

[Act 1997 No 43]



New South Wales

Totalizator Agency Board Privatisation Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

The following Bills are cognate with this Bill:

- *Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Bill 1997,*
- *Totalizator Bill 1997.*

Overview of Bill

The object of this Bill is to provide for the conversion of the Totalizator Agency Board (*the TAB*) into a company under the *Corporations Law* and for the sale of the new company (to be called TAB Limited) by public float with a maximum shareholding of 5% for any one shareholder.

The Bill provides for the following:

- (a) the TAB is to have share capital with shares to be issued to the State,
 - (b) the incorporation of the TAB as a company under the *Corporations Law*,
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- (c) the management of the TAB before its conversion to a company by a board of directors appointed by the Minister,
- (d) the management of the new TAB Limited before its sale,
- (e) the reorganisation of the TAB's business undertaking in connection with its conversion and sale,
- (f) the sale of the State's shares in TAB Limited by public float,
- (g) a maximum shareholding restriction of 5%, which is to apply both at the time of the float and in the future,
- (h) the payment of the proceeds of sale into the Consolidated Fund,
- (i) the transfer of staff on sale,
- (j) miscellaneous matters including savings and transitional provisions and consequential amendments.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the Act on a day or days to be appointed by proclamation.

Clause 3 lists the objects of the Act.

Clause 4 contains definitions and other interpretative provisions.

Clause 5 provides for the nomination of a Minister or Ministers to be the Minister for the purposes of the Act.

Part 2 Steps before conversion of TAB to company

Clause 6 provides for the TAB to have a share capital and provides for the amount, classes of and rights attaching to shares.

Clause 7 requires the TAB to apply capital in paying up shares and to issue those shares to the State.

Clause 8 requires the TAB to apply to the ASC for registration as a company and take certain other steps in connection with its becoming registered as a company.

Clause 9 provides for “TAB Limited” to be the name of the company that the TAB is converting to.

Part 3 Management of TAB before conversion to company

Clause 10 provides for the TAB to consist of at least 5 directors appointed by the Minister. This will apply from the commencement of the Part up to the conversion of the TAB to a company.

Clause 11 gives effect to a Schedule containing amendments to the *Totalizator (on-course Betting) Act 1964* made necessary by the new structure of the TAB before its conversion to a company.

Part 4 Conversion of TAB to company

Clause 12 provides that the TAB is taken to be registered as a company under the *Corporations Law*.

Clause 13 provides for the change of name of the TAB to “TAB Limited” on its becoming registered as a company.

Clause 14 provides for the operation of the new memorandum and articles of association of TAB Limited.

Clause 15 provides for the State of New South Wales to be a member of TAB Limited.

Clause 16 authorises the Minister to act for the State as a shareholder in TAB Limited.

Clause 17 provides that TAB Limited is a continuation of and the same legal entity as the existing TAB and provides for the construction of references in Acts and instruments to the existing TAB.

Clause 18 provides for the continuation of contracts and arrangements to which the existing TAB is a party.

Clause 19 provides for the repeal of Part 2 and the making of consequential amendments on the conversion of the TAB to TAB Limited.

Part 5 Management of TAB Limited after conversion and before sale

Clause 20 provides for the Part to apply during any period after the conversion of the TAB to a company when a majority of the issued shares in TAB Limited are held by the State.

Clause 21 provides that the board of directors of TAB Limited is subject to the control and direction of the Minister and provides protection from civil and criminal liability for anything done at the direction of the Minister (such as “signing off” on a prospectus, for example).

Clause 22 provides that TAB Limited is an agency through which the State conducts totalizator betting and other activities authorised by a licence under the *Totalizator Act 1997*, and for that purpose it is a public authority of the State. TAB Limited is not, and does not represent, the State except by express agreement with the Minister. TAB Limited is not exempt from any rate, tax, duty or other impost imposed by or under any law of the State merely because it is a company in which the State holds shares. It cannot render the State liable for its debts, liabilities or obligations, except as expressly provided.

Clause 23 applies certain provisions of the *State Owned Corporations Act 1989* to TAB Limited and provides for the regulations to prescribe modification to those applied provisions.

Part 6 Reorganisation of TAB business undertaking in connection with conversion and sale of TAB

Clause 24 authorises the Minister to direct that any part or parts of TAB’s business undertaking be transferred to a specified TAB subsidiary.

Clause 25 authorises the Minister to direct that any part or parts of the business undertaking of a TAB subsidiary (including anything transferred under this Part) be transferred to another specified TAB subsidiary or to the TAB.

Clause 26 authorises the Minister to direct that any assets transferred to a TAB subsidiary or to TAB under this Part are to be allocated to capital and reserves in specified amounts and in accordance with specified requirements.

Clause 27 provides that an order under this Part may be made before, on or after the conversion of TAB into a public company. After the conversion, an order may not be made unless all the shares in TAB Limited are held by the State.

Part 7 Exclusion of parts of business undertaking from TAB or TAB subsidiary

Clause 28 authorises the Minister to direct that any assets, rights or liabilities that are part of the business undertaking of TAB or a TAB subsidiary be excluded from that business undertaking and transferred to the Ministerial Holding Corporation or another person on behalf of the State.

Clause 29 enables an order under this Part to be made before, on or after the conversion of TAB into a public company. After the conversion, an order may not be made unless all the shares in TAB Limited are held by the State.

