

# Public Lotteries Act 1996 No 86

[1996-86]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Responsible Minister

- Minister for Gaming and Racing

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### 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](#).

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# Public Lotteries Act 1996 No 86



New South Wales

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# Public Lotteries Act 1996 No 86



New South Wales

An Act to amend and consolidate the law relating to the conduct of public lotteries; to repeal the *Soccer Football Pools Act 1975*, the *Lotto Act 1979* and the *New South Wales Lotteries Act 1990* and regulations made under those Acts; to make consequential amendments to other Acts; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Public Lotteries Act 1996*.

### 2 Commencement

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

### 3 Objects of Act

The objects of this Act are—

- (a) to make provision for the proper conduct of public lotteries in the public interest and to minimise any harm associated with public lotteries, and
- (b) to ensure that revenue derived from the conduct of public lotteries is accounted for in a proper manner, and
- (c) to ensure that, on balance, the State and the community as a whole benefit from the conduct of public lotteries.

### 4 Definitions

(1) In this Act—

**agent** of a licensee means an agent appointed or approved in accordance with the conditions of the licence held by the licensee.

**commission**, in relation to a public lottery, means an amount—

- (a) paid to, deducted by or retained by an agent in connection with a subscription to the public lottery (whether or not in the person's capacity as an agent of the



licensee conducting the public lottery), and

- (b) determined by or in accordance with, and identified as commission in, the conditions of the relevant licence or the rules of the public lottery.

**conduct** a public lottery includes promote, organise and operate the public lottery.

**corresponding law** means a law of another State, Territory or country under which a person is authorised to conduct a public lottery.

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

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

**inspector** means a person appointed under section 71.

**keno** has the meaning set out in section 5B.

**key employee** means a person (whether or not appointed under a contract of service) who is—

- (a) employed in a managerial or supervisory capacity in relation to the conduct of a public lottery by a licensee, or
- (b) authorised to make decisions, involving the exercise of his or her discretion, that regulate the operations of a licensee or an agent in relation to the conduct of a public lottery by the licensee, or
- (c) concerned or engaged, in any manner prescribed by the regulations, in the conduct of a public lottery by a licensee.

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

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

**operator licence**—see section 10.

**outgoings** for a public lottery conducted by a licensee means the amount required to be paid by the licensee in accordance with section 26 (1) into the prize fund for the lottery.

**player loss** on a public lottery conducted by a licensee means the difference between—

- (a) the subscriptions to the public lottery and, if the conditions of the licensee's licence so require, the commission payable in respect of those subscriptions, and
- (b) the outgoings for the public lottery.

**product licence**—see section 10.

**public lottery** has the meaning set out in section 5.

**rules** of a public lottery means the rules relating to the conduct of the public lottery in force under Part 4.

**subscriptions** to a public lottery means the amounts paid for entries in the public lottery, but does not include the following—

- (a) amounts charged to subscribers by the licensee’s agents for providing ancillary services in connection with the subscriptions (as referred to in section 13 (1) (e1)),
- (b) commission, unless this Act otherwise expressly provides.

**Note—**

See sections 26 (3), 28 (4) and 29 (6).

**symbol** includes amount, word or picture.

**unclaimed prize** means a prize that remains unclaimed by the prizewinner for a period of one year after the date on which the public lottery to which the prize relates was conducted.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

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

## 5 Meaning of “public lottery”

- (1) For the purposes of this Act, **public lottery** means any lottery, and includes—

- (a) a game of chance (including a game such as draw lottery or bingo) in which—

- (i) persons choose or are allocated numbers, and
- (ii) certain numbers are subsequently selected at random as prizewinning numbers, and
- (iii) prizes are distributed to persons holding the prizewinning numbers, or

- (b) a game of chance (including a game such as instant lottery) in which—

- (i) certain numbers are designated as prizewinning numbers, and
- (ii) persons are allocated numbers that have previously been selected at random, and
- (iii) prizes are distributed to persons holding the prizewinning numbers, or

- (c) a game of chance (including a game such as lotto, keno or powerball) in which persons choose or attempt to forecast, from designated numbers, fewer numbers to be drawn on a random basis, or
- (d) the game known as soccer football pool in which persons choose or attempt to forecast, from designated numbers, fewer numbers that represent the outcome of soccer football matches.

