

# Totalizator Act 1997 No 45

[1997-45]



New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Miscellaneous Acts \(Local Court\) Amendment Act 2007 No 94](#) (not commenced)
  - [Government Information \(Public Access\) \(Consequential Amendments and Repeal\) Act 2009 No 54](#) (not commenced)

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# Totalizator Act 1997 No 45



New South Wales

## Contents

<b>Long title</b> .....	8
<b>Part 1 Preliminary</b> .....	8
1 Name of Act .....	8
2 Commencement .....	8
3 Objects of Act .....	8
4 Application of Act .....	8
5 Definitions .....	8
6 Meaning of “totalizator” .....	10
6A Controlling bodies .....	11
6B Major racing bodies .....	11
<b>Part 2 Conduct of totalizators</b> .....	12
Note .....	12
7 Conduct of totalizator by licensee not unlawful .....	12
8 Contracts or agreements relating to totalizator betting enforceable .....	12
9 Unlawful conduct of totalizator .....	13
9A Processing in New South Wales of bets with conductors of betting activities in other jurisdictions .....	13
9B Processing in other jurisdictions of bets with New South Wales licensees .....	14
10 Exculpation of certain persons from certain offences .....	14
<b>Part 3 Licences to conduct totalizators</b> .....	15
<b>Division 1 General</b> .....	15

11	Meaning of “exclusivity period” .....	15
12	Licences may be granted to conduct totalizators of various kinds .....	15
13	Licensee can be approved to conduct other betting activities .....	16
14	TAB entitled to exclusive off-course totalizator licence .....	17
15	TAB and racing clubs entitled to exclusive on-course totalizator licences .....	17
15A	Consideration and fees for licences.....	18
16	Eligibility for further licence.....	19
17	Requirements for conduct of on-course totalizators by racing clubs .....	19
17A	Trade Practices exemption .....	20
	<b>Division 2 Applications for and grant of licences</b> .....	<b>21</b>
18	Application for licence .....	21
19	Restriction on maximum shareholding in applicant.....	21
20	Licensee not to be associated with casino and other activities .....	21
21	Suitability of applicant and close associates of applicant.....	22
21A	Commercial arrangements with the racing industry .....	23
22	Meaning of “close associate” .....	23
23	Investigation of application .....	24
24	Minister may require further information etc.....	24
25	Cost of investigations to be paid by applicant.....	25
26	Updating of applications.....	25
27	Grant of licence .....	26
28	Term of licence .....	26
29	No proprietary right in licence .....	26
	<b>Division 3 Maximum shareholding restrictions on licensees</b> .....	<b>26</b>
30	Division applies only to companies.....	26
30A	References to Corporations Law in this Division.....	26
31	Definitions .....	26
32	Application of Division .....	28
32A	Exemption for nominated company .....	28
33	Prohibited shareholding interest.....	29
34	Power to require information relating to entitlement to shares in licensee .....	29
35	Substantial shareholders to give notice to Minister .....	30
36	Disposal, forfeiture etc of shares where prohibited shareholding interest.....	31

37 Effect of prohibited shareholding on voting and dividend rights .....	32
38 Making, review and revocation of declarations by Minister .....	33
39 Appeal against declarations of Minister.....	34
40 Sale of forfeited shares.....	35
41 Immunity of Minister and licensees, officers and auditors.....	35
42 Service .....	35
42A Excluded matters for the purposes of the Corporations Act 2001 of the Commonwealth .....	35
<b>Division 4 Conditions of licences .....</b>	<b>36</b>
43 Conditions of licences.....	36
43A Additional conditions of TAB Limited licences.....	38
44 Amendment of conditions of licence .....	38
<b>Division 5 Disciplinary and other actions concerning licences .....</b>	<b>39</b>
45 General investigations.....	39
46 Injunctions to prevent contraventions etc .....	39
47 Disciplinary action against licensee.....	40
48 Rectification order as alternative to disciplinary action.....	42
49 Temporary suspension of licence.....	42
50 Completion of totalizator following cancellation, revocation or suspension of licence .....	43
51 Surrender of licence .....	43
52 Appointment of temporary licensee if licence suspended, cancelled, surrendered or revoked .....	43
<b>Part 4 Rules for conduct of totalizators.....</b>	<b>45</b>
53 Making of rules .....	45
54 Approval and publication of rules .....	45
55 Display of rules.....	45
56 Rules inconsistent with Act.....	46
57 Compliance with rules .....	46
58 Transitional provision—TAB to make rules while it holds exclusive licence.....	46
<b>Part 5 Supervision of conduct of totalizators.....</b>	<b>46</b>
<b>Division 1 Provision of information to Minister.....</b>	<b>46</b>
59 Licensees and contractors to inform Minister of changed circumstances.....	46
60 Minister may require information relating to licensees and contractors.....	47

61 Minister may require person to provide particulars concerning key employees .....	48
62 Minister may require key employees to provide information .....	48
63 Failure of key employee to provide required information .....	49
64 Power to terminate employment of key employee at Minister’s direction .....	49
65 Destruction of fingerprints and palm prints of former key employees.....	49
<b>Division 2 Directions by Minister .....</b>	<b>50</b>
66 Prejudice to integrity of totalizator .....	50
67 Minister may direct licensee to terminate certain contractual arrangements .....	50
68 Prejudice to integrity of totalizator involving key employee .....	51
<b>Part 6 Financial provisions .....</b>	<b>52</b>
69 Commission on totalizator betting.....	52
70 (Repealed) .....	52
71 Tax not payable on funds held for participating jurisdictions.....	52
72-74 (Repealed) .....	52
75 Unclaimed dividends, refunds and roundings.....	53
76 Other unclaimed money .....	53
77-79 (Repealed) .....	53
<b>Part 7 Offences and other provisions relating to totalizators .....</b>	<b>53</b>
80 Totalizator advertising .....	53
81 Credit betting prohibited .....	54
82 Bet not to be accepted from minor.....	54
83 Person not to bet on a totalizator on behalf of minor .....	54
84 Minor not to bet on totalizator .....	55
85 Minors not to be detained.....	55
86 Offences in respect of bets, tickets etc.....	55
87 Offence of unauthorised use of telephone betting credit accounts .....	56
88 Laying totalizator odds or dealing in totalizator tickets an offence .....	56
89 Restrictions on transmission of bets.....	56
90 Person not to invest on totalizator after finish of race.....	57
<b>Part 8 Enforcement .....</b>	<b>57</b>
<b>Division 1 Investigations .....</b>	<b>57</b>

91 Investigations .....	57
<b>Division 2 Inspectors</b> .....	<b>58</b>
92 Appointment of inspectors .....	58
93 Identification of inspectors .....	58
94 Right of inspectors to enter premises.....	58
95 Search warrant .....	59
96 Powers of inspectors.....	60
97 Cost of testing equipment and investigating computer systems to be paid by licensee .....	61
98 Offences relating to inspectors.....	61
99 Keeping and retention of records by licensee.....	62
<b>Division 3 Proceedings for offences</b> .....	<b>62</b>
100 Proceedings for offences .....	62
101 Time within which proceedings may be commenced .....	63
102 Persons who may bring proceedings .....	63
103 Offences by corporations.....	63
103A Remedial orders .....	63
<b>Part 9 Miscellaneous</b> .....	<b>64</b>
104 Act binds Crown.....	64
105 Secrecy.....	64
106 Appeals.....	66
107 No right to compensation for cancellation etc .....	66
108 Arrangements for supply of Police records .....	66
109 Disclosure of spent convictions .....	67
110 Destruction of fingerprints etc.....	67
111 Records not kept in writing.....	67
112 False or misleading information.....	67
113 Forgery etc .....	68
114 Forfeiture of offending articles .....	68
115 Delegation .....	69
116 Service of documents .....	69
117 Regulations.....	70
117A Responsible conduct of totalizators, totalizator betting and other betting activities.....	70

118 Repeals.....	70
119 (Repealed) .....	71
120 Savings, transitional and other provisions.....	71
121 Review of Act.....	71
<b>Schedule 1 (Repealed) .....</b>	<b>71</b>
<b>Schedule 2 Savings, transitional and other provisions .....</b>	<b>71</b>

# Totalizator Act 1997 No 45



New South Wales

An Act to amend and consolidate the law relating to the conduct of totalizators and the regulation of totalizator betting; to repeal the *Totalizator Act 1916* and the *Totalizator (Off-course Betting) Act 1964*; to make consequential amendments to other Acts; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Totalizator Act 1997*.

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation.
- (2) Different days may be appointed for the repeal of different provisions of any Act repealed by this Act.

### 3 Objects of Act

The objects of this Act 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.
- (b) (Repealed)

### 4 Application of Act

This Act applies, unless otherwise expressly provided, to and in respect of the conduct of totalizators, whether on or off a racecourse.

### 5 Definitions

- (1) In this Act:

**agent** means a person who under a contract or other arrangement with a licensee conducts a totalizator as the agent of the licensee or exercises as the agent of the licensee any functions in connection with the conduct of a totalizator.



**approved betting activity** means a betting activity that is approved under section 13 (Licensee can be approved to conduct other betting activities) to be conducted by a licensee.

**authorised betting auditorium** has the same meaning as in the [Racing Administration Act 1998](#).

**close associate** has the meaning given in section 22.

**conduct** a totalizator includes promote, manage and operate the totalizator.

**contractor** means a person who under a contract or other arrangement with a licensee performs any service in connection with the conduct of a totalizator (whether or not the service is performed for fee, gain or reward) and includes an employee of the licensee and an agent of the licensee.

**controlling bodies** is defined in section 6A.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**horse race** includes a harness race.

**inspector** means a person appointed under this Act as an inspector.

**key employee** means a person, or a person belonging to a class of persons, prescribed by the regulations to be a key employee in relation to the conduct of a totalizator.

**licence** means a licence in force under this Act.

**licensee** means the holder of a licence.

**major racing bodies** is defined in section 6B.

**nominated company** has the same meaning as in section 37A of the [Totalizator Agency Board Privatisation Act 1997](#).

**off-course totalizator** means a totalizator that is not an on-course totalizator.

**on-course totalizator** means a totalizator the bets on which can be placed only by persons on a racecourse.

**process**, in relation to a bet, means any one or more of the following:

- (a) register the bet,
- (b) calculate the dividend or other return (if any) payable on the bet,

- (c) carry out an activity for the purpose of calculating the dividend or other return (if any) payable on the bet,
- (d) if the bet is a winning bet—pay out on the bet,
- (e) generate and maintain records in relation to the bet,
- (f) otherwise deal with the bet.

**race meeting** means a meeting for the purpose of horse racing, harness racing or greyhound racing.

**racecourse** means:

- (a) land in New South Wales that is licensed as a racecourse under the [Racing Administration Act 1998](#), or
- (b) land outside New South Wales (including outside Australia) used for race meetings.

**racing club** means a club, association or other body of persons (whether incorporated or unincorporated) that is registered by a controlling body as a racing club.

**related body corporate**, in relation to a body corporate, has the same meaning as in section 9 of the [Corporations Act 2001](#) of the Commonwealth.

**rules** in relation to a totalizator means the rules relating to the conduct of the totalizator in force under Part 4.

**subsidiary**, in relation to a body corporate, means a body corporate that is a subsidiary of the first mentioned body corporate by virtue of Division 6 of Part 1.2 of the [Corporations Act 2001](#) of the Commonwealth.

**TAB** means the Totalizator Agency Board constituted by the [Totalizator \(Off-course Betting\) Act 1964](#), and includes the company known as TAB Limited established by the [Totalizator Agency Board Privatisation Act 1997](#).

**TAB Limited** means the company of that name (ACN 081 765 308).

**totalizator** has the meaning given in section 6.

- (2) Notes in the text of this Act do not form part of this Act.

## 6 Meaning of “totalizator”

For the purposes of this Act, **totalizator** means:

- (a) a system used to enable persons to invest money on events or contingencies with a view to successfully predicting specified outcomes of those events or contingencies

and to enable the money left after the deduction of commission to be divided and distributed among those persons who successfully predict those outcomes, and

(b) any instrument, machine or device through or by which the system is operated.

**Note—**

Under this Act money can be invested on a totalizator for horse and greyhound races, and on other sporting events approved by the Minister. References in this Act to a totalizator can include a reference to an approved betting activity under section 13. See that section.

**6A Controlling bodies**

- (1) For the purposes of this Act, the **controlling bodies** are Racing New South Wales, Harness Racing New South Wales and the Greyhound Racing New South Wales.
- (2) For the purposes of this Act, the racing clubs for which a controlling body is responsible are:
  - (a) in the case of Racing New South Wales—racing clubs that promote, conduct or control horse racing, and
  - (b) in the case of Harness Racing New South Wales—racing clubs that promote, conduct or control harness racing, and
  - (c) in the case of the Greyhound Racing New South Wales—racing clubs that promote, conduct or control greyhound racing.
- (3) If a controlling body ceases to exist, its functions under this Act are conferred on its successor and its successor becomes a controlling body in its place (including for the purposes of the operation of this section).
- (4) The successor of a controlling body is the body nominated by the Minister by order published in the Gazette.
- (5) The Minister cannot nominate a body as successor of a controlling body except with the approval of both a majority of the racing clubs for which the controlling body is responsible and of the principal racing club or clubs (as the case may be) for which the controlling body is responsible.
- (6) If a successor of a controlling body cannot be nominated, there is no successor of that body for the purposes of this section.

**6B Major racing bodies**

- (1) For the purposes of this Act, the **major racing bodies** are the following bodies:
  - (a) Australian Jockey Club Limited (ACN 130 406 852),
  - (b) Sydney Turf Club,

- (c) Provincial Association of New South Wales,
  - (d) Country Racing Council Limited,
  - (e) New South Wales Harness Racing Club Limited,
  - (f) NSW Greyhound Breeders, Owners & Trainers Association Limited,
  - (g) New South Wales National Coursing Association Limited.
- (2) If a major racing body ceases to exist, its functions under this Act are conferred on its successor and its successor becomes a major racing body in its place (including for the purposes of the operation of this section).
- (3) The successor of a major racing body is the body nominated by the Minister by order published in the Gazette.
- (4) The Minister cannot nominate a body as successor of a major racing body except with the approval of a majority of the racing clubs whose interests the major racing body represented or, where the major racing body did not represent the interests of any racing club, with the approval of a majority of the persons who were members of the major racing body immediately before it ceased to exist.
- (5) If a successor of a major racing body cannot be nominated, there is no successor of that body for the purposes of this section.

## Part 2 Conduct of totalizators

### Note—

Section 13 (Licensee can be approved to conduct other betting activities) provides that references in this Part to a totalizator include reference to approved betting activities under that section.

### 7 Conduct of totalizator by licensee not unlawful

- (1) The conduct of a totalizator by a licensee is not unlawful, despite the provisions of the *Unlawful Gambling Act 1998*, the *Public Lotteries Act 1996* or any other Act or law.
- (2) In particular, the *Lotteries and Art Unions Act 1901* does not apply to or in respect of any such conduct of a totalizator.

### 8 Contracts or agreements relating to totalizator betting enforceable

- (1) An agreement is not to be regarded as void or voidable, or otherwise unenforceable, merely because it relates to, or is made for the purposes of, betting on a totalizator conducted by a licensee.
- (2) Without limiting subsection (1), section 56 of the *Unlawful Gambling Act 1998* does not apply to or in respect of betting on a totalizator conducted by a licensee.

