

# Community Gaming Act 2018 No 60

[2018-60]



New South Wales

## Status Information

### Currency of version

Historical version for 28 September 2020 to 12 January 2023 (accessed 17 July 2024 at 20:15)

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

### Provisions in force

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

### Notes—

- **Does not include amendments by**
  - [Licensing and Registration \(Uniform Procedures\) Amendment Act 2022 No 2](#) (not commenced)
  - [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2022 No 59](#) (not commenced — commences on 13.1.2023)
- **See also**
  - [Statute Law \(Miscellaneous Provisions\) Bill 2021](#)

### 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 26 October 2022

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# Community Gaming Act 2018 No 60



New South Wales

An Act with respect to the conduct of lotteries and other games of chance; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Community Gaming Act 2018*.

### 2 Commencement

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

### 3 Objects of Act

(1) The objects of this Act are as follows—

- (a) to allow the conduct of gaming activities for charitable, social, not-for-profit or trade promotion purposes,
- (b) to ensure that there are reasonable net public benefits obtained from the conduct of gaming activities,
- (c) to ensure the integrity and fairness of permitted gaming activities,
- (d) to assist the ongoing viability of organisations conducting gaming activities that contribute positively to the community,
- (e) to minimise the regulatory burden required to sufficiently protect participants in gaming activities.

(2) This Act seeks to achieve these objects by the following means—

- (a) restricting who may conduct and benefit from gaming activities,
- (b) establishing a principles-based framework for regulating permitted gambling activities according to the level of risk associated with the activities,
- (c) ensuring that the proceeds and profits of permitted gaming activities are applied

to the particular purposes, or go to the persons or organisations, for which the activities are purported to be conducted.

#### 4 Definitions

(1) In this Act—

**authorised officer** means—

- (a) the Secretary, or
- (b) a person for the time being authorised in writing as an authorised officer by the Secretary, or
- (c) a person appointed as an investigator under section 18 of the [Fair Trading Act 1987](#), or
- (d) a police officer.

**authority** means an authority to conduct a permitted gaming activity granted under the regulations.

**body** means an unincorporated body.

**Note—**

A reference to a person in this Act includes a reference to a corporation or other incorporated body (see [Interpretation Act 1987](#), section 21).

**compliance notice**—see section 30 (2).

**conduct** a gaming activity—see section 6.

**Department** means the Department of Finance, Services and Innovation.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**permitted gaming activity** means a gaming activity permitted under section 10 and includes an activity taken under section 7 to be a permitted gaming activity.

**prize** includes any property or services sold or otherwise disposed of by means of a gaming activity.

**property** includes real or personal property.

**Secretary** means—

- (a) the Commissioner for Fair Trading, Department of Finance, Services and Innovation, or
- (b) if there is no person employed as Commissioner for Fair Trading—the Secretary of

the Department.

**Note—**

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

(2) Notes included in this Act do not form part of this Act.

## **5 Gaming activities**

(1) In this Act—

***gaming activity*** means—

- (a) a game of chance or a game partly of skill and partly of chance, or
- (b) without limiting paragraph (a), the award of any prize by lot or on the basis of a chance contingency related to a horse race, sporting event or competition, or
- (c) any activity, event, scheme or other matter prescribed by the regulations for the purposes of this definition as a gaming activity.

***participant*** in a gaming activity means—

- (a) a person who enters or competes in, or otherwise participates in, a gaming activity, or
- (b) a person on behalf of whom another person enters or competes, or otherwise participates, in a gaming activity.

- (2) This Act applies to a gaming activity only if it involves the sale or other disposal of property or services, or a promise to sell or otherwise dispose of property or services, to participants in the activity or at the direction of the participants.
- (3) This Act applies to a gaming activity whether or not consideration is paid by or on behalf of a person to become a participant.
- (4) The regulations may exempt a game, other activity, event, scheme or other matter from being a gaming activity to which this Act, or any provision of this Act, applies.
- (5) Any such exemption may be unconditional or subject to conditions.

## **6 Conduct of gaming activities**

- (1) In this Act, ***conduct*** a gaming activity means conduct or organise the gaming activity, whether alone or with others.
- (2) The following are taken to conduct a gaming activity—
  - (a) each person who authorises the conduct or organisation of a gaming activity as an

officer, a trustee or member of the governing body of an incorporated or unincorporated body,

- (b) a person or body that authorises the conduct or organisation of a gaming activity by an agent, contractor or employee,
- (c) a person who assists in conducting or organising a gaming activity,
- (d) a person or body that solicits or receives any money, property or other benefit in the course of the conduct or organisation of a gaming activity (other than as a prize winner or participant in the gaming activity),
- (e) any other person or body prescribed for the purposes of this section by the regulations.

