

# NSW Lotteries (Authorised Transaction) Act 2009 No 60

[2009-60]



New South Wales

## Status Information

### Currency of version

Historical version for 3 October 2009 to 1 April 2010 (accessed 23 November 2024 at 5:23)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Note**  
Amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987](#) No 15 once the amendments have taken effect.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 19 March 2010

# NSW Lotteries (Authorised Transaction) Act 2009 No 60



New South Wales

## Contents

<b>Long title</b> .....	4
<b>Part 1 Preliminary</b> .....	4
1 Name of Act .....	4
2 Commencement .....	4
3 Interpretation .....	4
<b>Part 2 The authorised transaction</b> .....	4
4 Authority for transfer of NSW Lotteries assets to private sector .....	4
5 Transfer of NSW Lotteries assets to public sector agencies .....	4
6 Proceeds of transaction .....	5
<b>Part 3 Facilitating the authorised transaction</b> .....	5
7 Treasurer's functions .....	5
8 Transaction companies .....	6
9 Functions of NSW Lotteries and transaction companies .....	6
10 Direction and control of NSW Lotteries and transaction companies .....	7
11 Establishment of Lotteries Assets Ministerial Holding Corporation .....	7
12 Vesting orders .....	8
13 Employee protections .....	8
14 State taxes .....	8
15 Contracts for sale of land .....	9

<b>Part 4 Miscellaneous</b> .....	9
16 Release of information by Auditor-General .....	9
17 Delegation .....	9
18 Act to bind State and other jurisdictions .....	9
19 General relationship of Act with other State legislation.....	9
20 Extraterritorial operation of Act.....	10
21 Construction of Act and instruments so as not to exceed legislative power.....	10
22 Protection of contractual and other obligations.....	11
23 Compensation not payable.....	12
24 Certificate evidence.....	13
25 Regulations.....	13
26 Savings and transitional regulations.....	13
27 Repeal of New South Wales Lotteries Corporatisation Act 1996 No 85.....	14
<b>Schedule 1 Interpretative provisions</b> .....	14
<b>Schedule 2 Corporate conversion of NSW Lotteries</b> .....	17
<b>Schedule 3 Vesting of assets, rights and liabilities</b> .....	18
<b>Schedule 4 Employee protections</b> .....	20
<b>Schedule 5 Amendment of Acts</b> .....	24

# NSW Lotteries (Authorised Transaction) Act 2009 No 60



New South Wales

An Act to provide for the transfer of the business of New South Wales Lotteries Corporation, and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *NSW Lotteries (Authorised Transaction) Act 2009*.

### 2 Commencement

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

### 3 Interpretation

(1) **Key definitions** In this Act:

**authorised transaction** means the transfer of NSW Lotteries assets authorised by Part 2.

**NSW Lotteries** means New South Wales Lotteries Corporation constituted by the *New South Wales Lotteries Corporatisation Act 1996*.

**NSW Lotteries assets** means assets, rights and liabilities of NSW Lotteries.

(2) **Other interpretative provisions** Expressions used in this Act that are defined in Schedule 1 have the meanings set out in that Schedule.

## Part 2 The authorised transaction

### 4 Authority for transfer of NSW Lotteries assets to private sector

This Act authorises the transfer to the private sector of any NSW Lotteries assets.

### 5 Transfer of NSW Lotteries assets to public sector agencies

This Act authorises the transfer of any NSW Lotteries assets to one or more public sector

agencies.

## **6 Proceeds of transaction**

- (1) The proceeds of the transfer of NSW Lotteries assets to the private sector pursuant to the authorised transaction (***the transaction proceeds***) belong to and are payable directly to the State.
- (2) The transaction proceeds paid to the State are to be paid into the Consolidated Fund.
- (3) The following deductions are authorised to be made from the transaction proceeds:
  - (a) deduction of such amounts as the Treasurer approves to repay debt and satisfy other liabilities of a public sector agency in respect of NSW Lotteries assets transferred for the purposes of the authorised transaction,
  - (b) deduction of such amounts as the Treasurer approves to reimburse public sector agencies for payments made by them in respect of any tax, duty, fee or charge imposed by any Act or law of the State or any other jurisdiction in connection with a transaction arrangement,
  - (c) deduction of such amounts as the Treasurer approves to satisfy any liability of a public sector agency arising under or in connection with a transaction arrangement,
  - (d) deduction of such amounts as the Treasurer approves to meet expenses reasonably incurred by public sector agencies for the purposes of the authorised transaction.
- (4) The transaction proceeds do not include any amount certified by the Treasurer to have been paid to a public sector agency as a tax, duty, fee or charge imposed by any Act or law of the State in connection with a transaction arrangement.
- (5) The deductions authorised to be made from the transaction proceeds may be made before payment of the transaction proceeds into the Consolidated Fund or may be made by payment from the Consolidated Fund.
- (6) The requirements of this section do not affect the validity of a transaction arrangement.

## **Part 3 Facilitating the authorised transaction**

### **7 Treasurer's functions**

The Treasurer has and may exercise all such functions as are necessary or convenient for the purposes of the authorised transaction. The functions conferred on the Treasurer by any other provision of this Act do not limit the Treasurer's functions under this section.

## **8 Transaction companies**

- (1) The Treasurer may for the purposes of the authorised transaction establish, or direct the establishment of, companies as **transaction companies** in any of the following ways:
  - (a) the formation or acquisition by or on behalf of the State or a SOC of a company limited by shares, so that all the issued shares in the company are held by or on behalf of the State or a SOC (or both),
  - (b) the formation or acquisition of a company as a wholly owned subsidiary company of a transaction company,
  - (c) the conversion of NSW Lotteries into a company limited by shares as provided by Schedule 2.
- (2) A transaction company that is a public sector agency may be converted from one kind of company to any other kind of company.
- (3) Except by express agreement with the Treasurer:
  - (a) a transaction company is not and does not represent the State, and
  - (b) the debts, liabilities and obligations of a transaction company are not guaranteed by the State.
- (4) The Treasurer may act for or on behalf of the State, a SOC or a transaction company that is a public sector agency in connection with the rights, privileges and benefits, and the duties, liabilities and obligations of the State, the SOC or the transaction company as the holder of shares or other securities in a transaction company.
- (5) Shares and other securities in a transaction company that is a public sector agency may be issued, sold or transferred in accordance with the directions of the Treasurer.
- (6) The Treasurer may on behalf of the State, a SOC or a transaction company that is a public sector agency enter into and carry out transaction arrangements for the issue, sale or transfer of shares and other securities in a transaction company.

## **9 Functions of NSW Lotteries and transaction companies**

- (1) NSW Lotteries and any transaction company have and may exercise all such functions as are necessary or convenient for the purposes of the authorised transaction.
- (2) The functions conferred by this section are in addition to any other functions that NSW Lotteries or a transaction company has apart from this section and those other functions do not prevent or otherwise limit the exercise of the additional functions conferred by this section.
- (3) The Treasurer may act for and on behalf of and in the name of NSW Lotteries or any

transaction company (while it is a public sector agency) in the exercise of any of its functions for the purposes of the authorised transaction.

#### **10 Direction and control of NSW Lotteries and transaction companies**

- (1) NSW Lotteries and any transaction company (while it is a public sector agency) are subject to the direction and control of the Treasurer in the exercise of any of their functions for the purposes of the authorised transaction.
- (2) The Treasurer may give directions for the purposes of the authorised transaction to NSW Lotteries and to any transaction company, and to the directors and other officers of NSW Lotteries or a transaction company. Any such directions must be complied with by NSW Lotteries, the transaction company or the directors or other officers concerned.
- (3) Directions to a transaction company (or its directors and other officers) can only be given and are only required to be complied with while the transaction company is a public sector agency.
- (4) The power to give directions under this section extends to directions with respect to the way in which NSW Lotteries or a transaction company is to conduct its business and other affairs.
- (5) Action taken by NSW Lotteries to comply with a direction of the Treasurer under this Act does not require the approval of the voting shareholders or portfolio Minister of NSW Lotteries.
- (6) Anything done or omitted to be done by a director or other officer of NSW Lotteries or a transaction company in complying with a direction given by the Treasurer under this Act does not subject the director or officer personally to any action, liability, claim or demand.
- (7) The provisions of this section are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act.