(2) For the purposes of this section, **numbers** includes—

- (a) symbols, or
- (b) a single number or symbol, or
- (c) a group or groups of numbers or of symbols (or of numbers and symbols), or
- (d) a combination or combinations of numbers or of symbols (or of numbers and symbols), or
- (e) a distribution or distributions of numbers or of symbols (or of numbers and symbols).

(3) For the purposes of this section, a person **chooses** numbers if the person chooses the numbers personally or if the numbers are chosen for the person.

#### **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.

#### **5B Meaning of “keno”**

- (1) For the purposes of this Act, **keno** means a game of chance that has the following essential features—
  - (a) the selection of 20 winning numbers from the set of numbers 1 to 80,
  - (b) each individual draw is conducted and completed within a 24 hour period,
  - (c) subscriptions are sold only to persons who at the time of sale are on the licensed premises of a club, hotel or casino (regardless of the manner or means of sale).
- (2) The sale of a multi-game entry does not commence the individual draws to which the multi-game entry relates (so the requirement that each individual draw is conducted and completed within a 24 hour period does not require the draws to which a multi-game entry relates to be conducted and completed within 24 hours after the sale of the multi-game entry).
- (3) In this section—

**licensed premises of a club, hotel or casino** means—

- (a) licensed premises to which a club licence under the [Liquor Act 2007](#) relates, or
- (b) licensed premises to which a hotel licence under the [Liquor Act 2007](#) relates, or
- (c) premises that form part of a casino within the meaning of the [Casino Control Act](#)

1992.

**multi-game entry** means an entry in a number of consecutive games of keno, starting with the game that is open when the entry is sold.

## Part 2 Conduct of public lotteries

### 6 Public lotteries not unlawful

- (1) A public lottery conducted by a licensee is not unlawful, despite the provisions of any other Act or law.
- (2) In particular—
  - (a) any such public lottery is not an unlawful game for the purposes of the *Unlawful Gambling Act 1998*, and
  - (b) the *Community Gaming Act 2018* does not apply to or in respect of any such public lottery.

### 7 Contracts or agreements relating to public lotteries enforceable

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

### 8 Unlawful conduct of public lottery by licensee

A licensee who conducts a public lottery is guilty of an offence if—

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

Maximum penalty—100 penalty units.

### 9 Exculpation of certain persons from certain offences

- (1) A person is not guilty of an offence under any law merely because—
  - (a) the person is an entrant in a public lottery conducted by a licensee, or
  - (b) the person is or acts for a licensee and the person conducts a public lottery in accordance with the requirements of or made under this Act, the regulations, the rules and the conditions of the licensee's licence, or

- (c) in relation to a public lottery conducted by a licensee in the manner referred to in paragraph (b), the person—
  - (i) is concerned in the conduct of the public lottery, or
  - (ii) prints or publishes any thing relating to the conduct of the public lottery, or
  - (iii) is the owner or occupier of any premises used for the purpose of, or in connection with, the conduct of the public lottery, or
- (d) the person prints or publishes the results of, or information as to the prize money payable in respect of, a public lottery conducted under a corresponding law.

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

## **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) *Community Gaming Act 2018*,
- (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.

### **Division 4 Special provision for keno licensing**

#### **21L Definitions**

In this Division—

**existing keno licence** means the licence in force under this Act in respect of games of keno immediately before the commencement of this Division.