(3) A person or body does not conduct a gaming activity—

- (a) if the person or body conducts the gaming activity solely as the agent or employee of another person or body that conducts the gaming activity, or
- (b) merely because the person or body gives any money or other benefit in the course of the gaming activity.

## **7 Application of Act to external gaming activities**

- (1) This Act and the regulations apply to a gaming activity in which persons resident in this State participate or can participate that is conducted or proposed to be conducted—
  - (a) outside Australia (whether or not it is lawful in the place where it is conducted or is proposed to be conducted), or
  - (b) in another State or a Territory.
- (2) A gaming activity is taken to be a permitted gaming activity if—
  - (a) it is conducted or proposed to be conducted in another State or a Territory, and
  - (b) it is authorised under a law of that State or Territory that is prescribed by the regulations as a corresponding law for the purposes of this section.

## **Part 2 Regulation of gaming activities**

### **Division 1 General prohibitions**

#### **8 Conduct of gaming activities generally prohibited**

- (1) A person must not conduct a gaming activity.

Maximum penalty—50 penalty units.



- (2) A person must not receive an amount of any money paid for the sale or provision of a ticket or other right to participate in a gaming activity.

Maximum penalty—50 penalty units.

- (3) A person must not sell or offer to sell a ticket or other right to participate in a gaming activity.

Maximum penalty—50 penalty units.

- (4) A person must not print, or make available in electronic form, a ticket or other right to participate in a gaming activity.

Maximum penalty—50 penalty units.

- (5) This section does not apply—

- (a) to or in respect of a permitted gaming activity carried out in accordance with this Act and the regulations, or
- (b) to any act or omission of a participant in a gaming activity if the act or omission is done or omitted to be done solely in that capacity.

## 9 Prohibited advertisements

- (1) A person must not cause to be published any advertisement, notice or other information promoting a gaming activity if the conduct of that activity is prohibited by or under this Act.

Maximum penalty—50 penalty units.

- (2) It is a defence to proceedings against a person who causes an advertisement to be published if the person establishes that the person did not know, and could not reasonably have known, that the gaming activity was prohibited by or under this Act.

- (3) It is a defence to proceedings against a person who causes an advertisement to be published (the ***publisher***) if the person establishes that—

- (a) the advertisement, notice or information was in the form provided (either directly or indirectly) or approved by or on behalf of a person conducting or proposing to conduct the gaming activity, and
- (b) the publisher has not been notified by or on behalf of the Secretary that the publication of the advertisement, notice or information may contravene this section.

- (4) In this section—

***publish*** means disseminate, exhibit, provide or communicate by oral, visual, written, electronic or other means (for example, by newspaper, radio, television, the internet,

cinema, billboards or other media).

## **Division 2 Permitted gaming activities**

### **10 Permitted gaming activities**

- (1) The regulations may make provision for or with respect to the gaming activities that are permitted gaming activities for the purposes of this Act and authorisations to conduct permitted gaming activities.

**Note—**

Exemptions, and conditions attached to them, may vary according to whether a gaming activity is conducted for a charitable, social or other not-for-profit purpose or for a trade promotion purpose.

- (2) Without limiting subsection (1), the regulations may—
  - (a) permit specified gaming activities or specified classes of gaming activities, and
  - (b) permit a gaming activity or class of gaming activities unconditionally or subject to conditions and may require an authority to conduct a gaming activity.
- (3) Nothing in the *Unlawful Gambling Act 1998* or any other law is taken to render unlawful a gaming activity that is a permitted gaming activity.

### **11 Authorities to conduct gaming activities**

- (1) The Secretary may, on application made in accordance with the regulations, grant an authority to conduct a permitted gaming activity.
- (2) The Secretary must not grant an authority to a person unless the Secretary is satisfied—
  - (a) that the person has the qualifications, if any, prescribed by the regulations to hold the authority, and
  - (b) of any other matters prescribed by the regulations for the purposes of this subsection.
- (3) The Secretary must refuse to grant an authority to a person if the Secretary is satisfied that the person is not a fit and proper person to hold the authority.
- (4) The Secretary may have regard to whether it is in the public interest to grant an authority when determining whether or not to grant the authority.
- (5) An authority may be granted unconditionally or subject to conditions and is subject to any conditions imposed by the regulations.
- (6) The Secretary may, by notice in writing given to the holder of an authority, impose a condition on the authority or amend or revoke a condition of the authority (other than a condition imposed by the regulations).