#### **11 Establishment of Lotteries Assets Ministerial Holding Corporation**

- (1) There is constituted by this Act a corporation with the corporate name of the Lotteries Assets Ministerial Holding Corporation.
- (2) The affairs of the Corporation are to be managed by the Treasurer who may authorise another Minister to exercise functions in relation to particular assets, rights and liabilities.
- (3) Any act, matter or thing done in the name of, or on behalf of, the Corporation by the Treasurer or a Minister authorised by the Treasurer, or with the authority of the Treasurer or any such Minister, is taken to have been done by the Corporation.

- (4) The Corporation has the functions conferred or imposed on it by or under this or any other Act.
- (5) The functions of the Corporation are:
  - (a) to hold, on behalf of the Crown, NSW Lotteries assets acquired by it or transferred to it by or under this or any other Act, and
  - (b) to carry on any activities or business that relate to any NSW Lotteries assets held by it, including demanding, collecting and receiving charges, levies, rates, royalties and fees, and
  - (c) such other functions for the purposes of the authorised transaction as may be prescribed by the regulations.

## 12 Vesting orders

The Treasurer may make vesting orders under Schedule 3 for the purposes of the authorised transaction.

## 13 Employee protections

Schedule 4 contains provisions relating to the transfer of employees of NSW Lotteries for the purposes of the authorised transaction.

## 14 State taxes

- (1) In this section:

**relevant matter** means any of the following:

- (a) the transfer of NSW Lotteries assets for the purposes of the authorised transaction,
- (b) a vesting of assets, rights or liabilities by operation of Schedule 3 (Vesting of assets, rights and liabilities) and anything certified by the Treasurer as having been done in consequence of such a vesting (for example, the transfer or registration of an interest in land),
- (c) the issue, disposal or purchase of shares or other securities in a company for the purposes of the authorised transaction,
- (d) any matter connected with the corporate conversion of NSW Lotteries for the purposes of the authorised transaction,
- (e) such other matters for the purposes of the authorised transaction as may be prescribed by the regulations.

**State tax** means application or registration fees, duty under the [Duties Act 1997](#) or any other tax, duty, fee or charge imposed by any Act or law of the State.



- (2) State tax is not payable by a public sector agency in relation to a relevant matter.
- (3) State tax is not payable by a person or body (other than a public sector agency) in relation to a relevant matter to such extent (if any) as the Treasurer may direct by order in writing, either generally or in a particular case.
- (4) An order may be made by the Treasurer under this section before or after the liability to pay the State tax concerned accrues.
- (5) The Treasurer must give a copy of an order under this section to the Chief Commissioner of State Revenue.

## **15 Contracts for sale of land**

Section 52A (Contracts for sale of land) of the *Conveyancing Act 1919* does not apply to a contract for the sale of land that is entered into for the purposes of the authorised transaction.

## **Part 4 Miscellaneous**

### **16 Release of information by Auditor-General**

Section 38 (Secrecy) of the *Public Finance and Audit Act 1983* does not apply to or in respect of a report or communication that the Treasurer authorises the Auditor-General to make to a person for the purposes of the authorised transaction.

### **17 Delegation**

The Treasurer may delegate to the Secretary of the Treasury, or to any other officer of the Government Service prescribed by the regulations, any function of the Treasurer under this Act except this power of delegation.

### **18 Act to bind State and other jurisdictions**

- (1) This Act binds the State and, in so far as the legislative power of the Parliament of New South Wales permits, the other States, the Territories and the Commonwealth.
- (2) Without limiting subsection (1), this Act has effect despite any privilege or immunity of the Crown in any of its capacities.
- (3) This Act does not make any State or Territory, the Commonwealth, or the Crown in any of its capacities, liable to be prosecuted for an offence.
- (4) A reference in this section to a State, Territory or the Commonwealth includes a reference to the Government of the State, Territory or Commonwealth.

### **19 General relationship of Act with other State legislation**

- (1) None of the following provisions operate to prevent, restrict or otherwise limit the

carrying out of the authorised transaction or the exercise of a function for the purposes of the authorised transaction:

- (a) any provision of the *State Owned Corporations Act 1989* or the *New South Wales Lotteries Corporatisation Act 1996*,
- (b) any provision of the constitution of NSW Lotteries or a subsidiary of NSW Lotteries.

- (2) In the event of any inconsistency between the provisions of this Act or the regulations and a provision of any other State legislation that is prescribed by the regulations as an inconsistent provision for the purposes of this section, the provisions of this Act or the regulations (as the case may be) prevail to the extent of the inconsistency.

## **20 Extraterritorial operation of Act**

- (1) It is the intention of the Parliament of New South Wales that the operation of this Act should, as far as possible, include operation in relation to the following:
  - (a) things situated in or outside the territorial limits of the State,
  - (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of the State,
  - (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another State, a Territory, the Commonwealth or a foreign country.
- (2) Without limiting subsection (1), it is the intention of the Parliament of New South Wales that the provisions of this Act have an operation in relation to the things, acts, transactions and matters referred to in that subsection even if the rules of private international law (whether at general law or as provided by legislation) would require the application of a law other than this Act instead of the provisions of this Act.

## **21 Construction of Act and instruments so as not to exceed legislative power**

- (1) Unless a contrary intention appears, if a provision of this Act or an instrument made under this Act:
  - (a) would, apart from this section, have an invalid application, but
  - (b) also has at least one valid application,it is the intention of the Parliament of New South Wales that the provision is not to have the invalid application, but is to have every valid application.
- (2) Despite subsection (1), the provision is not to have a particular valid application if:
  - (a) apart from this section, it is clear, taking into account the provision's context and the purposes or objects underlying this Act, that the provision was intended to

have that valid application only if every invalid application, or a particular invalid application, of the provision had also been within the legislative power of the Parliament of New South Wales, or

(b) the provision's operation in relation to that valid application would be different in a substantial respect from what would have been its operation in relation to that valid application if every invalid application, or a particular invalid application, of the provision had been within the legislative power of the Parliament of New South Wales.

(3) Subsection (2) does not limit the cases in which a contrary intention may be taken to appear for the purposes of subsection (1).

(4) This section is in addition to, and not in derogation of, section 31 of the [Interpretation Act 1987](#).

(5) In this section:

**application** means an application in relation to:

- (a) one or more particular persons, things, matters, places, circumstances or cases, or
- (b) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases.

**invalid application**, in relation to a provision, means an application because of which the provision exceeds the legislative power of the Parliament of New South Wales.

**valid application**, in relation to a provision, means an application which, if it were the provision's only application, would be within the legislative power of the Parliament of New South Wales.

## 22 Protection of contractual and other obligations

(1) This section applies to the following:

- (a) the operation of this Act (including any order under this Act and anything done or omitted to be done under or for the purposes of this Act),
- (b) the transfer of NSW Lotteries assets for the purposes of the authorised transaction,
- (c) the entering into or performance of obligations under a transaction arrangement by a public sector agency,
- (d) a disclosure of information by, on behalf of or with the consent of a public sector agency for the purposes of the authorised transaction.

(2) None of the matters or things to which this section applies are to be regarded as:

- (a) a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) a breach of any instrument (including, without limitation, any provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities) or as requiring any act to be done under an instrument, or
  - (c) giving rise to any right or remedy by a party to a contract or other instrument, or as causing or permitting the termination of, or exercise of rights under, any contract or other instrument, or
  - (d) an event of default under any contract or other instrument, or
  - (e) giving rise to a breach of or an offence against a provision of an Act that prohibits or restricts the disclosure of information, or
  - (f) releasing a surety or other obligee wholly or in part from an obligation.
- (3) This section does not affect the rights and obligations of the parties to a transaction arrangement in respect of the performance of obligations under the transaction arrangement.
- (4) In this section:

***instrument*** means an instrument (other than an instrument made under this Act) or any other document 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, process or other instrument issued by a court or tribunal.

