licence:
 - (a) grant a licence to the person making the application, or
 - (b) refuse to grant a licence.
- (2) A licence is subject to such conditions as are imposed under this Act or as are determined by the Minister and specified in the licence.

Schedule 1 Amendments to Liquor Act 1982 relating to monitoring of gaming devices

- (3) A licence may be granted to one person or 2 or more persons jointly.
- (4) A licensee may not transfer a licence to another person.
- (5) The period during which a licence is in force is the period specified by the Minister in the licence.

200E TAB entitled to licence during exclusive licence period

- (1) TAB or a wholly owned subsidiary of TAB is entitled to a licence (*the exclusive licence*) during the exclusive licence period to operate a CMS.
- (2) No other person may be granted a licence to operate a CMS during the exclusive licence period.
- (3) Subsections (1) and (2) cease to apply if the exclusive licence is cancelled or surrendered in accordance with this Division or otherwise ceases to be in force.
- (4) No application under this Division is required for the purposes of the grant of a licence for which there is an entitlement under this section.
- (5) Nothing in any other Act prevents TAB from operating a CMS under the authority of a licence, or from carrying out any of its functions as a licensee.
- (6) Nothing in this section is intended to prevent TAB or any other person (assuming that they are otherwise qualified) from applying for and being granted a licence in respect of any period after the end of the exclusive licence period.

200F Requirement for gaming devices to be connected to authorised CMS

- (1) This section applies to approved gaming devices that are of a class or classes of gaming devices identified by the Minister as being capable of connection to an authorised CMS.

- (2) It is a condition of a hotelier's licence that each approved gaming device to which this section applies that is kept, used or operated at the hotel must be connected to an authorised CMS:
- (a) by no later than 1 January 2001, or
 - (b) in the case of any particular hotel or class of hotel identified by the Minister—by no later than such date (being a date that is earlier than 1 January 2001) as the Minister may direct by notice in writing to the hotelier concerned, or
 - (c) in the case of such class or classes of hotels as may be prescribed by the regulations—by no later than such date (being a date that is later than 1 January 2001) as is specified in the regulations in respect of the class of hotel concerned.

200G Monitoring fee payable by hoteliers to licensee

- (1) It is a condition of a hotelier's licence that the hotelier must pay a monitoring fee in respect of each approved gaming device that:
- (a) is kept, used or operated on the licensed premises, and
 - (b) is connected to an authorised CMS.
- (2) The monitoring fee is payable by the hotelier:
- (a) in respect of each calendar month (or part of such month) that each such approved gaming device is connected to the authorised CMS, and
 - (b) to the licensee who is operating the authorised CMS to which each such approved gaming device is connected.
- (3) The amount of any fee payable under this section is to be determined by the Minister from time to time in consultation with the Treasurer, and in consultation with the Independent Pricing and Regulatory Tribunal pursuant to such arrangements as may be entered into under section 9 (1) (b) of the *Independent Pricing and Regulatory Tribunal Act 1992*.
- (4) The regulations may make provision for or in respect of the payment of any fee under this section.

200H Licence fee

- (1) The Minister may determine a fee for a licence. Any such fee is payable by the licensee in accordance with the regulations.
- (2) The regulations may make provision for or in respect of any fee payable under this section.

200I Alterations of conditions of licence

- (1) The Minister may, while a licence is in force, alter the conditions of the licence by imposing an additional condition or by amending, substituting or revoking a condition.
- (2) The Minister must not make an alteration under this section unless the Minister:
 - (a) has given the licensee notice, in writing, setting out the terms of the proposed alteration and inviting the licensee to make representations to the Minister, within the period specified in the notice, concerning the proposed alteration, and
 - (b) has, after the end of that period, considered any representations so made by or on behalf of the licensee.
- (3) An alteration under this section takes effect:
 - (a) on the day that is 7 days after the day on which a notice advising the licensee of the alteration is given to the licensee by the Minister, or
 - (b) if a later day is specified in the notice—on that day.
- (4) Subsections (2) and (3) do not apply to an alteration made at the request of a licensee. Such an alteration takes effect on the day specified in the notice advising of the alteration that is given by the Minister to the licensee.

200J Disciplinary action against licensee

- (1) If a licensee:
 - (a) fails to comply with any provision of this Act or the regulations, or

- (b) fails to comply with a condition of the licence, or
- (c) being a natural person:
 - (i) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (ii) becomes an incapacitated person and incapable of operating a CMS in accordance with this Division, or
 - (iii) is convicted of an offence involving fraud or dishonesty, or
- (d) being a corporation:
 - (i) enters into or authorises a dealing with or in respect of shares of, or other instruments issued by, the corporation without the consent in writing of the Minister that, in the opinion of the Minister, affects the control of the corporation, or
 - (ii) becomes an externally administered corporation within the meaning of the *Corporations Law*, or
 - (iii) fails to terminate promptly the employment of a person concerned in the management of the licensee who is convicted of an offence involving fraud or dishonesty,

the Minister may serve on the licensee a notice in writing affording the licensee an opportunity to show cause within 14 days (or such longer period as the Minister may specify in the notice) why disciplinary action should not be taken against the licensee on the grounds specified in the notice.