## 9 Unlawful conduct of totalizator

- (1) A person, other than a licensee, who conducts a totalizator is guilty of an offence.

Maximum penalty:

- (a) for a first offence—50 penalty units or imprisonment for 6 months, and
- (b) for a second or subsequent offence—100 penalty units or imprisonment for 12 months.

- (2) A licensee who conducts a totalizator is guilty of an offence if:

- (a) the licence does not authorise the conduct of that totalizator or totalizators of that kind, or
- (b) the totalizator is conducted in contravention of a requirement of or made under this Act, the regulations, the rules or the conditions of the licence.

Maximum penalty:

- (a) for a first offence—50 penalty units or imprisonment for 6 months, and
- (b) for a second or subsequent offence—100 penalty units or imprisonment for 12 months.

## 9A Processing in New South Wales of bets with conductors of betting activities in other jurisdictions

- (1) The Minister may, by notice published in the Gazette, approve, for the purposes of this section, any person who is authorised under the law of another State or a Territory or another country to conduct a betting activity in that State, Territory or country (**an approved person**).

- (2) An approved person may, while the approval is in force:

- (a) with the written consent of a licensee, use the systems or technology of the licensee (including any totalizator of the licensee), or
- (b) arrange for the licensee, on behalf of the approved person,

to process in New South Wales bets placed (or to be placed) with the approved person in the conduct, by a method specified in the notice of approval, of a betting activity that the approved person is authorised to conduct in the State, Territory or country concerned.

- (3) For the purposes of this Act, the processing of bets by an approved person or a licensee in accordance with subsection (2) is taken not to constitute, or involve, the conduct of a totalizator or other betting activity in New South Wales.

- (4) An approval under this section may be revoked at any time by further notice published in the Gazette.
- (5) The revocation of an approval does not affect any bet in the course of being processed at the time of the revocation.
- (6) In this section, **bet** includes a bet placed (or to be placed) with an approved person otherwise than by way of a totalizator.

#### **9B Processing in other jurisdictions of bets with New South Wales licensees**

- (1) The Minister may, by notice published in the Gazette, nominate, for the purposes of this section, any person who is authorised under the law of another State or a Territory or another country to conduct a betting activity (whether by means of a totalizator or otherwise) in that State, Territory or country (**a nominated person**).
- (2) A licensee may, while a nomination is in force:
  - (a) arrange with the nominated person for the licensee to use systems or technology (including a totalizator) of the nominated person, or
  - (b) arrange for the nominated person, on behalf of the licensee, to process, in the nominated person's jurisdiction, bets placed (or to be placed) with the licensee in the conduct of a betting activity that the licensee is authorised to conduct.
- (3) In taking action under subsection (2), a licensee is, for the purposes of this Act:
  - (a) taken to be conducting a betting activity in New South Wales, and
  - (b) taken to be conducting a totalizator in New South Wales in respect of such of the bets processed under that subsection as were (or are to be) placed with the licensee by way of a totalizator.
- (4) A nomination under this section may be revoked at any time by further notice published in the Gazette.
- (5) The revocation of a nomination does not affect any bet in the course of being processed at the time of the revocation.
- (6) In this section, **bet** includes a bet placed (or to be placed) with a licensee otherwise than by way of a totalizator.

#### **10 Exculpation of certain persons from certain offences**

- (1) A person is not guilty of an offence under any law merely because:
  - (a) the person makes bets by means of a totalizator conducted by a licensee, or

- (b) the person is or acts for a licensee and the person conducts a totalizator in accordance with the requirements of or made under this Act, the regulations, the rules and the conditions of the licensee's licence, or
- (c) in relation to a totalizator conducted in the manner referred to in paragraph (b), the person:
  - (i) is concerned in the conduct of the totalizator, or
  - (ii) prints or publishes any thing relating to the conduct of the totalizator, or
  - (iii) is the owner or occupier of any premises used for the purpose of, or in connection with, the conduct of the totalizator.

(2) This section does not affect any offence against this Act or the regulations.

## **Part 3 Licences to conduct totalizators**

### **Division 1 General**

#### **11 Meaning of "exclusivity period"**

In this Division, the ***exclusivity period*** means the period that begins on the commencement of this section and ends 15 years after a date declared by the Minister by order published in the Gazette to be the operative date for the purposes of this section. The date declared by the Minister as the operative date must not be earlier than the commencement of this section.

#### **12 Licences may be granted to conduct totalizators of various kinds**

- (1) A licence may be granted under this Act for the conduct of a totalizator in respect of betting on any one or more of the following events and contingencies:
  - (a) events and contingencies scheduled to be held at a race meeting on any racecourse within or outside Australia (being horse racing, harness racing or greyhound racing events or contingencies),
  - (b) any event declared for the time being under section 18 of the [Racing Administration Act 1998](#) to be a sports betting event for the purposes of that Act, or both.
- (2) A licence may only be granted to a company incorporated under the [Corporations Act 2001](#) of the Commonwealth or a racing club.
- (3) A licence may be granted for an on-course totalizator or an off-course totalizator, or both.
- (4) A licensee may under a contract or other arrangement engage a person to conduct a

totalizator on behalf of the licensee as the licensee's agent or to exercise on behalf of the licensee as the licensee's agent functions in connection with the conduct of a totalizator.

- (5) The licensee may under a contract or other arrangement engage persons to perform any service in connection with the conduct of a totalizator by the licensee.

### **13 Licensee can be approved to conduct other betting activities**

- (1) The Minister may by instrument in writing approve of the holder of a licence conducting a betting activity (otherwise than by means of a totalizator) on a particular event or contingency or class of events or contingencies, subject to such conditions as the Minister determines.
- (2) A betting activity may be approved under this section in respect of any of the following events and contingencies:
  - (a) events and contingencies scheduled to be held at a race meeting on any racecourse within or outside Australia (being horse racing, harness racing or greyhound racing events or contingencies),
  - (b) any event declared for the time being under section 18 of the *Racing Administration Act 1998* to be a sports betting event for the purposes of that Act.
- (3) The Minister must not under this section approve of a licensee conducting a betting activity that, in the opinion of the Minister, is offensive or contrary to the public interest.
- (4) The Minister is entitled to require payment of a charge of such amount as the Minister, with the concurrence of the Treasurer, considers appropriate for the grant of an approval under this section and the approval is of no force or effect while any charge payable is unpaid. A charge payable under this section can be set as a specified amount, an amount calculated in a specified manner, or a specified "base" amount plus an amount calculated in a specified manner.
- (5) Notice of an approval under this section must be published in the Gazette as soon as practicable after the approval is given but a failure to publish the notice does not affect the validity of the approval. An approval remains in force for the period specified in the approval or (if no period is specified) until it is withdrawn.
- (6) The approval of a betting activity may be given subject to conditions. The conditions become conditions of the licensee's licence and may be substituted, varied, revoked or added to accordingly.
- (7) When an approval is in force under this section for the conduct by a licensee of a betting activity:
  - (a) the licensee's licence is taken to authorise the conduct of the approved betting



activity, and

(b) a reference in this Act to a totalizator includes (in respect of the licensee concerned) a reference to the approved betting activity, except in Part 6 (Financial provisions) and except as the regulations may otherwise provide.

(8) The Minister may, for any reasonable cause stated in writing by the Minister, withdraw an approval given under this section. The Minister cannot withdraw an approval until the Minister has given the licensee a reasonable opportunity to be heard or to make submissions on the matter.

#### **14 TAB entitled to exclusive off-course totalizator licence**

(1) TAB or a wholly owned subsidiary of TAB is entitled to be granted a licence (the **TAB off-course licence**) to conduct an off-course totalizator during the exclusivity period in respect of betting on the following events and contingencies:

(a) events and contingencies scheduled to be held at a race meeting on any racecourse within or outside Australia (being horse racing, harness racing or greyhound racing events or contingencies),

(b) any event declared for the time being under section 18 of the [Racing Administration Act 1998](#) to be a sports betting event for the purposes of that Act.

(2) No other person may be granted a licence for the conduct, during the exclusivity period, of an off-course totalizator in respect of an event or contingency referred to in subsection (1).

(3) The Minister may, in the Minister's absolute discretion, grant the TAB off-course licence for a term that is longer than the exclusivity period.

##### **Note—**

The TAB off-course licence is only "exclusive" for the exclusivity period, even if it is granted for a longer period.

(4) This section ceases to apply if the exclusive licence is cancelled or otherwise ceases to have effect under this Act.

(5) No application under this Act is required for the purposes of the grant pursuant to this section of the TAB off-course licence (whether it is granted for the exclusivity period or for a longer period).

#### **15 TAB and racing clubs entitled to exclusive on-course totalizator licences**

(1) TAB or a wholly owned subsidiary of TAB is entitled to be granted a licence (the **TAB on-course licence**) to conduct an on-course totalizator during the exclusivity period in respect of betting on the following events and contingencies:

(a) events and contingencies scheduled to be held at a race meeting on any

racecourse within or outside Australia (being horse racing, harness racing or greyhound racing events or contingencies),

(b) any event declared for the time being under section 18 of the *Racing Administration Act 1998* to be a sports betting event for the purposes of that Act.

- (2) Each racing club (whether or not in existence on the commencement of this section) is also entitled to a licence (a **club on-course licence**) to conduct an on-course totalizator during the exclusivity period in respect of betting on any event or contingency scheduled to be held at a race meeting on any racecourse within or outside Australia.
- (3) No other person or body may be granted a licence for the conduct, during the exclusivity period, of an on-course totalizator in respect of an event or contingency to which an entitlement under subsection (1) or (2) applies.
- (4) The Minister may, in the Minister's absolute discretion, grant any of the licences to which this section applies for a term that is longer than the exclusivity period.

**Note—**

A licence is only "exclusive" for the exclusivity period, even if it is granted for a longer period.

- (5) Subsection (1) ceases to apply if the TAB on-course licence is cancelled or otherwise ceases to have effect under this Act. Subsection (2) ceases to apply to a racing club if its club on-course licence is cancelled or otherwise ceases to have effect under this Act.
- (6) The Minister can cancel the TAB on-course licence if the TAB off-course licence under section 14 is cancelled or otherwise ceases to have effect. Such a cancellation can be effected by notice in writing to the licensee under the TAB on-course licence and is not subject to the other requirements of this Act regarding cancellation of a licence.
- (7) No application under this Act is required for the purposes of the grant pursuant to this section of the TAB on-course licence or a club on-course licence, whether it is granted for the exclusivity period or for a longer period.

### **15A Consideration and fees for licences**

- (1) The Minister may determine that an amount is payable as consideration for the grant of a licence under this Act, except a licence granted to a racing club to authorise the operation of an on-course totalizator. Different amounts may be determined for different licences.
- (2) The Minister may determine a periodic licence fee for a licence under this Act, except a licence granted to a racing club to authorise the operation of an on-course totalizator and a licence granted to TAB or a wholly owned subsidiary of TAB under section 14 or 15. Any such fee is payable in accordance with the regulations. Different

fees may be determined for different licences.

- (3) The Minister can require payment of an amount of consideration payable under this section by payment in money or by the issue of shares to the State or as the Minister may otherwise direct.
- (4) A licence for which an amount of consideration has been determined to be payable under this section is not to be granted until the amount has been paid or arrangements satisfactory to the Minister have been made for its payment.
- (5) The regulations may make provision for or with respect to any fee payable under this section and in particular may provide for any of the following:
  - (a) the periods in respect of which a fee is payable,
  - (b) times for payments of fees,
  - (c) payment by instalments,
  - (d) penalties for late payment,
  - (e) suspension or cancellation of a licence for failing to pay a fee,
  - (f) the circumstances in which a fee (or part of a fee) may be refunded.

## **16 Eligibility for further licence**

The provisions of this Part are not intended to prevent TAB or a racing club (assuming that they are otherwise qualified) from applying for and being granted further licences in respect of any period beyond the period for which they hold licences granted pursuant to section 14 or 15.

## **17 Requirements for conduct of on-course totalizators by racing clubs**

- (1) A totalizator established and conducted pursuant to this Act by a racing club on a racecourse on which no authorised betting auditorium is established and conducted may be used only:
  - (a) on days on which race meetings are scheduled to be held on the racecourse, and
  - (b) in connection with races scheduled to be run on any such day or on any subsequent day on the racecourse or on any other racecourse within or outside New South Wales.
- (2) Any totalizator established and conducted pursuant to this Act by a racing club on a racecourse on which an authorised betting auditorium is established and conducted may be used in connection with any races to be run on that racecourse or on any other racecourse within or outside New South Wales.

- (3) If both TAB and a racing club are conducting a totalizator in respect of the same event or contingency, all bets made with the racing club in respect of the event or contingency:
- (a) are to be received by the racing club as agent for TAB, and
  - (b) are to be paid by the racing club into the totalizator conducted by TAB and are to form part of the money invested in that totalizator on the event or contingency.
- (4) It is a condition of a licence under this Act held by a racing club or by TAB that the licensee is to give effect to the requirements of subsection (3) in respect of bets made with the racing club.

**Note—**

Because the bets referred to in subsection (3) are treated as bets received by TAB the commission that can be deducted from the bets is deducted by TAB and not by the racing club. TAB pays the betting tax on the commission deducted and the racing club is not liable for that tax.

**17A Trade Practices exemption**

- (1) The following conduct is specifically authorised by this Act for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*:
- (a) the grant of the TAB off-course licence, the TAB on-course licence and a club on-course licence referred to in sections 14 and 15 of this Act,
  - (b) conduct authorised or required by or under the terms or conditions of a licence referred to in paragraph (a),
  - (b1) conduct authorised by section 9A or 9B,
  - (c) entering into an arrangement or proposed arrangement approved under this section,
  - (d) giving effect to an arrangement approved under this section,
  - (e) the giving of a direction pursuant to clause 15 (Power of controlling bodies to give directions) of Schedule 2 and any conduct engaged in in compliance with any such direction.
- (2) The Minister may by order published in the Gazette approve of the following for the purposes of this section:
- (a) any arrangement or proposed arrangement entered into or to be entered into for the purposes of section 21A (Commercial arrangements with the racing industry), 43 (2) or 43A,
  - (b) any arrangement or proposed arrangement that in the opinion of the Minister is

associated with and necessary or convenient for giving effect to a licence referred to in subsection (1) or an arrangement or proposed arrangement referred to in paragraph (a).

- (3) An approval under this section must identify the parties to the arrangements concerned.
- (4) Conduct authorised by this section is authorised only to the extent (if any) that it would otherwise contravene Part IV of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*.

(5) In this section:

**arrangement** includes agreement and understanding.

**giving effect to** an arrangement includes:

- (a) complying with any obligation under the arrangement, and
- (b) exercising or enforcing any right or power under the arrangement.

**Note—**

Section 51 of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales* provide that anything that is authorised by an Act is to be disregarded in deciding whether a person has contravened Part IV of the *Trade Practices Act 1974* and the Competition Code (which relates to restrictive trade practices).

## **Division 2 Applications for and grant of licences**

### **18 Application for licence**

- (1) An application for a licence to conduct a totalizator is to be made to the Minister.
- (2) An application is to be in such form, and accompanied by such information and documents, as the Minister requires.

### **19 Restriction on maximum shareholding in applicant**

The Minister must not grant an application for a licence to a company unless satisfied that no person has a prohibited shareholding interest in the company (within the meaning of Division 3).

