

Passed by both Houses



New South Wales

Gaming Machines Amendment (Centralised Monitoring System) Bill 2015

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Gaming Machines Act 2001 No 127	3

I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2015



New South Wales

Gaming Machines Amendment (Centralised Monitoring System) Bill 2015

Act No , 2015

An Act to amend the *Gaming Machines Act 2001* to make further provision with regard to licensing for a centralised monitoring system for gaming machines; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Gaming Machines Amendment (Centralised Monitoring System) Act 2015*.

2 Commencement

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

Schedule 1 **Amendment of Gaming Machines Act 2001 No 127**

[1] **Section 4 Definitions**

Insert in alphabetical order in section 4 (1):

approved ancillary CMS service means an additional service that may be provided by a CMS licensee using CMS infrastructure or CMS information and that is approved by the Minister under section 136D.

CMS information means information acquired in the course of the operation of an authorised CMS (including any mandatory ancillary CMS services) and includes data derived from that information, but does not include information acquired in providing an approved ancillary CMS service unless the information is also acquired, or could be acquired, in the course of the operation of the authorised CMS (including any mandatory ancillary CMS services).

CMS infrastructure means any hardware (including computers and cables) or software used for the purposes of providing an authorised CMS.

mandatory ancillary CMS service means an additional service that a CMS licensee is directed to provide in accordance with section 136C.

[2] **Section 134 Monitoring fee payable by hoteliers and clubs to CMS licensee**

Omit “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*” from section 134 (3).

Insert instead “in consultation with the Treasurer”.

[3] **Sections 136–136F**

Omit section 136. Insert instead:

136 Grant of CMS licence

- (1) The Minister may, after considering an application under Part 12 for a CMS licence:
 - (a) grant a CMS licence to the applicant, or
 - (b) refuse to grant a licence.
- (2) A CMS licence granted under this section:
 - (a) comes into force on the day on which it is granted or on such later date as may be specified in, or determined in accordance with, the CMS licence, and
 - (b) remains in force for the term specified in the CMS licence unless sooner cancelled or surrendered, and
 - (c) may be granted on the basis that no other CMS licence will be granted during the term of the licence, and
 - (d) is subject to such conditions as may be imposed by or under this Act or the regulations or are specified in the CMS licence.
- (3) A CMS licence granted on the basis referred to in subsection (2) (c) is referred to in this section as an ***exclusive CMS licence***.
- (4) The Minister may not grant a CMS licence under this section in relation to any period in which an exclusive CMS licence is in force.

- (5) A CMS licence may be granted to 1 person or 2 or more persons jointly.
- (6) Without limiting subsection (2) (a), a CMS licence may provide that the licence comes into force on or after the day on which specified criteria have been satisfied.

136A Eligibility for grant of licence

- (1) The Minister must not grant a CMS licence to an applicant unless the Minister is satisfied that the applicant is a suitable person to be concerned in or associated with the management and operation of a CMS.
- (2) Without limiting the matters that may be considered by the Minister in determining whether an applicant is a suitable person to be concerned in or associated with the management and operation of a CMS, the Minister is to consider whether:
 - (a) the applicant is of good repute, having regard to character, honesty and integrity, and
 - (b) the applicant has a sound and stable financial background, and
 - (c) in the case of an applicant who is not a natural person, the applicant has arranged a satisfactory ownership, trust or corporate structure, and
 - (d) the applicant has, or is able to obtain the services of persons who have, sufficient commercial and technical experience to manage and operate a CMS, and
 - (e) the applicant, or any close associate of the applicant, has any business association with a person, body or association that, in the opinion of the Minister, is not of good repute having regard to character, honesty and integrity or has undesirable or unsatisfactory financial sources, and
 - (f) each director, partner, executive officer, secretary or other executive officer associated or connected with the ownership, administration or management of the business of the applicant that is to be carried on under the authority of the CMS licence is a suitable person in his or her capacity as such.

136B General conditions of CMS licence

Without limiting the conditions to which a CMS licence may be subject, a CMS licence is subject to the following conditions:

- (a) the CMS licensee must manage and operate the authorised CMS in accordance with this Act, the regulations and the CMS licence,
- (b) the CMS licensee must not use CMS infrastructure or CMS information otherwise than in accordance with this Act, the regulations or the CMS licence,
- (c) the CMS licensee must provide any mandatory ancillary CMS services,
- (d) the CMS licensee must not carry out any approved ancillary CMS service otherwise than in accordance with the conditions of the approval,
- (e) the CMS licensee must have policies in place to comply with such information protection principles under the *Privacy and Personal Information Protection Act 1998* (in relation to business operations to be carried out by the applicant pursuant to the CMS licence) as would apply to the licensee if the licensee were a public sector agency under that Act.

