

[Act 1997 No 45]



New South Wales

Totalizator Bill 1997

Explanatory note

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

This Bill is cognate with the *Totalizator Agency Board Privatisation Bill 1997*.

Overview of Bill

The object of this Bill is to provide for the regulation of the conduct of totalizators on events and contingencies involving thoroughbred, harness and greyhound racing and other approved sporting events.

The Bill entitles the Totalizator Agency Board (*the TAB*), including the new TAB Limited to be formed by the incorporation of the TAB, to an exclusive 15-year licence to conduct off-course totalizator betting. The Bill also entitles the TAB and each racing club to an exclusive 15-year licence to conduct on-course totalizator betting. In the case of racing clubs, their licence will apply only to racing events and will not apply to totalizator betting on approved sporting events.

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

The Bill provides for the following:

- (a) a licensing scheme under which the conduct of totalizator betting is declared to be lawful,
- (b) the kinds of licences that can be granted to conduct totalizator betting (including the licences referred to above) and what they authorise,
- (c) the approval of licence holders to conduct other forms of betting on approved sporting events,
- (d) procedures for applications for and the granting of licences,
- (e) a maximum 5% individual shareholding limit on companies that hold a licence to conduct totalizator betting,
- (f) disciplinary and other action against licensees,
- (g) the making of rules for the conduct of totalizators,
- (h) the supervision of the operations of licensees,
- (i) the commission to which licensees are entitled on bets and the tax payable to the State on bets,
- (j) offences concerning totalizators, including offences concerning betting by minors,
- (k) enforcement, including the appointment and powers of inspectors,
- (l) the repeal of the *Totalizator Act 1916* and the *Totalizator (Off-course Betting) Act 1964*,
- (m) miscellaneous matters, including savings and transitional provisions and the consequential amendment of Acts.

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

Clause 3 sets out the objects of the proposed Act. These are:

- (a) to make provision for the proper conduct of totalizator betting in the public interest and to minimise any harm associated with such betting, and
- (b) to ensure that revenue derived from the conduct of totalizator betting is accounted for in a proper manner.

Clause 4 provides that the proposed Act (unless otherwise expressly stated) applies to and in respect of the conduct of totalizators, whether on or off a racecourse.

Clause 5 defines certain words and expressions used in the proposed Act.

Clause 6 sets out the meaning of *totalizator*.

Part 2 Conduct of totalizators

Clause 7 provides that the conduct of a totalizator under the authority of a licence is lawful.

Clause 8 provides that an agreement is not void, voidable or otherwise unenforceable merely because it relates to, or is made for the purposes of, betting on a totalizator conducted by a licensee.

Clause 9 makes it unlawful for a person other than a licensee to conduct a totalizator.

Clause 10 makes betting on a totalizator conducted by a licensee lawful.

Part 3 Licences to conduct totalizators

Division 1 General

Clause 11 provides for an exclusive licence period which is to run for 15 years. The exclusive licence period is relevant for the purposes of clauses 14 and 15.

Clause 12 provides that a licence may be granted for the conduct of a totalizator in respect of betting on:

- (a) any event or contingency scheduled to be held at a race meeting on any racecourse within or outside Australia, and
- (b) any sporting event declared for the time being under section 57EA of the *Gaming and Betting Act 1912* to be a sports betting event for the purposes of that Act.

A licence may only be granted to a company incorporated under the *Corporations Law* or a racing club. A licence may be granted for an on-course totalizator or an off-course totalizator.

Clause 13 authorises the Minister to approve of the holder of a licence conducting betting (otherwise than by means of a totalizator) on events and contingencies of a kind that can be the subject of totalizator betting.

Clause 14 entitles the TAB or a wholly owned subsidiary of the TAB to an exclusive licence during the exclusive licence period to conduct an off-course totalizator in respect of betting on:

- (a) any event or contingency scheduled to be held on any racecourse within or outside Australia, and
- (b) any sporting event declared for the time being under section 57EA of the *Gaming and Betting Act 1912* to be a sports betting event for the purposes of that Act.