### **20 Licensee not to be associated with casino and other activities**

- (1) A person to whom this section applies must not:
  - (a) hold a casino licence under the *Casino Control Act 1992*, or
  - (b) hold any other licence, or conduct any other business or activity, that is prescribed by the regulations for the purposes of this section.

- (2) This section applies to the following persons:
  - (a) the licensee,
  - (b) a subsidiary of the licensee,
  - (c) a related body corporate of the licensee.
- (3) However, subsection (1) (a) does not apply to or in respect of the nominated company or a related body corporate of the nominated company during any period during which the exemption granted to the nominated company and any related body corporate by section 32A is in force.

## **21 Suitability of applicant and close associates of applicant**

- (1) The Minister must not grant an application for a licence unless satisfied that 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.
- (2) For that purpose, the Minister is to consider whether:
  - (a) each of those persons is of good repute, having regard to character, honesty and integrity, and
  - (b) each of those persons is of sound and stable financial background, and
  - (c) in the case of an applicant that is not a natural person, it has or has arranged a satisfactory ownership, trust or corporate structure, and
  - (d) the applicant has or is able to obtain financial resources that are both suitable and adequate for ensuring the financial viability of the proposed totalizator, and
  - (e) the applicant has sufficient business ability to establish and conduct a successful totalizator, and
  - (f) the applicant has or is able to obtain the services of persons who have sufficient experience in the conduct of a totalizator, and
  - (g) any of those persons has any business association with any person, body or association that, in the opinion of the Minister, is not of good repute having regard to character, honesty and integrity or has undesirable or unsatisfactory financial sources, and
  - (h) each director, partner, trustee, executive officer and secretary and any other officer or person determined by the Minister to be associated or connected with the ownership, administration or management of the operations or business of the applicant or a close associate of the applicant is a suitable person to act in that capacity.

- (3) (Repealed)
- (4) The Minister must not grant an application for a licence unless satisfied that section 20 (Licensee not to be associated with casino and other activities) would not be contravened as a result of the grant of a licence to the applicant.

### **21A Commercial arrangements with the racing industry**

- (1) The Minister must not grant a licence (including a licence to TAB under section 14 or 15, but not including a licence to authorise a racing club to operate an on-course totalizator) unless:
  - (a) the Minister is satisfied that the applicant has made commercial arrangements with the racing industry in respect of the licence and the conduct of activities authorised by the licence, and
  - (b) the racing industry has provided the Minister with a written acknowledgment to the effect that the racing industry is satisfied with those arrangements, and
  - (c) the Minister has been provided with a copy of any agreement or other instrument that those arrangements involve.
- (2) For the purposes of this section, **the racing industry** comprises such one or more persons as the controlling bodies and major racing bodies nominate in writing to the Minister for the purposes of the licence concerned. A nomination in respect of a particular licence cannot be changed after it is made unless the Minister consents.

### **22 Meaning of “close associate”**

- (1) For the purposes of this Act, a person is a **close associate** of an applicant for, or the holder of, a licence if the person:
  - (a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the totalizator business of the licence applicant or holder, and by virtue of that interest or power is or will be able (in the opinion of the Minister) to exercise a significant influence over or with respect to the conduct of that totalizator business, or
  - (b) holds or will hold any relevant position, whether in his or her own right or on behalf of any other person, in the totalizator business of the licence applicant or holder.
- (2) In this section:
  - relevant financial interest** means:
    - (a) any share in the capital of the business, or

- (b) any entitlement to receive any income derived from the business, whether the entitlement arises at law or in equity or otherwise.

**relevant position** means the position of director, manager, and other executive positions and secretary, however those positions are designated, and such other positions as may be prescribed by the regulations for the purposes of this definition.

**relevant power** means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:

- (a) to participate in any directorial, managerial or executive decision, or
- (b) to elect or appoint any person to any relevant position.

### **23 Investigation of application**

- (1) On receiving an application for a licence, the Minister must carry out all such investigations and inquiries as the Minister considers necessary to enable the Minister to consider the application properly.
- (2) In particular, the Minister:
  - (a) may require any person the Minister is investigating in relation to the person's suitability to be concerned in or associated with the conduct of a totalizator to consent to having his or her photograph, fingerprints and palm prints taken, and
  - (b) must refer to the Commissioner of Police details of the persons the Minister is investigating, copies of any photographs, fingerprints and palm prints taken and any supporting information that the Minister considers appropriate for referral to the Commissioner.
- (3) The Commissioner of Police is to inquire into and report to the Minister on such matters concerning the application as the Minister may request.
- (4) The Minister may refuse to consider an application for a licence while any person from whom the Minister requires a photograph, fingerprints or palm prints under this section refuses to allow his or her photograph, fingerprints or palm prints to be taken.

### **24 Minister may require further information etc**

- (1) The Minister may, by notice in writing, require a person who is an applicant for a licence or who, in the opinion of the Minister, has some association or connection with the applicant that is relevant to the application to do any one or more of the following things:
  - (a) to provide, in accordance with directions in the notice, such information, verified by statutory declaration, as is relevant to the investigation of the application and is specified in the notice,



- (b) to produce, in accordance with directions in the notice, such records relevant to investigation of the application as are specified in the notice and to permit examination of the records, the taking of extracts from them and the making of copies of them,
  - (c) to authorise a person described in the notice to comply with a specified requirement of the kind referred to in paragraph (a) or (b),
  - (d) to furnish to the Minister such authorities and consents as the Minister directs for the purpose of enabling the Minister to obtain information (including financial and other confidential information) from other persons concerning the person and his or her associates or relations.
- (2) If a requirement made under this section is not complied with, the Minister may refuse to consider the application concerned.
- (3) A person who complies with a requirement of a notice under this section does not on that account incur a liability to another person.

## **25 Cost of investigations to be paid by applicant**

- (1) The reasonable costs incurred by the Minister in investigating and inquiring into an application for a licence are payable to the Minister by the applicant, unless the Minister determines otherwise in a particular case.
- (2) The Minister may require part or full payment in advance of the amount the Minister estimates will be payable by the applicant and may refuse to deal with the application until the required payment is made.
- (3) Investigation and inquiry costs may include travelling expenses within or outside the State.
- (4) It is a condition of any licence granted to the applicant that any amount payable under this section is paid.

## **26 Updating of applications**

- (1) If a change occurs in the information provided in or in connection with an application for a licence before the application is determined, the applicant must as soon as possible give the Minister written particulars of the change verified by statutory declaration.

Maximum penalty: 50 penalty units.

- (2) Particulars of any change given by the applicant are then to be considered to have formed part of the original application for the purposes of the application of subsection (1) to any further change in the information provided.

- (3) This section does not apply to a change in information if the Minister has notified the applicant in writing that the Minister does not require particulars of any change in the information concerned or does not require particulars of the type of change concerned.

## **27 Grant of licence**

- (1) The Minister may, after considering an application for a licence:
- (a) grant a licence to the person making the application, or
  - (b) refuse to grant a licence.
- (2) The Minister may grant a licence subject to any conditions determined by the Minister and specified in the licence.
- (3) A licence may be granted to one person or 2 or more persons jointly.

## **28 Term of licence**

A licence remains in force for the period for which it is granted, as specified in the licence, unless sooner cancelled or surrendered.

## **29 No proprietary right in licence**

A licence confers no right of property and is incapable of being assigned or mortgaged, charged or otherwise encumbered. This section does not prevent a licensee from conducting activities authorised by the licence in the course of a joint venture or other arrangement to which the licensee is a party.

## **Division 3 Maximum shareholding restrictions on licensees**

### **30 Division applies only to companies**

This Division applies only to a licensee that is a company incorporated under the [Corporations Act 2001](#) of the Commonwealth the licence of which authorises the conduct of an off-course totalizator.

### **30A References to Corporations Law in this Division**

A reference in this Division (other than section 30) to the Corporations Law (or a provision of that Law) is a reference to that Law (or the provision of that Law) as in force on 6 March 1998.

### **31 Definitions**

- (1) In this Division:
- officer**, in relation to a licensee, has the same meaning as in section 9 of the Corporations Law.

**voting share** in relation to a licensee, has the same meaning as in section 9 of the Corporations Law.

- (2) For the purposes of this Division, a person is an associate of another in relation to a licensee:
- (a) if the Minister:
- (i) is of the opinion that the person and the other are likely to act in concert with a view to taking control of, or exercising significant influence over, the licensee against the public interest, and
  - (ii) by notice in writing served on the licensee, declares that the person is an associate of the other in relation to the licensee, or
- (b) if the person is an associate of the other within the meaning of Division 2 of Part 1.2 of the Corporations Law, with that Division modified by omitting sections 13, 14, 16 (2) and 17 of that Law and by substituting for paragraphs (b) and (c) of section 12 (1) of that Law the following:
- or
- (b) the primary person's entitlement, as provided by section 609, to shares in a body corporate.
- (3) Where notice of a declaration under subsection (2) is served on a licensee, the Minister must, at the same time or as soon as practicable thereafter, cause written notice of the declaration to be served on the persons to whom the declaration relates.
- (4) For the purposes of this Division, a person has a relevant interest in a share if, and only if, the person would be taken to have a relevant interest in the share because of Division 5 of Part 1.2 of the Corporations Law if sections 33 and 35 (c) of that Law were disregarded.
- (5) For the purposes of this Division, the voting shares in a licensee to which a person (being the licensee or any other person) is entitled include voting shares in the licensee to which the person is entitled in accordance with section 609 of the Corporations Law, as if in that section a reference to an associate were a reference to an associate for the purposes of this Division and a reference to a relevant interest were a reference to a relevant interest to which subsection (4) of this section applies.
- (6) A reference in this Division to the Corporations Law is a reference to that Law as it would apply if references in that Law to a body corporate, corporation or company included references to:
- (a) a body corporate of any kind wherever formed or incorporated and whether formed or incorporated under that Law or any other law, and

- (b) any unincorporated body, being a society, association, company of proprietors or other body, wherever formed, that, under the law of its place of formation, may sue or be sued, or may hold property in the name of the secretary or some other officer of the society, association or body, or in the name of any trustee or trustees, and
  - (c) any unincorporated body, being a society, association, company of proprietors or other body or undertaking to which is applied, under the laws of the place of its formation, with or without exceptions, a law in force in that place relating to companies or corporations as if it were a company or corporation within the meaning of that Law.
- (7) The regulations may provide that relevant interests, or particular classes of relevant interests, in shares, or in particular classes of shares, are, in such circumstances and subject to such conditions (if any) as are specified in the regulations, to be disregarded for such purposes as are specified in the regulations.
- (8) If a whole or a portion of the share capital of a licensee consists of stock, a reference in this Division to a number of shares in the licensee as a percentage is, in relation to an amount of stock, a reference to the amount of stock that represents that number of shares.

### **32 Application of Division**

This Division (including any provision of the Corporations Law referred to or applied for the purposes of this Division) applies in relation to any transaction, agreement, arrangement, understanding or undertaking:

- (a) whether the transaction, agreement, arrangement, understanding or undertaking is entered into, or made, in this State or elsewhere, and
- (b) whether the shares (if any) to which the transaction, agreement, arrangement, understanding or undertaking relates are registered in this State or elsewhere, and
- (c) whether the proper law of the transaction, agreement, arrangement, understanding or undertaking is the law of this State or not.

#### **32A Exemption for nominated company**

The other provisions of this Division do not apply to or in respect of the nominated company or a related body corporate of the nominated company (other than a licensee or a subsidiary of a licensee), in relation to its entitlement to voting shares in TAB Limited, during any period during which the exemption granted to the nominated company and any related body corporate by section 37A of the [Totalizator Agency Board Privatisation Act 1997](#) is in force.

### **33 Prohibited shareholding interest**

- (1) A person has a prohibited shareholding interest in a licensee if the person is entitled to voting shares in the licensee that together constitute more than 10% of the total number of voting shares in the licensee.
- (2) For the purposes of this Division, a licensee or a subsidiary of a licensee cannot have a prohibited shareholding interest in the licensee.
- (3) A person must not have a prohibited shareholding interest in a licensee. A person who contravenes this subsection is guilty of an offence.

Maximum penalty: 100 penalty units.

### **34 Power to require information relating to entitlement to shares in licensee**

- (1) The Minister, or a director or the secretary of a licensee, may, by notice in writing served on a person who is, or is suspected by the Minister, director or secretary, as the case may be, of being entitled to shares in the licensee, require the person to furnish information specified in the notice for the purpose of determining whether that person or any other person has, or is taking action to acquire, a prohibited shareholding interest in the licensee.
- (2) A notice under subsection (1) may require the person on whom the notice is served, or, if that person is a corporation, 2 directors of the corporation, to verify by statutory declaration any information furnished in compliance with the notice.
- (3) If:
  - (a) a person on whom a notice under subsection (1) has been served fails to furnish, within the period required by the notice, the information required by the notice, verified as required by the notice, or
  - (b) information furnished by the person in response to the notice is, in the opinion of the Minister, by reason of anything included in it or omitted from it, false or misleading in a material particular,

the Minister may, by reason only of that fact, by notice in writing served on the licensee concerned, do one or more of the following:

- (c) declare that the person is an associate of another, or that another is an associate of that person,
- (d) declare that the person, or another to whom a declaration under paragraph (c) relates, is entitled to specified shares in the licensee concerned,
- (e) declare that the person, or another to whom a declaration under paragraph (c) relates, has a prohibited shareholding interest in the licensee concerned.

- (3A) A declaration under subsection (3) has effect according to its tenor for the purposes of this Division.
- (4) If notice of a declaration under subsection (3) is served on a licensee, the Minister must, at the same time or as soon as practicable thereafter, cause written notice of the declaration to be served:
- (a) on the person to whom the declaration relates, and
  - (b) in the case of a declaration under paragraph (e) of that subsection—on the holder of the shares to which the declaration relates.
- (5) A person who fails to comply with a requirement of a notice under this section, or in purported compliance with such a requirement furnishes information that is false or misleading in a material particular, is guilty of an offence.
- Maximum penalty: 100 penalty units.
- (6) It is a defence to a prosecution of a person for an offence under subsection (5) if it is proved that, at the time the information was furnished, the person believed, on reasonable grounds:
- (a) in the case of false information—that the information was true, or
  - (b) in the case of misleading information—that the information was not misleading.
- (7) A person is not liable to be convicted of both an offence under subsection (5) and an offence under Chapter 4 (Perjury, false statements etc) of Part 7 of the *Crimes Act 1900* in respect of the same incident. Section 112 (False or misleading information) does not apply to the furnishing of information under this section.

### **35 Substantial shareholders to give notice to Minister**

- (1) A person who is required to give notice to a licensee under a provision of Part 6C.1 of the *Corporations Act 2001* of the Commonwealth must give a copy of the notice to the Minister within the time that the notice is required under that Act to be given to the licensee.
- Maximum penalty: 100 penalty units.
- (2) A licensee must notify the Minister in writing within 2 business days after it receives a notice from a person under a provision of Part 6C.1 of the *Corporations Act 2001* of the Commonwealth, informing the Minister of the name and address of the person from whom the notice was received.
- Maximum penalty: 100 penalty units.

