

[Act 1997 No 151]



New South Wales

Totalizator Legislation Amendment Bill 1997

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Totalizator Agency Board Privatisation Act 1997*, the *Totalizator Act 1997*, the *Liquor Act 1982* and the *Registered Clubs Act 1976* as follows:

Amendments to the Totalizator Agency Board Privatisation Act 1997

- (a) A number of amendments are made to the Act to clarify the operation of provisions that will prevent a shareholding in TAB Limited in excess of 5% for any one shareholder.
- (b) Other amendments provide that a contravention of the maximum shareholding restriction will not lead to an automatic avoidance of the transaction that resulted in the prohibited shareholding but will still render the shares concerned liable to forfeiture at the direction of the Minister.

* Amended in committee—see table at end of volume.

- (c) Provision that enables a director or secretary of TAB Limited (in the context of a suspected contravention of the maximum shareholding restriction) to refuse to register certain share transfers is removed.
- (d) Provision is made for the State to be immune from liability in respect of the actions in good faith of the Minister and others under the maximum shareholding provisions.
- (e) Various consequential amendments and other minor amendments are made.

Amendments to the Totalizator Act 1997

- (a) The Act is amended to confer additional functions and powers on the racing industry *controlling bodies* (the NSW Thoroughbred Racing Board, Harness Racing New South Wales and the Greyhound Racing Authority (NSW)).
- (b) Various amendments are made to clarify which events and contingencies can be the subject of a licence under the Act to conduct a totalizator.
- (c) Provisions that deal with the grant of exclusive totalizator licences to TAB Limited (or a subsidiary) and the racing clubs are amended to make it clear that the exclusive licences can be granted for terms that are longer than the exclusivity period (15 years).
- (d) Provision is added to enable the Minister to require the payment of an amount as consideration for the grant of a totalizator licence and to require payment of a periodic licence fee.
- (e) Exemption from the operation of Part IV of the *Trade Practices Act 1974* of the Commonwealth is granted in respect of the grant of the exclusive licences, conduct under those licences, certain arrangements approved by the Minister and conduct under those arrangements, and the giving by a controlling body of certain directions to racing clubs.
- (f) An existing provision that requires an applicant for a totalizator licence to have made commercial arrangements with the racing industry is modified to require the arrangements to be arrangements that the racing industry is satisfied with.
- (g) A number of amendments are made to the Act to clarify the operation of provisions that will prevent a shareholding in a totalizator licensee in excess of 5% for any one shareholder.

- (h) Other amendments provide that a contravention of the maximum shareholding restriction will not lead to an automatic avoidance of the transaction that resulted in the prohibited shareholding but will still render the shares concerned liable to forfeiture at the direction of the Minister.
- (i) Provision that enables a director or secretary of a totalizator licensee (in the context of a suspected contravention of the maximum shareholding restriction) to refuse to register certain share transfers is removed.
- (j) Provision is made for the State to be immune from liability in respect of the actions in good faith of the Minister and others under the maximum shareholding provisions.
- (k) The provision that requires the holder of a totalizator licence to have in place and give effect to certain commercial arrangements with the racing industry is amended to exempt licences held by racing clubs and to require that the arrangements must be to the satisfaction of the racing industry.
- (l) A provision for the payment of rebates of betting tax to racing clubs is amended to provide for the rebates to be determined by directions of the Minister given by order published in the Gazette, rather than by regulation.
- (m) Existing transitional provisions for the continuation of the Racing Development Fund are amended to provide for the winding up and distribution of the fund.
- (n) An existing transitional provision that confers additional powers on the controlling bodies is expanded to broaden the range of purposes for which the additional powers are available.
- (o) New provisions are added to give the controlling bodies power to give certain directions to the racing clubs for which they are responsible, and to provide for exemptions from stamp duty.
- (p) Various consequential amendments and other minor amendments are made.