- (2) The licensee may, within the period allowed by the notice, arrange with the Minister for the making of submissions to the Minister as to why disciplinary action should not be taken and the Minister is to consider any submissions so made.

- (3) The Minister may then decide that it is appropriate that certain disciplinary action be taken against the licensee and may either:
 - (a) take that disciplinary action by giving written notice of the action to the licensee, or
 - (b) as an alternative to taking that disciplinary action, take action under section 200K.
- (4) Disciplinary action may be taken against a person whether or not the person has been prosecuted, convicted or penalised for any contravention that is the grounds for the action.
- (5) Disciplinary action takes effect when notice of it is given or on a later date specified in the notice.
- (6) The fact that disciplinary action is taken by the Minister under this section does not prevent the Minister from taking the same or other disciplinary action under this section if the contravention continues or a fresh contravention occurs.
- (7) A monetary penalty imposed under this section may be recovered as a debt due to the Crown in a court of competent jurisdiction.

200K Rectification order as alternative to disciplinary action

- (1) As an alternative to taking disciplinary action against a licensee, the Minister may direct the licensee in writing to take specified action within a specified time to rectify the matter that constitutes the basis for taking the disciplinary action concerned.
- (2) If a licensee fails to take the specified action within the specified time, the Minister may proceed to take the relevant disciplinary action by giving written notice of the action to the licensee, and the disciplinary action takes effect when the notice is given or on a later date specified in the notice.

200L Temporary suspension of licence

- (1) The Minister may take action under this section, without prior notice to a licensee, in order to secure compliance by a licensee with a direction given to the licensee in accordance with the regulations.
- (2) If the Minister considers it necessary or expedient for the purposes of this section, the Minister may, by notice, suspend a 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.

200M Surrender of licence

- (1) A licensee may surrender the licence by giving notice in writing to the Minister. If the licence is held by more than one person, each licensee is to surrender the licence.
- (2) The surrender takes effect only if the Minister consents to the surrender.

200N Appointment of temporary licensee if licence suspended, cancelled or surrendered

- (1) If a licence is suspended, cancelled or surrendered, the Minister may, if the Minister is satisfied that it is in the public interest to do so, by instrument in writing appoint a person to be a licensee (*the appointed licensee*) for the purposes of this section.
- (2) In appointing a person to be the appointed licensee, the Minister must have regard to the suitability of the person.
- (3) The appointed licensee is to be appointed on such terms and conditions as the Minister thinks fit.

- (4) The appointment of the appointed licensee may be terminated at any time by the Minister and is in any case terminated:
- (a) 90 days after appointment unless in a particular case the appointment is extended by the regulations, or
 - (b) by the grant of another licence to operate a CMS under this Division.
- (5) The appointed licensee:
- (a) is to be considered to be the holder of a licence granted on the same terms and subject to the same conditions as the suspended, cancelled or surrendered licence (as in force immediately before its suspension, cancellation or surrender) with such modifications as the Minister may direct, and
 - (b) is to assume full control of and responsibility for the business of the former licensee in respect of the CMS operated under the former licence, and
 - (c) is to operate or cause to be operated a CMS in accordance with this Act, and
 - (d) has, in connection with the operation of a CMS, all the functions of the former licensee.
- (6) Subject to this section, an appointed licensee under this section may enter into such arrangements as are approved by the Minister with the former licensee, including arrangements relating to the use of assets and services of staff of the former licensee.
- (7) The former licensee must:
- (a) make available to the appointed licensee on reasonable terms such assets of, or under the control of, the former licensee as are reasonably necessary for arrangements under subsection (6), and

- (b) use the former licensee's best endeavours to make available such staff of the former licensee as are reasonably necessary for those arrangements.

Maximum penalty: 100 penalty units.

- (8) The regulations may make provision for or with respect to the functions of an appointed licensee.
- (9) The following provisions have effect in respect of the net earnings of a CMS while operated by an appointed licensee under this section:
 - (a) no payment of net earnings (including any fees or charges) is to be made to the former licensee without the prior approval of the Minister,
 - (b) the former licensee is entitled to a fair rate of return out of net earnings (if any) on any property of the former licensee retained by the appointed licensee (subject to any arrangements made under subsection (6)),
 - (c) the Minister may in the Minister's discretion direct that all or any part of net earnings (other than that to which the former licensee is entitled under paragraph (b)) is to be paid into the Consolidated Fund, with any balance to be paid to the former licensee.