136C Mandatory ancillary CMS services

- (1) The Minister may, by notice in writing, direct a CMS licensee to provide additional specified services in relation to the management and operation of the authorised CMS or the use of CMS infrastructure or CMS information.
- (2) The Minister may only give a direction to a CMS licensee under subsection (1) after:
 - (a) providing the licensee with a draft of the proposed direction at least 60 days before giving the direction, and
 - (b) inviting the licensee to provide submissions in relation to the proposed direction, and
 - (c) considering any written submissions provided by the licensee in relation to the proposed direction (within 14 days after providing the proposed direction to the licensee).
- (3) A direction under this section may make provision for or with respect to the following:
 - (a) the terms and conditions applicable to the provision of the mandatory ancillary CMS service,
 - (b) the use of CMS infrastructure or CMS information,
 - (c) the period during which the mandatory ancillary CMS service is to be provided,
 - (d) the payment of fees in relation to the provision of the mandatory ancillary CMS service,
 - (e) the persons to whom the mandatory ancillary CMS service is to be provided,
 - (f) the terms of any agreement between the CMS licensee and any other person in relation to the provision of the mandatory ancillary CMS service,
 - (g) any other matter prescribed by the regulations.
- (4) The Minister may:
 - (a) amend a direction given under this section by giving a subsequent direction in accordance with this section, or
 - (b) revoke a direction given under this section by notice in writing to the CMS licensee.
- (5) In determining whether to give a direction under this section, the Minister may consult with such persons as the Minister thinks fit.

136D Approved ancillary CMS services

- (1) The Minister may, on application by a CMS licensee, approve the provision of additional services by the CMS licensee in relation to the management and operation of an authorised CMS or the use of CMS infrastructure or CMS information.
- (2) If the Minister receives an application under this section, the Minister is to:
 - (a) provide a draft determination to the CMS licensee not more than 60 days after the receipt of the application either rejecting the application or approving the proposed service, and
 - (b) invite the licensee to provide submissions in relation to the draft determination, and

- (c) consider any written submissions provided by the licensee in relation to the draft determination (within 14 days after providing the draft determination to the licensee), and
 - (d) provide reasons for the draft determination.
- (3) An approval under this section may make provision for or with respect to the following:
 - (a) the terms and conditions applicable to the provision of the approved ancillary CMS service,
 - (b) the use of CMS infrastructure or CMS information,
 - (c) the period that the approved ancillary CMS service may be provided,
 - (d) the payment of fees in relation to the provision of the approved ancillary CMS service,
 - (e) the persons to whom the approved ancillary CMS service may be provided,
 - (f) the terms of any agreement between the CMS licensee and any other person in relation to the provision of the approved ancillary CMS service,
 - (g) any other matter prescribed by the regulations.
- (4) The Minister is, as soon as practicable after approving under this section additional services by the CMS licensee, to cause a copy of the approval:
 - (a) to be published in the Gazette, and
 - (b) to be laid before both Houses of Parliament.
- (5) If the Minister has not made a determination in relation to an application under this section within 60 days after providing the draft determination:
 - (a) the Minister may, by notice to the CMS licensee, extend the time for determining the application by 20 days, and
 - (b) if the Minister does not extend the time under paragraph (a), the Minister is taken to have refused the application.
- (6) A determination of the Minister to grant or refuse an application under this section must include reasons for the determination.
- (7) In determining whether to approve an application under this section, the Minister may:
 - (a) require the CMS licensee to provide further information in relation to the applicant, and
 - (b) consult with such persons as the Minister thinks fit.

136E Confidential information relating to CMS licensee

- (1) A CMS licensee or person applying for a CMS licence may, when providing information to the Minister in connection with a CMS licence, claim that the information is confidential if there are sufficient grounds for such a claim.
- (2) There are sufficient grounds for a claim that information is confidential only if it appears that disclosure of the information:
 - (a) could adversely affect the competitive position of the licensee, applicant or any other person, or
 - (b) would result in the licensee or applicant being in breach of a duty of confidentiality owed to another person.