### **23 Compensation not payable**

- (1) Compensation is not payable by or on behalf of the State:
- (a) because of the enactment or operation of this Act, or for any consequence of that enactment or operation, or
  - (b) because of any statement or conduct relating to the enactment of this Act.
- (2) This section does not extend to compensation payable under a transaction arrangement to a party to the transaction arrangement in connection with the performance of obligations under the transaction arrangement.
- (3) In this section:

***compensation*** includes damages or any other form of monetary compensation.

***conduct*** includes any act or omission, whether unconscionable, misleading, deceptive or otherwise.

***operation of this Act*** includes the operation of any notice or order under this Act

and any agreement entered into under or for the purposes of this Act.

**statement** includes a representation of any kind:

- (a) whether made verbally or in writing, and
- (b) whether negligent, false, misleading or otherwise.

**the State** means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes a public sector agency and an officer, employee or agent of the Crown or a public sector agency.

## 24 Certificate evidence

A certificate purporting to be signed by the Treasurer or an officer prescribed by the regulations certifying that an order specified or referred to in the certificate is an order made by the Treasurer under a specified provision of this Act is admissible in evidence in any legal proceedings and is evidence of the matters certified.

## 25 Regulations

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.

## 26 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) For the avoidance of doubt, any such provision may, if the regulations so provide, have effect despite any specified provision of this Act.
- (3) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, 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.

## 27 Repeal of New South Wales Lotteries Corporatisation Act 1996 No 85

The *New South Wales Lotteries Corporatisation Act 1996* is repealed.

### Schedule 1 Interpretative provisions

(Section 3)

#### 1 Definitions

In this Act:

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

**authorised transaction**—see section 3.

**corporate conversion**, in relation to NSW Lotteries, means the registration of NSW Lotteries as a company under the Corporations Act.

**Corporations Act** means the *Corporations Act 2001* of the Commonwealth.

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

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

**general law** means the common law and equity (as modified from time to time by legislation).

**legislation** includes:

- (a) any statute of a legislature (whether enacted or made in Australia or elsewhere), and
- (b) any proclamation, regulation, rule, by-law, order or any other kind of subordinate legislation (however described) made under the authority of a statute (whether enacted or made in Australia or elsewhere).

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

**Lotteries Assets Ministerial Holding Corporation** or **the Corporation** means the Lotteries Assets Ministerial Holding Corporation constituted by this Act.

**NSW Lotteries**—see section 3.

**NSW Lotteries assets**—see section 3.

**private sector** means any person other than a public sector agency.

**Note—**

A person who is a public sector agency of another jurisdiction is a private sector person for the purposes of this Act.

**public sector agency** means any of the following:

- (a) the State (including the Crown in right of the State),
- (b) a Minister,
- (c) NSW Lotteries,
- (d) the Ministerial Holding Corporation constituted by the [State Owned Corporations Act 1989](#),
- (e) the Lotteries Assets Ministerial Holding Corporation,
- (f) a public authority of the State,
- (g) a SOC,
- (h) any other person acting on behalf of the State (or the Crown in right of the State),
- (i) a transaction company, but only while all the shares in the transaction company are held by or on behalf of the State or a SOC or the transaction company is a subsidiary of another transaction company all the shares in which are held by or on behalf of the State or a SOC.

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

**SOC** means a State owned corporation within the meaning of the [State Owned Corporations Act 1989](#).

**State legislation** means any legislation of the State.

**transaction arrangement** means a transaction, agreement or other arrangement entered into by a public sector agency for the purposes of the authorised transaction.

**transaction company** means a company established as a transaction company pursuant to this Act.

## **2 Functions for the purposes of the authorised transaction**

For the purposes of this Act, any act, matter or thing is done or has effect for the purposes of the authorised transaction if it is done or has effect for the purpose of effecting or facilitating the authorised transaction or is done or has effect for any purpose that is ancillary or incidental to or consequential on the authorised transaction.

### 3 Transfer of NSW Lotteries assets—interpretation

- (1) When this Act authorises the transfer of NSW Lotteries assets to the private sector it is authorising any transaction, arrangement or other action that results in NSW Lotteries assets becoming vested in one or more persons in the private sector.
- (2) The following are examples of the ways in which NSW Lotteries assets can be transferred to the private sector:
  - (a) direct sale to the private sector,
  - (b) sale to the private sector of a transaction entity,
  - (c) any other transaction whereby any one or more persons in the private sector becomes an owner of NSW Lotteries assets.
- (3) The transfer of NSW Lotteries assets to the private sector does not require a transfer of NSW Lotteries assets by or from NSW Lotteries and could, for example, be effected by the corporate conversion of NSW Lotteries (to establish a transaction company) and the transfer of shares in the transaction company to the private sector.
- (4) In this clause:

**entity** includes a transaction company.

**sale** of an entity includes a sale of securities in the entity.

**transaction entity** means:

- (a) an entity that holds NSW Lotteries assets or into which NSW Lotteries is converted, or
- (b) an entity that is the holding company of an entity referred to in paragraph (a), or
- (c) an entity that has control (within the meaning of the Corporations Act) of an entity referred to in paragraph (a), or
- (d) any other entity the sale of which to the private sector results in NSW Lotteries assets being vested in the private sector.

### 4 Words and expressions defined in Corporations Act

Words and expressions used in this Act that are defined in section 9 of the Corporations Act have the same meanings as in that section, except in so far as they are defined differently in this Act or the context or subject-matter otherwise indicates or requires.

### 5 Notes

Notes included in this Act do not form part of this Act.



## Schedule 2 Corporate conversion of NSW Lotteries

(Section 8)

### 1 Direction for corporate conversion of NSW Lotteries

The Treasurer may direct by order in writing (**a corporate conversion direction**) that NSW Lotteries be converted into a company limited by shares of a specified type.

### 2 Application for conversion to company

- (1) If a corporate conversion direction is given, NSW Lotteries is authorised to apply to be registered under Part 5B.1 of the Corporations Act as a company limited by shares of the type specified in the direction.
- (2) The Treasurer can certify that the provisions of this Act have been complied with concerning the transfer of the incorporation of NSW Lotteries to the Corporations Act, and such a certificate is conclusive evidence in any proceedings before a court or tribunal that all the requirements of this Act have been complied with concerning the transfer of the incorporation of NSW Lotteries to the Corporations Act.
- (3) The Treasurer's certificate under this clause cannot be challenged, reviewed or called into question in proceedings before any court or tribunal.

### 3 Effect of conversion

- (1) The following provisions are taken to have had effect immediately before NSW Lotteries is registered as a company under the Corporations Act:
  - (a) NSW Lotteries ceases to be a statutory State owned corporation for the purposes of the *State Owned Corporations Act 1989* or any other State legislation,
  - (b) the voting shareholders (within the meaning of the *State Owned Corporations Act 1989*) of NSW Lotteries cease to be members of the corporation,
  - (c) the board of directors of NSW Lotteries is dissolved and each member (including any acting member) of the board ceases to hold office as such,
  - (d) any person who holds a statutory office of NSW Lotteries ceases to hold that office, subject to Schedule 4 (Employee protections),
  - (e) any person who ceases to be a member of NSW Lotteries or to hold an office because of the operation of this subclause is not entitled to any compensation for the loss of that membership or office.
- (2) Nothing in this clause prevents any person from becoming an officer of the company into which NSW Lotteries is being converted in accordance with its constitution and the provisions of the Corporations Act.

- (3) NSW Lotteries becomes a transaction company for the purposes of this Act only when it is registered as a company under the Corporations Act.