2000 Directions to licensees and other relevant persons

- (1) The regulations may provide for the Minister to give directions to any licensee, hotelier, registered club, or other person concerned in the management or supervision of a CMS:
 - (a) regarding any matter that relates to the operation of a CMS, and
 - (b) regarding any agreement or arrangement that relates to a CMS, and

- (c) requiring the licensee, hotelier, registered club or other person to provide such information or particulars, and in such circumstances, as may be prescribed by the regulations.
- (2) The regulations may make provision for or with respect to the enforcement of such directions.

200P Right of authorised persons to enter premises

- (1) An authorised person may, for the purposes of exercising functions under this Division, or the regulations made under this Division, at any reasonable time:
 - (a) enter any part of the premises of a licensee, or
 - (b) enter any part of licensed premises or those of a registered club.
- (2) An authorised person is not entitled to exercise the powers conferred by this section in relation to any part of any premises used for residential purposes, except:
 - (a) with the consent of the occupier of the premises, or
 - (b) under the authority conferred by a search warrant issued under section 200Q.
- (3) An authorised person who enters premises under this section is not authorised to remain on the premises if, at the request of the licensee or other occupier of the premises, the authorised person does not show his or her means of identification as an authorised person to the licensee or other occupier.

200Q Search warrant

- (1) An authorised person may apply to an authorised justice for the issue of a search warrant if the authorised person believes on reasonable grounds that a provision of this Act, or the regulations made under this Act, relating to the operation of a CMS is being or has been contravened on any premises.

- (2) An authorised justice to whom any such application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised person named in the warrant:
 - (a) to enter the premises, and
 - (b) to exercise any function of an authorised person under this Division.
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.

200R Powers of authorised persons

- (1) An authorised person may do any one or more of the following:
 - (a) require any person whom the authorised person reasonably suspects of being in possession or control of any documents that relate to, or that the authorised person reasonably suspects relate to, the operation of a CMS to produce the documents for inspection and to answer questions or provide information relating to the documents,
 - (b) make copies of, take extracts from and notes relating to, any documents,
 - (c) require a licensee, hotelier, registered club or other person whom the authorised person reasonably suspects of having possession or control of any device or equipment that is, or that appears to the authorised person to be, used in relation to the operation of a CMS to produce the device or equipment for inspection and to answer questions or provide information relating to the device or equipment,
 - (d) inspect and test any device or equipment in the possession or control of a licensee, hotelier, registered club or other person that is, or that appears to the authorised person to be, used in relation to the operation of a CMS,

Schedule 1 Amendments to Liquor Act 1982 relating to monitoring of gaming devices

- (e) for the purpose of any such inspection or testing:
 - (i) require the licensee, hotelier, registered club or other person to provide the authorised person with any assistance that the authorised person reasonably requires, or
 - (ii) if practicable, remove the device or equipment to another place, for any time that is reasonably necessary for that purpose,
 - (f) if the authorised person 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,
 - (g) by notice in writing require any licensee, hotelier, registered club or other person concerned, in whatever capacity, in the operation of a CMS, to attend before an authorised person at a specified time and place and answer questions, or provide information, with respect to the operation of any CMS,
 - (h) call to his or her aid:
 - (i) another authorised person 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 authorised person to be competent for the purpose,
 - (i) exercise any other functions prescribed by the regulations as functions of an authorised person for the purposes of this Division.
- (2) If an authorised person seizes any document, device or equipment under this section, it may be retained by the authorised person until the completion of any proceedings (including proceedings on appeal) in which it may be tendered in evidence but only if, in the case of

Amendments to Liquor Act 1982 relating to monitoring of gaming devices **Schedule 1**

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 authorised person as a true copy.

- (3) Subsection (2) 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.
- (4) A copy of documents provided under subsection (2) is, as evidence, of equal validity to the documents of which it is certified to be a true copy.
- (5) A person is not required by this section to answer a question that might incriminate the person.
- (6) A person has, while acting in aid of an authorised person under this section, the functions of an authorised person.

200S Offences relating to authorised persons

- (1) A person who:
 - (a) prevents an authorised person from exercising any function conferred on the authorised person by or under this Division, or
 - (b) hinders or obstructs an authorised person in the exercise of any such function, or
 - (c) fails to comply with a requirement of an authorised person under this Division, or
 - (d) furnishes to an authorised person (whether in answer to a question asked by an authorised person or otherwise) information that the person knows is false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: 50 penalty units.

Schedule 1 Amendments to Liquor Act 1982 relating to monitoring of gaming devices

- (2) It is a defence to a prosecution for an offence under subsection (1) (c) for the failure of the defendant to answer a question asked by an authorised person for the purposes of this Division if the defendant proves that the defendant did not know, and could not with reasonable diligence ascertain, the answer to the question.
- (3) If an answer to a question asked by an authorised person for the purposes of this Division, or any information, is given to an authorised person by an officer of a corporation (within the meaning of the *Corporations Law*) that is concerned in the operation of a CMS, the answer and information are, for the purposes of any proceedings against the corporation under this Act, binding on and admissible in evidence against the corporation unless it is proved that the answer or information was given on a matter in respect of which the officer had no authority to bind the corporation.