**new keno licence** means a licence granted by the Minister as provided by section 21N.

#### **21M Authority for Minister to enter into keno licensing arrangements**

- (1) The Minister is authorised, on behalf of the Crown in right of the State—
- (a) to accept the offer made in the tabled copy of the deed poll to enter into the deed

set out in the annexure to that deed poll, which is titled and referred to in this Division as **the Implementation Deed**, and

- (b) to enter into the Implementation Deed.
- (2) The **tabled copy of the deed poll** is the copy of the deed poll executed on 22 December 2015 as tabled, by or on behalf of the Minister introducing the Bill for the [Public Lotteries Amendment \(Keno Licensing\) Act 2016](#), in the Legislative Assembly on the day that the Bill was introduced.
- (3) The reference in this section to the offer made in the tabled copy of the deed poll includes that offer as extended by any supplementary deed poll to the extent that the supplementary deed poll extends the time by which any condition precedent referred to in the tabled copy of the deed may be satisfied.
- (4) For the avoidance of doubt, it is declared that the Minister and the Treasurer are (and are taken always to have been) authorised on behalf of the Crown in right of the State—
  - (a) to conduct negotiations with the other parties to the Implementation Deed in connection with that deed and the grant of the new keno licences (including in relation to the consideration payable to the Crown for any such grant), and
  - (b) to exercise any function under this Act for or in connection with the entry into and performance of obligations arising under the Implementation Deed.
- (5) The tabling of the tabled copy of the deed poll as provided by this section does not abrogate, limit or otherwise affect any right or liability of any person arising under or in relation to the deed poll or the Implementation Deed after it comes into force.

#### **21N Grant of new keno licences**

- (1) The Minister is to grant an operator licence and product licence (each a **new keno licence**) as required to satisfy the conditions precedent of the Implementation Deed.
- (2) A new keno licence is deemed to have been granted under section 10 but the grant of a new keno licence does not require the approval of the Treasurer and sections 11 and 12 do not apply to the grant of the licence.
- (3) Section 16 (Consideration payment for licence) applies to the grant of a new keno licence.
- (4) A new keno licence is to be granted as required by this section even though the existing keno licence is in force when the new keno licence is granted.

#### **21O Revocation of existing keno licence**

- (1) The existing keno licence is revoked immediately before the commencement time

under the new keno licences. The commencement time under the new keno licences is the time from which the licensee under the new keno licences is authorised to conduct games of keno under those licences.

- (2) Any agreement (an **existing keno agency agreement**) that provides for a person to act as the agent of the licensee under the existing keno licence in connection with the conduct of a public lottery and that is in force immediately before the revocation of the existing keno licence continues in force after the existing keno licence is revoked and is not affected by the revocation of that licence (but without affecting any later variation or termination of the agreement).
- (3) A reference in an existing keno agency agreement to the existing keno licence is, after the revocation of the existing keno licence, to be read as a reference to the new keno licences.
- (4) Compensation is not payable by or on behalf of the State because of the revocation of the existing keno licence under this section, or for any consequence of the revocation of that licence under this section.

## **21P Savings and transitional arrangements**

- (1) The rules for the conduct of games of keno that are in force under the existing keno licence immediately before the revocation of that licence continue in force as the rules made and approved under this Act for the conduct of games of keno under a new keno licence (but without affecting any later amendment of those rules).
- (2) The prize fund kept for the purposes of Division 1 of Part 5 by the licensee under the existing keno licence becomes and is taken to be the prize fund kept for that purpose by the licensee under a new keno licence.
- (3) Any approval in force under this Act in respect of the existing keno licence immediately before the revocation of that licence is taken to have been given in respect of a new keno licence for which the approval has any relevant operation.
- (4) A game of keno being conducted under the existing keno licence immediately before the revocation of that licence is to be continued and completed under a new keno licence.

## **Part 4 Rules for conduct of public lotteries**

### **22 Making of rules**

- (1) A licensee is required to make rules, not inconsistent with this Act, the regulations or the conditions of the licensee's licence, for or with respect to the conduct by the licensee of the public lottery.
- (2) Without limiting subsection (1), the rules may make provision as to the liability of a

licensee, agent or other person acting under the authority or on behalf of a licensee in connection with the following—

- (a) the handling of applications for subscriptions to a public lottery,
  - (b) the printing and issue of tickets in a public lottery,
  - (c) the determination of the entitlement (if any) of a subscriber to a prize in a public lottery,
  - (d) the payment of prizes in, or the refund of money subscribed to, a public lottery.
- (3) The power to make rules under this section includes power to amend or repeal any rules made in the exercise of that power.