- (3) A claim that information is confidential must be accompanied by a detailed statement of the reasons in support of the claim and is not duly made unless accompanied by such a statement.
- (4) The Minister must take all reasonable steps to prevent the disclosure of information that is claimed to be confidential unless the disclosure is authorised by this section.
- (5) The disclosure of information that is claimed to be confidential is authorised if:
 - (a) the disclosure is for the purposes of the administration of this Act to a person engaged in the administration of this Act, or
 - (b) the disclosure is made with the consent of the person who provided the information and (if disclosure could adversely affect the competitive position of another person) that other person, or
 - (c) the disclosure is authorised or required under any other Act or law, or
 - (d) the disclosure is authorised or required by a court, or
 - (e) the disclosure is, in the opinion of the Minister, in the public interest and the Minister is of the opinion that the public benefit in disclosing the information outweighs any detriment that might be suffered by any person as a result of the disclosure.
- (6) This section does not prevent the disclosure of information that is claimed to be confidential if:
 - (a) the Minister is of the opinion that there are insufficient grounds for the claim and the Minister has notified the Minister's opinion to the person who provided the information, or
 - (b) the Minister is of the opinion that the information is CMS information, or
 - (c) the disclosure is made to a person or body prescribed by the regulations.
- (7) A disclosure of information authorised by this section does not constitute a breach of any duty of confidentiality (either by the person making the disclosure or by the CMS licensee).
- (8) In this section, information is provided *in connection with a CMS licence* if the information is provided in connection with any of the following:
 - (a) an application for a CMS licence,
 - (b) activities authorised by a CMS licence,
 - (c) a direction to provide a mandatory ancillary CMS service,
 - (d) an application to provide an approved ancillary CMS service.

136F Review of suitability of licensee

- (1) The Minister may from time to time determine whether, in the opinion of the Minister, a CMS licensee remains a suitable person to be concerned in or associated with the management and operation of a CMS.
- (2) For the purpose of determining whether a person is a suitable person to be concerned in or associated with the management and operation of a CMS, the Minister is to have regard to the same matters to which the Minister is required to have regard in deciding whether an applicant is a suitable person to be granted a CMS licence.
- (3) The Minister may require a CMS licensee to pay to the Minister such reasonable costs as may be incurred by or on behalf of the Minister in

conducting any inquiry or investigation for the purposes of a determination under this section.

- (4) It is a condition of a CMS licence that the CMS licensee must:
 - (a) provide such information (including necessary consents to facilitate the provision of information) as the Minister may reasonably request for the purposes of making a determination under this section, and
 - (b) pay the costs that the Minister requires the CMS licensee to pay under this section in connection with any inquiry or investigation conducted for the purposes of making a determination under this section.
- (5) The Minister may recover from a CMS licensee (as a debt due to the Crown) any costs that the Minister has required the CMS licensee to pay under this section.
- (6) The Minister may give a certificate as to the amount of the reasonable costs incurred by or on behalf of the Minister in conducting any inquiry or investigation for the purposes of a determination under this section, and such a certificate is, in any proceedings, evidence of the matter certified.

[4] Section 137 Exclusive CMS licence during exclusive licence period

Omit the section.

[5] Section 139

Omit the section. Insert instead:

139 Rights associated with and control of CMS information

- (1) All rights associated with CMS information are vested in the Crown.
- (2) A CMS licensee must not use or divulge CMS information to any person without the written consent of the Minister or as otherwise authorised in accordance with the CMS licence, this Act or the regulations.
Maximum penalty: 100 penalty units.
- (3) A person to whom CMS information is divulged by the CMS licensee must not use or divulge CMS information otherwise than in accordance with this Act, the regulations or any terms or conditions under which the information was provided to the person.
Maximum penalty: 50 penalty units.
- (4) If a person who is in possession of CMS information divulges that information to another person, the information provided to that other person is subject to:
 - (a) the same terms and conditions to which the person divulging the information was subject, and
 - (b) such additional terms and conditions as may be imposed by the person divulging the information.
- (5) Despite subsection (2), a CMS licensee may, during the term of the CMS licence, use CMS information for the purposes of the operation and management of the authorised CMS.

[6] Section 170 No proprietary interest in licences

Omit "137 (4)," from section 170 (2).