## Schedule 3 Vesting of assets, rights and liabilities

(Section 12)

### 1 Definitions

In this Schedule:

**transferee** means the person or body in whom any assets, rights or liabilities are vested by a vesting order.

**transferor** means the person or body from whom any assets, rights or liabilities are divested by a vesting order.

**vesting order**—see clause 2.

### 2 Making of vesting order

The Treasurer may, by order (**a vesting order**), vest assets, rights and liabilities of NSW Lotteries or a transaction company in a person specified in the order as the transferee.

### 3 Vesting of assets, rights and liabilities in transferee

- (1) When any assets, rights or liabilities are vested by a vesting order, the following provisions have effect (subject to the vesting order):
- (a) the assets vest in the transferee by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,
  - (b) the rights and liabilities become, by virtue of this clause, the rights and liabilities of the transferee,
  - (c) all proceedings relating to the assets, rights or liabilities pending by or against the transferor are taken to be proceedings pending by or against the transferee,
  - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities by, to or in respect of the transferor is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
  - (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to those assets or liabilities but subject to the regulations), to be read as, or as including, a reference to the transferee.
- (2) No attornment to the transferee by a lessee from the transferor is required.

#### **4 Terms and conditions of vesting**

A vesting order may be made on such terms and conditions as are specified in the order.

#### **5 Consideration for vesting**

A vesting order may specify the consideration for which a vesting to which it applies is made and the value or values at which assets, rights or liabilities are vested.

#### **6 Date of vesting**

A vesting order takes effect on the date it is made or on such other date as may be specified in the order.

#### **7 Vesting of interests in land**

- (1) A vesting order may vest an interest in respect of land vested in the transferor without vesting the whole of the interests of the transferor in that land.
- (2) If the interest vested is not a separate interest, the order operates to create the interest vested in such terms as are specified in the order.
- (3) This clause does not limit any other provision of this Schedule.

#### **8 Confirmation of vesting**

- (1) The Treasurer may by order in writing confirm a vesting of particular assets, rights or liabilities by operation of this Schedule.
- (2) Such an order is evidence of that vesting.

#### **9 Determinations by Treasurer**

For the purposes of the making of a vesting order, the Treasurer may determine whether or not particular assets, rights or liabilities comprise assets, rights or liabilities of NSW Lotteries or a transaction company at a particular time, and such a determination is conclusive as to the matters determined.

#### **10 Certification to registration authorities**

- (1) In this clause:

**registration authority** means a person or body that has functions under any law in connection with the keeping of a register in respect of assets, rights or liabilities.

- (2) A public sector agency that is the transferee or transferor under a vesting order may lodge with a registration authority a certificate certifying as to such information as may reasonably be required by the registration authority to enable the registration authority to exercise any function of the authority arising in connection with the vesting of any asset, right or liability pursuant to the vesting order.

- (3) Such a certificate is to be accepted and acted upon by the registration authority and, despite any other law, the registration authority is not entitled to require that the information concerned be provided to it in any particular form or in any particular manner.
- (4) No fee or charge is payable by the transferee to a registration authority for or in respect of the exercise of any function by the registration authority in connection with the vesting of an asset, right or liability by a vesting order.

## 11 Evidence of orders and certificates

A document purporting to be a vesting order or an order or certificate given under a provision of this Schedule is, unless the contrary is established, taken to be such an order or certificate and to have been properly made or given.

## 12 Public sector accounting policies

The Treasurer may give directions to public sector agencies for or with respect to accounting policies to be applied by public sector agencies in connection with the transfer between public sector agencies of assets, rights and liabilities of NSW Lotteries or a transaction company for the purposes of the authorised transaction (in place of public sector accounting policies that would otherwise be applicable in respect of any such transfer).

# Schedule 4 Employee protections

(Section 13)

## 1 Definitions

In this Schedule:

**contract employee** means an employee of NSW Lotteries whose employment is under an individual contract of employment.

**permanent employee** means an employee of NSW Lotteries whose employment is in a category of employment that is described in the relevant award as permanent employment.

**relevant award** means:

- (a) *New South Wales Lotteries Corporation (Salaries, Allowances and Conditions of Employment) 2008 Award* of the Industrial Relations Commission, or
- (b) any award, agreement or industrial instrument (under a law of the State or of the Commonwealth) to which NSW Lotteries is a party and that is expressed to cover employees of NSW Lotteries, to the extent that it replaces or supersedes the Award referred to in paragraph (a).

**temporary employee** means an employee of NSW Lotteries whose employment is in a category of employment that is described in the relevant award as temporary employment.

**transaction completion** means the day certified by the Treasurer by order in writing as the day on which the authorised transaction is completed.

**transferred employee** means an employee of NSW Lotteries whose employment is transferred under this Schedule.

## 2 Transfer of employees

- (1) The Treasurer may by order in writing transfer the employment of an employee of NSW Lotteries to the employment of a Department of the Public Service or to the employment of an employer in the private sector.
- (2) A transaction company is considered to be an employer in the private sector for the purposes of this Schedule even while it is a public sector agency.
- (3) A person who is a permanent employee or temporary employee of NSW Lotteries may decline to be transferred to employment in the private sector, in which case the employee may only be transferred under this Schedule to the employment of a Department of the Public Service.
- (4) The employer to whose employment an employee is transferred under this Schedule is the **new employer**.

## 3 Employment protection for employees transferred to private sector

- (1) The employment of a transferred employee with the new employer in the private sector is to be on the same terms and conditions as applied to the employee under the relevant award or the employee's contract of employment immediately before the transfer of employment.
- (2) Those terms and conditions cannot be varied during the employment guarantee period for the transferred employee except by agreement entered into by or on behalf of the transferred employee.
- (3) The employment of a transferred employee with the new employer cannot be terminated by the new employer during the employment guarantee period, except:
  - (a) for serious misconduct, or
  - (b) pursuant to the proper application of reasonable disciplinary procedures, or
  - (c) pursuant to a direction in respect of which section 57 (Power to terminate employment of key employee at Minister's direction) of the [Public Lotteries Act 1996](#) applies, or

(d) by agreement with the employee.

(4) The **employment guarantee period** for a transferred employee is:

- (a) for permanent employees—the period of 3 years after the transaction completion, and
- (b) for temporary employees—the remainder of the employee’s current term of employment (as specified in the contract under which the employee was engaged as a temporary employee) immediately before the transaction completion or the period of 3 years after the transaction completion, whichever period ends first, and
- (c) for contract employees—there is no employment guarantee period for contract employees.

**Note—**

The employment of a transferred employee who is a contract employee remains governed by the contract of employment.

#### **4 Employment protection for employees transferred to Public Service**

- (1) The employment of a person who is transferred to a Department under this Schedule is to be on the same terms and conditions as applied to the employee under the relevant award immediately before the transfer, subject to this clause.
- (2) The employment of a transferred employee with the new employer is to be managed in accordance with any relevant public sector policy (an **excess employee policy**) applicable to excess employees of Departments, and for that purpose the employee is to be treated as an employee declared excess by the Department to which the employee is transferred on the basis that the employee’s substantive position in the Department has been deleted.
- (3) The terms and conditions of employment of the transferred employee cannot be varied for 12 months after the employee becomes an employee of the new employer except by agreement with the employee or in accordance with an excess employee policy.
- (4) This clause does not operate to extend the period of engagement of a temporary employee of NSW Lotteries. A transferred employee who was a temporary employee of NSW Lotteries immediately before the transfer is not entitled to employment as a transferred employee beyond the finishing date of the person’s employment as a temporary employee of NSW Lotteries (as specified in the contract under which the employee was engaged as a temporary employee).

#### **5 Superannuation**

- (1) A transferred employee is entitled to continue as a contributor, member or employee

for the purposes of any superannuation scheme in respect of which he or she was a contributor, member or employee (as an employee of NSW Lotteries) immediately before the transfer of employment and remains so entitled subject to any variation to that entitlement made either by agreement or otherwise in accordance with law.