### **23 Approval and publication of rules**

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

### **24 Display of rules**

- (1) A licensee or agent who accepts entries in a public lottery must—
- (a) display a complete copy of the rules of the public lottery in a prominent position at each place where those entries are accepted, or
  - (b) make available a complete copy of the rules of the public lottery for inspection by any person free of charge on request.
- (2) If the Minister so directs a licensee, the licensee or agent of the licensee must also display an extract of the rules approved by the Minister in a prominent position at each place where entries in the public lottery are accepted.
- (3) A licensee or agent who, in accordance with this section, displays an extract only of the rules of a public lottery at any place must keep a complete copy of those rules at that place and must produce them for inspection by any person free of charge on

request.

Maximum penalty—10 penalty units.

#### **24A Display of notice that minors prohibited from entering lottery**

A licensee or agent must display a notice to the effect that persons under 18 years of age are prohibited from entering a public lottery in a prominent position at the place where entries are accepted at the time the licensee or agent accepts any entry in a public lottery.

Maximum penalty—10 penalty units.

#### **25 Rules inconsistent with Act**

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

### **Part 5 Financial provisions relating to public lotteries**

#### **Division 1 Prize fund**

##### **25A Separate prize funds**

A separate prize fund is to be kept in respect of a licensee for each kind of public lottery that the licensee is licensed to conduct.

##### **26 Application of subscriptions to prize fund**

- (1) Out of the subscriptions received by a licensee in respect of a public lottery conducted by the licensee, the licensee must pay into the prize fund for the lottery an amount that, when added to any amount already applied by the licensee or the licensee's agents to the payment of prizes won in the lottery, is not less than the requisite percentage of the subscriptions for the lottery.
- (2) The requisite percentage is the percentage specified in the conditions of the licence.
- (3) In this section, a reference to subscriptions includes, if the conditions of the licence so require, a reference to commission payable in respect of those subscriptions.

##### **27 Prize fund account**

- (1) A prize fund for a public lottery kept in respect of a licensee is to be kept in an account in a bank, building society or credit union that is nominated or approved by the Minister.
- (2) Payments under this Division are to be made in accordance with the conditions of the licence or section 27A (Unclaimed prizes).

- (3) A licensee may draw on the prize fund—
- (a) in order to apply money from the fund in accordance with subsection (8), or
  - (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),
- unless the Minister has by notice in writing directed the bank, building society or credit union at which the prize fund is kept not to accommodate drawings by the licensee on the fund.
- (4) If the Minister has so directed a bank, building society or credit union, the Minister may draw on the prize fund—
- (a) in order to enable the completion of a public lottery to which the fund relates that has been commenced by the licensee, or
  - (b) in order to apply money from the fund in accordance with subsection (8) (c) towards the reimbursement of the licensee, or
  - (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.
- (5) Money for the time being credited to a prize fund and not immediately required for the payment of prizes may be invested in such manner as the licensee concerned requests and the Minister approves in writing.
- (6) The proceeds of an investment, or of any realisation of an investment, under subsection (5) must be paid into the relevant prize fund and form part of the fund.
- (7) At the request of the licensee, investments made from the prize fund are to be realised (unless there are special circumstances that warrant not doing so).
- (8) Apart from investment under subsection (5), money forming part of a prize fund may be applied only—
- (a) towards the payment by the licensee or the licensee's agents of prizes won in a public lottery in respect of which the fund is kept, and
  - (a1) towards the payment of contributions by the licensee to prizes won in a public lottery conducted pursuant to an agreement entered into by the licensee under section 37A, and
  - (b) towards the payment, from a prize reserve fund located within the prize fund in accordance with the conditions of the licence, of the amounts specified to be paid from the prize reserve fund by the conditions of the licence, and

- (c) to the extent that the conditions of the licence require any subsidy of the prize fund by the licensee—towards the reimbursement of the licensee, and
  - (d) towards payment of such costs for operating the prize fund as the Minister approves in writing, and
  - (e) in the case of a licence that is no longer in force—in accordance with regulations under subsection (10).
- (9) The regulations may make provision for or with respect to the disposal of money as to which any dispute has arisen.
- (10) The regulations may make provision for or with respect to the disposal by the Minister of any money in a prize fund (being money that is not required for payment of prizes won in a public lottery) when a licence is no longer in force.