### 36 Disposal, forfeiture etc of shares where prohibited shareholding interest

(1) If the Minister:

(a) makes a declaration under section 34 (3), or

(b) forms the opinion and, by notice in writing served on a licensee, declares under this subsection,

that a person (in this section referred to as **the offender**) has a prohibited shareholding interest in a licensee, the Minister may, by notice in writing served:

(c) if the offender holds voting shares in the licensee to which the offender is entitled—on the offender, or

(d) on any other person who holds voting shares in the licensee to which the offender is entitled,

declare that the offender or that other person must dispose of the relevant number of those shares, or a specified number of those shares not exceeding the relevant number, otherwise than to the offender or an associate of the offender within a specified period, being not less than 3 months after service of the notice.

(2) For the purposes of subsection (1), the relevant number of shares that a person may be required by a notice under that subsection to dispose of is:

(a) subject to paragraph (b), the number of shares held by the person that would need to be so disposed of in order to cause the offender to cease to have a prohibited shareholding interest in the licensee, or

(b) if, after all the shares in the licensee held by the person to which the offender is entitled were so disposed of, the offender would continue to have a prohibited shareholding interest in the licensee—the total number of those shares.

(3) For the purposes of this section, a person is not to be taken to have disposed of shares in a licensee to which an offender is entitled unless and until the person ceases to hold the shares and the offender ceases to be entitled to the shares.

(4) If a person served with a notice of a declaration under subsection (1) requiring the person to dispose of shares in a licensee fails to comply with the notice within the period specified by the notice, the shares to which the notice relates are, by force of this subsection, forfeited to the State.

(5) If a transaction is entered into with respect to any shares in a licensee and:

(a) a person who did not, before the transaction is entered into, have a prohibited shareholding interest in the licensee would have such an interest after the transaction, or

(b) a person who, before the transaction is entered into, had a prohibited shareholding interest in the licensee would be entitled after the transaction to a greater number of voting shares in the licensee than the person was entitled to immediately before the transaction,

the transaction is not illegal or void as a result of this Division but the shares in the licensee that were the subject of the transaction are subject to forfeiture under subsection (6).

- (6) The Minister may by written notice served on the parties to a transaction referred to in subsection (5) declare that the shares in the licensee that were the subject of the transaction are forfeited to the State.
- (6A) A declaration under subsection (6) takes effect when the notices required in respect of the declaration by subsections (6) and (7) are served (or, if they are served at different times, when the one that is served latest is served).
- (7) The Minister must cause written notice of:
- (a) a declaration under subsection (1) requiring a person to dispose of shares in a licensee, or
  - (b) a declaration under subsection (6) that shares in a licensee are forfeited to the State,
- to be served on the licensee.
- (8), (9) (Repealed)

### **37 Effect of prohibited shareholding on voting and dividend rights**

- (1) This section applies to any provision of the articles of association of a licensee that:
- (a) provides for the suspension of any voting rights attaching to voting shares in the licensee as a result of any person who is entitled to the shares having a prohibited shareholding interest in the licensee, or
  - (b) authorises or requires the licensee, as a result of any person having a prohibited shareholding interest in the licensee, to refuse payment, defer payment or suspend any entitlement to payment of any amount or amounts that would otherwise be due from the licensee in respect of any shares in the licensee to which the person is entitled.
- (2) It is a condition of a licence under this Act that any provision of the articles of association of the licensee to which this section applies cannot be amended or repealed except with the written consent of the Minister.
- (3) If the Minister is of the opinion that a resolution of a general meeting of a licensee has



been passed as a result of the admission of votes that should not, by virtue of a provision of the articles of association of the licensee to which this section applies, have been admitted, the Minister may, by notice in writing served on the licensee, declare the resolution to have been (at all times) null and void.

- (4) If notice of a declaration under this section is served on a licensee, the Minister must, at the same time or as soon as practicable thereafter, cause written notice of the declaration to be served on each person whose votes should not, in the opinion of the Minister, have been admitted.
- (5) A notice under this section does not have any effect unless it is served on the licensee within one month after the date of the resolution to which it relates.

### **38 Making, review and revocation of declarations by Minister**

- (1) A declaration may be made by the Minister under this Division on the basis of such information as the Minister considers sufficient in the circumstances.
- (2) A declaration of the Minister under this Division other than:
  - (a) a declaration under section 36 (1) requiring a person to dispose of shares in a licensee, or
  - (b) a declaration under section 36 (6) that shares in a licensee are forfeited to the State,

is effective when written notice of the declaration is served on the licensee irrespective of when or whether service is effected on any other person as provided by this Division.

- (3) If the Minister makes a declaration under this Division in relation to a licensee:
  - (a) the licensee, or
  - (b) any other person on whom notice of the declaration has been served in pursuance of this Division,may apply to the Minister for a review of the declaration.
- (4) On an application under this section for review of a declaration, the Minister:
  - (a) must allow the applicant and, where the applicant is not the licensee, the licensee, a reasonable opportunity to make submissions in relation to the application, and
  - (b) may, after giving due consideration to any such submissions:
    - (i) confirm the declaration, or
    - (ii) revoke or vary the declaration either conditionally or unconditionally and with

effect from the date of the declaration or some other date determined by the Minister.

- (5) Notwithstanding that an application is made under this section for review of a declaration of the Minister under this Division, the declaration continues to have effect pending determination of the application except as otherwise determined by the Minister.
- (6) The Minister may, of his or her own motion, by notice in writing served on the person on whom notice of the declaration was served, revoke or vary a declaration of the Minister under this Division with effect from the date of the declaration or some other date determined by the Minister.

### **39 Appeal against declarations of Minister**

- (1) A licensee or any other person on whom notice of a declaration of the Minister is served under this Division may appeal to the Supreme Court against the declaration.
- (2) An appeal does not lie against a declaration under section 37 annulling a resolution of a licensee.
- (3) An appeal under this section must be instituted within 21 days after notice of the declaration under appeal is served on the appellant, unless the appellant has within that 21 day period applied for a review of the declaration under section 38, in which case the appeal may be instituted within 21 days after determination of the application for review. The period fixed by this subsection as the period within which an appeal must be instituted cannot be extended.
- (4) Where an appeal concerning a licensee is instituted by a person other than the licensee, the licensee is to be a respondent in addition to the Minister.
- (5) The Supreme Court may, on an appeal under this section, if satisfied that proper grounds for making the declaration did not exist, quash or vary the declaration, either conditionally or unconditionally and with effect from the date of the declaration or some other date, as the Court thinks fit, and make any consequential or ancillary orders that may be just.
- (6) Notwithstanding an appeal under this section, a declaration other than:
  - (a) a declaration under section 36 (1) requiring a person to dispose of shares in a licensee, or
  - (b) a declaration under section 36 (6) that shares in a licensee are forfeited to the State,continues to have effect pending determination of the appeal.
- (7) Except as provided in this Division, a declaration of the Minister under this Division

may not be challenged or called into question.

#### **40 Sale of forfeited shares**

- (1) The Minister is to sell any shares forfeited to the State under this Act.
- (2) For the purposes of any such sale, the Minister is not bound by any restriction on the sale of shares contained in the memorandum or articles of association of the licensee concerned.
- (3) Any money realised from the sale of forfeited shares under this section must, after deduction of the reasonable costs of the forfeiture and sale:
  - (a) if the shares were transferred as a result of a transaction referred to in section 36 (5) and the transferor has not received the full consideration agreed upon with the transferee—be applied in payment to the transferor of the amount or value of the consideration not received by the transferor and in payment of the balance (if any) to the transferee, or
  - (b) in any other case—be paid to the person from whom the shares were forfeited.

#### **41 Immunity of Minister and licensees, officers and auditors**

No liability attaches to the Minister or the State or to a licensee or any officer or auditor of a licensee for any act or omission in good faith and in the exercise or discharge, or purported exercise or discharge, of a power or duty under this Division.

#### **42 Service**

A notice required or authorised by this Division to be served on a person may:

- (a) in the case of a natural person:
  - (i) be served personally on the person, or
  - (ii) be sent by post to the person at his or her last known place of residence, business or employment, or
- (b) in the case of a company or other body—be left at, or sent by post to, its registered office or a place of business of the company or body whether within the State or elsewhere.

#### **42A Excluded matters for the purposes of the [Corporations Act 2001](#) of the Commonwealth**

- (1) The regulations may declare any matter that is dealt with by this Act or the regulations to be an excluded matter for the purposes of section 5F of the [Corporations Act 2001](#) of the Commonwealth in relation to:
  - (a) the whole of the Corporations legislation, or

- (b) a specified provision of the Corporations legislation, or
- (c) the Corporations legislation other than a specified provision, or
- (d) the Corporations legislation other than to a specified extent.

**Note—**

Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

(2) In this section:

**matter** includes act, omission, body, person or thing.

## **Division 4 Conditions of licences**

### **43 Conditions of licences**

- (1) The conditions of a licence may include (in addition to any other conditions referred to in this Act) conditions relating to the following:
  - (a) the appointment of, and the making of probity checks in respect of, contractors,
  - (b) the contents of the rules for a totalizator,
  - (c) the display, by the licensee and the licensee's agents, of the rules and of other information relating to the conduct of a totalizator,
  - (d) the form and manner of making bets on a totalizator, including the making of bets by post or telephone or by the use of other means of communication,
  - (e) requiring the payment of minimum dividends in respect of events or contingencies,
  - (f) the adjustment of profits or losses accruing to a licensee as a result of an error in the calculation or determination of dividends,
  - (g) the provision by the licensee of a bond or other financial guarantee to ensure payment of any tax, in respect of a totalizator, required to be paid under the *Betting Tax Act 2001*,
  - (h) the furnishing of information, whether in the form of statements, returns or otherwise, by the licensee to the Minister relating to the conduct of a totalizator,
  - (i) the time or times at which, and the form in which, the information must be furnished to the Minister,
  - (j) the giving to the Minister of monitoring access to the licensee's computer system

(including real-time access),

(k) the auditing of the financial records of the licensee relating to the conduct of a totalizator,

(l) the security requirements in respect of a totalizator,

(m) the approval by the Minister of any device, equipment or computer software that is used in connection with the conduct of a totalizator or that otherwise affects the conduct of a totalizator, and the approval by the Minister of persons engaged in the design, construction, creation, operation, repair or maintenance of any such device, equipment or computer software,

(n) the approval by the Minister of the installation and location of facilities (such as ATMs and EFTPOS) for the withdrawal or transfer of money from bank and similar accounts at places where investments on a totalizator can be made,

(o) any other matters that the Minister thinks fit.

(2) Every licence (other than a licence that authorises a racing club to operate an on-course totalizator) is subject to a condition that the licensee must have in place and must give effect to commercial arrangements with the racing industry in respect of the licence and the conduct of activities authorised by the licence, being arrangements that the racing industry has acknowledged in writing to the Minister are to the satisfaction of the racing industry.

(2A) For the purposes of subsection (2), **the racing industry** comprises such one or more persons as the controlling bodies and major racing bodies nominated under section 21A for the purposes of the licence concerned. That nomination may be changed for the purposes of this section by fresh nomination in writing to the Minister, but only if the licensee consents to the fresh nomination.

(2B) Every licence granted to TAB Limited is subject to the condition that:

(a) no person has a prohibited shareholding interest (within the meaning of Division 3) in the nominated company, or

(b) if the nominated company is a company referred to in paragraph (c) of the definition of **nominated company** in section 37A (6) of the *Totalizator Agency Board Privatisation Act 1997*, no person has such an interest in the ultimate holding company (within the meaning of the *Corporations Act 2001* of the Commonwealth) of the nominated company.

However, this condition has effect only while the exemption granted to the nominated company and any related body corporate by section 32A is in force.

(2C) Subsection (2) extends to commercial arrangements entered into from time to time.

- (3) A licence may make provision for advice to be furnished to the Minister in connection with the exercise of the Minister's functions under this Act.
- (4) The conditions of a licence must not be inconsistent with this Act.

#### **43A Additional conditions of TAB Limited licences**

- (1) It is a condition of every licence of TAB Limited that both TAB Limited and the nominated company must put in place and must give effect to such commercial arrangements (being arrangements that the racing industry has acknowledged in writing to the Minister are satisfactory to the racing industry) as the racing industry considers necessary to ensure that the racing industry is in no less favourable a position under the relevant arrangements in force under section 43 (2) than it was under those arrangements as in force immediately before the nominated company was nominated.
- (2) It is also a condition of every licence of TAB Limited that, if TAB Limited and the racing industry enter into new arrangements under section 43 (2) on or after the date on which the nominated company was nominated, the nominated company must put in place and give effect to arrangements made by the nominated company and the racing industry for ensuring that the new arrangements, with respect to TAB Limited as licensee, are effectively carried out.
- (3) If the nominated company is a company referred to in paragraph (c) of the definition of **nominated company** in section 37A (6) of the *Totalizator Agency Board Privatisation Act 1997*, subsections (1) and (2) apply as if the reference in those subsections to the nominated company were a reference to the ultimate holding company (within the meaning of the *Corporations Act 2001* of the Commonwealth) of the nominated company.
- (4) In this section:

**nominated** means nominated under section 37A (6) of the *Totalizator Agency Board Privatisation Act 1997*.

**the racing industry** has the same meaning as it has in section 43 (2A).

#### **44 Amendment of conditions of licence**

- (1) The Minister may amend the conditions of a licence in accordance with this section.
- (2) The conditions may be amended by being substituted, varied, revoked or added to.
- (3) An amendment may be proposed:
  - (a) by the licensee by requesting the Minister in writing to make the amendment, or
  - (b) by the Minister by giving notice in writing of the proposed amendment to the

licensee and giving the licensee at least 14 days to make submissions to the Minister concerning the proposed amendment.

- (4) The Minister is to consider any submissions made by the licensee and is then to decide whether to make the proposed amendment, either with or without changes from that originally proposed.
- (5) The Minister is to notify the licensee of the Minister's decision. Any amendment that the Minister decides upon takes effect when notice of the decision is given to the licensee or on such later date as may be specified in the notice.

## **Division 5 Disciplinary and other actions concerning licences**

### **45 General investigations**

- (1) The Minister may from time to time investigate any totalizator.
- (2) An investigation of a totalizator may relate to (but is not limited to) any of the following matters:
  - (a) the conduct of the totalizator,
  - (b) the licensee who conducts the totalizator or a person who, in the opinion of the Minister, is an associate of the licensee,
  - (c) a person or persons who, in the opinion of the Minister, could affect any aspect of the conduct of the totalizator,
  - (d) a person or persons who, in the opinion of the Minister, could be in a position to exercise direct or indirect control over the conduct of the licensee, or an associate of the licensee, in relation to the conduct of the totalizator,
  - (e) the suitability of the licensee to hold a licence or be concerned in the conduct of the totalizator,
  - (f) whether or not it is in the public interest that the licensee's licence should continue in force.
- (3) The Minister is to take whatever action under this Act the Minister considers appropriate in the light of the results of an investigation.

### **46 Injunctions to prevent contraventions etc**

- (1) If the Supreme Court is satisfied on the application of the Minister that a licensee or former licensee has engaged or is proposing to engage in conduct that constitutes or would constitute:
  - (a) a contravention of a provision of this Act or of a condition of the licence, or

- (b) attempting to contravene such a provision, or
- (c) aiding, abetting, counselling or procuring a person to contravene such a provision, or
- (d) inducing, or attempting to induce, whether by threats or promises or otherwise, a person to contravene such a provision, or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision, or
- (f) conspiring with others to contravene such a provision,

the Court may grant an injunction in such terms as the Court determines to be appropriate.