- (2) The new employer is taken to be an employer for the purposes of any superannuation scheme in respect of which the transferred employee continues as a contributor, member or employee pursuant to an entitlement under this clause.

## **6 Continuity of employment**

The continuity of a transferred employee's employment is taken not to have been broken by the transfer of employment, and service of the employee with NSW Lotteries (including service deemed to be service with NSW Lotteries) that is continuous service up to the time of transfer is deemed for all purposes to be service with the new employer.

## **7 Accrued leave entitlements**

- (1) A transferred employee retains any rights to sick leave, annual leave or long service leave accrued or accruing immediately before the transfer of employment (except accrued leave for which the employee has, on ceasing to be an employee of NSW Lotteries, been paid the monetary value in pursuance of any other entitlement of the employee).
- (2) Nothing in the *Industrial Relations Act 1996*, the *Long Service Leave Act 1955* or the *Annual Holidays Act 1944* prevents payment in connection with the operation of this Act of the monetary value of annual leave or long service leave in lieu of an entitlement to that leave accrued by a person as an employee of a public sector agency before the transfer of the employee's employment under this Schedule.

## **8 Transfer payments**

- (1) A transferred employee is not entitled to receive any payment or other benefit (including in the nature of severance pay or redundancy or other compensation) merely because the employee ceased to be an employee of NSW Lotteries, or the employee's contract of employment with NSW Lotteries was terminated, as a result of the transfer of employment (but without affecting any entitlement to a transfer payment under this clause).
- (2) The Treasurer or another public sector agency may enter into agreements or other arrangements with respect to the making of transfer payments to employees in connection with the transfer of employment of employees under this Schedule or otherwise in connection with the operation of this Act.
- (3) Any such arrangements may provide for the payment of any such transfer payments to be payments on the occasion of the termination of employment with the current employer despite any provision of this Schedule.

## 9 Workplace relations

The Treasurer may negotiate and enter into agreements or industrial instruments concerning workplace relations for or on behalf of the State or a public sector agency in connection with the operation of this Schedule.

## 10 Operation of Commonwealth law

- (1) A provision of this Schedule (including a provision to the extent that it imposes or continues a term or condition of employment) has no effect to the extent of any inconsistency with any provision of the *Workplace Relations Act 1996* or *Fair Work Act 2009* of the Commonwealth or of any instrument under either of those Acts.
- (2) This clause is not intended to limit the operation of section 21 (Construction of Act and instruments so as not to exceed legislative power) of this Act.

## Schedule 5 Amendment of Acts

### 5.1 Public Lotteries Act 1996 No 86

#### [1] Section 3 Objects of Act

Insert at the end of section 3 (b):

, and

- (c) to ensure that, on balance, the State and the community as a whole benefit from the conduct of public lotteries.

#### [2] Section 4 Definitions

Omit the definition of **licence** from section 4 (1). Insert instead:

**licence** means an operator licence or product licence in force under this Act.

#### [3] Section 4 (1)

Insert in alphabetical order:

**operator licence**—see section 10.

**product licence**—see section 10.

#### [4] Section 5A

Insert after section 5:



## 5A Meaning of “close associate”

- (1) For the purposes of this Act, a person is a **close associate** of another 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 lottery business of the other person, 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 management or operation of that 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 lottery business of the other person.

- (2) In this section:

**lottery business** means the business conducted or to be conducted by a person under the authority of an operator licence.

**relevant financial interest**, in relation to a business, means:

- (a) any share in the capital of the business, or
- (b) any entitlement to receive any income derived from the business, or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise, or
- (c) any entitlement to receive any rent, profit or other income in connection with the use or occupation of premises on which the lottery business of the other person is to be carried on (such as, for example, an entitlement of the owner of premises to receive rent as lessor of the premises).

**relevant position** means:

- (a) the position of director, manager or secretary, or
- (b) any other position, however designated, if it is an executive position.

**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.

- (3) A financial institution is not a close associate for the purposes of this section by reason only of having a relevant financial interest in relation to a business.

**[5] Part 3**

Omit the Part. Insert instead:

## **Part 3 Licences to conduct public lotteries**

### **Division 1 Grant of licences**

#### **10 Operator licences and product licences**

- (1) The Minister can grant the following kinds of licences for the purposes of this Act:
  - (a) an **operator licence**, which is a licence to conduct any public lottery for which the licensee holds a product licence,
  - (b) a **product licence**, which is a licence for a particular public lottery that is issued to the licensee under an operator licence to authorise the licensee to conduct the particular public lottery.
- (2) The grant of an operator licence requires the approval of the Treasurer.
- (3) A product licence can only be held by the holder of an operator licence.
- (4) Both kinds of licence can only be held by a corporation or by 2 or more corporations jointly.

#### **11 Considerations for grant of operator licence**

- (1) The Minister is not to grant an operator licence to a person (**the applicant**) unless satisfied that the applicant and each close associate of the applicant is a suitable person to be concerned in or associated with the management and operation of the business (the **lottery business**) to be conducted under the licence.
- (2) For the purpose of determining suitability to be concerned in or associated with the management and operation of a lottery business the Minister is to consider whether:
  - (a) the applicant and each close associate is of good repute, having regard to character, honesty and integrity, and
  - (b) the applicant and each close associate is of sound and stable financial background, and
  - (c) the applicant has, or has arranged, a satisfactory ownership 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 lottery business, and
  - (e) the applicant has or is able to obtain the services of persons who have sufficient experience in the management and operation of a lottery business, and
  - (f) the applicant has sufficient business ability to establish and maintain a successful lottery business, and
  - (g) the applicant has sufficient technical expertise and resources to conduct lotteries of the kind to be conducted as part of the lottery business, and
  - (h) the applicant or any close associate has any business association with any person, body or association who, 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
  - (i) each director, partner, 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 of the lottery business of the applicant is a suitable person to act in that capacity.
- (3) This section does not limit the matters that the Minister can consider in determining suitability to be concerned in or associated with the management and operation of a lottery business and does not limit the matters that the Minister can consider in deciding whether to grant an operator licence to the applicant.

## **12 Considerations for grant of product licence**

- (1) The Minister is not to grant a product licence for the conduct of a game as a public lottery unless satisfied that the game is suitable to be conducted as a public lottery.
- (2) For the purpose of determining the suitability of a game to be conducted as a public lottery the Minister is to consider:
  - (a) whether the proposed rules of the game are appropriate and sufficient to ensure the game's integrity as a public lottery, and
  - (b) whether the harm minimisation and consumer protection measures proposed for the conduct of the game are appropriate and sufficient for the purposes of the conduct of the game as a public lottery, and
  - (c) such other matters as the Minister considers relevant.

### **13 Police assistance**

- (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 NSW Police Force to assist in the effectual administration of this Part. Those arrangements are sufficient authority for the supply of that information.
- (2) The Minister may arrange with the Commissioner of Police for police officers to be seconded or otherwise engaged to assist the Minister in the exercise of functions under this Part.

### **14 Conditions of licence**

- (1) The Minister may impose any conditions on a licence at the time of its issue.
- (2) The Minister may at any time amend the conditions of a licence (by imposing further conditions or by altering or removing existing conditions) but only with the agreement of the licensee. In addition, in the case of an operator licence, the Minister may not amend the conditions of the licence without the approval of the Treasurer.
- (3) The agreement of the licensee is not required for an amendment to the conditions of a licence under Division 2 (Disciplinary action).
- (4) The approval of the Treasurer must be obtained for the inclusion in a licence (either at the time of issue or by subsequent amendment) of a condition specifying the general duty or licence duty, or both, to be paid by the licensee to the Treasurer in accordance with Part 5.

**Note—**

Part 5 provides for the inclusion of conditions in the licence relating to the prize fund for a public lottery, and to the payment of duty by the licensee in connection with the grant of the licence and the conduct of the public lottery.