### **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.

## **Division 2 Duty payable to Treasurer**

### **28 Payment of general duty**

- (1) Out of the subscriptions received by a licensee in respect of public lotteries conducted by the licensee, the licensee must pay to the Treasurer, as general duty, an amount equal to a requisite percentage of—
  - (a) the subscriptions for those public lotteries, or
  - (b) the player loss on those public lotteries,as determined by the conditions of the licence.
- (2) The requisite percentage is the percentage specified in the conditions of the licence.
- (3) A licensee must, within 7 days after the day on which entries in respect of a public lottery close, or within such other period as the Treasurer may determine, pay to the Treasurer the general duty required by this section in respect of those public lotteries.



- (4) In this section, a reference to subscriptions includes, if the conditions of the licence so require, a reference to commission payable in respect of those subscriptions.

## **29 Payment of licence duty**

- (1) If the conditions of a licence so require, a licensee must also pay to the Treasurer, as licence duty for the licence, an amount determined in accordance with the conditions of the licence.
- (2) Different amounts may be determined for licences for different public lotteries.
- (3) An aggregate amount may be determined for several public lotteries conducted under the same licence or under different licences held by the same licensee.
- (4) The amount determined may (but need not) be—
- (a) a flat or periodic amount, or
  - (b) a percentage of the subscriptions received by the licensee in respect of public lotteries conducted by the licensee, or
  - (c) a percentage of the player loss on the public lotteries conducted by the licensee.
- (5) A licensee must, within the period specified in the conditions of the licence, or within such other period as the Treasurer may determine, pay to the Treasurer the licence duty required by this section in respect of the licence.
- (6) In this section, a reference to subscriptions includes, if the conditions of the licence so require, a reference to commission payable in respect of those subscriptions.

## **30 Additional duty because of non-payment**

- (1) If payment of general duty or licence duty is not made by the due date, the licensee must, in addition to that duty, pay to the Treasurer, as additional general duty or licence duty, an amount that is equal to the requisite percentage of the amount of the unpaid duty in respect of each month, calculated from the due date, during which that duty remains unpaid.
- (2) The requisite percentage is 10 per cent or, if another percentage is specified by the conditions of the licence, the percentage so specified.
- (3) Despite subsection (1), the Treasurer may, if the Treasurer thinks fit, forgo the whole or any part of any additional duty, or allow further time for the payment of any additional duty.

## **31 Payment of duty into Consolidated Fund**

The Treasurer must pay any money paid to the Treasurer as duty under this Division into the Consolidated Fund.

### **32 (Repealed)**

### **33 Sharing of duty with participating areas**

- (1) In this section, ***participating area***, in relation to any class or description of public lotteries, means any State, Territory or country declared under subsection (2) to be a participating area for the purposes of this section in relation to public lotteries of that class or description.
- (2) The Minister may, by order published in the Gazette, declare to be a participating area for the purposes of this section any State, Territory or country in which it is lawful to conduct public lotteries of any class or description under this Act.
- (3) Out of any duty received by the Treasurer under this Division, the Treasurer may, in respect of a participating area, pay in accordance with subsection (4) such proportion as the Treasurer may from time to time determine of—
  - (a) so much of the duty as, in the opinion of the Treasurer, was paid to the Treasurer in respect of—
    - (i) subscriptions paid to any person in that participating area, being subscriptions to any public lottery in respect of which the area concerned is a participating area, or
    - (ii) player loss incurred in relation to a person who subscribed to the lottery in a participating area, and
  - (b) any additional duty that, in the opinion of the Treasurer, was paid to the Treasurer and is attributable to the late payment of the portion of any duty referred to in paragraph (a).
- (4) Nothing in subsection (3) prevents the Treasurer, in respect of a participating area, from determining to pay the whole of the duty referred to in subsection (3) (a) and the whole of any additional duty referred to in subsection (3) (b).
- (5) Any payment that may be made under subsection (3) in respect of a participating area must be made to such person, on behalf of the State, Territory or country that is the participating area, as the Minister considers appropriate.
- (6) Any payment that may be made under or in accordance with subsections (3) and (5) may be made without further authority than those subsections.