Clause 15 entitles the TAB and racing clubs to an exclusive licence during the exclusive licence period to conduct on-course totalizators. The TAB's licence relates to the same events as its off-course licence but the licences of the racing clubs relate only to events on a racecourse.

Clause 16 makes it clear that the exclusive licence entitlements of the Part do not prevent further licences being granted to the exclusive licence holders after the exclusive licence term.

Clause 17 restricts the use of a racing club totalizator to the days on which race meetings are scheduled to be held on the racecourse concerned, unless there is an authorised betting auditorium on the racecourse. The clause also provides that when a racing club conducts a totalizator on the same event as the TAB the bets made with the club are received for and paid into the TAB's totalizator.

Division 2 Applications for and grant of licences

Clause 18 requires applications for licences to be made to the Minister.

Clause 19 prevents the grant of a licence to a company if a person has a 5% or greater shareholding in the company.

Clause 20 prevents the licensee and related bodies having an association with the licensee from holding a licence for a casino under the *Casino Control Act 1992*.

Clause 21 prevents the grant of a licence unless the applicant, and each close associate of the applicant, is a suitable person to be concerned in or associated with the conduct of a totalizator.

Clause 22 explains what is meant by *close associate*.

Clause 23 provides for the investigation of applications for licences.

Clause 24 empowers the Minister to call for further information from applicants and others who have a relevant association or connection with the applicant,

Clause 25 requires the cost of the investigation of an application to be paid by the applicant.

Clause 26 requires applicants to update their applications in line with changes in their circumstances.

Clause 27 provides for the grant of a licence.

Clause 28 provides for the term of a licence.

Clause 29 provides that a licence confers no right of property and is incapable of being assigned or mortgaged, charged or otherwise encumbered.

Division 3 Maximum shareholding restrictions on licensees

Clause 30 provides that the Division applies only to a company under the *Corporations Law*.

Clause 31 contains definitions and other interpretative provisions.

Clause 32 provides for the application of the Division irrespective of where various matters occur.

Clause 33 provides that a shareholding of more than 5% is a prohibited shareholding in a licensee, and provides that a licensee or a subsidiary of a licensee cannot have a prohibited shareholding interest in the licensee and that it is unlawful for a person to have a prohibited shareholding interest in a licensee.

Clause 34 authorises the Minister to require certain persons to provide information in relation to shareholdings in a licensee and authorises the Minister to make certain declarations in relation to those matters.

Clause 35 requires the Minister to be given copies of substantial shareholder notices given to a licensee under the *Corporations Law*.

Clause 36 empowers the Minister to require the disposal of shares that constitute a prohibited shareholding.

Clause 37 prevents the alteration without the consent of the Minister of provisions of the articles of association of a licensee that provide for the suspension of voting and dividend rights as a result of a person having a prohibited shareholding interest in the licensee. The clause also allows the

Minister to declare void a resolution of a general meeting of a licensee if of the opinion that the resolution was passed as a result of the admission of votes that should not have been admitted.

Clause 38 deals with the making, review and revocation of declarations by the Minister.

Clause 39 provides for an appeal against a declaration by the Minister.

Clause 40 requires the Minister to sell any shares that are forfeited to the State under the Act.

Clause 41 confers immunity from liability on the Minister, a licensee and any officer or auditor of a licensee for any act or omission in good faith under the Division.

Clause 42 provides for the manner in which notices are to be served for the purposes of the Division.

Division 4 Conditions of licences

Clause 43 gives examples of the matters to which the conditions of a licence can relate.

Clause 44 provides the procedure for the amendment of the conditions of a licence.

Division 5 Disciplinary and other actions concerning licences

Clause 45 confers general powers of investigation on the Minister.

Clause 46 provides for the grant of an injunction to prevent a breach or anticipated breach of the Act or a condition of a licence.

