



New South Wales

Gaming Machines Amendment Act 2004 No 97

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Gaming Machines Amendment Act 2004 No 97

Act No 97, 2004

An Act to amend the *Gaming Machines Act 2001* in consequence of a requirement that TAB Limited, the specified holder of certain exclusive licences under the Act, divest itself of those licences; to facilitate the transfer of those licences; and for other purposes. [Assented to 15 December 2004]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Gaming Machines Amendment Act 2004*.

2 Commencement

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

3 Amendment of Gaming Machines Act 2001 No 127

The *Gaming Machines Act 2001* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 4 Definitions

Omit the definitions of *investment licence* and *TAB* from section 4 (1).

[2] Sections 73 (Sharing of receipts from gaming machines) and 74 (Granting interests in gaming machines)

Omit “Subject to Part 11, a hotelier” from sections 73 (1) and 74 (1) wherever occurring.

Insert instead “A hotelier”.

[3] Section 73 (2)

Omit the subsection. Insert instead:

- (2) This section does not apply in respect of the sharing of receipts arising from the operation of an approved gaming machine that is part of an authorised linked gaming system if the sharing of receipts is pursuant to an agreement, between the holder of the relevant links licence and the hotelier or registered club that operates the approved gaming machine, in relation to the linked gaming system.

[4] Section 136 Grant of CMS licence

Omit section 136 (4) and (5).

[5] Section 136 (7)

Insert “(other than the exclusive CMS licence referred to in section 137)” after “A CMS licence”.

[6] Section 137

Omit the section. Insert instead:

137 Exclusive CMS licence during exclusive licence period

- (1) The *exclusive CMS licence* is the CMS licence in force under section 136 immediately before the repeal and re-enactment of this section by the *Gaming Machines Amendment Act 2004*.
- (2) The exclusive CMS licence is the only CMS licence that can be granted under section 136 to be in force during the period up to 1 December 2016 (referred to in this section as the *exclusive licence period*).

- (3) Subsection (2) ceases to apply if the exclusive CMS licence is cancelled or surrendered in accordance with this Act or otherwise ceases to be in force.
- (4) The exclusive CMS licence may be transferred only:
 - (a) with the written consent of the Minister, and
 - (b) subject to such terms and conditions as the Minister may determine and specify in writing.
- (5) Nothing in any other Act prevents the holder for the time being of the exclusive CMS licence from operating a CMS under the authority of that licence, or from carrying out any of its functions as a CMS licensee.
- (6) Nothing in this section is intended to prevent any holder (or former holder) of the exclusive CMS licence or any other person (assuming that they are otherwise qualified) from applying for and being granted a CMS licence in respect of any period after the exclusive licence period.

[7] Section 147

Omit the section. Insert instead:

147 Exclusive inter-hotel linked gaming system licence during exclusive licence period

- (1) The *exclusive inter-hotel links licence* is the inter-hotel links licence in force under section 153 immediately before the repeal and re-enactment of this section by the *Gaming Machines Amendment Act 2004*.
- (2) The exclusive inter-hotel links licence is the only inter-hotel links licence that can be granted under section 153 to be in force during the exclusive licence period.
- (3) Subsection (2) ceases to apply if the exclusive inter-hotel links licence is cancelled or surrendered in accordance with this Act or otherwise ceases to be in force.
- (4) The exclusive inter-hotel links licence may be transferred only:
 - (a) with the written consent of the Minister, and
 - (b) subject to such terms and conditions as the Minister may determine and specify in writing.
- (5) Nothing in any other Act prevents the holder for the time being of the exclusive inter-hotel links licence from operating a linked gaming system in a hotel under the authority of that licence, or from carrying out any of its functions as a licensee.

- (6) Nothing in this section is intended to prevent any holder (or former holder) of the exclusive inter-hotel links licence or any other person (assuming that they are otherwise qualified) from applying for and being granted an inter-hotel links licence in respect of any period after the exclusive licence period.

[8] Section 152

Omit the section. Insert instead:

152 Exclusive inter-club linked gaming system licence during exclusive licence period

- (1) The *exclusive inter-club links licence* is the inter-club links licence in force under section 153 immediately before the repeal and re-enactment of this section by the *Gaming Machines Amendment Act 2004*.
- (2) The exclusive inter-club links licence is the only inter-club links licence that can be granted under section 153 to be in force during the exclusive licence period.
- (3) Subsection (2) ceases to apply if the exclusive inter-club links licence is cancelled or surrendered in accordance with this Act or otherwise ceases to be in force.
- (4) The exclusive inter-club links licence may be transferred only:
- (a) with the written consent of the Minister, and
 - (b) subject to such terms and conditions as the Minister may determine and specify in writing.
- (5) Nothing in any other Act prevents the holder for the time being of the exclusive inter-club links licence from operating a linked gaming system in a registered club under the authority of that licence, or from carrying out any of its functions as a licensee.
- (6) Nothing in this section is intended to prevent any holder (or former holder) of the exclusive inter-club links licence or any other person (assuming that they are otherwise qualified) from applying for and being granted an inter-club links licence in respect of any period after the exclusive licence period.