Amendments to the Liquor Act 1982

- (a) The Bill makes the following amendments with respect to the proposed centralised monitoring system (CMS) for gaming machines in hotels:
 - (i) new interpretative provisions are inserted to define what constitutes “connection” of a gaming machine to the CMS,

- (ii) the provision dealing with the power of the **CMS** licensee to collect gaming machine duty is amended to enable gaming machines to be included in or excluded from its operation by regulation,
 - (iii) provisions for secrecy of information are clarified and expanded,
 - (iv) provisions dealing with the CMS licence are amended to require that a licence holder must have certain commercial arrangements with the racing industry,
 - (v) other minor or consequential changes.
- (b) Exemption from the operation of Part IV of the *Trade Practices Act 1974* of the Commonwealth is conferred in respect of the exclusive CMS licence to be granted to TAB Limited (or a subsidiary).
 - (c) Amendments are made to provide flexibility in respect of the payment and collection of the CMS monitoring fee payable by hoteliers.
 - (d) An existing provision for the payment of a fee determined by the Minister for a CMS licence is replaced with provision for an amount to be payable as consideration for the grant of the licence and as a periodic licence fee.
 - (e) Provisions dealing with licences to operate a linked gaming system are amended to require the holder of a licence to have made certain commercial arrangements with the racing industry.
 - (f) Exemption from the operation of Part IV of the *Trade Practices Act 1974* of the Commonwealth is conferred in respect of the grant of the exclusive linked gaming system licence to TAB Limited (or a subsidiary).
 - (g) An existing provision for the payment of a fee determined by the Minister for a linked gaming system licence is replaced with provision for an amount to be payable as consideration for the grant of the licence and as a periodic licence fee.
 - (h) Various consequential amendments and other minor amendments are made.

Amendments to the Registered Clubs Act 1976

- (a) The Bill makes the following amendments with respect to the proposed centralised monitoring system (CMS) for gaming machines in clubs:
 - (i) a new interpretative provision is inserted to defined what constitutes “connection” of a gaming machine to the CMS,

- (ii) the provision dealing with the power of the CMS licensee to collect gaming machine duty is amended to enable gaming machines to be included in or excluded from its operation by regulation,
 - (iii) a regulation making power that allows the transfer of the Liquor Administration Board's functions with respect to gaming machines that are connected or capable of connection to a CMS is expanded so that it applies to all gaming machines under the Act.
- (b) Provisions dealing with licences to operate a linked gaming system for clubs are amended to require that a licence can only be held by a person who has made certain commercial arrangements with the racing industry.
- (c) Exemption from the operation of Part IV of the *Trade Practices Act 1974* of the Commonwealth is conferred in respect of the exclusive inter-club linked gaming system licence to be granted to TAB Limited (or a subsidiary).
- (d) Amendments are made to provide flexibility in respect of the payment and collection of the CMS monitoring fee payable by registered clubs.
- (e) An existing provision for the payment of a fee determined by the Minister for a linked gaming system licence is replaced with provision for an amount to be payable as consideration for the grant of the licence and as a periodic licence fee.
- (f) Various consequential amendments and other minor amendments are made.

Outline of provisions

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

Clause 2 provides for the proposed Act to commence on a day or days to be proclaimed.

Clause 3 gives effect to the Schedule of amendments to the *Totalizator Agency Board Privatisation Act 1997*.

Clause 4 gives effect to the Schedule of amendments' to the *Totalizator Act 1997*.

Clause 5 gives effect to the Schedule of amendments to the *Liquor Act 1982*.

Clause 6 gives effect to the Schedule of amendments to the *Registered Clubs Act 1976*.

Schedule 1 Amendment of Totalizator Agency Beard Privatisation Act 1997

Schedule 1 [1]–[5],[30] and [33] amend provisions dealing with the issue of shares in TAB Limited to reflect the fact that all the shares issued to the State may not all be issued at the same time and that some may be issued under the *Totalizator Act 1997* as consideration for the grant of a licence.

Schedule 1 [6]–[8], [10]–[14] and [19]–[21] clarify and improve the operation of provisions that will prevent a shareholding in TAB Limited in excess of 5% for any one shareholder.

Schedule 1 [[15]–[18]and [25] amend the maximum shareholding provisions so that a contravention of them will not lead to an automatic avoidance of a transaction that resulted in a prohibited shareholding (but will still render the shares concerned liable to forfeiture at the direction of the Minister).

Schedule 1 [9] and [22]–[24] make amendments to reflect the fact that the exclusive licences provided for under the *Totalizator Act 1997* can be issued to a subsidiary of TAB Limited (and not just TAB Limited itself).

Schedule 1 [26] extends an existing section that grants immunity to the Minister and others in respect of functions exercised in good faith under the maximum shareholding provisions so that the immunity extends to the State.

Schedule 1 [27] makes minor amendments to correct terminology and references to TAB Limited after its corporatisation.

Schedule 1 [28] and [29] amend an existing provision that protects contractual and other obligations arising under the Act so that the provision will extend to the payment of any consideration or fee payable for a licence issued to TAB Limited under the *Totalizator Act 1997*, the *Liquor Act 1982* or the *Registered Clubs Act 1976*. The provision is also simplified by the removal of an unnecessary exception.