Clause 30 provides that the Ministerial Holding Corporation or any other person to whom any excluded undertaking is transferred may sell or otherwise dispose of the whole or any part of the excluded undertaking, or retain the whole or any part of the excluded undertaking and conduct any business to which it relates.

Clause 31 authorises the Ministerial Holding Corporation or any other person to whom any excluded undertaking is transferred under this Part to enter into an agreement or arrangement with TAB or a TAB subsidiary for the exercise by TAB or the TAB subsidiary (as an agent or otherwise) of functions relating to the excluded undertaking.

Part 8 Sale of TAB Limited by public float

Division 1 Sale process

Clause 32 authorises the Minister to make arrangements for the sale of TAB Limited by a public float involving the disposal of the shares issued to the State, including underwriting agreements and the issue of a prospectus.

Clause 33 authorises the State to dispose of all or any of its shares in TAB Limited.

Clause 34 gives effect to a Schedule of consequential amendments to Acts to take effect on the sale of TAB Limited.

Clause 35 provides that the obligations of TAB Limited are not guaranteed by the State.

Division 2 Maximum shareholding restrictions

Clause 36 contains definitions for the purposes of the Division.

Clause 37 contains general provisions as to how the Division applies.

Clause 38 provides that a shareholding of more than 5% in TAB Limited is a prohibited shareholding interest and provides that TAB Limited or a subsidiary of TAB Limited cannot have a prohibited shareholding interest in TAB Limited and that it is unlawful for a person to have a prohibited shareholding interest in TAB Limited.

Clause 39 authorises the Minister, or a director or the secretary of TAB Limited, to require a person to furnish specified information for the purpose of determining whether the person or any other person has or is acquiring a prohibited shareholding interest in TAB Limited. The Minister is further authorised to declare persons to be associated or to be entitled to specified shares in TAB Limited.

Clause 40 provides for the Minister to be given a copy of a substantial shareholder notice in respect of TAB Limited under the *Corporations Law*.

Clause 41 authorises the Minister to declare that a person whom the Minister believes has a prohibited shareholding interest in TAB Limited must dispose of shares and provides for shares that are not disposed of to be forfeited to the State.

Clause 42 provides that any provision of the articles of association of TAB Limited that provides for the suspension of voting rights or refusal or deferral of payment of dividend, on the basis of a prohibited shareholding interest, cannot be amended or repealed except with the written consent of the Minister. The Minister is also authorised to declare void a resolution of a general meeting of TAB Limited that has been passed as a result of the admission of votes that should not have been admitted.

Clause 43 deals with the making, review and revocation by the Minister of declarations under the Division.

Clause 44 provides for an appeal against declarations of the Minister under the Division.

Clause 45 requires the Minister to sell any shares forfeited to the State under the Act and specifies the persons to whom the proceeds of sale are to be paid.

Clause 46 provides an immunity from liability for the Minister and TAB Limited and its officers and auditors for any act or omission in good faith under the Division.

Clause 47 provides for how a notice required under the Division is to be served.

Division 3 Results of sale

Clause 48 requires the proceeds of the sale of TAB Limited to be paid into the Consolidated Fund. Allowance is made for any surplus above an amount determined by the Treasurer as a fair return to the State on the sale to be paid as the Treasurer directs.

Clause 49 provides that on the sale of TAB Limited each member of staff of TAB Limited continues to be a member of staff of TAB Limited.

Part 9 Vesting of undertaking on transfer

Clause 50 provides that the Part applies to certain orders under the Act transferring a of the business undertaking of TAB.

Clause 51 provides for the vesting of any part of a business undertaking that is transferred by an order to which the Part applies.

Clause 52 provides for the transfer of the employment of staff under an order to which the Part applies.

Clause 53 authorises an order to which the Part applies to specify the consideration on which the order is made and the value or values at which assets, rights or liabilities are transferred.

Part 10 Miscellaneous

Clause 54 provides that the Act binds the Crown.

Clause 55 makes it clear that the TAB may, whether or not in connection with the conversion, form or participate in the formation of subsidiary companies before the conversion.

Clause 56 provides that none of the matters for which the Act provides is to be regarded as a breach of certain obligations.

Clause 57 authorises the Treasurer to approve of the communication by the Auditor-General to certain authorised persons of matters that have come to the knowledge of the Auditor-General in respect of TAB, TAB Limited, a TAB subsidiary or a TAB Limited subsidiary.

Clause 58 provides for the exemption from State taxes and charges of the issue of shares in TAB Limited, the disposal of those shares by the State and certain other matters relating to the conversion of TAB into TAB Limited.

Clause 59 authorises the Minister to give certain certificates and for those certificates to be evidence.

Clause 60 provides that proceedings for offences are to be in a Local Court.

Clause 61 gives effect to a Schedule of savings and transitional provisions.

Clause 62 contains a regulation making power.

Schedules

Schedule 1 contains provisions concerning the office and functions of directors of the TAB before its conversion to TAB Limited.

Schedule 2 contains amendments to various Acts that are to take effect before the conversion of the TAB to TAB Limited.

Schedule 3 contains amendments to the *Totalizator (Off-course Betting) Act 1964* that are to take effect on the conversion of the TAB to TAB Limited.

Schedule 4 contains consequential amendments to Acts that are to take effect on the sale of TAB Limited.

Schedule 5 contains savings, transitional and other consequential provisions.