[9] Section 153 Granting of links licence

Omit section 153 (3) and (4).

[10] Part 11 Investment licences (sections 159–165)

Omit the Part.

[11] Part 12, heading

Omit the heading. Insert instead:

Part 12 General provisions relating to CMS and links licences

[12] Section 166 Definitions

Omit paragraph (c) from the definition of *licence*.

[13] Section 169 Trade Practices exemption for exclusive licences

Omit “Part 9, 10 or 11” from section 169 (1) (a). Insert instead “Part 9 or 10”.

[14] Section 170 No proprietary right in licences

Omit section 170 (2). Insert instead:

- (2) Despite subsection (1), a licence is capable of being transferred in accordance with section 137 (4), 147 (4) or 152 (4), as the case may be.

[15] Section 177 Directions to licensees and other relevant persons

Omit section 177 (1) (c).

[16] Section 210 Regulations

Omit “CMS licences, links licences and investment licences” from section 210 (2) (w).

Insert instead “CMS licences and links licences”.

[17] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Gaming Machines Amendment Act 2004

[18] **Schedule 1**

Insert at the end of the Schedule, with appropriate Part and clause numbers:

**Part Provisions consequent on enactment of
Gaming Machines Amendment Act 2004**

Definitions

In this Part:

amending Act means the *Gaming Machines Amendment Act 2004*.

investment licence means the investment licence granted to TAB and in force under Part 11 immediately before the repeal of that Part by the amending Act.

TAB means the company known as TAB Limited established by the *Totalizator Agency Board Privatisation Act 1997*.

Arrangements for collection of certain fees after transfer of licence

An authorisation in writing, executed by or on behalf of a hotelier or registered club, that is, immediately before any transfer of a CMS licence or links licence in accordance with this Act, effective to permit the holder of that licence (**the current holder**) to appropriate, by automatic debit from the accounts of the hotelier or club at a bank or financial institution, amounts payable:

- (a) as or in respect of the monitoring fee payable under section 134, or
- (b) in connection with the operation of an authorised linked gaming system,

continues to have effect after a transfer of the licence and so has effect as if a reference in the authorisation to the current holder were a reference to the person to whom the licence is transferred.

Arrangements necessary for continued operation of authorised CMS or authorised linked gaming system after transfer of licence

- (1) The Minister may, by order published in the Gazette, identify such contracts between a holder of a CMS licence or a links licence and other parties as are, in the Minister's opinion, necessary for the continued operation of the authorised CMS or authorised linked gaming system to which the licence relates.
- (2) The publication of such an order operates to require the other parties to the contracts to give any consents that are necessary to

permit the assignment or novation of such contracts by the holder of the CMS licence or links licence concerned to the person to whom the licence is transferred in accordance with this Act.

- (3) The consents may be given either unconditionally or subject to such conditions as the Minister considers reasonable.
- (4) However, if a consent required to be given under this clause is not given within 60 days after it has been duly sought, the consent is taken to have been given unconditionally.
- (5) Neither the transfer under this Act of a CMS licence or a links licence nor the operation of this clause is to be regarded:
 - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
 - (d) as an event of default under any contract or other instrument.

Cancellation of investment licence

The investment licence is taken to be cancelled on the repeal of Part 11.

Preservation of certain arrangements under investment licence

- (1) Any contract or other arrangement between TAB and a hotelier entered into pursuant to the investment licence and in force immediately before the cancellation of that licence may be completed despite that cancellation and despite the other provisions of this Act.
- (2) However:
 - (a) the contract or arrangement may not be varied so as to extend its term, and
 - (b) no further contract or arrangement of the same kind may be entered into pursuant to the contract or arrangement, and

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- (c) failure to extend the term of the contract or arrangement, or to enter into any further such contract or arrangement, does not constitute a breach of, or default under, any contract or arrangement.
- (3) This clause has effect despite the provisions of the contract or arrangement concerned.
- (4) For the purposes of this clause, section 169 applies as it was in force immediately before its amendment by the amending Act.

[Second reading speech made in—
Legislative Assembly on 10 November 2004
Legislative Council on 10 December 2004]

BY AUTHORITY