[10] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

*Liquor and Registered Clubs Legislation Amendment
(Monitoring and Links) Act 1997.*

Schedule 2 Amendments to Liquor Act 1982 relating to inter-hotel linked gaming systems

(Section 3)

[1] Section 201 Definitions and operation of Part

Insert in alphabetical order in section 201 (1):

authorised person means a special inspector, a police officer or a person prescribed as an authorised person for the purposes of this Part.

exclusive licence period means the period that begins on the commencement of this Part and ends 15 years after a date declared by the Minister by order published in the Gazette to be the operative date for the purposes of this Part. The date declared by the Minister as the operative date must not be earlier than the commencement of this Part.

[2] Section 204 Requirement for licence to operate linked gaming system

Insert at the end of the section:

- (2) A person does not commit an offence under this section if the person is only carrying out activities involving the preliminary development and testing of a linked gaming system and those activities have been approved by the Minister.

[3] Section 207 Grant of licence

Omit section 207 (3) (e).

[4] Section 207A

Insert after section 207:

207A TAB entitled to licence during exclusive licence period

- (1) TAB or a wholly owned subsidiary of TAB is entitled to a licence (*the exclusive licence*) during the exclusive licence period to operate a linked gaming system.

- (2) No other person may be granted a licence to operate a linked gaming system during the exclusive licence period.
- (3) Subsections (1) and (2) cease to apply if the exclusive licence is cancelled or surrendered in accordance with this Part or otherwise ceases to be in force.
- (4) No application under this Part is required for the purposes of the grant of a licence for which there is an entitlement under this section.
- (5) Nothing in any other Act prevents TAB from operating a linked gaming system under the authority of a licence, or from carrying out any of its functions as a licensee.
- (6) Nothing in this section is intended to prevent TAB or any other person (assuming that they are otherwise qualified) from applying for and being granted a licence in respect of any period after the exclusive licence period.

[5] Section 210

Omit the section. Insert instead:

210 Licence fee

- (1) The Minister may determine a fee for a licence. Any such fee is payable by the licensee in accordance with the regulations.
- (2) The regulations may make provision for or in respect of any fee payable under this section.

[6] Section 215A

Insert after section 215:

215A Appointment of temporary licensee if licence suspended, cancelled or surrendered

- (1) If a licence is suspended, cancelled or surrendered, the Minister may, if the Minister is satisfied that it is in the public interest to do so, by instrument in writing appoint a person to be a licensee (*the appointed licensee*) for the purposes of this section.

- (2) In appointing a person to be the appointed licensee, the Minister must have regard to the suitability of the person.
- (3) The appointed licensee is to be appointed on such terms and conditions as the Minister thinks fit.
- (4) The appointment of the appointed licensee may be terminated at any time by the Minister and is in any case terminated:
 - (a) 90 days after appointment unless in a particular case the appointment is extended by the regulations, or
 - (b) by the grant of another licence to operate a linked gaming system under this Part.
- (5) The appointed licensee:
 - (a) is to be considered to be the holder of a licence granted on the same terms and subject to the same conditions as the suspended, cancelled or surrendered licence (as in force immediately before its suspension, cancellation or surrender) with such modifications as the Minister may direct, and
 - (b) is to assume full control of and responsibility for the business of the former licensee in respect of the linked gaming system operated under the former licence, and
 - (c) is to operate or cause to be operated a linked gaming system in accordance with this Act, and
 - (d) has, in connection with the operation of a linked gaming system, all the functions of the former licensee.
- (6) Subject to this section, an appointed licensee under this section may enter into such arrangements as are approved by the Minister with the former licensee, including arrangements relating to the use of assets and services of staff of the former licensee.

- (7) The former licensee must:
- (a) make available to the appointed licensee on reasonable terms such assets of, or under the control of, the former licensee as are reasonably necessary for arrangements under subsection (6), and
 - (b) use the former licensee's best endeavours to make available such staff of the former licensee as are reasonably necessary for those arrangements.
- Maximum penalty: 100 penalty units.
- (8) The regulations may make provision for or with respect to the functions of an appointed licensee.
- (9) The following provisions have effect in respect of the net earnings of a linked gaming system while operated by an appointed licensee under this section:
- (a) no payment of net earnings (including any fees or charges) is to be made to the former licensee without the prior approval of the Minister,
 - (b) the former licensee is entitled to a fair rate of return out of net earnings (if any) on any property of the former licensee retained by the appointed licensee (subject to any arrangements made under subsection (6)),
 - (c) the Minister may in the Minister's discretion direct that all or any part of net earnings (other than that to which the former licensee is entitled under paragraph (b)) is to be paid into the Consolidated Fund, with any balance to be paid to the former licensee.