- (2) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of the application.
- (3) The Court may rescind or vary an injunction granted under this section.
- (4) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:
  - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind, and
  - (b) whether or not the person has previously engaged in conduct of that kind, and
  - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.
- (5) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:
  - (a) whether or not it appears to the Court that the person intends to fail again, or to continue to fail, to do that act or thing, and
  - (b) whether or not the person has previously failed to do that act or thing, and
  - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person fails to do that act or thing.
- (6) When the Minister makes an application to the Court for the grant of an injunction under this section, the Court is not to require the Minister or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

#### **47 Disciplinary action against licensee**

- (1) In this Division:



**disciplinary action** means any one or more of the following actions in relation to a licence:

- (a) the cancellation or suspension of the licence,
- (b) the imposition on the licensee of a monetary penalty of up to \$100,000 in the case of a racing club or \$1,000,000 in any other case,
- (c) the amendment of the conditions of the licence by the Minister (other than under section 44),
- (d) the issue of a letter of censure by the Minister to the licensee.

**grounds for disciplinary action** means any one or more of the following grounds in respect of a licence:

- (a) that the licence was improperly obtained in that, at the time the licence was granted, there were grounds for declining to grant it,
  - (b) that the licensee has contravened a provision of this Act, the regulations, the rules, a condition of the licence or a direction given under Division 2 of Part 5,
  - (c) that the licensee, a subsidiary of the licensee or a related body corporate of the licensee is in contravention of section 20 (Licensee not to be associated with casino and other activities),
  - (d) that the licensee has failed to use reasonable endeavours to ensure that the contractors of the licensee do not contravene a provision of this Act, the regulations, the rules, a condition of the licence or a direction given under Division 2 of Part 5,
  - (e) that the licensee becomes an externally administered corporation within the meaning of the *Corporations Act 2001* of the Commonwealth,
  - (f) that the licensee is, for specified reasons, considered to be no longer a suitable person to give effect to the licence and this Act,
  - (g) that for specified reasons, it is considered to be no longer in the public interest that the licence should remain in force.
- (2) The Minister may serve on the licensee a notice in writing affording the licensee an opportunity to show cause within 14 days (or such longer period as the Minister may specify in the notice) why disciplinary action should not be taken against the licensee on grounds for disciplinary action specified in the notice.
- (3) The licensee may, within the period allowed by the notice, arrange with the Minister for the making of submissions to the Minister as to why disciplinary action should not be taken and the Minister is to consider any submissions so made.

- (4) The Minister may then decide that it is appropriate that certain disciplinary action be taken against the licensee and may either:
  - (a) take that disciplinary action by giving written notice of the action to the licensee, or
  - (b) as an alternative to taking that disciplinary action, take action under section 48.
- (5) Disciplinary action may be taken against a person whether or not the person has been prosecuted, convicted or penalised for any contravention that is the grounds for the action.
- (6) Disciplinary action takes effect when notice of it is given or on a later date specified in the notice.
- (7) The fact that disciplinary action is taken by the Minister under this section does not prevent the Minister from taking the same or other disciplinary action under this section if the contravention continues or a fresh contravention occurs.
- (8) A monetary penalty imposed under this section may be recovered as a debt due to the Crown in a court of competent jurisdiction.

#### **48 Rectification order as alternative to disciplinary action**

- (1) As an alternative to taking disciplinary action against a licensee, the Minister may direct the licensee in writing to take specified action within a specified time to rectify the matter that constitutes the grounds for disciplinary action concerned.
- (2) If a licensee fails to take the specified action within the specified time, the Minister may proceed to take the relevant disciplinary action by giving written notice of the action to the licensee, and the disciplinary action takes effect when the notice is given or on a later date specified in the notice.

#### **49 Temporary suspension of licence**

- (1) The Minister may take action under this section, without prior notice to a licensee, in order to secure compliance by a licensee with a direction given to the licensee by a notice under Division 2 of Part 5.

**Note—**

Division 2 of Part 5 enables the Minister to give directions to licensees, contractors and other persons engaged in the conduct of totalizators to protect the integrity of totalizators and to require the termination of arrangements between licensees and contractors, and the employment of key employees, for a similar purpose.

- (2) If the Minister considers it necessary or expedient for the purposes of this section, the Minister may, by notice, suspend a licence:
  - (a) until a date specified in the notice of suspension, or

(b) if the notice so specifies—until the Minister, being satisfied that the relevant direction has been complied with, further notifies the licensee.

(3) As an alternative to total suspension of a licence under subsection (2), the Minister may partially suspend a licence (for example, in respect of the conduct of a totalizator at a specified racecourse or premises or for a specified event or contingency) until a date or the happening of an event, as referred to in subsection (2) (a) and (b).

#### **50 Completion of totalizator following cancellation, revocation or suspension of licence**

(1) Nothing in this Division prevents the Minister, if a licence is cancelled, revoked or taken to have been revoked, or is suspended, from authorising a person to complete the conduct of any totalizator betting that was in the course of being conducted when the licence was cancelled, revoked or taken to have been revoked, or was suspended.

(2) In that event:

(a) the person so authorised is taken to be the licensee under the cancelled, revoked or suspended licence, and

(b) the cancelled, revoked or suspended licence is, for the purposes of enabling the completion of the totalizator betting, taken not to have been cancelled, revoked or suspended.

#### **51 Surrender of licence**

(1) A licensee may surrender the licensee's licence by giving notice in writing to the Minister. If the licence is held by more than one licensee, all licensees must surrender the licence.

(2) The surrender takes effect only if the Minister consents to the surrender.

#### **52 Appointment of temporary licensee if licence suspended, cancelled, surrendered or revoked**

(1) If a licence is suspended, cancelled, surrendered or revoked, the Minister may, if the Minister is satisfied that it is in the public interest to do so, by instrument in writing appoint a person to be the licensee of the totalizator for the purposes of this section.

(2) In appointing a person to be the licensee, the Minister must have regard to the suitability of the person.

(3) The licensee is to be appointed on such terms and conditions as the Minister thinks fit.

(4) The appointment of the licensee may be terminated at any time by the Minister and is in any case terminated:

(a) 90 days after appointment unless in a particular case the appointment is extended by the regulations, or

(b) by the grant of another licence to conduct the totalizator under this Act.

(5) The licensee:

(a) is to be considered to be the holder of a licence granted on the same terms and subject to the same conditions as the suspended, cancelled, surrendered or revoked licence (as in force immediately before the suspension, cancellation, surrender or revocation) with such modifications as the Minister may direct, and

(b) is to assume full control of and responsibility for the business of the former licensee in respect of the totalizator, and

(c) is to conduct or cause to be conducted totalizator operations in accordance with this Act, and

(d) has, in connection with the conduct of those operations, all the functions of the former licensee.

(6) Subject to this section, a licensee appointed under this section may enter into such arrangements as are approved by the Minister with the former licensee, including arrangements relating to the use of assets and services of staff of the former licensee.

(7) The former licensee:

(a) must make available to the licensee on reasonable terms such assets of, or under the control of, the former licensee as are reasonably necessary for arrangements under subsection (6), and

(b) must use his, her or its best endeavours to make available such staff of the former licensee as are reasonably necessary for those arrangements.

Maximum penalty: 100 penalty units.

(8) The regulations may make provision for or with respect to the functions of a licensee appointed under this section.

(9) The following provisions have effect in respect of the net earnings of a totalizator while operations in the totalizator are being conducted by a licensee under this section:

(a) no payment of net earnings is to be made to the former licensee without the prior approval of the Minister,

(b) the former licensee is entitled to a fair rate of return out of net earnings (if any) on any property of the former licensee retained by the licensee (subject to any arrangements made under subsection (6)),

(c) the Minister may in the Minister's discretion direct that all or any part of net earnings (other than that to which the former licensee is entitled under paragraph

(b)) is to be paid into the Consolidated Fund, with any balance to be paid to the former licensee.

## **Part 4 Rules for conduct of totalizators**

### **53 Making of rules**

- (1) A licensee is required to make rules, not inconsistent with this Act, the regulations or the conditions of the licensee's licence, for or with respect to the conduct by the licensee of the totalizator.
- (2) Without limiting subsection (1), the rules may make provision as to the liability of a licensee, agent or other person acting under the authority or on behalf of a licensee in connection with the following:
  - (a) the making of bets on a totalizator,
  - (b) the printing and issuing of betting tickets,
  - (c) the determination of the entitlement (if any) of an investor to a dividend in a totalizator,
  - (d) the payment of dividends in, or the refund of money invested in, a totalizator.
- (2A) A licensee is required to make the rules referred to in section 69.
- (3) The power to make rules under this section includes power to amend or repeal any rules made in the exercise of that power.

### **54 Approval and publication of rules**

- (1) Rules made under this Part must be submitted to the Minister for approval and have no effect unless they are approved in writing by the Minister.
- (2) If the rules are so approved, the licensee must cause the rules to be published in the Gazette.
- (3) Rules take effect:
  - (a) on and from the day on which they are published in the Gazette, or
  - (b) if a later day is specified in the rules—on and from that day.

### **55 Display of rules**

A licensee or agent who accepts bets on a totalizator must:

- (a) display in a prominent position at each place where bets on the totalizator are accepted a notice to the effect that a copy of the rules of the totalizator are available for inspection there free of charge, and

- (b) keep available at each of those places a complete copy of the rules of the totalizator for inspection by any person free of charge on request, and
- (c) provide a complete copy of the rules of the totalizator to any person on request by the person and payment of such reasonable charge as the licensee may require to be paid.

Maximum penalty: 50 penalty units.

#### **56 Rules inconsistent with Act**

If a rule becomes inconsistent with this Act, the regulations or the conditions of a licence (because of the amendment of this Act or the regulations or alteration of the conditions of the licence), the rule ceases to have effect to the extent of the inconsistency.

#### **57 Compliance with rules**

- (1) A licensee must conduct betting on the totalizator in accordance with the relevant rules.
- (2) The rules, as in force when a bet is made, form part of the contract between the licensee and the investor.

#### **58 Transitional provision—TAB to make rules while it holds exclusive licence**

- (1) While TAB or a wholly owned subsidiary of TAB holds a licence during the exclusivity period under Division 1 of Part 3, the rules for the conduct of totalizators are to be made, in accordance with this Part, by TAB.
- (2) Any racing club that also holds a licence to conduct an on-course totalizator during that period must comply with the rules made by TAB with such modifications (if any) as the Minister may approve.
- (3) The Minister may make additional rules for the conduct of on-course totalizators by racing clubs during that period. The Minister makes rules under this subsection by notifying the rules to the racing clubs.

### **Part 5 Supervision of conduct of totalizators**

#### **Division 1 Provision of information to Minister**

##### **59 Licensees and contractors to inform Minister of changed circumstances**

If a change of a kind prescribed by the regulations occurs in the circumstances that existed in relation to a licensee at the time the licensee was granted the licence or in relation to a contractor of the licensee at the time the contractor became a contractor:

- (a) the licensee, in the case of a change that relates to the licensee, or

(b) the contractor, in the case of a change that relates to the contractor,

must notify the Minister in writing, not later than 14 days after the change occurs, of the particulars relating to the change that the regulations prescribe.

Maximum penalty: 100 penalty units.

#### **60 Minister may require information relating to licensees and contractors**

(1) The Minister may, by notice in writing, 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:

- (a) to provide the Minister or an inspector, in accordance with directions in the notice, with the information relevant to the licensee or contractor or that association (or relevant to any matter prescribed by the regulations) that is specified in the notice, or
- (b) to produce to the Minister or an inspector, in accordance with directions in the notice, the documents relevant to the licensee or contractor or that association (or relevant to any matter prescribed by the regulations) that are specified in the notice and to permit examination of the documents and the taking of extracts from, and the making of copies of, them, or
- (c) to attend before the Minister or an inspector for examination in relation to any matters relevant to the licensee or contractor or that association (or relevant to any matter prescribed by the regulations) and to answer any question relating to those matters.

A licensee, contractor or person who fails to comply with a requirement of a notice under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

- (2) A natural person is not excused from complying with a notice under this section on the ground that compliance might tend to incriminate the person. However, if the person claims, before complying with the notice, that compliance might tend to incriminate the person, information provided in compliance with the notice is not admissible in evidence against the person in criminal proceedings other than proceedings under this Act.
- (3) If documents are produced under this section, the Minister or inspector to whom they are produced may retain possession of them for a reasonable period so that they may be examined and extracts taken from, or copies made of, them.
- (4) The Minister or inspector must permit inspection of the documents, at any reasonable time during which they are retained under this section, by a person who would be entitled to inspect them if they were not in the possession of the Minister or inspector.

- (5) A person who complies with a requirement of a notice under this section does not on that account incur a liability to another person.

**61 Minister may require person to provide particulars concerning key employees**

The Minister may, by notice in writing served on a person, require the person to provide the Minister, within a reasonable time specified in the notice, with the following:

- (a) the names of all persons who are key employees of the person,
- (b) the positions held by, and the duties of, those employees,
- (c) any other relevant particulars relating to those employees as are specified in the notice.

A person who fails to comply with a requirement of a notice under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

**62 Minister may require key employees to provide information**

- (1) The Minister may, by notice in writing served on a key employee, require the key employee:
  - (a) to consent, in accordance with directions in the notice, to having his or her photograph, fingerprints and palm prints taken, and
  - (b) to provide, in accordance with directions in the notice, the information (verified by statutory declaration) relevant to the key employee that is specified in the notice, and
  - (c) to produce, in accordance with directions in the notice, the documents relevant to the key employee that are specified in the notice and to permit examination of the documents and the taking of extracts from, and the making of copies of, them, and
  - (d) to furnish the authorities and consent that the Minister may require for the purpose of obtaining further information (including financial and other confidential information) from other persons and institutions.
- (2) The Minister is to refer to the Commissioner of Police copies of photographs, fingerprints and palm prints obtained in respect of a key employee under this section and any supporting information that the Minister considers should be referred to the Commissioner.
- (3) The Commissioner of Police is to inquire into, and report to the Minister on, any matters concerning the key employee that the Minister may request.



- (4) A key employee is not excused from complying with a notice under this section on the ground that compliance might tend to incriminate the employee. However, if the employee claims, before complying with the notice, that compliance might tend to incriminate the employee, information provided in compliance with the notice is not admissible in evidence against the employee in any criminal proceedings other than proceedings under this Act.
- (5) A key employee who complies with a requirement of a notice under this section does not on that account incur a liability to another person.

### **63 Failure of key employee to provide required information**

- (1) The Minister may, if a key employee refuses or fails to comply with a requirement of a notice served on the key employee under section 62, by notice in writing, direct:
  - (a) the licensee or a contractor, or
  - (b) any other appropriate person,to terminate immediately and not to renew the employment or arrangement by reason of which the key employee is a key employee of the licensee, contractor or other person.
- (2) A person who does not give effect to a direction given to the person under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

### **64 Power to terminate employment of key employee at Minister's direction**

- (1) This section applies in respect of a direction given by the Minister under this Division or Division 2 to an employer to terminate the employment of a key employee or the other arrangement by reason of which a key employee is a key employee of the employer.
- (2) It is taken to be a condition of any agreement or other arrangement entered into between an employer and a key employee that the employer has the rights required to enable the employer to give effect to a direction to which this section applies.
- (3) The termination of employment or an arrangement in accordance with this section has effect despite any other Act or law, or any contract, award or enterprise or other agreement, and the State does not incur any liability because of such a termination.
- (4) In this section, **employer** means a licensee, contractor or other person to whom a direction to which this section applies is given.