Schedule 1 [31] corrects a consequential amendment.

Schedule 1 [32] corrects a cross-reference.

Schedule 2 Amendment of Totalizator Act 1997

Schedule 2 [1] and [4] define *controlling bodies* to mean the NSW Thoroughbred Racing Board, Harness Racing New South Wales and the Greyhound Racing Authority (NSW).

Schedule 2 [2] alters the definition of *racing club* so that it is restricted to those bodies that are registered by one of the controlling bodies as a racing club.

Schedule 2 [3] extends the definition of *racecourse* to provide for racecourses that are situated outside the State.

Schedule 2 [6] and [7] amend the general provisions that deal with the grant of totalizator licences to make it clear that a licence can be granted in respect of betting on any one or more of the events and contingencies referred to in those provisions.

Schedule 2 [5], [8] and [29] amend the provisions that deal with the grant of exclusive licences to TAB Limited (or a subsidiary) and the racing clubs so as:

- (a) to make it clear that the exclusive licences apply in respect of all of the events and contingencies referred to in those provisions,
- (b) to make it clear that the exclusive licences can be granted for terms that are longer than the exclusivity period (15 years) (but so as only to be exclusive for the exclusivity period),
- (c) to make it clear that to the extent that an exclusive licence applies to an event or contingency on a racecourse it will only cover horse, greyhound and harness racing events or contingencies held at a race meeting,
- (d) to insert a new provision that will enable the Minister to require the payment of an amount as consideration for the grant of a totalizator licence and payment of a periodic licence fee.

Schedule 2 [9] grants a broad exemption from the operation of Part IV of the *Trade Practices Act 1974* of the Commonwealth in respect of the grant of the exclusive licences, conduct under those licences, certain arrangements approved by the Minister and conduct under those arrangements, and the giving by a controlling body of directions under a new provision enabling controlling bodies to give directions to the racing clubs for which they are responsible.

Schedule 2 [10] and [11] replace a provision that requires an applicant for a licence to have made commercial arrangements with the racing industry that the Minister is satisfied are necessary to properly give effect to the licence

with a provision that requires the arrangements to be arrangements that the racing industry has indicated it is satisfied with. The new provision also requires the Minister to be provided with a copy of the arrangements. Racing clubs are exempted from the new requirement.

Schedule 2 [12]–[25] clarify and improve the operation of provisions that will prevent an individual shareholder entitlement in the holder of a totalizator licence in excess of 5%. The provisions will also be amended so that a contravention of the shareholding restrictions will not lead to the automatic voiding of a transaction that resulted in a prohibited shareholding but instead will make the shares concerned liable to forfeiture at the direction of the Minister.

Schedule 2 [26] extends an existing section that grants immunity to the Minister and others in respect of functions exercised in good faith under the maximum shareholding provisions so that the immunity extends to the State.

Schedule 2 [27] amends a provision that requires the holder of a totalizator licence to have in place and give effect to certain commercial arrangements with the racing industry to exempt on-course totalizator licences held by racing clubs from the requirement and to provide that the arrangements must be to the satisfaction of the racing industry. **Schedule 2 [28]** inserts a definition of *racing industry*.

Schedule 2 [30] amends an existing provision for the payment of rebates of betting tax to racing clubs to provide for the rebates to be determined by directions of the Minister given by order published in the Gazette, rather than by regulation.

Schedule 2 [31] and **[32]** amend existing transitional provisions for the continuation of the Racing Development Fund to provide for the conversion of references to the old Fund and to provide for the winding up and distribution of the continued fund.

Schedule 2 [33] and **[34]** amend an existing transitional provision that confers additional powers on the controlling bodies to broaden the range of purposes for which the additional powers are available, and inserts an additional provision to give the controlling bodies power to give directions to the racing clubs for which they are responsible. There is also provision for exemptions from stamp duty for arrangements entered into by the controlling bodies for facilitating the restructuring and reorganisation of the racing industry.

Schedule 3 Amendment of Liquor Act 1982

Schedule 3 [1] and **[8]** insert new interpretative provisions to define what constitutes “connection” of a gaming machine to a CMS (a centralised monitoring system for gaming machines in hotels).

Schedule 3 [2] and **[3]** amend a provision dealing with the power of the CMS licensee to collect gaming machine duty to enable the regulations to include within the operation of the section gaming machines that are not connected to the CMS, or to exclude gaming machines from its operation that are connected to the CMS.