- (5) The conditions of a licence must at all times include the conditions specified in Schedule 1 as the mandatory conditions of the licence.
- (6) Without limiting the conditions that can be imposed on a licence, any of the conditions specified in Schedule 1 as the optional conditions of a licence can be imposed on a licence.
- (7) A licensee may apply to the Minister for an amendment of the conditions of the licence and any such application is to be made and determined in accordance with any relevant conditions of the licence.

### **15 Licence fees**

The Minister may require the payment of fees for or in connection with the

consideration and determination of an application for the grant or transfer of a licence (including fees to cover reasonable costs incurred in investigating and inquiring into any application or proposal for the grant or transfer of a licence).

## **16 Consideration payment for licence**

- (1) The Minister may, on the occasion of the grant of an operator licence, require the licensee to pay a **consideration payment** in connection with the grant of the licence.
- (2) The Minister may determine that the consideration payment is to be payable wholly in respect of the operator licence or may determine that it is to be apportioned between the operator licence and any one or more of the product licences issued to the licensee when the operator licence is issued.
- (3) The Minister may determine that a consideration payment is to be:
  - (a) a single amount payable on grant of the licence or licences concerned or by a later time determined by the Minister, as consideration for the grant of the licence or licences, or
  - (b) an amount (or variable amounts) payable periodically for the duration of the licence or licences concerned and at the times determined by the Minister, as consideration for the continuation of the licence or licences.
- (4) A requirement or determination of the Minister under this section requires the approval of the Treasurer.
- (5) It is a condition of a licence that the licensee must pay any consideration payment that the licensee is required to pay under this section.
- (6) A consideration payment paid by a licensee pursuant to a requirement under this section is not recoverable on the grounds of, or on any ground arising from, the surrender, cancellation, suspension or transfer of the licence concerned.
- (7) A consideration payment paid to the Minister under this section is to be paid into the Consolidated Fund.

## **17 Term of licence**

- (1) A licence is granted for the term specified in the licence.
- (2) The maximum term for which a licence may be granted is 40 years.

## **18 Exclusive operator licence**

- (1) An operator licence can, if the Minister thinks fit, be granted as an exclusive licence for any period (the **exclusivity period**) up to the term for which the

licence is granted.

- (2) If an operator licence is granted as an exclusive licence, no other operator licence can be granted to be in force during the exclusivity period. This does not affect a licence already in force when the exclusive licence is granted.
- (3) The grant of an exclusive licence does not create an exclusivity period for games of keno, with the result that one or more operator licences limited to a product licence for games of keno can be granted to be in force during the exclusivity period.

## **19 Transfer of licence**

- (1) A licence can be transferred but only with the approval of the Minister given at the Minister's absolute discretion. The Minister must consult with the Treasurer before approving the transfer of a licence.
- (2) A product licence can only be transferred to the holder of an operator licence.
- (3) The Minister is not to approve of the transfer of an operator licence to a person (***the transferee***) unless satisfied that:
  - (a) the transferee and each close associate of the transferee is a suitable person to be concerned in or associated with the management and operation of the business to be conducted under the licence, and
  - (b) there are satisfactory arrangements for the transfer to the transferee of responsibilities for the conduct and completion of any public lottery being conducted at the time of transfer of the licence.
- (4) For the purpose of determining whether the transferee or any close associate of the transferee is a suitable person to be concerned in or associated with the management and operation of the business being conducted under the licence, the Minister is to have regard to the same matters to which the Minister is required to have regard in deciding whether an applicant or close associate of an applicant is a suitable person for that purpose.

## **20 Changes to ownership structure of licensee**

- (1) A significant change in the ownership structure of a licensee must not occur unless the Minister has given consent in writing for the change to occur.
- (2) A significant change in the ownership structure of a licensee is considered to occur when:
  - (a) a person acquires a relevant interest in issued voting shares in the licensee or any holding company of the licensee and the acquisition results in that person's, or some other person's, voting power in the licensee or holding

company increasing from 20% or below to more than 20%, or

- (b) a person becomes a person who controls, or ceases to be a person who controls, the licensee or any holding company of the licensee.
- (3) The regulations may prescribe another percentage to replace 20% in subsection (2).
- (4) Words and expressions used in this section that are defined in section 9 of the *Corporations Act 2001* of the Commonwealth have the same meanings as in that section, except in so far as they are defined differently in this Act or the context or subject-matter otherwise indicates or requires.

## **21 Surrender of licence**

- (1) A licensee may surrender the 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.

## **Division 2 Disciplinary action**

### **21A Review of suitability of licensee**

- (1) The Minister may from time to time determine whether in the opinion of the Minister the licensee under an operator licence and each close associate of the licensee remains a suitable person to be concerned in or associated with the management and operation of the business conducted under the licence.
- (2) For the purpose of determining whether the licensee or any close associate of the licensee is a suitable person to be concerned in or associated with the management and operation of the business conducted under the licence, the Minister is to have regard to the same matters to which the Minister is required to have regard in deciding whether an applicant or close associate of an applicant is a suitable person for that purpose.
- (3) The Minister may require the licensee under an operator licence to pay to the Minister such reasonable costs as may be incurred by or on behalf of the Minister in conducting any inquiry or investigation for the purposes of a determination under this section.
- (4) It is a condition of an operator licence that the licensee must:
  - (a) provide such information (including necessary consents to facilitate the provision of information) as the Minister may reasonably request for the purpose of making a determination under this section, and

- (b) pay the costs that the Minister requires the licensee to pay under this section in connection with any inquiry or investigation conducted for the purposes of a determination under this section.
- (5) The Minister may recover from a licensee (as a debt due to the Crown) any costs that the Minister has required the licensee to pay under this section.
- (6) The Minister may give a certificate as to the amount of the reasonable costs incurred by or on behalf of the Minister in conducting any inquiry or investigation for the purposes of a determination under this section, and such a certificate is in any proceedings evidence of the matter certified.

## **21B Grounds for disciplinary action against licensee**

- (1) Each of the following grounds constitutes grounds for disciplinary action against a licensee under this Division:
  - (a) the licensee or any close associate of the licensee is not a suitable person to be concerned in or associated with the management and operation of the business being conducted under the licence,
  - (b) the licensee has failed to comply with a provision of this Act or the regulations,
  - (c) the licensee or any close associate of the licensee has been convicted of an offence under a relevant gaming law,
  - (d) the licensee or any close associate of the licensee has been convicted in the State or elsewhere of an offence in connection with the management or operation of a public lotteries, gaming or wagering business,
  - (e) the licensee or any close associate of the licensee has been convicted of an offence in the State that is an indictable offence or has been convicted elsewhere than in the State of an offence that, if committed in the State, would be an indictable offence,
  - (f) the licensee has failed to comply with the rules of a public lottery conducted by the licensee,
  - (g) the licensee has failed to comply with a condition of the licence or a direction given to the licensee under Division 2 of Part 7,
  - (h) a significant change in the ownership structure of the licensee (as referred to in section 20) occurs without the consent in writing of the Minister as required by that section,
  - (i) the licensee has failed to use reasonable endeavours to ensure that the licensee's agents comply with this Act, the regulations and any direction



given by the Minister under Division 2 of Part 7,

- (j) the licensee has entered into or authorised a dealing with or in respect of securities of, or other instruments issued by, the licensee without the consent in writing of the Minister that, in the opinion of the Minister, affects the control of the licensee,
- (k) the licensee has become insolvent or an externally-administered body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth,
- (l) the licensee has failed to promptly terminate the employment of a person concerned in the management of the licensee who is convicted of an offence involving fraud or dishonesty,
- (m) the licence was granted as a result of a material false or misleading representation or declaration.

**Note—**

Division 2 of Part 7 enables the Minister to give directions to licensees and other persons engaged in the conduct of public lotteries on a licensee's behalf to protect the integrity of public lotteries and to require the termination of arrangements between licensees and agents and the employment of key employees of licensees for a similar purpose.

