
NSW Lotteries (Authorised Transaction) Bill 2009

Amendments proposed by Legislative Council on 8 September 2009.

No. 1 Page 29, Schedule 5.1 [5]. Insert after line 8:

- (3) This section does not limit the matters that the Minister can consider in determining suitability to be concerned in or associated with the management and operation of a lottery business and does not limit the matters that the Minister can consider in deciding whether to grant an operator licence to the applicant.

No. 2 Page 31, Schedule 5.1 [5], line 24. Omit “30 years”. Insert instead “40 years”.

No. 3 Page 46, Schedule 5.1 [19]. Insert after line 30:

Division 1 Preliminary

No. 4 Page 47, Schedule 5.1 [19]. Insert after line 13:

- (2) Other expressions used in this Part that are defined in the Transaction Act have the same meaning as in that Act.

No. 5 Page 47, Schedule 5.1 [19]. Insert before line 14:

Division 2 General provisions

No. 6 Page 49, Schedule 5.1. Insert after line 3:

Division 3 Protections for existing lotteries agents

39 Definitions

In this Division:

agency agreement means an agreement that provides for a person to act as agent for a licensee in connection with the conduct of a public lottery by the licensee.

agency protection period means the period of 5 years commencing on the transaction completion date.

existing retail agency agreement means a retail agency agreement under which a retail agent was an agent of NSW Lotteries immediately before the commencement of the new licensing arrangements (and includes such an agreement as in force after that commencement).

existing retail agent means an agent under an existing retail agency agreement.

retail agency agreement means an agency agreement that provides for the agent to sell lottery tickets only at:

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- (a) the premises of a newsagency, convenience store or other retail business, or
 - (b) any premises prescribed (or of a kind prescribed) by the regulations for the purposes of this definition.

termination for convenience provision means a provision of an existing retail agency agreement that permits the termination of the agreement by giving a period of notice of intention to terminate and does not require any ground or cause for the termination.

7-Eleven agency agreement means an agency agreement entered into with a person as a franchisee of 7-Eleven Stores Pty Limited.

40 Protections for existing agency agreements

- (1) The following protections apply to an existing retail agency agreement:
 - (a) the agreement continues in force after the commencement of the new licensing arrangements on the same terms and conditions as applied to the agreement immediately before the commencement of the new licensing arrangements,
 - (b) the terms and conditions of the agreement cannot be varied during the agency protection period except by agreement between the licensee and the agent,
 - (c) if the agreement is due to expire before the end of the agency protection period, the term of the agreement is extended until the end of that period unless the agent and the licensee otherwise agree,
 - (d) the agreement cannot be terminated by the licensee pursuant to a termination for convenience provision of the agreement during the agency protection period unless the agent consents to the termination,
 - (e) the terms and conditions of the agreement cannot be varied without the agreement of the agent during the 6 months after the end of the agency protection period unless the licensee has given the agent at least 6 months' notice of the proposed variation,
 - (f) the agreement cannot be terminated by the licensee pursuant to a termination for convenience provision of the agreement during the 6 months after the end of the agency protection period unless the licensee has given the agent at least 6 months' notice of intention to terminate.

Note. Notice of intention to terminate can be given during the agency protection period (but so that the 6-month period of notice expires after the end of the agency protection period). Paragraph (f) does not extend to an agency agreement that is extended under paragraph (c) (because the agreement expires at the end of the agency protection period).
 - (2) A restriction imposed by this clause on the right of a licensee to terminate an agency agreement pursuant to a termination for convenience provision of the agreement does not affect any right of the agent to terminate pursuant to such a provision or any right of the licensee or agent to terminate for a breach of the agreement.
 - (3) This clause does not prevent the termination of an agency agreement pursuant to a direction of the Minister under section 21H (Withdrawal of approval or appointment of agent under conditions of licence) or 60 (Minister may direct licensee to terminate certain agency arrangements).
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41 Restrictions on new agency agreements

- (1) A licensee must not enter into an agency agreement before the end of the agency protection period that authorises the agent to sell lottery tickets at the premises of a retail business unless the premises are the premises of a newsagency, convenience store or a business that is (or that is of a kind) prescribed by the regulations.
- (2) A licensee must not enter into an agency agreement during the 6 months after the end of the agency protection period that authorises the agent to sell lottery tickets at the premises of a retail business unless:
 - (a) the premises are the premises of a newsagency, convenience store or a business that is (or that is of a kind) prescribed by the regulations, or
 - (b) the licensee has given each agent under an existing retail agency agreement not less than 6 months' notice in writing of the licensee's intention to enter into the agency agreement, specifying the general nature of the business carried on by the proposed agent.
- (3) The Minister is not to recommend the making of a regulation for the purposes of this clause unless satisfied that the business or kind of business to be prescribed is of a similar nature to a business that is an agent under an existing retail agency agreement.
- (4) A failure to comply with this clause does not affect the validity of an agency agreement entered into in contravention of this clause but such a failure constitutes a failure to comply with a provision of this Act for the purposes of section 21B (Grounds for disciplinary action against licensee).