### **65 Destruction of fingerprints and palm prints of former key employees**

- (1) Any fingerprints or palm prints obtained under this Division, and any copies of them,

are to be destroyed as soon as the key employee from whom they were obtained is no longer a key employee.

(2) A person:

- (a) who has possession of fingerprints or palm prints obtained by the Minister under this Division, or copies of them, and
- (b) who fails to deliver them to the Minister, in accordance with the written directions of the Minister, to enable subsection (1) to be complied with,

is guilty of an offence.

Maximum penalty (subsection (2)): 100 penalty units.

## **Division 2 Directions by Minister**

### **66 Prejudice to integrity of totalizator**

(1) The Minister may give a direction under this section 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 because of:

- (a) any irregularity or alleged irregularity of any kind, or
- (b) the character or reputation of any person concerned in the conduct of the totalizator, or
- (c) any other fact or circumstance reported to the Minister.

(2) The Minister may, for the purpose of avoiding the prejudice referred to in this section, by notice in writing, direct:

- (a) the licensee, or
- (b) a contractor, or
- (c) any other person engaged, in whatever capacity, in any aspect of the conduct of the totalizator,

to take (or to refrain from taking) any action specified in the notice in relation to all or any specified totalizators conducted by the licensee.

(3) A person who does not comply with a direction given to the person under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

### **67 Minister may direct licensee to terminate certain contractual arrangements**

(1) If a person who is a contractor of a licensee does not comply with a direction given to

the person under section 66, the Minister may, by notice in writing, direct the licensee to terminate, within a time specified in the notice, the contract or other arrangement under which the person is a contractor of the licensee.

- (2) A licensee who does not comply with a notice given to the licensee under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

- (3) It is taken to be a condition of any contract or other arrangement entered into between a licensee and a contractor that the licensee has the rights required to enable the licensee to give effect to a direction to which this section applies.

- (4) The termination of a contract or other arrangement in accordance with this section has effect despite any other Act or law and neither the State nor the Minister incurs any liability by reason of that termination.

- (5) The regulations can exempt specified contracts or other arrangements or specified classes of contracts or other arrangements from the operation of this section. The effect of such an exemption is that a contract or other arrangement to which the exemption applies cannot be the subject of a direction under this section.

#### **68 Prejudice to integrity of totalizator involving key employee**

- (1) The Minister may give a direction under this section 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 because of:

- (a) the criminal record of a key employee, or
- (b) the character or reputation of a key employee.

- (2) The Minister may, by notice in writing, direct:

- (a) the licensee, or
- (b) a contractor, or
- (c) any other appropriate person,

to terminate immediately and not to renew the employment or arrangement by reason of which the key employee is a key employee of the licensee, contractor or other person.

- (3) A person who does not comply with a direction given to the person under this section is guilty of an offence.

Maximum penalty (subsection (3)): 100 penalty units.

## Part 6 Financial provisions

### 69 Commission on totalizator betting

- (1) A licensee may deduct, or cause to be deducted, as commission out of the total amount invested in each totalizator conducted by the licensee on one or more events or contingencies, an amount not exceeding the amount prescribed by the rules in respect of a totalizator of that class or description.
- (2) An amount prescribed by the rules for the purposes of subsection (1) must be expressed as a percentage of the total amount invested in the class or description of totalizator concerned, and must not exceed 25% of the total amount invested.

### 70 (Repealed)

### 71 Tax not payable on funds held for participating jurisdictions

- (1) The Minister may, by order published in the Gazette, declare that another State or a Territory or another country is taken to be a participating jurisdiction for the purposes of this section in relation to totalizators of a particular class or description if:
  - (a) it is lawful to conduct totalizators of that class or description in the State, Territory or country, and
  - (b) totalizators of that class or description are conducted under this Act.
- (2) An order under this section may do either or both of the following:
  - (a) limit the circumstances in which the State, Territory or country is taken to be a participating jurisdiction for the purposes of this section,
  - (b) limit the period for which the State, Territory or country is taken to be a participating jurisdiction for the purposes of this section.
- (3) No betting tax is payable under the *Betting Tax Act 2001* in respect of any amount invested in a totalizator on behalf of an authority that conducts totalizator betting in another State or a Territory or another country if, at the time the amount is invested:
  - (a) the State, Territory or country is taken to be a participating jurisdiction in the circumstances concerned by virtue of an order in force under this section, and
  - (b) the totalizator in which the amount is invested is of the class or description of totalizators in relation to which the State, Territory or country is taken to be a participating jurisdiction.
- (4) For the purposes of this section, **country** includes part of a country.

### 72-74 (Repealed)

## **75 Unclaimed dividends, refunds and roundings**

- (1) This section applies to the following amounts:
  - (a) any dividend declared, or other amount refundable to an investor in accordance with the regulations or rules, in respect of an event or contingency on which a licensee conducts a totalizator that is not claimed after the happening of the event or contingency,
  - (b) roundings (a rounding being an amount that would ordinarily form part of a dividend but that is retained by the licensee as a result of the rounding down of an amount calculated as dividend).
- (2) The licensee is, subject to this section, entitled to all amounts to which this section applies.
- (3) An investor who is entitled to a dividend or other amount referred to in subsection (1) (a) can claim the dividend or amount from the licensee within 12 months after the happening of the event or contingency concerned.
- (4) (Repealed)

## **76 Other unclaimed money**

- (1) Any unclaimed money held by any person as a result of the operation of this Act is to be paid into the Consolidated Fund.
- (2) In this section, **unclaimed money** means money that is not claimed by any person but does not include money referred to in section 75.

## **77-79 (Repealed)**

# **Part 7 Offences and other provisions relating to totalizators**

## **80 Totalizator advertising**

- (1) A licensee or other person who publishes, or causes to be published, any totalizator advertising that is in contravention of any requirement of the regulations or rules, is guilty of an offence.  
  
Maximum penalty: 50 penalty units.
- (2) The regulations may provide for the Minister or other person to grant exemptions from a regulation made under subsection (1).
- (3) In this section:  
  
**publication** includes dissemination of any kind, whether effected by oral, visual, written, electronic or other means (for example, dissemination by means of cinema,

video, radio, television or the Internet).

**totalizator advertising** means advertising that is directly related to the conduct of a totalizator.

### **81 Credit betting prohibited**

- (1) A person must not accept a bet on a totalizator unless the bet is paid for in any one of the following ways at or before the time the bet is made:
  - (a) in cash,
  - (b) by debit against an amount held in an account for the person who makes the bet by the person who accepts the bet,
  - (c) by debit against a credit betting facility made available by the person who accepts the bet, being a facility under which the obligations of the debtor are secured or guaranteed in accordance with arrangements approved by the Minister or prescribed by the regulations.

Maximum penalty: 20 penalty units.

- (2) For the purposes of subsection (1), electronic funds transfer of an amount to an account operated by the person is taken to be payment of that amount in cash to the person.

### **82 Bet not to be accepted from minor**

- (1) A person who accepts a bet on a totalizator from a person who is under the age of 18 years (whether the bet is made in person, by mail, by electronic means or otherwise) is guilty of an offence.

Maximum penalty: 50 penalty units.

- (2) It is a defence to a prosecution for an offence under this section if the defendant proves that the defendant had no reason to believe, and did not believe, that the person from whom the defendant accepted the bet was under the age of 18 years.

### **83 Person not to bet on a totalizator on behalf of minor**

- (1) A person who, on behalf of a person under the age of 18 years, makes a bet on a totalizator is guilty of an offence.

Maximum penalty: 50 penalty units.

- (2) It is a defence to a prosecution for an offence under this section if the defendant proves that the defendant had no reason to believe, and did not believe, that the person on whose behalf the defendant made the bet was under the age of 18 years.

#### **84 Minor not to bet on totalizator**

- (1) A person who, while under the age of 18 years, makes a bet on a totalizator is guilty of an offence.

Maximum penalty: 20 penalty units.

- (2) A person is not to be convicted of an offence against this section unless it is proved that, when the bet was made, there was displayed in a conspicuous place on the premises at which the bet was made, a legible notice to the effect that it is an offence for a person under the age of 18 years to make a bet by means of the totalizator.

- (3) A licensee is guilty of an offence if it conducts betting by means of a totalizator on premises that do not have such a notice affixed in a conspicuous place.

Maximum penalty (subsection (3)): 50 penalty units.

#### **85 Minors not to be detained**

A person under the age of 18 years may not be imprisoned, or detained in a detention centre, as a consequence of a failure to pay a penalty for an offence under this Part.

#### **86 Offences in respect of bets, tickets etc**

Any person who:

- (a) having the management or control of any premises or place used in connection with the conduct of a totalizator authorises or permits the premises or place to be constituted or used, or any act or thing to be done or omitted in or in relation to the premises or place in contravention of or failure of compliance with this Act, the regulations or the rules, or
- (b) having the management or control of or being employed or acting in any capacity in connection with the conduct of a totalizator accepts from any person any bet that is prohibited by or does not conform to this Act, the regulations or the rules, or
- (c) not being a person authorised by the licensee to do so, sells or offers to sell any ticket or acknowledgment issued or purporting to be issued by a licensee in respect of a bet, or
- (d) purchases any such ticket or acknowledgment from any person not authorised by a licensee to sell it, or
- (e) receives or permits to be received any bet on a totalizator in respect of an event or contingency after the time provided by the rules as the closing time for acceptance of bets on the event or contingency, or
- (f) being an agent of a licensee required to account to a licensee for his or her operations in respect of an event or contingency, fails to do so, or

(g) not being a person authorised by the licensee to do so, represents (whether personally or by employees or agents) to other persons that the person is willing to take bets with the licensee and to account to those other persons for any proceeds of those bets,

is guilty of an offence against this Act.

Maximum penalty: 50 penalty units.

### **87 Offence of unauthorised use of telephone betting credit accounts**

A person who charges or attempts to charge a bet against another person's telephone betting credit account maintained with a licensee except with that other person's authority is guilty of an offence.

Maximum penalty: 50 penalty units.

### **88 Laying totalizator odds or dealing in totalizator tickets an offence**

A person:

- (a) who makes or enters into a bet, or who offers to make or to enter into a bet, on the result of an event or contingency, by which the person agrees to pay to the other party to the bet, if the other party should win the bet, a sum of money the amount of which is dependent on the result of the working of a totalizator on the event or contingency, or
- (b) who (not being a person lawfully conducting or employed in the working of a totalizator) sells or offers for sale a ticket, card or thing entitling or purporting to entitle the purchaser or holder of it to an interest in the result of the working of the totalizator on an event or contingency, or
- (c) who purchases from a person (not being a person lawfully conducting or employed in the working of a totalizator) a ticket, card, or thing entitling or purporting to entitle the purchaser or holder of it to an interest in the result of the working of the totalizator on an event or contingency, or
- (d) makes or offers to make a contract or bargain of any kind to pay or receive money on an event or contingency determined or to be determined by the result of the working of the totalizator on an event or contingency,

is guilty of an offence.

Maximum penalty: 50 penalty units.

### **89 Restrictions on transmission of bets**

- (1) An officer, agent or employee of a racing club must not accept or act on a request, instruction or direction relating to investments on a totalizator, whether received on a



racecourse or elsewhere, if the request, instruction or direction is made or given by telephone or by any kind of electronically transmitted message. If this subsection is contravened, the racing club concerned is guilty of an offence.

Maximum penalty: 50 penalty units.

- (2) This section does not prevent such a request, instruction or direction from being made or given by telephone or by any kind of electronically transmitted message if the request, instruction or direction is made in a manner approved by the Minister.
- (3) This section does not apply to transmissions by or on behalf of a racing club for the purposes of conducting a totalizator in accordance with this Act.

#### **90 Person not to invest on totalizator after finish of race**

- (1) A person who makes an investment on a totalizator with respect to a race knowing that the race has already finished is guilty of an offence.

Maximum penalty: 50 penalty units.

- (2) If a Local Court finds a person guilty of an offence against this section, the Court may, in addition to any penalty imposed for the offence, order the person to pay an amount equal to the amount (if any) derived from the investment concerned.
- (3) Any amount recovered under subsection (2) is required to be paid into the Consolidated Fund.

### **Part 8 Enforcement**

#### **Division 1 Investigations**

##### **91 Investigations**

- (1) The Minister may appoint a person to investigate and report on matters and circumstances specified by the Minister relating to:
  - (a) the conduct of any totalizator, or
  - (b) a licensee or agent or a person who, in the opinion of the Minister, is an associate of a licensee or agent, or
  - (c) a specified person who, or a specified class of persons that includes persons who, in the opinion of the Minister, could be in a position to exercise direct or indirect control over a licensee or agent, in relation to the conduct of a totalizator.
- (2) A person appointed to carry out an investigation may, for the purpose of the investigation, exercise:
  - (a) the functions conferred by section 60 (Minister may require information relating to

licensees and contractors) on the Minister, and

(b) any other functions of the Minister specified by the Minister in the instrument of appointment.

(3) The exercise of functions under this section by a person other than the Minister has effect as if the functions had been exercised by the Minister.

## **Division 2 Inspectors**

### **92 Appointment of inspectors**

- (1) The Minister may appoint any person to be an inspector for the purposes of this Act.
- (2) A person is not eligible to be appointed as an inspector unless the person possesses the highest standard of integrity.
- (3) The question of whether a person possesses the highest standard of integrity is to be determined by the Minister.
- (4) For the purpose of making the determination, the Minister may cause to be carried out all investigations and inquiries that the Minister considers proper and, in particular, may obtain and consider a report from the Commissioner of Police in relation to any person being considered.
- (5) The Commissioner of Police is to furnish the report at the request of the Minister and may for the purpose of the report require a person to whom the report relates to consent to having his or her photograph, fingerprints or palm prints taken.
- (6) If a person refuses or fails to comply with a request by the Commissioner, the person is not eligible to be appointed to a position as an inspector while the refusal or failure continues.
- (7) An inspector is, in the exercise of the inspector's functions as an inspector, subject to the direction and control of the Minister.

### **93 Identification of inspectors**

- (1) An inspector is not authorised to exercise the functions of an inspector unless he or she is in possession of an identity card issued by the Minister.
- (2) If an inspector proposing to exercise the functions of an inspector fails to produce on demand his or her identity card, the inspector is not authorised to exercise those functions in relation to the person making the demand.

### **94 Right of inspectors to enter premises**

- (1) An inspector may, for the purpose of exercising functions under this Act or the regulations, at any reasonable time:

- (a) enter any part of the premises of a licensee, and any part of premises or a place used or occupied by a licensee in connection with the conduct of a totalizator, or
  - (b) enter any part of the premises of an agent, any part of premises or a place used or occupied by an agent in connection with the conduct of a totalizator, or
  - (c) enter any part of premises or a place that the inspector reasonably suspects is being used in connection with the conduct of a totalizator (other than by a licensee or agent of a licensee), or
  - (d) enter any part of premises or a place that the inspector reasonably suspects is being used (other than by a licensee or an agent of a licensee) for receiving bets on a totalizator, or
  - (e) enter premises or place on a racecourse.
- (2) An inspector is not entitled to exercise the powers conferred by this section in relation to any part of any premises used for residential purposes, except:
- (a) with the consent of the occupier of the premises, or
  - (b) under the authority conferred by a search warrant issued under section 95.
- (3) An inspector who enters premises or a place under this section is not authorised to remain there if, on the request of the licensee, agent or other occupier of the premises or place, the inspector does not show his or her identity card to the licensee, agent or other occupier.