[7] Sections 216A–216D

Insert after section 216:

216A Right of authorised persons to enter premises

- (1) An authorised person may, for the purposes of exercising functions under this Part or the regulations made under this Part, at any reasonable time:
- (a) enter any part of the premises of a licensee, or

- (b) enter any part of licensed premises, or
 - (c) enter any part of the premises of a person, not being a licensee or a hotelier, whom the authorised person reasonably suspects of operating a linked gaming system.
- (2) An authorised person is not entitled to exercise the powers conferred by this section in relation to any part of any premises used for residential purposes, except:
 - (a) with the consent of the occupier of the premises, or
 - (b) under the authority conferred by a search warrant issued under section 216B.
- (3) An authorised person who enters premises under this section is not authorised to remain on the premises if, at the request of the licensee or other occupier of the premises, the authorised person does not show his or her means of identification as an authorised person to the licensee or other occupier.

216B Search warrant

- (1) An authorised person may apply to an authorised justice for the issue of a search warrant if the authorised person believes on reasonable grounds that a provision of this Part, or the regulations made under this Part, is being or has been contravened on any premises.
- (2) An authorised justice to whom any such application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised person named in the warrant:
 - (a) to enter the premises, and
 - (b) to exercise any function of an authorised person under this Act.
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.

216C Powers of authorised persons

- (1) An authorised person may do any one or more of the following:
 - (a) require any person whom the authorised person reasonably suspects of being in possession or control of any documents that relate to, or that the authorised person reasonably suspects relate to, the operation of a linked gaming system to produce the documents for inspection and to answer questions or provide information relating to the documents,
 - (b) make copies of, take extracts from and notes relating to, any documents,
 - (c) require a licensee, hotelier or other person whom the authorised person reasonably suspects of having possession or control of any device or equipment that is, or that appears to the authorised person to be, used in relation to the operation of a linked gaming system to produce the device or equipment for inspection and to answer questions or provide information relating to the device or equipment,
 - (d) inspect and test any device or equipment in the possession or control of a licensee, hotelier or other person that is, or that appears to the authorised person to be, used in relation to the operation of a linked gaming system,
 - (e) for the purpose of any such inspection or testing:
 - (i) require the licensee, hotelier or other person to provide the authorised person with any assistance that the authorised person reasonably requires, or
 - (ii) if practicable, remove the device or equipment to another place, for any time that is reasonably necessary for that purpose,

- (f) if the authorised person 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,
 - (g) by notice in writing require any licensee, hotelier or other person concerned, in whatever capacity, in the operation of a linked gaming system, to attend before an authorised person at a specified time and place and answer questions, or provide information, with respect to the operation of any linked gaming system,
 - (h) call to his or her aid:
 - (i) another authorised person 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 authorised person to be competent for the purpose,
 - (i) exercise any other functions prescribed by the regulations as functions of an authorised person for the purposes of this Part.
- (2) If an authorised person seizes any document, device or equipment under this section, it may be retained by the authorised person until the completion of any proceedings (including proceedings on appeal) in which it may be tendered in 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 authorised person as a true copy.
- (3) Subsection (2) 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.
- (4) A copy of documents provided under subsection (2) is, as evidence, of equal validity to the documents of which it is certified to be a true copy.

- (5) A person is not required by this section to answer a question that might incriminate the person.
- (6) A person has, while acting in aid of an authorised person under this section, the functions of an authorised person.

216D Offences relating to authorised persons

- (1) A person who:
 - (a) prevents an authorised person from exercising any function conferred on the authorised person by or under this Part, or
 - (b) hinders or obstructs an authorised person in the exercise of any such function, or
 - (c) fails to comply with a requirement of an authorised person under this Part, or
 - (d) furnishes to an authorised person (whether in answer to a question asked by an authorised person or otherwise) information that the person knows is false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: 50 penalty units.

- (2) It is a defence to a prosecution for an offence under subsection (1) (c) for the failure of the defendant to answer a question asked by an authorised person for the purposes of this Part if the defendant proves that the defendant did not know, and could not with reasonable diligence ascertain, the answer to the question.
- (3) If an answer to a question asked by an authorised person for the purposes of this Part, or any information, is given to an authorised person by an officer of a corporation (within the meaning of the *Corporations Law*) that is concerned in the operation of a linked gaming system, the answer and information are, for the purposes of any proceedings against the corporation under this Act, binding on and admissible in evidence against the corporation unless it is proved that the answer or information was given on a matter in respect of which the officer had no authority to bind the corporation.