## **Division 3 Miscellaneous**

### **34 Sport and Recreation Fund—soccer football pool duty**

- (1) There is established in the Special Deposits Account an account to be called the Sport and Recreation Fund.

- (2) There is to be paid, without further appropriation than this Act, into the Sport and Recreation Fund out of the Consolidated Fund in each financial year an amount equal to two-thirds of the amount of the duty and additional duty paid to the Treasurer under this Part in respect of soccer football pools.
- (3) If any money is paid to the Treasurer under section 33 (3) pursuant to an arrangement with a participating area under that section, that money is, for the purposes of subsection (2), taken to be paid to the Treasurer as duty or additional duty.
- (4) The money paid to the Sport and Recreation Fund under subsection (2) and the *Totalizator Act 1997* must be used to support and develop, by way of grant or loan, those sporting and recreational facilities and services within the State that are approved by the Minister administering the *Sporting Bodies' Loans Guarantee Act 1977*.
- (5) Any interest payable on a loan made under subsection (4), and any repayment of the principal of such a loan, is to be paid into the Sport and Recreation Fund.

### **35 False statements as to revenue**

A person who, with respect to subscriptions received or other revenue derived from conducting a public lottery, furnishes or makes to an inspector or other person exercising a function under this Act a report, return or statement that the person knows is false or misleading in a material particular is guilty of an offence.

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

### **36 Recovery of money**

- (1) An amount that is payable by a person to the Treasurer under this Act but is not paid may be recovered from the person as a debt due to the Crown in any court of competent jurisdiction.
- (2) For the purpose of an action to recover an amount referred to in this section, a certificate of the Treasurer certifying the amount alleged to be payable by a person and that the amount has not been paid is evidence that the amount so specified is payable to the Treasurer in accordance with this Act and has not been paid.

## **Part 6 Other provisions relating to public lotteries**

### **Division 1 General**

#### **37 Special provision relating to appointment of statutory authorities as agents**

- (1) A statutory authority may be appointed as an agent of a licensee.
- (2) A statutory authority that is appointed as an agent is, to the extent that it is not otherwise authorised to do so, authorised to do anything that is necessary or

expedient to be done by the statutory authority as agent by or under the authority of this Act, the regulations, the rules or the conditions of a licence.

(3) In this section, **statutory authority** includes—

- (a) a person holding or occupying a particular office or position under any Act or law, or
- (b) a body, whether incorporated or unincorporated, constituted by or under any Act or law (including a State owned corporation).

### **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.

### **38 Publicity concerning prizewinners**

(1) A licensee who publishes, or causes to be published, the identity of a person who claims a prize in a public lottery and has requested anonymity is guilty of an offence.

Maximum penalty—20 penalty units.

(2) The regulations may prescribe the manner in which an entrant in a public lottery may request anonymity.

(3) A person may at any time revoke a request for anonymity.

(4) This section does not prevent a licensee from publishing, or causing to be published, the venue or geographic location at which a prizewinning ticket was sold and the amount of a prize won.

### 39 Advertising of public lotteries

(1) A licensee or other person who publishes, or causes to be published, any public lottery advertising that—

- (a) is false, misleading or deceptive, or
  - (b) is in contravention of any requirement of the regulations,
- is guilty of an offence.

Maximum penalty—50 penalty units.