## 95 Search warrant

- (1) An inspector may apply to an authorised officer for the issue of a search warrant if the inspector believes on reasonable grounds that a provision of this Act or the regulations is being or has been contravened in any premises or place.
- (2) An authorised officer to whom any such application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant:
- (a) to enter the premises or place, and
  - (b) to exercise any function of an inspector under this Act.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section:

**authorised officer** has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

## 96 Powers of inspectors

- (1) An inspector may do any one or more of the following:
  - (a) require any person whom the inspector reasonably suspects of being in possession or control of any documents that relate to, or that the inspector reasonably suspects relate to, the conduct of a totalizator to produce the documents for inspection and to answer questions or provide information relating to the documents,
  - (b) make copies of, take extracts from and notes relating to, any documents,
  - (c) require a licensee, agent or other person whom the inspector reasonably suspects of having possession or control of any device or equipment that is, or that appears to the inspector to be, used in relation to the conduct of a totalizator to produce the device or equipment for inspection and to answer questions or provide information relating to the device or equipment,
  - (d) inspect and test any device or equipment in the possession or control of a licensee, agent or other person that is, or that appears to the inspector to be, used in relation to the conduct of a totalizator,
  - (e) for the purpose of any such inspection or testing:
    - (i) require the licensee, agent or other person to provide the inspector with any assistance that the inspector reasonably requires, or
    - (ii) if practicable, remove the device or equipment to another place, for any time that is reasonably necessary for that purpose,
  - (f) require a licensee, agent or other person to give the inspector on-site or remote-site access to any computer system that is, or appears to the inspector to be, used in relation to the conduct of a totalizator,
  - (g) if the inspector considers it to be necessary to do so for the purpose of obtaining evidence of the commission of an offence—seize any document or any device or equipment inspected or tested under this subsection,
  - (h) by notice in writing require any licensee, agent or other person concerned, in whatever capacity, in the conduct of a totalizator, to attend before the inspector at a specified time and place and answer questions, or provide information, with respect to the conduct of any totalizator,
  - (i) call to his or her aid:
    - (i) another inspector, or a police officer, if he or she is obstructed, or believes on reasonable grounds that he or she will be obstructed, in the exercise of his or her functions, or

- (ii) a person considered by the inspector to be competent for the purpose,
  - (j) exercise any other functions prescribed by the regulations as functions of an inspector.
- (2) If an inspector seizes any document, device or equipment under this section, it may be retained by the inspector until the completion of any proceedings (including proceedings on appeal) in which it may be tendered in evidence but only if, in the case of documents, the person from whom the documents were seized is provided, within a reasonable time after the seizure, with a copy of the documents certified by an inspector as a true copy.
- (3) Subsection (2) ceases to have effect in relation to anything seized if, on the application of a person aggrieved by the seizure, the court in which proceedings referred to in that subsection are instituted so orders.
- (4) A copy of documents provided under subsection (2) is, as evidence, of equal validity to the documents of which it is certified to be a true copy.
- (5) A person is not required by this section to answer a question that might incriminate the person.
- (6) A person has, while acting in aid of an inspector under this section, the functions of an inspector.

**97 Cost of testing equipment and investigating computer systems to be paid by licensee**

- (1) The reasonable costs incurred in investigating and testing any device, equipment or computer system as referred to in section 96 are payable to the Minister by the licensee, unless the Minister determines otherwise in a particular case.
- (2) Investigation and testing costs may include travelling expenses within or outside the State.
- (3) It is a condition of any licence that any amount payable under this section by the licensee is paid.

**98 Offences relating to inspectors**

- (1) A person who:
- (a) prevents an inspector from exercising any function conferred on the inspector by or under this Act, or
  - (b) hinders or obstructs an inspector in the exercise of any such function, or
  - (c) fails to comply with a requirement of an inspector by or under this Act, or
  - (d) furnishes to an inspector (whether in answer to a question asked by an inspector

or otherwise) information that the person knows is false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: 50 penalty units.

- (2) It is a defence to a prosecution for an offence under subsection (1) (c) for the failure of the defendant to answer a question asked by an inspector for the purposes of this Act if the defendant proves that the defendant did not know, and could not with reasonable diligence ascertain, the answer to the question.
- (3) If an answer to a question asked by an inspector for the purposes of this Act, or any information, is given to an inspector by an officer of a corporation (within the meaning of the *Corporations Act 2001* of the Commonwealth) that is concerned in the conduct of a totalizator, the answer and information are, for the purposes of any proceedings against the corporation under this Act, binding on and admissible in evidence against the corporation unless it is proved that the answer or information was given on a matter in respect of which the officer had no authority to bind the corporation.

## **99 Keeping and retention of records by licensee**

- (1) It is a condition of a licence that the licensee must ensure that all documents relating to the conduct of the totalizator under the licence are:
  - (a) kept at the principal place of business in New South Wales of the licensee or at such other place as the Minister approves in writing, and
  - (b) retained for not less than 7 years after the completion of the transactions to which they relate.
- (2) It is a condition of a licence that the licensee must ensure that all documents relating to the operations of the licensee under the licence are:
  - (a) kept at the principal place of business in New South Wales of the licensee or at such other place as the Minister approves in writing, and
  - (b) retained for not less than 7 years after the completion of the transactions to which they relate.
- (3) The Minister may by instrument in writing grant an exemption to the licensee from all or specified requirements of this section in respect of all or specified, or specified classes of, documents and may grant such an exemption subject to conditions.

## **Division 3 Proceedings for offences**

### **100 Proceedings for offences**

Proceedings for an offence against this Act or the regulations are to be dealt with

summarily before a Local Court.

### **101 Time within which proceedings may be commenced**

- (1) Proceedings for an offence under this Act or the regulations may be commenced not later than 2 years after the date alleged to be the date on which the offence was committed.
- (2) This section has effect despite the *Criminal Procedure Act 1986* or any other Act.

### **102 Persons who may bring proceedings**

Proceedings for an offence under this Act or the regulations may be brought by:

- (a) an inspector, or
- (b) a police officer, or
- (c) any other person, or person of a class, prescribed by the regulations.

### **103 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

### **103A Remedial orders**

- (1) A court that finds a person guilty of an offence against this Act or the regulations, being an offence that is prescribed by the regulations for the purposes of this section, may, in addition or as an alternative to any penalty it may impose for the offence, make either or both of the following orders:
  - (a) an order requiring the person to publish an advertisement correcting any information contained in any betting information or advertisement published by the person that the court is satisfied on the evidence before it is false, misleading or deceptive and giving directions (if any) that the court considers appropriate as to the time, form, extent and manner of publication,
  - (b) an order requiring any one or more of the following:
    - (i) the person,

(ii) if the person is a corporation, a director of the corporation or a person concerned in the management of the corporation,

(iii) an employee of the person,

to undertake any specified course of training that the court considers will promote responsible practices in the conduct of betting activities by the person.

(2) A person who, without lawful excuse, fails to comply with an order under this section is guilty of an offence.

Maximum penalty: 20 penalty units.

## **Part 9 Miscellaneous**

### **104 Act binds Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

### **105 Secrecy**

(1) A person who:

(a) acquires information in the exercise of a function under this Act, and

(b) directly or indirectly makes a record of the information or divulges it to another person,

is guilty of an offence unless the information is recorded or divulged in the exercise of functions under this Act.

Maximum penalty: 50 penalty units.

(2) Despite subsection (1), information may be divulged:

(a) to a particular person or persons, if the Minister certifies that it is necessary in the public interest that the information be divulged to the person or persons, or

(b) to a person who is expressly or impliedly authorised to obtain it by the person to whom the information relates, or

(c) to Racing New South Wales, Greyhound Racing New South Wales or Harness Racing New South Wales, or

(d) to a person or authority prescribed by the regulations.

(3) It is not an offence under this section if, in legal proceedings, a person:

(a) divulges information in answer to a question that the person is compellable to answer, or



- (b) produces a document or other thing that the person is compellable to produce.
- (4) An authority or person to whom information is divulged under this section, and a person or employee under the control of that authority or person, are, in respect of that information, subject to the same rights, privileges and duties under this section as they would be if that authority, person or employee were a person exercising functions under this Act and had acquired the information in the exercise of those functions.
- (5) This section does not apply to the divulging of information to any of the following:
  - (a) the Independent Commission Against Corruption,
    - (a1) the Inspector of the Independent Commission Against Corruption,
    - (b) the Australian Crime Commission,
    - (c) the New South Wales Crime Commission,
    - (d) the Ombudsman,
    - (e) the Police Integrity Commission,
    - (f) the Inspector of the Police Integrity Commission,
    - (g) any other person or body prescribed by the regulations for the purposes of this subsection.
- (6) This section does not prevent a person being given access to a document in accordance with the *Freedom of Information Act 1989* unless the document:
  - (a) contains matter the disclosure of which could reasonably be expected to do any of the following:
    - (i) prejudice the investigation of any contravention or possible contravention of the law (including any revenue law) whether generally or in a particular case,
    - (ii) enable the existence or identity of any confidential source of information, in relation to the enforcement or administration of the law, to be ascertained,
    - (iii) prejudice the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law (including any revenue law), or
  - (b) is a document the disclosure of which would disclose any of the following information:
    - (i) information concerning the business, commercial, professional or financial affairs of a licensee, contractor or key employee,

(ii) information obtained in the course of an investigation of a licensee, contractor or key employee.

(6A) This section does not apply to the divulging of information to the Chief Commissioner of State Revenue (referred to in section 60 of the *Taxation Administration Act 1996*) for the purpose of administration of the *Betting Tax Act 2001*.

(7) In this section, a reference to the divulging of information includes a reference to the production of a document or other thing and the provision of access to the document or other thing.

### **106 Appeals**

- (1) Except as otherwise provided in this Act, a decision of the Minister under this Act is final and is not subject to appeal or review.
- (2) A person aggrieved by a decision of the Minister to cancel or suspend a licence or to alter the conditions of a licence may appeal from the decision to the Supreme Court on a question of law.
- (3) The Supreme Court is to hear and determine the appeal and make such order as it thinks appropriate by reason of its decision, including, without limiting the Court's power to make such orders:
  - (a) an order affirming or setting aside the decision of the Minister, and
  - (b) an order remitting the matter to the Minister to decide again in accordance with the directions of the Court.
- (4) Proceedings on an appeal in respect of a decision of the Minister do not operate to stay the decision appealed from unless the Supreme Court otherwise orders.

### **107 No right to compensation for cancellation etc**

No right to compensation enforceable against the Crown arises in relation to the cancellation, suspension, or variation of the terms or conditions of, a licence granted under this Act, or an alteration of the conditions of such a licence under this Act.

### **108 Arrangements for supply of Police records**

- (1) The Minister and the Commissioner of Police may enter into arrangements for the supply to the Minister of information contained in the records of the Police Service, to assist in the effectual administration of this Act.
- (2) Those arrangements are sufficient authority for the supply of that information.

### **109 Disclosure of spent convictions**

- (1) Section 12 (Consequences of conviction becoming spent) of the *Criminal Records Act 1991* does not apply in relation to an application for a licence.
- (2) The Minister is to be considered to be a law enforcement agency for the purposes of section 13 (Unlawful disclosure of information concerning spent convictions) of the *Criminal Records Act 1991*.

### **110 Destruction of fingerprints etc**

- (1) Any fingerprints or palm prints obtained by the Minister under this Act and any copies of them must be destroyed by the Minister as soon as the Minister has no further use for them.
- (2) The Minister is to be considered to have no further use for them when:
  - (a) they were obtained in connection with an application for a licence and the application is refused, or
  - (b) the licence in connection with which they were obtained is cancelled or surrendered (but is to be considered to have further use for them whenever the licence is in force).
- (3) A person who in connection with an application for a licence has possession of fingerprints or palm prints obtained by or on behalf of the Minister under this Act, or copies of them, must deliver them to the Minister, in accordance with the directions of the Minister, so as to enable the Minister to comply with subsection (1).

Maximum penalty: 20 penalty units.

### **111 Records not kept in writing**

- (1) This section applies to a record that:
  - (a) is not in writing, or
  - (b) is not written in the English language, or
  - (c) is not decipherable on sight.
- (2) A requirement under this Act to produce a record is, in the case of a record to which this section applies, to be considered to be a requirement to produce (in addition to the record if it is in writing or instead of the record if it is not in writing) a statement written in the English language and decipherable on sight containing the whole of the information in the record.

### **112 False or misleading information**

- (1) A person who:

- (a) in, or in relation to, any application made under this Act, or
- (b) in purported compliance with a requirement of a notice under this Act, or
- (c) in purporting to provide information under this Act that the person has been authorised to provide,

gives information that is false or misleading in a material particular is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) It is a defence to a prosecution of a person for an offence under subsection (1) if it is proved that, at the time the information was given, the person believed, on reasonable grounds:
  - (a) in the case of false information—that the information was true, or
  - (b) in the case of misleading information—that the information was not misleading.

### **113 Forgery etc**

A person must not:

- (a) forge or counterfeit any betting voucher, betting slip, licence under this Act, inspector's form of identification or employee's form of identification, or
- (b) knowingly utter a counterfeit or forged betting voucher, betting slip, licence under this Act, inspector's form of identification or employee's form of identification, or
- (c) personate the holder of such a licence or form of identification, or
- (d) falsely represent himself or herself to be an inspector, or
- (e) connive at any such forging, counterfeiting, uttering, personating or representing.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

### **114 Forfeiture of offending articles**

- (1) If a person commits an offence under this Act involving the unlawful use or possession of any device or equipment relating to the conduct of a totalizator or any other article or thing, the court before which the person is convicted may order the device, equipment, article or thing to be forfeited to the Crown.
- (2) An inspector or a police officer may, in a place or premises at which a totalizator is conducted, seize and retain possession of any device, equipment, article or thing that he or she reasonably suspects is liable to forfeiture under this section.

### **115 Delegation**

The Minister or Treasurer may delegate to a public servant or an officer of a class prescribed by the regulations all or any of the functions conferred or imposed on the Minister or Treasurer by or under this Act, other than:

- (a) this power of delegation, or
- (b) the function of granting or refusing to grant a licence for the conduct of an off-course totalizator, or
- (c) any other function prescribed by the regulations.

### **116 Service of documents**

- (1) A document required or permitted by or under this Act to be served on a person may, if the person is a natural person, be served:
  - (a) by delivering the document to the person, or
  - (b) by sending the document by post addressed to the person at the person's last known place of residence, or
  - (c) by leaving the document at the person's last known place of residence with a person apparently resident at that place and apparently not less than 16 years of age, or
  - (d) by leaving the document at the person's last known place of business with a person apparently in the service of the person and apparently not less than 16 years of age.
- (2) A document required or permitted by or under this Act to be served on a person may, if the person is a corporation, be served:
  - (a) by sending the document by post addressed to the corporation at its registered office or principal place of business in New South Wales, or
  - (b) by leaving the document at the registered office or principal place of business in New South Wales of the corporation with some person apparently employed in connection with the business of the corporation and apparently not less than 16 years of age.
- (3) If a document is to be served on a licensee and the licence concerned is held by 2 or more licensees, service of the document on one licensee in accordance with this section is taken to be service, in accordance with this section, on each other licensee.
- (4) The provisions of this section are in addition to, and do not prejudice the operation of, any other law prescribing procedures sufficient for the service of documents.