- (2) For the purpose of determining whether the licensee or any close associate of the licensee is a suitable person to be concerned in or associated with the management and operation of the business being conducted under the licence, the Minister is to have regard to the same matters to which the Minister is required to have regard in deciding whether an applicant or close associate of an applicant is a suitable person for that purpose.
- (3) In this section:

**relevant gaming law** means any of the following laws:

- (a) *Unlawful Gambling Act 1998*,
- (b) *Lotteries and Art Unions Act 1901*,
- (c) *Gaming Machines Act 2001*,
- (d) *Casino Control Act 1992*,
- (e) any other law (including any law of another State or Territory or of another country) that is prescribed by the regulations as a relevant gaming law for the purposes of this definition.

## **21C Disciplinary action**

- (1) The Minister can take any of the following **disciplinary actions** against a licensee if satisfied that there are grounds for disciplinary action against the licensee under this Division:
  - (a) suspend or cancel the licence (but only if there is a **sufficient ground** for the suspension or cancellation as provided by this Division),
  - (b) amend the conditions of the licence to deal with any act, omission or other circumstance that constitutes a ground for disciplinary action,
  - (c) impose a monetary penalty on the licensee of an amount not exceeding \$250,000,
  - (d) direct the licensee to rectify a matter that relates to any act, omission or other circumstance that constitutes a ground for disciplinary action,
  - (e) censure the licensee for any act, omission or other circumstance that constitutes a ground for disciplinary action.
- (2) A direction to rectify a matter must direct that the matter be rectified within a specified period that is reasonable in the circumstances having regard to the nature of the matter to be rectified.
- (3) The Minister is not to suspend or cancel a licence except with the approval of the Treasurer.
- (4) A monetary penalty imposed under this section may be recovered as a debt due to the Crown in a court of competent jurisdiction.

## **21D Sufficient grounds for suspension or cancellation of licence**

A ground for disciplinary action is a **sufficient ground** for the suspension or cancellation of a licence if (and only if) the Minister is satisfied that:

- (a) the act, omission or other circumstance constituting the ground for disciplinary action is of a serious and fundamental nature and the integrity of the conduct of a public lottery may be jeopardised in a material way or the public interest may be adversely affected in a material way, or
- (b) the ground for disciplinary action is failure by the licensee to pay any duty payable by the licensee under Division 2 of Part 5.

## **21E Procedure for taking disciplinary action**

- (1) Before taking disciplinary action, the Minister must first follow the show cause procedure provided for by this Division and then decide whether there is a

sufficient ground for the taking of the proposed disciplinary action.

- (2) The Minister is not required to follow the show cause procedure before:
  - (a) immediately suspending the licence as authorised by this Division, or
  - (b) censuring a licensee for any act, omission or other circumstance that constitutes a ground for disciplinary action.
- (3) If the licensee fails to comply with a direction (imposed as disciplinary action) to rectify a matter within the period allowed for compliance, the Minister may take any other disciplinary action that the Minister could have taken in respect of the ground for disciplinary action concerned (without again following the show cause procedure for that other disciplinary action).
- (4) The Minister takes disciplinary action by giving notice of the action to the licensee concerned.
- (5) Disciplinary action takes effect when notice of it is given to the licensee or on such later date as may be specified in the notice of disciplinary action.
- (6) The Minister may at any time by notice in writing to the licensee under a suspended licence cancel the remaining period of suspension or reduce the remaining period of suspension by a stated period.

#### **21F Immediate suspension of licence**

- (1) The Minister may suspend a licence immediately if the Minister considers there is a sufficient ground for the suspension or cancellation of the licence and the circumstances are so extraordinary that it is imperative to suspend the licence immediately to ensure that the integrity of the conduct of a public lottery is not jeopardised in a material way or the public interest is not adversely affected in a material way.
- (2) An immediate suspension is effected by giving written notice of the suspension (a **suspension notice**) to the licensee and then following the show cause procedure provided for by this Division.
- (3) The suspension takes effect when the suspension notice is given and continues to have effect until the show cause procedure is completed.

#### **21G Show cause procedure**

- (1) The following procedure is the **show cause procedure** for proposed disciplinary action under this Division:
  - (a) the Minister must give the licensee a show cause notice that requires the licensee to show why the proposed disciplinary action should not be taken,

- (b) the Minister must promptly give each interested person a copy of the show cause notice,
  - (c) the Minister must consider all written representations made during the show cause period by the licensee or any interested person to whom a copy of the show cause notice is given.
- (2) A show cause notice must indicate the following:
- (a) the disciplinary action that the Minister proposes to take,
  - (b) the ground for the proposed disciplinary action and the act, omission or other circumstance constituting the ground for the proposed action,
  - (c) the period (the **show cause period**) within which the licensee must show why the proposed disciplinary action should not be taken.
- (3) The show cause period is to be a period of not less than 21 days after the show cause notice is given.
- (4) An **interested person** is a person who appears to the Minister to have an interest in the licence that may be adversely affected by the proposed disciplinary action. An interested person is only to be given a copy of the show cause notice if the Minister is satisfied that it is appropriate in the circumstances.
- (5) In considering whether it is appropriate to give a copy of the show cause notice to an interested person, the matters to which the Minister may have regard include the following:
- (a) the nature of the person's interest in the licence,
  - (b) whether the licensee's interests may be improperly prejudiced.
- (6) An interested person to whom a copy of the show cause notice is given may make representations about the proposed disciplinary action to the Minister during the show cause period.

## **21H Withdrawal of approval or appointment of agent under conditions of licence**

- (1) The Minister may withdraw the approval or appointment of an agent of a licensee under the conditions of a licence if the Minister is of the opinion that the integrity or apparent integrity of a public lottery conducted by the licensee is likely to be seriously prejudiced because of the criminal record, character or reputation of the agent.
- (2) An agent ceases to be an agent of the licensee if the approval or appointment is

so withdrawn, and any arrangement under which the agent was appointed as the agent of the licensee is taken to be terminated.

- (3) The Minister is not to withdraw the approval or appointment unless the Minister:
  - (a) has given the licensee and the agent notice, in writing, of the proposed withdrawal, and
  - (b) has invited the licensee and the agent to make representations to the Minister, within the period specified in the notice, concerning the proposed withdrawal, and
  - (c) has, after the end of that period, considered any representations so made.
- (4) The withdrawal of the approval or appointment takes effect:
  - (a) on the day that is 14 days after the day on which a notice advising the licensee and the agent of the withdrawal is given to the licensee and the agent by the Minister, or
  - (b) if a later day is specified in the notice—on that day.
- (5) It is taken to be a condition of any arrangement under which a person is appointed as an agent of a licensee that, in the event of the termination of the arrangement because of the withdrawal of an approval or appointment under this section, the licensee does not incur any liability to the agent by reason only of that termination (except to the extent agreed on between the licensee and the agent).

## **21I Completion of public lottery following cancellation or suspension of licence**

- (1) If a licence is suspended or cancelled, the Minister may authorise a person to complete the conduct of any game in a public lottery that was in the course of being conducted when the licence was suspended or cancelled.
- (2) In that event:
  - (a) the person so authorised is taken to be the licensee under the suspended or cancelled licence, and
  - (b) the suspended or cancelled licence is, for the purposes of enabling the completion of the conduct of the public lottery, taken not to have been suspended or cancelled.

## **Division 3 Temporary licences**

### **21J Grant of temporary licence on suspension, cancellation or surrender of**

## **licence**

- (1) Following the suspension, cancellation or surrender of a licence (the **original licence**), the Minister may grant a temporary licence to be in force for the period determined by the Minister.
- (2) The Minister may grant a temporary licence only if satisfied that the proposed licensee and each close associate of the proposed licensee is a suitable person to be concerned in or associated with the management and operation of the business to be conducted under the licence.
- (3) A temporary licence is granted on such terms and conditions as the Minister determines and Division 1 does not apply to a temporary licence.
- (4) A temporary licence:
  - (a) may be extended once only for a period determined by the Minister, and
  - (b) may be cancelled at any time by the Minister, and
  - (c) if granted following the suspension of the original licence, is cancelled by the lifting or expiry of that suspension.
- (5) If a temporary licence (including a temporary licence granted under this subsection) is cancelled or otherwise terminates (other than under subsection (4) (c)), the Minister may grant a further temporary licence under this section.
- (6) The cumulative periods for which a temporary licence may be granted or extended under this section cannot exceed 3 years after the day on which the original licence was cancelled, suspended or surrendered.