Schedule 3 Amendments to Registered Clubs Act 1976 relating to monitoring of gaming devices

(Section 4)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

authorised centralised monitoring system means a centralised monitoring system operated under the authority of a licence in force under Division 4 of Part 11 of the *Liquor Act 1982*.

CMS licensee means the holder of a licence in force under Division 4 of Part 11 of the *Liquor Act 1982*.

[2] Section 9A Conditions relating to certificate of registration

Insert after section 9A (3A):

(3B) The certificate of registration of a club is subject to any condition that is imposed under this Act in relation to an approved gaming device or an authorised centralised monitoring system.

[3] Section 73 Regulations

Insert after section 73 (1A) (t):

(ta) any matter relevant to the operation of an authorised centralised monitoring system,

[4] Section 82C Poker machine access register

Insert before section 82C (1):

(1A) Nothing in this section applies to or in respect of an approved gaming device that is connected to an authorised centralised monitoring system.

[5] Section 86 (1) definition of “cancelled credits payment”

Omit “(otherwise than directly from the machine)”.

[6] Section 86 (1) definition of “outgoings”

Omit “,refills and short pays”.

Insert instead “or any other outgoing of a kind prescribed by the regulations”.

[7] Section 86 (1) definitions of “refill” and “short pay”

Omit the definitions.

[8] Section 86 (1) definition of “revenue”

Omit the definition. Insert instead:

revenue from an approved gaming device means money invested by players of the gaming device in order to play it.

[9] Section 86A

Insert after section 86:

86A Collection of duty on approved gaming devices

- (1) This section applies to approved gaming devices that are connected to an authorised centralised monitoring system.
- (2) A CMS licensee is authorised to collect the duty imposed by this Division in respect of each approved gaming device to which this section applies. It is a condition of the licence of the CMS licensee that any amount of duty collected by the licensee is paid to the Board in accordance with the arrangements approved by the Minister.
- (3) The regulations may make provision for or in respect of the collection of duty by a CMS licensee.
- (4) In this section, *duty* includes any penalty that is payable to the Board in relation to the duty.

[10] Part 10, Division 2A

Insert after Division 2:

Division 2A Monitoring of approved gaming devices

87HA Requirement for gaming devices to be connected to authorised centralised monitoring system

- (1) This section applies to approved gaming devices that are of a class or classes of gaming devices identified by the Minister as being capable of connection to an authorised centralised monitoring system.
- (2) It is a condition of a certificate of registration of a registered club that each approved gaming device to which this section applies that is kept, used or operated on the defined premises must be connected to an authorised centralised monitoring system:
 - (a) by no later than 1 January 2001, or
 - (b) in the case of any particular registered club or class of registered club identified by the Minister—by no later than such date (being a date that is earlier than 1 January 2001) as the Minister may direct by notice in writing to the registered club concerned, or
 - (c) in the case of such class or classes of registered clubs as may be prescribed by the regulations—by no later than such date (being a date that is later than 1 January 2001) as is specified in the regulations in respect of the class of registered club concerned.

87HB Monitoring fee payable by registered clubs to CMS licensee

- (1) It is a condition of a certificate of registration of a registered club that the registered club must pay a monitoring fee in respect of each approved gaming device that:

Schedule 3 Amendments to Registered Clubs Act 1976 relating to monitoring of gaming devices

- (a) is kept, used or operated on the defined premises, and
 - (b) is connected to an authorised centralised monitoring system.
- (2) The monitoring fee is payable by the registered club:
 - (a) in respect of each calendar month (or part of such month) that each such approved gaming device is connected to the authorised centralised monitoring system, and
 - (b) to the CMS licensee who is operating the authorised centralised monitoring system to which each such approved gaming device is connected.
- (3) The amount of any fee payable under this section is to be determined by the Minister from time to time in consultation with the Treasurer, and in consultation with the Independent Pricing and Regulatory Tribunal pursuant to such arrangements as may be entered into under section 9 (1) (b) of the *Independent Pricing and Regulatory Tribunal Act 1992*.
- (4) The regulations may make provision for or in respect of the payment of any fee under this section.

[11] Section 133A

Insert after section 133:

133A Transfer of Board's functions under this Act relating to approved gaming devices

- (1) The regulations may provide that any function of the Board under this Act relating to approved gaming devices that are, or are capable of being, connected to an authorised centralised monitoring system may be exercised by a person other than the Board.
- (2) Any such regulation is to specify:
 - (a) the function of the Board that is to be exercised, and
 - (b) the person who may exercise the function.

- (3) The regulations may make provision with respect to any matter that is relevant to the exercising of a function of the Board by a person other than the Board.
- (4) A delegation by the Board under section 75 of the *Liquor Act 1982* has no effect if it is inconsistent with a regulation made in accordance with this section.