Clause 47 provides a procedure for the taking of disciplinary action against a licensee.

Clause 48 provides for the making of rectification orders by the Minister as an alternative to the taking of disciplinary action against a licensee.

Clause 49 provides a mechanism for the temporary suspension of a licence.

Clause 50 permits the Minister to authorise a person to complete the conduct of any totalizator betting that is in the course of being conducted when a licence is cancelled, revoked or suspended.

Clause 51 provides for the surrender of a licence by notice in writing to the Minister.

Clause 52 provides for the appointment of a temporary licensee if a licence is suspended, cancelled, surrendered or revoked.

Part 4 Rules for conduct of totalizators

Clause 53 requires a licensee to make rules for the conduct of a totalizator by the licensee.

Clause 54 requires rules to be submitted to the Minister for approval.

Clause 55 imposes requirements for the display of rules on premises where totalizator betting is conducted.

Clause 56 provides for a rule that is inconsistent with the Act to have no effect to the extent of the inconsistency.

Clause 57 requires a licensee to comply with the rules for a totalizator and provides that the rules constitute a contract between the licensee and an investor.

Clause 58 provides that during the term of any exclusive licence granted to the TAB to conduct a totalizator, the rules for the conduct of totalizators are to be made by the TAB. The clause also provides that the Minister may make additional rules for the conduct of on-course totalizators by clubs during that period.

Part 5 Supervision of conduct of totalizators

Division 1 Provision of information to Minister

Clause 59 requires licensees and licensee's contractors to inform the Minister of changes in their circumstances.

Clause 60 authorises the Minister to require a licensee or contractor, or a person who, in the opinion of the Minister, has a direct or indirect association with a licensee or contractor to provide information, produce documents or attend and answer questions.

Clause 61 authorises the Minister to require persons to provide information about key employees.

Clause 62 authorises the Minister to require key employees to provide information.

Clause 63 authorises the Minister to direct the termination of employment of a key employee who fails to comply with a direction to give information to the Minister.

Clause 64 gives an employer power to terminate a key employee's employment in compliance with a direction of the Minister under the Part.

Clause 65 requires fingerprints or palm prints obtained under this Division to be destroyed as soon as the key employee from whom they were obtained is no longer a key employee.

Division 2 Directions by Minister

Clause 66 authorises the Minister to give a direction to a licensee, a contractor and certain others to take or refrain from taking specified action if the Minister is of the opinion that the integrity or apparent integrity of a totalizator conducted by a licensee is likely to be seriously prejudiced.

Clause 67 authorises the Minister to direct a licensee to terminate a contract or other arrangement under which a person is a contractor of the licensee if the contractor does not comply with a direction given to the contractor under clause 66.

Clause 68 authorises the Minister to order the termination of the employment of a key employee if of the opinion that the integrity or apparent integrity of a totalizator is likely to be seriously prejudiced because of the criminal record, character or reputation of a key employee.

Part 6 Financial provisions

Clause 69 authorises a licensee to deduct as commission an amount up to 25% of the total amount invested in each totalizator conducted by the licensee.

Clause 70 requires the payment as tax of an amount equal to 28.2% of the total amount deducted by way of commission under clause 69. The clause also provides for payment of a 28.2% tax on the net earnings from approved betting activities.

Clause 71 provides that no betting tax under clause 70 is payable in respect of amounts invested in a totalizator on behalf of an authority that conducts totalizator betting in a participating jurisdiction.

Clause 72 provides for the payment of interest on overdue amounts of tax.

Clause 73 requires betting tax to be paid into the Consolidated Fund.

Clause 74 requires a proportion of the amount of betting tax paid in respect of non-race meeting events to be paid into the Sport and Recreation Fund established under the *Public Lotteries Act 1996*.

Clause 75 entitles a licensee to retain unclaimed dividends and refunds, and roundings (subject to the deduction of a tax of 28.2% of roundings).