- (7) The Secretary may suspend or cancel an authority on the following grounds—
- (a) the holder has failed to comply with this Act or the regulations,
  - (b) the conduct of the gaming activity does not comply with the requirements of the authority or this Act or the regulations,
  - (c) the Secretary is of the opinion that it is in the public interest to suspend or cancel the authority,
  - (d) other grounds prescribed by the regulations for the purposes of this subsection.
- (8) The regulations may make provision for or with respect to the following—
- (a) the permitted gaming activities for which an authority is required,
  - (b) fees for authorities,
  - (c) the duration of authorities,
  - (d) procedures relating to the proposed suspension or cancellation of an authority,
  - (e) reviews of or appeals against the suspension or cancellation of an authority.
- (9) The regulations may amend Schedule 1 to the *Licensing and Registration (Uniform Procedures) Act 2002* by inserting a reference to this section or a provision of the regulations.

**Note—**

The effect of amending the Schedule is to apply uniform licensing provisions under that Act. The application of the provisions may be varied by regulation under this Act (see section 3 of that Act).

## **12 Prohibited prizes**

- (1) A gaming activity is not a permitted gaming activity if any of the prizes for the activity consist of the following—
- (a) tobacco in any form,
  - (b) a firearm, ammunition, or an imitation firearm, within the meaning of the *Firearms Act 1996*,
  - (c) a prohibited weapon within the meaning of the *Weapons Prohibition Act 1998*,
  - (d) any item or service prescribed by the regulations for the purposes of this section.
- (2) The regulations may provide for exceptional circumstances in which a contravention of subsection (1) does not have the effect that a gaming activity is no longer a permitted gaming activity.

### **13 Entitlement of winner to prize**

- (1) A person or body that conducts a gaming activity must award the winner of each prize in that gaming activity the prize concerned.
- (2) A person or body that contravenes this section is guilty of an offence.  
Maximum penalty—50 penalty units.
- (3) It is a defence to a prosecution for an offence under this section if the person or body did not, after making all reasonable inquiries, award the prize to the winner because the winner could not be located.
- (4) The regulations may specify additional circumstances in which there is a defence to a prosecution for an offence under this section.

### **14 Misappropriation of funds or prizes**

A person is guilty of an indictable offence if the person—

- (a) is concerned in the conduct of a permitted gaming activity or conducts a gaming activity as the agent or employee of a person who is concerned in the conduct of a gaming activity, and
- (b) converts to the person's own use any money raised by means of the gaming activity or any prize connected with the gaming activity.

Maximum penalty—200 penalty units or imprisonment for 5 years, or both.

### **15 Fraudulent conduct of gaming activities**

- (1) A person is guilty of an offence if the person, with intent to defraud, conducts a permitted gaming activity (other than a game partly of skill and partly of chance) so that not all participants in the gaming activity have an equal chance of winning a prize.

Maximum penalty—50 penalty units or imprisonment for 6 months, or both.

- (2) A person is guilty of an offence if the person fraudulently conducts a permitted gaming activity that is a game partly of skill and partly of chance.

Maximum penalty—50 penalty units or imprisonment for 6 months, or both.

### **16 Falsification of records**

A person is guilty of an indictable offence if the person, with intent to defraud or deceive another person—

- (a) alters or falsifies a record relating to a permitted gaming activity, or
- (b) makes or concurs in the making of a false or fraudulent entry in a record relating to a

permitted gaming activity, or

- (c) omits or concurs in omitting a material particular from a record relating to a permitted gaming activity.

Maximum penalty—200 penalty units or imprisonment for 5 years, or both.

### **17 False representations**

A person is guilty of an offence if—

- (a) the person conducts or proposes to conduct a permitted gaming activity, or acts on behalf of a person or body that conducts or proposes to conduct a permitted gaming activity, and
- (b) the person represents to an employee or agent involved in the conduct of the permitted gaming activity that anything required or permitted by or under this Act has been done or that any condition precedent to the conduct of the permitted gaming activity has been complied with, and
- (c) when the representation was made, the person knew that, or was reckless as to whether, the thing had not been done or the condition had not been complied with.

Maximum penalty—50 penalty units or imprisonment for 6 months, or both.

### **18 No double jeopardy**

If an act or omission of a person is an offence against both sections 16 and 17, the person may only be punished for an offence under one of those sections.

## **Part 3 Enforcement**

### **Division 1 Investigation powers**

#### **19 Identity cards for authorised officers**

- (1) The Secretary must issue an authorised officer with an identity card.
- (2) The identity card must—
  - (a) be in the form approved by the Secretary, and
  - (b) contain a recent photograph of the person.
- (3) An authorised officer must not exercise a function conferred by or under this Act unless an identity card has been issued to the authorised officer by the Secretary.
- (4) A person who has ceased to be an authorised officer must not, without reasonable excuse, fail to return to the Secretary, within the period specified by the Secretary in a request for the return of the card, any identity card issued to the person by the

Secretary.