[7] Section 172 Disciplinary action against licensees

Insert after paragraph (b) of the definition of *disciplinary action* in section 172 (1):

- (b1) in the case of a CMS licence—the imposition on the licensee of a monetary penalty (not exceeding the amount prescribed by the regulations) and, in the case of a continuing contravention, a further penalty (not exceeding the amount prescribed by the regulations) for each day the contravention continues,

[8] Section 172 (2) (c1) and (c2)

Insert after section 172 (2) (c):

- (c1) in the case of a CMS licensee—ceases to be a suitable person to be concerned in or associated with the management and operation of a CMS, or
- (c2) in the case of a CMS licensee who holds a CMS licence that is not in force:
 - (i) is, in the opinion of the Minister, unlikely to satisfy any criteria for the licence to come into force within a reasonable time, or
 - (ii) fails to comply with any arrangements made for the payment of the amount payable as consideration for the grant of a CMS licence under section 168, or

[9] Section 172 (2)

Insert at the end of the subsection:

Note. Section 174A provides for the cancellation of a CMS licence in extraordinary circumstances without giving the licensee an opportunity to show cause why disciplinary action should not be taken against the licensee.

[10] Section 172 (2A)

Insert after section 172 (2):

- (2A) Despite subsection (2), the Minister may serve a letter of reprimand on a CMS licensee on any of the grounds referred to in that subsection without giving the licensee an opportunity to show cause why that action should not be taken against the licensee.

[11] Section 172 (4)

Omit “either”.

[12] Section 172 (4) (b)

Omit “as an alternative to taking that disciplinary action,”.

[13] Section 172 (4) (c)

Insert at the end of section 172 (4) (b):

, or

- (c) in the case of a CMS licensee, take both that disciplinary action and action under section 173.

[14] Section 173 Rectification orders

Insert after section 173 (2):

- (3) The Minister may direct a CMS licensee to take specified action within a specified time to rectify the matter that constitutes the basis for taking

disciplinary action under section 172 whether or not the Minister has also taken disciplinary action under that section.

[15] Section 174A

Insert after section 174:

174A Suspension or cancellation of CMS licence in extraordinary circumstances

- (1) Despite any other provision in this Part, the Minister may, by notice in writing to a CMS licensee, cancel or suspend the CMS licence if the Minister is satisfied that:
 - (a) the conduct of the CMS licensee may materially jeopardise the integrity of the CMS, or
 - (b) failure to do so may result in the public interest being adversely affected in a material way.
- (2) A notice given under this section is to specify:
 - (a) when the cancellation or suspension takes effect (whether on the date notice is given or a later date), and
 - (b) the grounds on which the licence was cancelled or suspended.

[16] Section 176 Appointment of temporary licensee if CMS licence or links licence suspended, cancelled or surrendered

Omit section 176 (4) (a). Insert instead:

- (a) in the case of a links licence—90 days after appointment unless in a particular case the appointment is extended by the regulations, or
- (a1) in the case of a CMS licence—1 year after the appointment unless in a particular case the appointment is extended by the Minister (for up to 2 additional years), or

[17] Schedule 1 Savings, transitional and other provisions

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

Part Provisions consequent on enactment of Gaming Machines Amendment (Centralised Monitoring System) Act 2015

Definitions

In this Part:

amending Act means the *Gaming Machines Amendment (Centralised Monitoring System) Act 2015*.

existing CMS licence means the CMS licence in force immediately before the commencement of the amending Act.

Transitional arrangements for existing CMS licence

- (1) This Act, as in force immediately before the commencement of the amending Act, continues to apply in respect of the existing CMS licence.
- (2) The Minister may enter into an agreement with the holder of the existing CMS licence to provide for the transition to the CMS licensing arrangements under this Act as amended by the amending Act. Such an agreement may be entered into whether or not a new CMS licence has been granted.

- (3) Any such transitional agreement may provide for:
 - (a) the extension of the operation and management of the authorised CMS for a period of not more than 2 years after the end of the term of the existing CMS licence, and
 - (b) any other matter or thing that was or could be provided for by an existing CMS licence.
- (4) A transitional agreement entered into under this clause is taken to be the existing CMS licence. The monitoring fee payable under section 134 during the period that the transitional agreement is in force may, despite anything in that section, be increased by the Minister in accordance with any increases in the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.
- (5) The regulations made under Part 1 of this Schedule consequent on the enactment of the amending Act have effect despite anything to the contrary in this clause.