Clause 76 requires other unclaimed money held under the Act to be paid into the Consolidated Fund.

Clause 77 allows the regulations to make provision for betting tax rebates where turnover on a race meeting does not exceed a specified amount.

Clause 78 creates various offences for the protection of the revenue from betting tax.

Clause 79 provides for the recovery of unpaid betting tax.

Part 7 Offences and other provisions relating to totalizators

Clause 80 imposes restrictions on advertising in connection with totalizators.

Clause 81 imposes restrictions on credit betting.

Clause 82 prohibits the acceptance of a bet on a totalizator from a minor.

Clause 83 prohibits a person betting on a totalizator on behalf of a minor.

Clause 84 prohibits a minor betting on a totalizator.

Clause 85 prevents a minor being detained for non-payment of a fine imposed under the Part.

Clause 86 creates offences concerning unauthorised use of totalizator premises, facilities and documentation.

Clause 87 creates an offence of unauthorised use of a telephone betting credit account.

Clause 88 creates offences concerning the laying of totalizator odds and unauthorised dealings in totalizator tickets.

Clause 89 imposes restrictions on the acceptance of instructions regarding totalizator betting by telephone or other electronic means.

Clause 90 makes it an offence to invest on a totalizator after the event concerned has finished.

Part 8 Enforcement

Division 1 Investigations

Clause 91 authorises the Minister to appoint persons to conduct investigations into various matters connected with totalizator betting.

Division 2 Inspectors

Clause 92 provides for the appointment of inspectors by the Minister.

Clause 93 provides for identity cards for inspectors.

Clause 94 confers powers of entry on inspectors.

Clause 95 provides for the issue of a search warrant on the application of an inspector.

Clause 96 confers wide powers on inspectors.

Clause 97 requires the cost of testing equipment and investigating computer systems to be paid by the licensee concerned.

Clause 98 creates offences concerning the powers of inspectors.

Clause 99 imposes requirements regarding the keeping of records by licensees.

Division 3 Proceedings for offences

Clause 100 requires proceedings for offences to be dealt with by a Local Court.

Clause 101 allows proceedings for offences to be commenced up to 2 years after the alleged offence was committed.

Clause 102 imposes restrictions on who may bring proceedings for offences.

Clause 103 makes a director of a corporation liable for offences by the corporation in some cases.

Part 9 Miscellaneous

Clause 104 provides that the Act binds the Crown.

Clause 105 imposes obligations of secrecy on persons concerned in the administration of the Act.

Clause 106 provides for an appeal to the Supreme Court on some matters arising under the Act.

Clause 107 provides that there is no right to compensation enforceable against the Crown in relation to the cancellation, suspension, or variation of the terms or conditions of a licence or an alteration of the conditions of a licence.

Clause 108 provides for the making of arrangements for the supply of police records for use under the Act.

Clause 109 provides for the disclosure of spent convictions under the *Criminal Records Act 1991* to the Minister.

Clause 110 provides for the destruction of fingerprints and palm prints provided under the Act.

Clause 111 imposes restrictions on the form in which records can be kept under the Act.

Clause 112 creates offences concerned with the furnishing of false or information.

Clause 113 creates offences concerned with forgery and counterfeiting.

Clause 114 provides for the forfeiture of articles in respect of which an offence has been committed.

Clause 115 provides a power of delegation to the Minister and the Treasurer.

Clause 116 makes provision for the way in which documents are to be served under the Act.

Clause 117 is a regulation making power.

Clause 118 repeals various Acts and instruments.

Clause 119 gives effect to the Schedule of consequential amendments to various Acts.

Clause 120 gives effect to the Schedule of savings and transitional provisions.

Clause 121 provides for a review of the Act in 5 years.

Schedules

Schedule 1 contains consequential amendments to Acts that are to take effect on conversion of the TAB to TAB Limited.

Schedule 2 contains savings, transitional and other consequential provisions.