Maximum penalty—10 penalty units.

- (5) This section does not apply to an authorised officer who is the Secretary, a police officer or an investigator appointed under section 18 of the *Fair Trading Act 1987*.

## **20 Identity cards to be shown**

- (1) An authorised officer must—
- (a) carry his or her identity card at all times when exercising a power under this Act to enter premises or a power that may be exercised after entering premises, and
  - (b) produce the identity card if requested to do so by a person in relation to whom the authorised officer is exercising, or about to exercise, the power.
- (2) An investigator appointed under the *Fair Trading Act 1987* complies with this section if the investigator carries and produces the investigator's certificate of identification issued under that Act.
- (3) This section does not apply to a power conferred by a search warrant or to a power exercised by an authorised officer who is the Secretary or a police officer.

## **21 Exercise of investigation powers**

An authorised officer may exercise a power conferred by this Division if the authorised officer reasonably believes that it is necessary to determine whether there has been a contravention of this Act, the regulations or an authority.

## **22 Power of entry**

- (1) An authorised officer may enter premises (other than premises or any part of premises used only for residential purposes) without the occupier's consent and without obtaining a search warrant.
- (2) An authorised officer may enter any premises with the occupier's consent or the authority of a search warrant.

## **23 Times for entry**

- (1) An authorised officer may enter premises under this Division only at any of the following times and after giving the occupier reasonable notice—
- (a) at any reasonable time during the day,
  - (b) at any time at which a gaming activity is being conducted on the premises,
  - (c) at any time the premises are open for entry,

- (d) at any time permitted by the occupier or a search warrant authorising the entry.
- (2) An authorised officer is not required to comply with subsection (1) if the Secretary has certified that, in the circumstances, an authorised officer need not comply with any or all of the requirements of that subsection.
- (3) An authorised officer must comply with any direction of the Secretary as to entry to premises under subsection (2).

#### **24 Powers to do things at premises**

An authorised officer may, at any premises lawfully entered, do any of the following—

- (a) make inquiries of any person employed at the premises,
- (b) require documents to be produced for inspection,
- (c) examine and inspect any documents,
- (d) copy any documents or parts of documents,
- (e) take photos and make recordings (including photographs, audio, video, digital or other recordings) of the premises or anything on the premises,
- (f) seize any documents that the authorised officer reasonably considers relevant to an inquiry under this Part or determining whether there has been a contravention of this Act or the regulations.

#### **25 Provision of information and documents**

- (1) An authorised officer, may, by written notice given to a person, require the person to do one or more of the following within the period specified in the notice—
  - (a) produce, in accordance with the notice, accounts and statements relating to any matter for which a power may be exercised under this Division,
  - (b) provide written answers to questions about any matter for which a power may be exercised under this Division,
  - (c) verify by statutory declaration an account, statement or answer that is produced or provided,
  - (d) attend at a specified time and place and give evidence or produce documents in the person's custody with respect to any matter for which a power may be exercised under this Division,
  - (e) furnish copies of, or extracts from, a document in the person's custody or under the person's control that relates to any matter for which a power may be exercised under this Division.

- (2) The notice must specify a reasonable time for compliance with the notice and may specify the manner in which the accounts, statements or documents are to be produced.
- (3) A person to whom a document or thing is produced under this Division—
  - (a) must provide a receipt for the document or thing, and
  - (b) may make copies of, or take extracts from, the document or thing, and
  - (c) may examine the document or thing, and
  - (d) must make a document or thing available for inspection by any other person who would be entitled to inspect the document if it were not in the possession of the person conducting the inquiry.

## 26 Search warrants

- (1) An authorised officer may apply to an issuing officer for a search warrant if the applicant has reasonable grounds for believing that—
  - (a) a provision of this Act or the regulations has been or is being contravened on premises, or
  - (b) there are on the premises documents relevant to an inquiry under this Part and a person having custody or control of the documents has failed to comply with a requirement under this Act to produce those documents or to provide copies of them or extracts from them.
- (2) An issuing officer to whom an application for a search warrant is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant and any other person named in the warrant—
  - (a) to enter the premises concerned, and
  - (b) to search the premises for evidence of a contravention of this Act or the regulations.
- (2A) A police officer may accompany an authorised officer who enters premises and searches for evidence under a search warrant as if the police officer were named in the warrant.
- (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—

**issuing officer** means an authorised officer within the meaning of the *Law*



*Enforcement (Powers and Responsibilities) Act 2002.*

**27 Care to be taken**

- (1) An authorised officer must do as little damage as possible when exercising a function under this Act.
- (2) If damage is caused by a person exercising a power to enter premises, a reasonable amount of compensation is recoverable as a debt owed by the Crown to the owner of the premises, unless the occupier hindered or obstructed the exercise of that power.