Schedule 3 [4], [5] and **[7]** replace a provision dealing with the duty of secrecy of the CMS licensee with respect to information obtained from the operation of the CMS with a new provision that extends to officers, directors and employees of the CMS licensee and also provides for the making of regulations to impose further restrictions on the use of that information by the CMS licensee.

Schedule 3 [6] expands a regulation making power that allows the transfer of the Liquor Administration Board’s functions with respect to gaming machines that are connected or capable of connection to a CMS so that the provision applies to all gaming machines under the Act.

Schedule 3 [9] amends provisions dealing with the CMS licence to provide that the licence is subject to a condition that the licensee must have commercial arrangements with the racing industry in place and give effect to them.

Schedule 3 [10] amends a provision dealing with the term of a CMS licence to make it clear that the term of the licence is subject to any earlier cancellation or surrender.

Schedule 3 [11] grants a broad exemption from the operation of Part IV of the *Trade Practices Act 1974* of the Commonwealth in respect of the grant of the exclusive CMS licence to TAB Limited (or a subsidiary) and conduct under those licences.

Schedule 3 [12] and **[13]** amend the Act to provide flexibility in respect of the payment and collection of the monitoring fee payable by a hotelier in respect of gaming devices connected to the CMS. The regulations will be able to provide for the manner and frequency of payment, to whom the fee is payable and the collection and recovery of the fee.

Schedule 3 [14] replaces an existing provision for the payment of a fee determined by the Minister for a CMS licence with a provision that provides for the determination by the Minister of an amount as the consideration

payable for the grant of the licence and for the determination of a periodic licence fee.

Schedule 3 [15] and [16] amend provisions dealing with disciplinary action and search warrants in connection with a CMS licensee to include a breach of a provision of the *Registered Clubs Act 1976* or the regulations under that Act as grounds for the operation of the provisions.

Schedule 3 [17] amends provisions dealing with licences to operate a linked gaming system to provide that the licence is subject to a condition that the licensee must have commercial arrangements with the racing industry in place and give effect to them.

Schedule 3 [18] confers a broad exemption from the operation of Part IV of the *Trade Practices Act 1974* of the Commonwealth in respect of the grant of the exclusive linked gaming system licence to TAB Limited (or a subsidiary) and conduct under those licences.

Schedule 3 [19] replaces an existing provision for the payment of a fee determined by the Minister for a linked gaming system licence with a provision that provides for payment of an amount determined by the Minister as the consideration payable for the grant of the licence and for the payment of a periodic licence fee.

Schedule 3 [20] amends a provision dealing with the term of a linked gaming system licence to make it clear that the term of the licence is subject to any earlier cancellation or surrender.

Schedule 4 Amendment of Registered Clubs Act 1976

Schedule 4 [1] inserts a new interpretative provision to define what constitutes “connection” of a gaming machine to a CMS.

Schedule 4 [2] and [3] amends the provision dealing with the power of the CMS licensee to collect gaming machine duty to enable the regulations to include within the operation of the section gaming machines that are not connected to the CMS, or to exclude gaming machines from its operation that are connected to the CMS.

Schedule 4 [4] and [5] amend the Act to provide flexibility in respect of the payment and collection of the monitoring fee payable by a registered club in respect of gaming devices connected to the CMS. The regulations will be able to provide for the manner and frequency of payment, to whom the fee is payable and the collection and recovery of the fee.

Schedule 4 [6] expands a regulation making power that allows the transfer of the Liquor Administration Board's functions with respect to gaming machines that are connected or capable of connection to a CMS so that it will apply to all gaming machines under the Act.

Schedule 4 [7] amends provisions dealing with licences to operate a linked gaming system for clubs to provide that the licence is subject to a condition that the licensee must have commercial arrangements with the racing industry in place and give effect to them.

Schedule 4 [8] confers a broad exemption from the operation of Part IV of the *Trade Practices Act 1974* of the Commonwealth in respect of the grant of the exclusive inter-club linked gaming system licence to TAB Limited (or a subsidiary) and conduct under those licences.

Schedule 4 [9] replaces an existing provision for the payment of a fee determined by the Minister for a linked gaming system licence with a provision that provides for the payment of an amount determined by the Minister as consideration for the grant of the licence and for payment of a periodic licence fee.

Schedule 4 [10] amends a provision dealing with the term of a linked gaming system licence to make it clear that the term of the licence is subject to any earlier cancellation or surrender.