42 Restriction on increase in number of retail agents

- (1) A licensee must not enter into an agency agreement during the agency protection period if the effect of entering into the agreement would be to increase the number of retail agency agreements in force at the time by more than 100 over the allowable limit.
- (2) The *allowable limit* is the sum of:
 - (a) the number of retail agency agreements that are in force immediately before the transaction completion date, and
 - (b) the number of 7-Eleven agency agreements entered into on or after the transaction completion date.
- (3) A failure to comply with this clause does not affect the validity of an agency agreement entered into in contravention of this clause but such a failure constitutes a failure to comply with a provision of this Act for the purposes of section 21B (Grounds for disciplinary action against licensee).

43 New full-service agency agreements—restriction on more favourable terms

- (1) A licensee must not enter into a full-service agency agreement during the agency protection period on terms that are substantially more favourable to the agent than the terms of any existing agency agreement that is a full-service agency agreement unless the licensee has offered to enter into an agency agreement on those terms with each agent of the licensee under

an existing agency agreement that is a full-service agency agreement.

- (2) A licensee must publicly advertise opportunities for interested parties to enter into full-service agency agreements with the licensee during the agency protection period.
- (3) A **full-service agency agreement** is an agency agreement that authorises the agent to sell entries in all the public lotteries that the licensee is authorised to conduct.
- (4) This clause does not apply to or in respect of a 7-Eleven agency agreement entered into during the agency protection period.
- (5) A failure to comply with this clause does not affect the validity of an agency agreement entered into in contravention of this clause but such a failure constitutes a failure to comply with a provision of this Act for the purposes of section 21B (Grounds for disciplinary action against licensee).

44 Variation of fit-out obligations of existing agents

- (1) A requirement imposed by or under an existing retail agency agreement with respect to shop fit-out and shop signage (such as a requirement of the Retail Image Program of NSW Lotteries) cannot be varied during the agency protection period without the consent in writing of the agent.
- (2) An existing retail agency agreement cannot be varied during the agency protection period to impose any additional obligation on the agent to pay for any new terminal to be used for selling entries in a public lottery except with the consent in writing of the agent.
- (3) This clause does not apply to or in respect of a 7-Eleven agency agreement.

45 Funds transfer obligations of existing agents

A licensee is not entitled to vary the frequency with which an existing retail agent is required during the agency protection period to forward to the licensee money received by the agent from the sale of entries in a public lottery, unless the agent consents in writing to the variation.

46 Training and operational support for existing agents

During the agency protection period, the licensee under an existing retail agency agreement must provide to the agent (at no cost to the agent) training and operational support of the kind and of a standard provided to existing retail agents by NSW Lotteries before the transaction completion date.

47 Minister's approval of changes to commission rates

- (1) The Minister must not approve any change to an existing agent commission rate (or any rule or amendment of a rule that would have the effect of changing an existing agent commission rate) during the agency protection period without first consulting on the proposed change with the persons or bodies that the Minister considers represent the views and interests of existing retail agents.
- (2) An **existing agent commission rate** is the rate at which commission is payable to an agent under an existing retail agency agreement in respect of sales of entries in a public lottery conducted by the licensee.

48 Establishment of industry forum

- (1) The Minister is to establish an industry forum to facilitate discussion between representatives of participants in the public lotteries industry about issues that are of interest or concern to them.
- (2) The Minister is to convene the forum at least twice each year.
- (3) Issues to be discussed at the forum include (but are not limited to) product innovation, product distribution, agent commission rates and the effectiveness or otherwise of harm minimisation initiatives.

49 Inconsistency with existing agreements

- (1) A term or condition of an existing retail agency agreement is of no effect to the extent (if any) that is inconsistent with the operation of this Division.
- (2) Each existing retail agency agreement is deemed to include a provision that the parties agree to give effect to the provisions of this Division.

50 Keno not affected

This Division does not apply to an agency agreement to the extent that it provides for a person to act as agent in respect of games of keno.