**28 Recovery of expenses**

- (1) The Minister may direct that a specified person or body is liable to pay the remuneration of, and any expenses incurred by, an authorised officer that are referable to the exercise of functions under this Part in relation to the person or body.
- (2) The Minister may give a direction only if the remuneration was payable, or expenses were incurred, in relation to an offence of which a person has been found guilty.
- (3) The amount payable by the specified person or body is the amount certified by the Minister.
- (4) The amount payable is recoverable in a court of competent jurisdiction as a debt due to the Crown.
- (5) If the functions were exercised in relation to a body, the trustees or persons who are members of the governing body of the body are jointly and severally liable for the amount payable.
- (6) A trustee or person is not so liable unless the trustee or person knowingly authorised or permitted the offence to be committed.

**29 Offences relating to inquiries and inspections**

A person must not—

- (a) hinder or obstruct an authorised officer in the exercise of functions under this Act or the regulations, or
- (b) fail to comply with a requirement made by a notice given under this Division within the period specified by the notice, or
- (c) fail to answer questions or provide information when required to do so by an authorised officer in the exercise of the authorised officer's functions under this Act or the regulations, or
- (d) fail to produce for inspection any document or other thing when required to do so by an authorised officer in the exercise of the authorised officer's functions under this Act

or the regulations, or

- (e) alter, conceal or destroy any document required to be produced under a notice given under this Division, or
- (f) refuse to take an oath, or make an affirmation, required to be taken or made under this Division.

Maximum penalty—50 penalty units or imprisonment for 6 months, or both.

## **Division 2 Other general enforcement powers**

### **30 Compliance notices**

- (1) This section applies if an authorised officer reasonably believes that a person or body conducting or proposing to conduct a gaming activity—
  - (a) is contravening a provision of this Act or the regulations or a condition of an authority, or
  - (b) has contravened a provision or condition in circumstances that make it likely that the contravention will continue or be repeated.
- (2) The authorised officer may give the person or body a written notice (a **compliance notice**) requiring the person or body to—
  - (a) remedy the contravention, or
  - (b) prevent a likely contravention from occurring, or
  - (c) remedy the things or operations causing the contravention or likely contravention.
- (3) A compliance notice must state—
  - (a) the grounds on which the notice is given, including the particular contravention or contraventions on which the notice is based, and
  - (b) the day by which the person or body is required to comply with the notice.
- (4) A compliance notice may include directions as to the measures to be taken to remedy the contravention or prevent the likely contravention, or the matters or activities causing the contravention or likely contravention, to which the notice relates.
- (5) The day specified for compliance must be reasonable in all the circumstances.
- (6) A person to whom a compliance notice is given must comply with the notice within the period specified in the notice.

Maximum penalty—50 penalty units.

- (7) If a body fails to comply with a compliance notice given to the body under this section, each trustee or other person who was a member of the governing body at the time of the offence is guilty of an offence, if the trustee or person knowingly authorised or permitted the failure to comply.

Maximum penalty—50 penalty units.

### **31 Extension of time for complying with compliance notice**

- (1) An authorised officer may, by written notice given to a person or body, extend the compliance period for a compliance notice.
- (2) However, the authorised officer may extend the compliance period only if the period has not ended.
- (3) In this section—

***compliance period*** means the period ending on the day stated in the compliance notice by which a person is required to comply with the notice and includes that period as extended under this section.

### **32 Other provisions relating to notices**

- (1) An authorised officer may make minor changes to a compliance notice—
- (a) for clarification, or
  - (b) to correct errors or references, or
  - (c) to reflect changes of address or other circumstances.
- (2) The Secretary may revoke or vary any compliance notice.
- (3) A compliance notice is not invalid only because of—
- (a) a formal defect or irregularity in the notice unless the defect or irregularity causes or is likely to cause substantial injustice, or
  - (b) a failure to use the correct name of the person or body to whom the notice is issued if the notice sufficiently identifies the person or body and is given to the person or body in accordance with this Act.

### **33 Secretary may issue order prohibiting conduct of gaming activity**

- (1) The Secretary may, by order in writing given to a person or body conducting or proposing to conduct a gaming activity, make an order prohibiting the conduct of the gaming activity, if the Secretary is satisfied that—
- (a) it is likely that the provisions of this Act or the regulations or the conditions of an authority have not been, or will not be, complied with in relation to the gaming

activity, or

(b) it would otherwise be against the public interest for the gaming activity to be conducted.