## **21K Arrangements with former licensee**

- (1) A temporary licensee may enter into any arrangements that 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.
- (2) The former licensee:
  - (a) must make available to the temporary licensee on reasonable terms any assets of, or under the control of, the former licensee that are reasonably necessary for arrangements under subsection (1), and
  - (b) must use its best endeavours to make available any staff of the former licensee that are reasonably necessary for those arrangements.

Maximum penalty: 100 penalty units.

- (3) In this section:

**former licensee** means the person who was a licensee:

- (a) under the original licence immediately before its cancellation, suspension or surrender, or
- (b) under a temporary licence immediately before its cancellation or other termination.

**[6] Section 23 Approval and publication of rules**

Insert after section 23 (1):

- (1A) The Minister is required to decide whether to approve an amendment of rules in a timely manner and so as to give effect to any condition of the relevant product licence as to the time within which such a decision is to be made.

**[7] Section 27 Prize fund account**

Insert “or section 27A (Unclaimed prizes)” after “conditions of the licence” in section 27 (2).

**[8] Section 27 (3) (b)**

Omit the paragraph. Insert instead:

- (b) in order to make payments in respect of unclaimed prizes or disputed money as authorised or required by or under subsection (9) or section 27A (Unclaimed prizes),

**[9] Section 27 (4) (c)**

Omit the paragraph. Insert instead:

- (c) in order to make payments in respect of unclaimed prizes or disputed money, as authorised or required by or under subsection (9) or section 27A (Unclaimed prizes), that the licensee is unable to make from the fund because of the direction.

**[10] Section 27 (9)**

Omit the subsection. Insert instead:

- (9) The regulations may make provision for or with respect to the disposal of money as to which any dispute has arisen.

**[11] Section 27A**

Insert after section 27:

## **27A Unclaimed prizes**

- (1) The regulations may make provision for or with respect to the time within which claims for unclaimed prizes must be made.
- (2) Unclaimed prizes in a prize fund kept by a licensee are to be paid into the Consolidated Fund as directed by the Minister with the approval of the Treasurer and after consultation with the licensee.
- (3) After an unclaimed prize is paid into the Consolidated Fund any liability to pay the prize to the prize winner becomes a liability of the Crown and payment of the prize to the prize winner is authorised to be made from the Consolidated Fund.

### **[12] Section 32 Irrevocable licence conditions**

Omit the section.

### **[13] Section 37A**

Omit the section. Insert instead:

## **37A Agreements with lotteries authorities of other jurisdictions**

- (1) A licensee may, on such terms as are approved by the Minister, enter into an agreement with a lotteries authority of another jurisdiction with respect to:
  - (a) the administration of a scheme for the conduct of public lotteries among participating jurisdictions, and
  - (b) the manner of making payments to and by the licensee, and
  - (c) related matters.
- (2) In this section:

***another jurisdiction*** means another State, a Territory or another country.

***lotteries authority*** means a person or body who is authorised to conduct public lotteries in another jurisdiction.

***participating jurisdiction*** means New South Wales and any other jurisdiction in which a lotteries authority that is a party to an agreement with a licensee under this section is authorised to conduct public lotteries.



**[14] (Repealed)**

**[15] Section 52 Licensees and agents to inform Minister of changed circumstances**

Omit “his or her” from section 52 (1). Insert instead “the”.

**[16] Section 79A**

Omit the section. Insert instead:

**79A Review by Administrative Decisions Tribunal of certain decisions**

A person may apply to the Administrative Decisions Tribunal for a review of any of the following decisions:

- (a) a decision of the Minister to take disciplinary action against the person under Division 2 of Part 3,
- (b) a decision of the Minister under section 21H to withdraw the approval or appointment of the person as an agent of a licensee under the conditions of a licence.

**[17] Schedule 1**

Insert as Schedule 1:

**Schedule 1 Licence conditions**

(Section 14)

**1 Mandatory conditions of operator licence**

The following conditions are mandatory conditions for an operator licence:

- (a) a condition that provides for the procedure to be followed by the licensee and the Minister in connection with an application by the licensee for a product licence (including providing for the time within which such an application is to be determined),
- (b) a condition that provides for the licensee to be required to demonstrate the integrity of the equipment or systems used by the licensee or agent in connection with the registration or processing of an entry in a public lottery or that otherwise affects the outcome of the public lottery.

**2 Mandatory conditions of product licence**

The following conditions are mandatory conditions for a product licence:

- (a) a condition that provides for the procedure to be followed by the licensee and

the Minister in connection with any application by the licensee for an amendment of the conditions of the licence (including providing for the time within which such an application is to be determined and the determination notified to the licensee),

- (b) a condition that requires the licensee to comply with the rules of the public lottery.

### **3 Optional conditions of licences**

Conditions with respect to any of the following matters are the optional conditions of a licence:

- (a) the approval or appointment of agents by the Minister or any other person,
- (b) the withdrawal by the Minister of any approval or appointment of agents,
- (c) the payment of and accounting for commission,
- (d) the maximum amount or rate of commission,
- (e) the application of and accounting for subscriptions received by the licensee, including the payment of prizes from the subscriptions, the deposit of subscriptions and the accounts to be kept in respect of the subscriptions,
- (f) the authorisation of agents to charge subscribers to a public lottery for providing such ancillary services in connection with subscriptions as may be approved by the Minister,
- (g) the contents of the rules for a public lottery,
- (h) the display, by the licensee and the licensee's agents, of the rules and of other information relating to the conduct of a public lottery,
- (i) the frequency with which a public lottery must or may be conducted by the licensee,
- (j) the form and manner of entry in a public lottery,
- (k) the printing of tickets, rules or other documents relating to the conduct of a public lottery,
- (l) the amount payable in respect of each entry in a public lottery,
- (m) the minimum number of entries that one person may make in one public lottery,
- (n) the maximum number of entries that one person may make in one public lottery,

- (o) in respect of a public lottery conducted by a draw, the attendance at each draw of a person nominated by the Minister,
- (p) the number of entries that may be made in a public lottery, the amount of money prizes and the nature of other prizes,
- (q) the minimum amounts of prizes to be paid in respect of a public lottery,
- (r) the subsidising by the licensee of the prize fund for a public lottery to the extent necessary to enable prizes to be paid at the minimum amounts specified by the conditions,
- (s) the provision by the licensee of a bond or other financial guarantee to ensure payment of the duty, in respect of a public lottery, specified in Part 5,
- (t) 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 public lottery,
- (u) the time or times at which, and the form in which, the information must be furnished to the Minister,
- (v) the auditing of the financial records of the licensee relating to the conduct of a public lottery,
- (w) the conduct of a promotional lottery, being a public lottery conducted by a licensee for the purpose of promoting or marketing the public lottery and for which no subscription or other amount is charged by the licensee or an agent,
- (x) the approval by the Minister of contracts or arrangements, entered into by the licensee or the licensee's employees or agents, or by any other person, for the purpose of conducting a public lottery,
- (y) the approval by the Minister of persons engaged in the repair or maintenance of any device or equipment used in relation to the conduct of a public lottery,
- (z) the security requirements in respect of a public lottery,
- (aa) the approval by the Minister of any electrical or mechanical device or equipment that is used by the licensee or agent in connection with the registration or processing of an entry in a public lottery or that otherwise affects the outcome of the public lottery.

**[18], [19] (Repealed)**

## **5.2 State Owned Corporations Act 1989 No 134**

### **Schedule 5 Statutory SOCs**

Omit “New South Wales Lotteries Corporation”.

## **5.3**

(Repealed)