



New South Wales

Totalizator Amendment (Exclusivity) Bill 2013

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 Act 1997*:

- (a) to enable the Minister administering that Act to accept the offer made by TAB Limited to enter into the deed entitled “NSW Exclusivity Deed” set out in Attachment 1 to a deed poll tabled by or on behalf of the Minister in the Legislative Assembly, and
- (b) to extend the exclusivity period that applies in relation to the granting of totalizator licences to TAB Limited and racing clubs under the Act for an additional 20-year period if the NSW Exclusivity Deed comes into force.

The NSW Exclusivity Deed will, on coming into force, entitle the Crown to be paid specified instalments as consideration for the extension of the exclusivity period.

Outline of provisions

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 the date of assent to the proposed Act.

Schedule 1 Amendment of Totalizator Act 1997 No 45

Schedule 1 [2]:

- (a) authorises the Minister, on behalf of the Crown in right of the State, to accept the offer made by TAB Limited to enter into the deed entitled “NSW Exclusivity Deed” set out in

Attachment 1 to the deed poll tabled by or on behalf of the Minister in the Legislative Assembly on the day on which this Bill is introduced, and

- (b) provides for the exclusivity period under Division 1 of Part 3 of the Act to be extended for an additional 20-year period (commencing on 23 June 2013) if the NSW Exclusivity Deed comes into force.

However, the extension of the exclusivity period will end if the NSW Exclusivity Deed is terminated under clause 5.1 of the Deed before the end of the additional 20-year period. **Schedule 1 [1]** makes a consequential amendment to the definition of *exclusivity period*.

Schedule 1 [4] provides for certain competition authorisations with respect to the NSW Exclusivity Deed and the deed poll that contained the offer for the NSW Exclusivity Deed. **Schedule 1 [3]** replaces outdated references to the *Trade Practices Act 1974* of the Commonwealth with references to the *Competition and Consumer Act 2010* of the Commonwealth.

Schedule 1 [5] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of an Act that amends the *Totalizator Act 1997* (including the proposed Act).



New South Wales

Totalizator Amendment (Exclusivity) Bill 2013

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Totalizator Act 1997 No 45	3



New South Wales

Totalizator Amendment (Exclusivity) Bill 2013

No. , 2013

A Bill for

An Act to amend the *Totalizator Act 1997* to authorise an extension of the exclusivity period for the conduct of totalizators.

The Legislature of New South Wales enacts:

1

1 Name of Act

2

This Act is the *Totalizator Amendment (Exclusivity) Act 2013*.

3

2 Commencement

4

This Act commences on the date of assent to this Act.

5

Schedule 1	Amendment of Totalizator Act 1997 No 45	1
[1] Section 11 Meaning of “exclusivity period”		2
Insert at the end of the section:		3
(2) Despite subsection (1), the <i>exclusivity period</i> includes any extension of the period resulting from the operation of section 17AA.		4 5
[2] Section 17AA		6
Insert after section 17:		7
17AA Extension of exclusivity period by agreement		8
(1) The Minister is authorised, on behalf of the Crown in right of the State, to accept the offer made by TAB Limited in the tabled copy of the deed poll to enter into the deed entitled “NSW Exclusivity Deed” set out in Attachment 1 to that deed poll.		9 10 11 12
(2) The <i>tabled copy of the deed poll</i> is the copy of the deed poll executed by TAB Limited on 19 June 2013 as tabled, by or on behalf of the Minister introducing the Bill for the <i>Totalizator Amendment (Exclusivity) Act 2013</i> , in the Legislative Assembly on the day that the Bill was introduced.		13 14 15 16
(3) If and when the NSW Exclusivity Deed comes into force, the <i>exclusivity period</i> referred to in section 11 is taken for the purposes of this Act (including for the purposes of any provision of a licence that refers to the exclusivity period) to have been extended to include an additional 20-year period:		17 18 19 20
(a) commencing at the beginning of 23 June 2013, and		21
(b) ending at 12.00 am on 23 June 2033.		22
Note. The NSW Exclusivity Deed will, on coming into force, entitle the Crown to be paid specified instalments as consideration for the extension of the exclusivity period.		23 24
(4) However, subsection (3) ceases to have effect if the NSW Exclusivity Deed is terminated before 23 June 2033 in accordance with clause 5.1 of the Deed and, on such a termination, the exclusivity period referred to in section 11 is taken to have ended for the purposes of this Act (including for the purposes of any provision of a licence that refers to the exclusivity period).		25 26 27 28 29
(5) For the avoidance of doubt, it is declared that:		30
(a) the Minister for Tourism, Major Events, Hospitality and Racing was authorised, on behalf of the Crown in right of the State, to conduct negotiations with TAB Limited concerning the extension of the exclusivity period referred to in section 11 (including in relation to the consideration payable to the Crown for any such extension), and		31 32 33 34 35
(b) the tabling of the tabled copy of the deed poll as provided by this section does not abrogate, limit or otherwise affect any right or liability of any person arising under or in relation to the deed poll or the NSW Exclusivity Deed after it comes into force, and		36 37 38 39
(c) except as provided by subsection (4), nothing in section 107 (No right to compensation for cancellation etc) abrogates, limits or otherwise affects any claim or any other action by TAB Limited against the Crown in right of the State under the NSW Exclusivity Deed after it comes into force.		40 41 42 43 44
(6) This section has effect despite anything to the contrary in this Act or any other law.		45 46

[3] Section 17A Competition authorisations	1
Omit “ <i>Trade Practices Act 1974</i> ” wherever occurring (including the note at the end of the section).	2 3
Insert instead “ <i>Competition and Consumer Act 2010</i> ”.	4
[4] Section 17A (1) (b2)	5
Insert after section 17A (1) (b1):	6
(b2) in relation to an arrangement comprised by a deed referred to in section 17AA:	7 8
(i) entering into the arrangement, or	9
(ii) giving effect to the arrangement, or	10
(iii) conduct of the parties to the arrangement in negotiating the arrangement,	11 12
[5] Schedule 2 Savings, transitional and other provisions	13
Insert at the end of clause 1 (1):	14
any Act that amends this Act	15