(2) A person must not fail to comply with an order given to the person under this section.

Maximum penalty—50 penalty units.

(3) If a body fails to comply with an order given to the body under this section, each trustee or other person who was a member of the governing body at the time of the offence is guilty of an offence, if the trustee or person knowingly authorised or permitted the failure to comply.

Maximum penalty—50 penalty units.

(4) A person, or a trustee or member of the governing body of a body, given an order under this section may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision by the Secretary to make the order.

(5) An order may be given whether or not a compliance notice has been given to the person or body under this Part.

#### **34 Secretary may prohibit person or body from conducting gaming activities**

(1) The Secretary may, by order in writing given to a person or body, prohibit the person or body from conducting any gaming activities for a period not exceeding 2 years after the order is given to the person or body, if the Secretary is satisfied that the person or body—

(a) has persistently failed to comply with the provisions of this Act or the regulations or the conditions of an authority, and

(b) is likely to continue to do so.

(2) A person must not fail to comply with an order given to the person under this section.

Maximum penalty—50 penalty units.

(3) If a body fails to comply with an order given to the body under this section, each trustee or other person who was a member of the governing body at the time of the offence is guilty of an offence, if the trustee or person knowingly authorised or permitted the failure to comply.

Maximum penalty—50 penalty units.

(4) A person, or a trustee or member of the governing body of a body, given an order under this section may apply to the Civil and Administrative Tribunal for an

administrative review under the *Administrative Decisions Review Act 1997* of the decision by the Secretary to make the order.

- (5) An order may be given whether or not a compliance notice has been given to the person or body under this Part.

### **35 Court orders**

- (1) The Local Court or the Supreme Court may, on the application of the Secretary, make an order under this section.
- (2) An application for an order must be made not later than 2 years after the gaming activity was conducted.
- (3) The Local Court may make an order that a person or body that has conducted, or is conducting, a gaming activity—
- (a) pay an amount specified by the Court to a participant in a gaming activity, if the Court is satisfied that the participant is entitled to that amount as a result of participating in the gaming activity, or
  - (b) pay an amount to a person or body to whom the proceeds of a gaming activity are payable, if the Court is satisfied that the person or body is entitled to that amount as a beneficiary of the gaming activity.
- (4) The Supreme Court may make an order that—
- (a) a person or body that has conducted, or is conducting, a gaming activity pay an amount or give any other prize specified by the Court to a participant in a gaming activity, if the Court is satisfied that the participant is entitled to that amount or prize as a result of participating in the gaming activity, or
  - (b) a person or body that has conducted, or is conducting, a gaming activity pay an amount to a person or body to whom the proceeds of a gaming activity are payable, if the Court is satisfied that the person or body is entitled to that amount as a beneficiary of the gaming activity, or
  - (c) a person or body that has conducted, or is conducting, a gaming activity cease to conduct the gaming activity, if the Court is satisfied that the activity is prohibited under this Act or is being, or is likely to be, conducted in a manner that contravenes this Act, the regulations or the conditions of an authority, or
  - (d) a person or body that has conducted, or is conducting or proposing to conduct, a gaming activity comply with an authority or give effect to any rule for the conduct of the gaming activity.
- (5) The Local Court may not make an order for the payment of an amount to a participant in a gaming activity, or person to whom the proceeds of a gaming activity are

payable, that exceeds \$100,000.

(6) A person must not fail to comply with an order given to the person under this section.

Maximum penalty—50 penalty units.

(7) If a body fails to comply with an order under this section, each trustee or other person who was a member of the governing body at the time of the offence is guilty of an offence, if the trustee or person knowingly authorised or permitted the failure to comply.

Maximum penalty—50 penalty units.

### **36 Enforcement of court orders**

(1) If a court makes an order for the payment of money under section 35, and the whole of the amount is not paid in accordance with the order, the registrar of the court must, on application by the person to whom the money is to be paid (the **debtor**), issue to the debtor a certificate that—

(a) identifies the order and specifies the person required to pay the money, and

(b) specifies the amount required to be paid by the order that has not, as at the date of the certificate, been paid in accordance with the order.

(2) The debtor may file the certificate in the registry of a court having jurisdiction to order the payment of the amount specified, and the registrar of the court must immediately enter judgment in favour of the debtor against the person required to pay the money specified in the certificate for—

(a) the amount specified in the certificate as having not been paid, and

(b) any fees payable to the registrar for filing the certificate.

## **Division 3 Enforceable undertakings**

### **37 Secretary may accept undertakings**

(1) The Secretary may accept a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention by the person of this Act or the regulations.