[12] Schedule 2 Transitional provisions

Insert at the end of clause 1A (1):

*Liquor and Registered Clubs Legislation Amendment
(Monitoring and Links) Act 1997.*

Schedule 4 Amendments to Registered Clubs Act 1976 relating to inter-club linked gaming systems

(Section 4)

[1] Section 134 Definitions and operation of Part

Insert in alphabetical order in section 134 (1):

authorised person means a special inspector, a police officer or a person prescribed as an authorised person for the purposes of this Part.

exclusive licence period means the period that begins on the commencement of this Part and ends 15 years after a date declared by the Minister by order published in the Gazette to be the operative date for the purposes of this Part. The date declared by the Minister as the operative date must not be earlier than the commencement of this Part.

subsidiary of TAB means a body corporate that is a subsidiary of TAB by virtue of Division 6 of Part 12 of the *Corporations Law*.

TAB means the Totalizator Agency Board constituted by the *Totalizator (Off-course Betting) Act 1964*, and includes the company known as TAB Limited established by the *Totalizator Agency Board Privatisation Act 1997*.

[2] Section 137 Requirement for licence to operate linked gaming system

Insert at the end of the section:

- (2) A person does not commit an offence under this section if the person is only carrying out activities involving the preliminary development and testing of a linked gaming system and those activities have been approved by the Minister.

[3] Section 140 Grant of licence

Omit section 140 (3) (e).

[4] Section 140A

Insert after section 140:

140A TAB entitled to licence during exclusive licence period

- (1) TAB or a wholly owned subsidiary of TAB is entitled to a licence (*the exclusive licence*) during the exclusive licence period to operate a linked gaming system.
- (2) No other person may be granted a licence to operate a linked gaming system during the exclusive licence period.
- (3) Subsections (1) and (2) cease to apply if the exclusive licence is cancelled or surrendered in accordance with this Part or otherwise ceases to be in force.
- (4) No application under this Part is required for the purposes of the grant of a licence for which there is an entitlement under this section.
- (5) Nothing in any other Act prevents TAB from operating a linked gaming system under the authority of a licence, or from carrying out any of its functions as a licensee.
- (6) Nothing in this section is intended to prevent TAB or any other person (assuming that they are otherwise qualified) from applying for and being granted a licence in respect of any period after the exclusive licence period.

[5] Section 143

Omit the section. Insert instead:

143 Licence fee

- (1) The Minister may determine a fee for a licence. Any such fee is payable by the licensee in accordance with the regulations.
- (2) The regulations may make provision for or in respect of any fee payable under this section.

[6] Section 148A

Insert after section 148:

148A Appointment of temporary licensee if licence suspended, cancelled or surrendered

- (1) If a licence is suspended, cancelled or surrendered, the Minister may, if the Minister is satisfied that it is in the public interest to do so, by instrument in writing appoint a person to be a licensee (*the appointed licensee*) for the purposes of this section.
- (2) In appointing a person to be the appointed licensee, the Minister must have regard to the suitability of the person.
- (3) The appointed licensee is to be appointed on such terms and conditions as the Minister thinks fit.
- (4) The appointment of the appointed licensee may be terminated at any time by the Minister and is in any case terminated:
 - (a) 90 days after appointment unless in a particular case the appointment is extended by the regulations, or
 - (b) by the grant of another licence to operate a linked gaming system under this Part.
- (5) **The** appointed licensee:
 - (a) is to be considered to be the holder of a licence granted on the same terms and subject to the same conditions as the suspended, cancelled or surrendered licence (as in force immediately before its suspension, cancellation or surrender) with such modifications as the Minister may direct, and
 - (b) is to assume full control of and responsibility for the business of the former licensee in respect of the linked gaming system operated under the former licence, and
 - (c) is to operate or cause to be operated a linked gaming system in accordance with this Act, and

- (d) has, in connection with the operation of a linked gaming system, all the functions of the former licensee.
- (6) Subject to this section, an appointed licensee under this section may enter into such arrangements as are approved by the Minister with the former licensee, including arrangements relating to the use of assets and services of staff of the former licensee.
- (7) The former licensee must:
- (a) make available to the appointed licensee on reasonable terms such assets of, or under the control of, the former licensee as are reasonably necessary for arrangements under subsection (6), and
 - (b) use the former licensee's best endeavours to make available such staff of the former licensee as are reasonably necessary for those arrangements.
- Maximum penalty: 100 penalty units.
- (8) The regulations may make provision for or with respect to the functions of an appointed licensee.
- (9) The following provisions have effect in respect of the net earnings of a linked gaming system while operated by an appointed licensee under this section:
- (a) no payment of net earnings (including any fees or charges) is to be made to the former licensee without the prior approval of the Minister,
 - (b) the former licensee is entitled to a fair rate of return out of net earnings (if any) on any property of the former licensee retained by the appointed licensee (subject to any arrangements made under subsection (6)),
 - (c) the Minister may in the Minister's discretion direct that all or any part of net earnings (other than that to which the former licensee is entitled under paragraph (b)) is to be paid into the Consolidated Fund, with any balance to be paid to the former licensee.