## **117 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to any matter to which the conditions of a licence may relate.
- (3) A regulation may create an offence punishable by a penalty not exceeding 50 penalty units. A regulation may also provide that a contravention of any particular provision of the regulations by a licensee is taken to be a contravention of the conditions of the licence.

## **117A Responsible conduct of totalizators, totalizator betting and other betting activities**

- (1) The regulations may make provision for or with respect to requiring or encouraging the adoption of responsible practices in the conduct of totalizators, totalizator betting and any other betting activities approved under section 13.
- (2) In particular, the regulations may make provision for or with respect to:
  - (a) the standards to be observed for the conduct of gambling activities,
  - (b) the prohibition or restriction of the offering of inducements, or of inducements of a kind, specified by the regulations,
  - (c) the notices to be displayed with respect to the availability of counselling in respect of financial, social or other problems that may arise in connection with gambling,
  - (d) the inclusion on each betting ticket issued by or on behalf of a licensee of:
    - (i) a warning notice about gambling, and
    - (ii) the name and contact details of a gambling counselling service specified, or of a kind specified, by the regulations.
- (3) It is the intention of Parliament that regulations under this section will be made as soon as practicable after the date of assent to the [Gambling Legislation Amendment \(Responsible Gambling\) Act 1999](#).

## **118 Repeals**

The following Acts, regulations and rules are repealed:

- [Totalizator Act 1916 No 75](#),
- [Totalizator \(Off-course\) Betting Act 1964 No 1](#),
- [Totalizator Legislation \(Amendment\) Act 1993 No 58](#),

- [Totalizator Legislation Amendment Act 1995 No 5](#),
- [Totalizator Legislation Further Amendment Act 1995 No 59](#),
- [Totalizator \(Off-course Betting\) Amendment Act 1981 No 45](#),
- [Totalizator \(Off-course Betting\) Amendment Act 1996 No 72](#),
- [Totalizator Regulation 1993](#),
- [Totalizator Rule 1993](#),
- [Totalizator \(Off-course Betting\) Regulation 1994](#).

### **119 (Repealed)**

### **120 Savings, transitional and other provisions**

Schedule 2 has effect.

### **121 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 (Repealed)**

## **Schedule 2 Savings, transitional and other provisions**

(Section 120)

### **Part 1 Savings and transitional regulations**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

[Intergovernmental Agreement Implementation \(GST\) Act 2000](#)

[Racing and Totalizator Legislation Amendment Act 2000](#)

*Betting Tax Act 2001*

*Totalizator Legislation Amendment Act 2003*

*Totalizator Legislation Amendment (Inter-jurisdictional Processing of Bets) Act 2006*

*Totalizator Amendment Act 2008*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of this Act**

### **2 Definitions**

In this Part:

**repealed Act** means the *Totalizator Act 1916* or the *Totalizator (Off-course Betting) Act 1964*.

**Totalizator Act** means the *Totalizator Act 1916*.

**Totalizator (Off-course Betting) Act** means the *Totalizator (Off-course Betting) Act 1964*.

### **3 Rules**

- (1) Any rules in force under a provision of the Totalizator Act immediately before the repeal of the provision continue in force as if they were rules made and in force in accordance with Part 4 of this Act.
- (2) Subclause (1) does not affect the future amendment or repeal of the rules.

### **4 Current totalizator betting**

- (1) Any totalizator that was being conducted under a provision of a repealed Act immediately before the repeal of the provision may be completed under this Act.



- (2) This Act applies to and in respect of a totalizator referred to in this clause in the same way as it applies to a totalizator conducted under this Act.

## **5 Saving of existing agreements with interstate authorities**

- (1) An arrangement or agreement in force under a provision of a repealed Act immediately before the repeal of the provision with any State, Territory or country in respect of the investment of funds on a totalizator within New South Wales on behalf of that State, Territory or country is taken, for the balance of the term of the arrangement or agreement, to be an arrangement or agreement made for the purposes of this Act.
- (2) Despite the repeal of section 12 of the Totalizator (Off-course Betting) Act, an arrangement or agreement in force under that section immediately before its repeal remains subject to the provisions of subsections (6)–(8) of that section and TAB remains subject to those provisions in respect of the arrangement or agreement.

## **6 Agents**

A person who was an agent of a licensee under a provision of a repealed Act immediately before the repeal of the provision is taken to be an agent of the licensee under this Act in accordance with the terms and conditions applying immediately before that repeal.

## **7 Inspectors**

A person who was an inspector under a provision of a repealed Act immediately before the repeal of the provision is taken:

- (a) to be an inspector under this Act, and
- (b) to have satisfied the requirements of this Act as to the standard of integrity required for appointment as an inspector.

## **8 Delegations**

Any delegation in force under a provision of a repealed Act immediately before the repeal of the provision is taken to have been given under this Act and continues to have effect as if it had been given under this Act.

## **9 Disclosure of information**

Any information acquired by a person in the exercise of functions under a repealed Act is taken to have been acquired by the person in the exercise of functions under this Act.

## **10 Dividends and refunds under repealed provisions**

- (1) A provision of a repealed Act continues to apply (as if it had not been repealed) to and in respect of any dividend declared payable, and any amount refundable to an investor, in respect of any event or contingency that happened before the repeal of

the provision.

- (2) Subclause (1) applies only for 12 months after the commencement of this clause, after which time the relevant provisions of this Act apply to any such dividend or amount.

## **11 Continuation of Racecourse Development Fund**

- (1) The Racecourse Development Fund under the *Totalizator Act 1916* is continued under this Act and the following provisions apply:
  - (a) the assets and liabilities of the fund under the *Totalizator Act 1916* become assets and liabilities of the fund (**the RDF**) under this Act, and
  - (b) a reference in any instrument made or entered into before the commencement of this clause to the Racecourse Development Fund under the *Totalizator Act 1916* is taken to be a reference to the RDF under this Act.
- (2) There is to be a Racecourse Development Committee (**the Committee**) consisting of 3 persons appointed by the Minister.
- (3) There is to be paid to the credit of the RDF:
  - (a) any amounts repaid, or received as interest, in respect of any loans made from the RDF (including loans made from the fund under the *Totalizator Act 1916*), and
  - (b) any amount required to be paid into the fund under the *Totalizator Agency Board Privatisation Act 1997* out of the proceeds of sale of TAB Limited under that Act.
- (4) There is to be paid out of the RDF:
  - (a) the costs and expenses incurred by the Committee in carrying out its functions under this Act, and
  - (b) any amounts that are authorised to be paid out of the Fund under subclause (5).
- (5) The Minister may, on the recommendation of the Committee, authorise payments out of the Fund for the following purposes:
  - (a) to provide finance for or towards the making of permanent improvements or the provision of totalizator facilities or the construction or the making of permanent improvements to a training track or to any facilities ancillary thereto which are under the management of a racing club or clubs, whether the totalizator or ancillary facilities are on a racecourse or elsewhere,
  - (b) to re-finance wholly or in part, or to discharge in whole or in part, any liability incurred in the making of permanent improvements or the provision of totalizator facilities or in the construction or in the making of permanent improvements to a training track or to any facilities ancillary thereto which are under the

management of a racing club or clubs, whether the totalizator or ancillary facilities are on a racecourse or elsewhere,

- (c) to discharge wholly or in part any liabilities incurred by or on behalf of a racing club in respect of a racecourse which has ceased to be licensed under the *Racing Administration Act 1998*,
- (d) to assist horse or greyhound trainers to transfer their training activities to premises at or in the vicinity of a training track,
- (e) to meet any expenses of the AJC Principal Club, Greyhound Racing New South Wales or Harness Racing New South Wales that are, in the opinion of the Minister, of a capital nature or to re-finance wholly or in part, or to discharge wholly or in part, any liability incurred in meeting any such expenses,
- (f) such other purposes as may be prescribed by the regulations.

(6) Any payments authorised to be paid under subclause (5) may be made by way of grant or loan and any payment by way of loan may be made subject to such terms and conditions of repayment and at such rate of interest (if any) as are, with the approval of the Minister, agreed upon between the Committee and the person to whom the loan is made.

(7) The Committee may, with the approval of the Minister, enter into agreements or arrangements with any person relating to any matter in respect of which payments may be authorised under subclause (5).

(8) (Repealed)

#### **11A Distribution of Racecourse Development Fund**

(1) In this clause:

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**instrument** means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

**liabilities** means any liabilities, debts and obligations (whether present or future and whether vested or contingent).

**rights** means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent).

**the RDF** means the fund continued by clause 11 as the RDF under this Act.

- (2) On a day appointed by proclamation for the purposes of this clause, the RDF is wound up and the assets, rights and liabilities of the RDF are transferred to such person or persons (as transferee) as the Minister directs by order in writing published in the Gazette.
- (3) When assets, rights and liabilities are transferred under this clause, the following provisions apply:
  - (a) the assets transferred vest in the transferee by force of this clause and without the need for any conveyance, transfer, assignment or assurance,
  - (b) the rights and liabilities transferred become by force of this clause the rights and liabilities of the transferee,
  - (c) all proceedings pending in relation to the transferred assets, rights and liabilities immediately before the transfer are taken to be proceedings pending by or against the transferee,
  - (d) anything done or omitted to be done in relation to the transferred assets, rights or liabilities is (to the extent that it has any force or effect) taken to have been done or omitted to be done by, to or in respect of the transferee,
  - (e) a reference in any instrument (except an instrument exempted from this paragraph by direction of the Minister) made or entered into before the day appointed for the purposes of this clause to the Racecourse Development Fund under the [Totalizator Act 1916](#) or to the RDF under this Act is taken to be a reference to any fund to which the assets, rights and liabilities were transferred,
  - (f) any instrument executed only for a purpose ancillary to or consequential on the operation of this clause or the purpose of giving effect to this clause is not chargeable with stamp duty and is exempt from payment of any fee or charge that would otherwise be payable under any other Act in respect of the registration of the instrument.

## **12 Racing Assistance Fund**

- (1) The Racing Assistance Fund under the [Totalizator Act 1916](#) is continued under this Act. Accordingly, money and assets standing to the credit of the fund under the [Totalizator Act 1916](#) become money and assets standing to the credit of that fund under this Act.
- (2) The Minister may, from time to time, apply any amount standing to the credit of the Racing Assistance Fund:
  - (a) in the payment of contributions or rebates to or on behalf of racing clubs (in accordance with a formula determined by the Minister) towards the costs of controlling race meetings, and

(b) in the payment of contributions to research organisations towards the costs of conducting research into racing animals.

(3) On a day appointed by proclamation for the purposes of this clause, the Racing Assistance Fund is to be wound up and any money or other assets standing to the credit of the fund are to be applied as the Minister directs by order in writing published in the Gazette.

### **13 Interest on overdue tax**

(1) If the due date for the payment of any betting tax is after the commencement of this clause but before the commencement of section 72 (Interest on overdue tax) and the betting tax is not paid by the due date, an additional amount equal to 10% of the amount of betting tax payable becomes immediately due and payable, and on being paid is to be credited to the Consolidated Fund.

(2) The Minister may, if in any particular case the Minister thinks fit to do so, waive the payment of the whole or any part of an additional amount payable under subclause (1) or give time for its payment.

(3) Any amount required to be paid to the Minister under this clause may be recovered in a court of competent jurisdiction as a debt due to the Crown.

### **14 Commercial arrangements with racing bodies**

Each controlling body has such additional powers, authorities, duties and functions as may be necessary or convenient for enabling it to enter into and perform its obligations under the following arrangements:

- (a) commercial arrangements for facilitating the conduct of totalizator betting and other betting activities authorised by this Act and arrangements ancillary to those arrangements,
- (b) commercial arrangements referred to in sections 200D (2A) and 207 (2A) of the *Liquor Act 1982* and section 140 (2A) of the *Registered Clubs Act 1976*,
- (c) arrangements for the giving of financial assistance and support to the racing industry or individual racing clubs, and arrangements ancillary to those arrangements,
- (d) arrangements for the distribution of moneys payable under the arrangements referred to in paragraphs (a) and (b),
- (e) arrangements with the State in connection with the restructuring and reorganisation of the racing industry consequent on the enactment of this Act and the *Totalizator Agency Board Privatisation Act 1997*.

### **15 Power of controlling bodies to give directions**

- (1) Each controlling body has power to give the racing clubs for which it is responsible such directions as the controlling body considers to be necessary or desirable for the purpose of enabling it to exercise its rights and perform its obligations under, and otherwise to give effect to, arrangements referred to in clause 14.
- (2) A contract under seal is taken to exist between each controlling body and the racing clubs for which it is responsible, under which each racing club agrees to comply with the directions given to the racing club under this clause.
- (3) Each controlling body must exercise its powers under this clause to give directions to the racing clubs for which it is responsible so as to ensure that the arrangements referred to in clause 14 are carried into effect.

### **16 Exemption from stamp duty and registration fees and charges**

- (1) The Minister may, by direction in writing, grant an exemption under this clause for any instrument that the Minister is satisfied has been executed only for the purpose of or in the course of giving effect to arrangements referred to in clause 14 for facilitating the restructuring and reorganisation of the racing industry consequent on the enactment of this Act and the *Totalizator Agency Board Privatisation Act 1997*.
- (1A) This clause applies to an arrangement under section 43A, and to any new arrangement under section 43 (2) as referred to in section 43A (2), as if the arrangement were an arrangement referred to in clause 14.
- (2) An exemption under this clause has the effect that the instrument for which it is granted is not chargeable with stamp duty and is exempt from payment of any fee or charge that would otherwise be payable under any other Act in respect of the registration of the instrument.
- (3) An exemption is not to be granted under this clause except with the approval of the Treasurer.

## **Part 3 Provision consequent on enactment of *Intergovernmental Agreement Implementation (GST) Act 2000***

### **17 Change in betting tax due to GST**

The amendments made to sections 70 and 75 by the *Intergovernmental Agreement Implementation (GST) Act 2000* apply to money that is paid into a totalizator in respect of an event or contingency occurring on or after 1 July 2000.

## **Part 4 Provisions consequent on enactment of *Racing and Totalizator***

## Legislation Amendment Act 2000

### 18 Existing tax liability preserved

The amendment made to section 71 by Schedule 2 [1] to the *Racing and Totalizator Legislation Amendment Act 2000* does not apply to any amount invested before the commencement of that amendment.

### 19 Orders under section 71

Any order made under section 71 and in force immediately before the commencement of Schedule 2 [1] to the *Racing and Totalizator Legislation Amendment Act 2000* is taken to have been made under that section as in force after that commencement and remains in force for the period specified in the order unless sooner revoked.

## Part 5 Provision consequent on enactment of Totalizator Amendment Act 2008

### 20 Removal of 16 per cent cap on commission

To the extent that the amendment made by Schedule 1 [4] to the *Totalizator Amendment Act 2008* removes the 16 per cent cap on commission that a licensee may deduct each financial year from the total amount invested in totalizators conducted by the licensee in that year, the amendment is taken to have commenced on 1 July 2007.