(2) The giving of an undertaking does not constitute an admission of guilt by the person giving it in relation to the contravention or alleged contravention to which the undertaking relates.

(3) The Secretary may make a written undertaking publicly available.

(4) An undertaking takes effect and becomes enforceable when the Secretary's decision

to accept the undertaking is given to the person who made the undertaking or at any later date specified by the Secretary.

### **38 Notice of decision and reasons for decision**

- (1) The Secretary must give the person seeking to make an undertaking written notice of the Secretary's decision to accept or reject the undertaking and of the reasons for the decision.
- (2) The Secretary must publish, on a publicly accessible website maintained by the Department, notice of a decision to accept an undertaking and the reasons for that decision.

### **39 Compliance with undertaking**

A person must not contravene an undertaking given by that person that is in effect.

Maximum penalty—50 penalty units.

### **40 Contravention of undertaking**

- (1) The Secretary may apply to the Local Court for an order if a person contravenes an undertaking.
- (2) An application for an order must be made not later than 2 years after the contravention occurred.
- (3) If the Court is satisfied that the person who made the undertaking has contravened the undertaking, the Court, in addition to the imposition of any penalty, may make 1 or both of the following orders—
  - (a) an order directing the person to comply with the undertaking for the period specified in the order,
  - (b) an order discharging the undertaking.
- (4) In addition to the orders referred to in subsection (3), the Court may make any other order that the Court considers appropriate in the circumstances, including orders directing the person to pay to the State—
  - (a) the costs of the proceedings, and
  - (b) the reasonable costs of the Secretary in monitoring compliance with the undertaking in the future.
- (5) Nothing in this section prevents proceedings being brought for the contravention or alleged contravention of this Act to which the undertaking relates.

#### **41 Withdrawal or variation of undertaking**

- (1) A person who has made an undertaking may, at any time, with the written agreement of the Secretary—
  - (a) withdraw the undertaking, or
  - (b) vary the undertaking.
- (2) However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of the Act.
- (3) The Secretary must publish, on a publicly accessible website maintained by the Department, notice of the withdrawal or variation of an undertaking.

#### **42 Proceedings for alleged contravention**

- (1) Subject to this section, no proceedings for a contravention or alleged contravention of this Act or the regulations may be brought against a person if an undertaking is in effect in relation to that contravention.
- (2) No proceedings may be brought for a contravention or alleged contravention of this Act or the regulations against a person who has made an undertaking in relation to that contravention and has completely discharged the undertaking.
- (3) The Secretary may accept an undertaking in relation to a contravention or alleged contravention before proceedings in relation to that contravention have been finalised.
- (4) If the Secretary accepts an undertaking before the proceedings are finalised, the Secretary must take all reasonable steps to have the proceedings discontinued as soon as possible.

### **Division 4 Offences**

#### **43 Nature of proceedings for offences**

Proceedings for an offence under this Act or the regulations (except against sections 14 and 16) may be dealt with summarily before the Local Court.

**Note—**

Chapter 5 of the [Criminal Procedure Act 1986](#) (which relates to summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 14 or 16. See Table 2 of Schedule 1 to that Act.

#### **44 Offences by corporations**

- (1) If a corporation contravenes 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 subsection (1) whether or not the corporation has been proceeded against or 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.

#### **45 Additional orders by courts in criminal proceedings**

- (1) A court may, in addition to or as an alternative to imposing a penalty for an offence under this Act or the regulations, by order suspend or revoke an authority, or vary an authority granted under the regulations.
- (2) A person must not fail to comply with an order made by the court under this section.  
Maximum penalty—20 penalty units.
- (3) If a body fails to comply with an order made by the court under this section, each trustee or other person who was a member of the governing body at the time of the offence is guilty of an offence, if the trustee or person knowingly authorised or permitted the failure to comply.

Maximum penalty—50 penalty units.

#### **46 Penalty notices**

- (1) An authorised officer may issue a penalty notice to a person if it appears to the authorised officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

**Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

## Part 4 Miscellaneous

### 47 Delegation

- (1) The Minister may delegate the exercise of any function of the Minister under this Act (other than this power of delegation) to—
  - (a) any person employed in the Department, or
  - (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.
- (2) The Secretary may delegate the exercise of any function of the Secretary under this Act (other than this power of delegation) to—
  - (a) any person employed in the Department, or
  - (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

### 48 Service of documents

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods—
  - (a) in the case of an individual—by personal delivery to the person,
  - (b) by post to the address specified by the person for the service of documents of that kind,
  - (c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,
  - (d) in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,
  - (e) by email to an email address specified by the person for the service of documents of that kind,
  - (f) by any other method authorised by the regulations for the service of documents of that kind.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person by any other method.
- (3) In this section, **serve** includes give or send.