[7] Sections 150–153

Insert after section 149:

150 Right of authorised persons to enter premises

- (1) An authorised person may, for the purposes of exercising functions under this Part or the regulations made under this Part, at any reasonable time:
 - (a) enter any part of the premises of a licensee, or
 - (b) enter any part of the premises of a registered club, or
 - (c) enter any part of the premises of a person, not being a licensee or a registered club, whom the authorised person reasonably suspects of operating a linked gaming system.
- (2) An authorised person is not entitled to exercise the powers conferred by this section in relation to any part of any premises used for residential purposes, except:
 - (a) with the consent of the occupier of the premises, or
 - (b) under the authority conferred by a search warrant issued under section 151.
- (3) An authorised person who enters premises under this section is not authorised to remain on the premises if, at the request of the licensee or other occupier of the premises, the authorised person does not show his or her means of identification as an authorised person to the licensee or other occupier.

151 Search warrant

- (1) An authorised person may apply to an authorised justice for the issue of a search warrant if the authorised person believes on reasonable grounds that a provision of this Part, or the regulations made under this Part, is being or has been contravened on any premises.

- (2) An authorised justice to whom any such application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised person named in the warrant:
 - (a) to enter the premises, and
 - (b) to exercise any function of an authorised person under this Act.
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.

152 Powers of authorised persons

- (1) An authorised person may do any one or more of the following:
 - (a) require any person whom the authorised person reasonably suspects of being in possession or control of any documents that relate to, or that the authorised person reasonably suspects relate to, the operation of a linked gaming system to produce the documents for inspection and to answer questions or provide information relating to the documents,
 - (b) make copies of, take extracts from and notes relating to, any documents,
 - (c) require a licensee, registered club or other person whom the authorised person reasonably suspects of having possession or control of any device or equipment that is, or that appears to the authorised person to be, used in relation to the operation of a linked gaming system to produce the device or equipment for inspection and to answer questions or provide information relating to the device or equipment,
 - (d) inspect and test any device or equipment in the possession or control of a licensee, registered club or other person that is, or that appears to the authorised person to be, used in relation to the operation of a linked gaming system,

- (e) for the purpose of any such inspection or testing:
 - (i) require the licensee, registered club or other person to provide the authorised person with any assistance that the authorised person reasonably requires, or
 - (ii) if practicable, remove the device or equipment to another place, for any time that is reasonably necessary for that purpose,
 - (f) if the authorised person 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,
 - (g) by notice in writing require any licensee, registered club or other person concerned, in whatever capacity, in the operation of a linked gaming system, to attend before an authorised person at a specified time and place and answer questions, or provide information, with respect to the operation of any linked gaming system,
 - (h) call to his or her aid:
 - (i) another authorised person 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 authorised person to be competent for the purpose,
 - (i) exercise any other functions prescribed by the regulations as functions of an authorised person for the purposes of this Part.
- (2) If an authorised person seizes any document, device or equipment under this section, it may be retained by the authorised person until the completion of any proceedings (including proceedings on appeal) in which

it may be tendered in 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 authorised person as a true copy.

- (3) Subsection (2) 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.
- (4) A copy of documents provided under subsection (2) is, as evidence, of equal validity to the documents of which it is certified to be a true copy.
- (5) A person is not required by this section to answer a question that might incriminate the person.
- (6) A person has, while acting in aid of an authorised person under this section, the functions of an authorised person.

153 Offences relating to authorised persons

- (1) A person who:
 - (a) prevents an authorised person from exercising any function conferred on the authorised person by or under this Part, or
 - (b) hinders or obstructs an authorised person in the exercise of any such function, or
 - (c) fails to comply with a requirement of an authorised person under this Part, or
 - (d) furnishes to an authorised person (whether in answer to a question asked by an authorised person or otherwise) information that the person knows is false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: 50 penalty units.

Schedule 4 Amendments to Registered Clubs Act 1976 relating to inter-club linked gamingsystems

- (2) It is a defence to a prosecution for an offence under subsection (1) (c) for the failure of the defendant to answer a question asked by an authorised person for the purposes of this Part if the defendant proves that the defendant did not know, and could not with reasonable diligence ascertain, the answer to the question.
- (3) If an answer to a question asked by an authorised person for the purposes of this Part, or any information, is given to an authorised person by an officer of a corporation (within the meaning of the *Corporations Law*) that is concerned in the operation of a linked gaming system, the answer and information are, for the purposes of any proceedings against the corporation under this Act, binding on and admissible in evidence against the corporation unless it is proved that the answer or information was given on a matter in respect of which the officer had no authority to bind the corporation.

[Minister's second reading speech made in—
Legislative Assembly on 21 May 1997
Legislative Council on 19 June 1997]