## 49 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, regulations may be made for or with respect to the following—
  - (a) permitted gaming activities,
  - (b) prizes for gaming activities, including the prohibition of prizes or benefits and limits on the value or type of prizes that may be offered,
  - (c) without limiting paragraph (b), the regulation or prohibition of liquor prizes for gaming activities,
  - (d) a register containing information relating to authorities,
  - (e) the sale or other disposal of unclaimed prizes and the payment of the proceeds of sale of unclaimed prizes,
  - (f) the imposition of civil penalties for contraventions of the regulations relating to the conduct of permitted gaming activities, including the conferral of jurisdiction on a person, court or tribunal for that purpose and for the purpose of appeals against civil penalties,
  - (g) fees for authorities and other matters,
  - (h) the payment of money received in connection with a gaming activity,
  - (i) records relating to the conduct of gaming activities, including financial records,
  - (j) regulating advertisements for or the marketing of permitted gaming activities,
  - (k) regulating amounts paid as commission, salary or wages in connection with the conduct of a gaming activity,
  - (l) agents for the sale of tickets in a gaming activity,
  - (m) audits of gaming activities and persons or bodies that conduct gaming activities,
  - (n) the service of notices under this Act,
  - (o) the waiver, reduction, postponement or refund by the Secretary of fees payable or paid under this Act or the regulations.
- (3) The regulations may create an offence punishable by a penalty not exceeding 50 penalty units.

## 50 Repeals

The following Act and instrument are repealed—

- (a) *Lotteries and Art Unions Act 1901 No 34*,
- (b) *Lotteries and Art Unions Regulation 2014*.

## Schedule 1 Savings, transitional and other provisions

### Part 1 General

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision—
  - (a) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date, and
  - (b) has effect despite anything to the contrary in this Schedule.
- (3) 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.
- (4) Without limiting subclauses (1) and (2), regulations made for the purposes of this clause may amend this Schedule to provide for additional or different savings and transitional provisions instead of including the provisions in the regulations.

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

#### 2 Definitions

In this Part—

**former legislation** means the *Lotteries and Art Unions Act 1901* and the *Lotteries and Art Unions Regulation 2014*.

### 3 General savings

- (1) Any act, matter or thing done or omitted to be done under a provision of the former legislation and having any force or effect immediately before the commencement of a provision of this Act or a regulation under this Act that replaces that provision is, on that commencement, taken to have been done or omitted to be done under the provision of this Act or the regulation.
- (2) This clause does not apply—
  - (a) to the extent to which its application is inconsistent with any other provision of this Schedule or a provision of a regulation made under this Schedule, or
  - (b) to the extent that its application would be inappropriate in a particular case.

### 4 Existing gaming activities

- (1) A gaming activity permitted under the former legislation and not concluded before the commencement of section 10 is taken to be a permitted gaming activity for the purposes of this Act.
- (2) Despite subclause (1), the regulations may provide that a gaming activity taken to be permitted under this clause is not permitted.

### 5 Existing permits

- (1) A permit in force under the former legislation immediately before the commencement of section 11 is taken to be an authority granted under this Act.
- (2) The permit continues in force for the term (if any) specified under the former legislation and subject to any conditions to which it was subject immediately before that commencement.
- (3) Nothing in this clause prevents the permit from being cancelled or suspended in accordance with this Act and the regulations or the conditions of the permit from being varied or revoked in accordance with this Act and the regulations.

## Part 3 Provisions consequent on enactment of **Better Regulation and Customer Service Legislation Amendment (Bushfire Relief) Act 2020**

### 6 Definitions

In this Part—

**relevant period** means the period—

- (a) starting on 18 July 2019, and
- (b) ending immediately before the commencement of this Act.

**repealed Act** means the *Lotteries and Art Unions Act 1901*.

**repealed regulation** means a regulation in force under the repealed Act.

**7 Power to waive, reduce, postpone or refund fees applies to events before commencement**

- (1) To remove any doubt, the power of the Secretary to waive, reduce, postpone or refund, in whole or part, a fee payable or paid under this Act or the regulations applies in relation to—
  - (a) a person who was suffering financial hardship—
    - (i) during the relevant period, or
    - (ii) because of events that happened during the relevant period, or
  - (b) special circumstances—
    - (i) that existed during the relevant period, or
    - (ii) that exist because of events that happened during the relevant period.
- (2) Also to remove any doubt, the power to waive, reduce, postpone or refund fees under subclause (1) extends to a fee payable or paid under the repealed Act or repealed regulations.

**Schedule 2 (Repealed)**