(1A) A court that finds a person guilty of an offence under this section may, in addition or as an alternative to any penalty that it may impose for the offence, make either or both of the following orders—

(a) an order requiring the person to publish an advertisement correcting any information contained in the public lottery advertising concerned that the court is satisfied is false, misleading or deceptive and giving directions (if any) that the court considers appropriate as to the time, form, extent and manner of publication,

(b) an order requiring any one or more of—

- (i) the person, or
- (ii) if the person is a corporation, a director of the corporation or a person concerned in the management of the corporation, or
- (iii) an employee of the person (including a key employee),

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

(1B) A person who, without lawful excuse, fails to comply with an order under this section is guilty of an offence.

Maximum penalty—20 penalty units.

(2) The regulations may provide for the Minister or other person to grant exemptions from a regulation made under subsection (1) (b).

(3) In this section—

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

**publication** includes dissemination of any kind, whether effected by oral, visual, written, electronic or other means (for example, dissemination by means of cinema,

video, radio or television).

### **39A Direct payment of prizes by agent**

The rules may make provision for a licensee to authorise an agent of the licensee to pay a prize won in a public lottery conducted by the licensee, being a prize that does not exceed the amount prescribed by the regulations in relation to the lottery.

### **40 Betting syndicates**

- (1A) A licensee may, for fee or reward, promote or take part in the formation of a syndicate for the purpose of purchasing an entry in, or subscribing to, a public lottery conducted by the licensee.
- (1) The rules may make provision for a licensee to authorise an agent of the licensee, for fee or reward, to promote or take part in the formation of a syndicate for the purpose of purchasing an entry in, or subscribing to, a public lottery conducted by the licensee.

### **41 Unauthorised betting syndicates prohibited**

- (1) A person who, for fee or reward, promotes or takes part in the formation of a syndicate for the purpose of purchasing an entry in, or subscribing to, a public lottery conducted by a licensee is guilty of an offence.

Maximum penalty—20 penalty units.

- (2) This section does not apply to—
- (a) any person who is authorised by the rules to so promote or take part in the formation of a syndicate, but only in relation to such promotion or participation by the person that is in accordance with the rules, or
- (b) the licensee conducting the public lottery concerned.

### **42 Advertising of unauthorised betting syndicate prohibited**

- (1) A person who advertises by any means that he or she or some other person will accept money for a share in an entry to be purchased in, or a subscription to be made to, a public lottery is guilty of an offence.
- (2) A person who publishes such an advertisement is guilty of an offence.
- (3) This section does not apply to—
- (a) any person who is authorised by the rules to so advertise, but only in relation to such advertising by the person that is in accordance with the rules, or
- (b) the licensee conducting the public lottery concerned.

Maximum penalty—20 penalty units.

#### **42A Advertising of alleged method for winning prohibited**

A person who advertises by any means that the person or some other person will accept any money or other reward in return for information relating to—

- (a) a particular method of entering in or subscribing to a public lottery, being a method of a kind prescribed by the regulations, or
- (b) making or selecting a particular entry in such a public lottery,

that it is claimed may, or will, increase the chances of winning a prize in a lottery is guilty of an offence.

Maximum penalty—20 penalty units.

#### **43 Credit betting prohibited**

A licensee or agent of a licensee must not extend, or offer to extend, a cash advance or any other form of credit to a person for the purpose of enabling the person to enter in or subscribe to a public lottery conducted by the licensee.

Maximum penalty—50 penalty units.

#### **43A Unauthorised selling of entries in or subscriptions to public lottery prohibited**

A person (other than a licensee, or a person acting for the licensee, in the lawful conduct of a public lottery) who sells an entry in, or a subscription to, a public lottery is guilty of an offence.

Maximum penalty—100 penalty units.

#### **43B Unauthorised promotion or marketing of public lottery prohibited**

A person (other than a licensee, or a person acting for the licensee, in the lawful conduct of a public lottery) who promotes or markets a public lottery is guilty of an offence.

Maximum penalty—100 penalty units.

#### **43C Person not to enter or subscribe to public lottery for or on behalf of another for fee or reward**

A person (other than a licensee, or a person acting for the licensee, in the lawful conduct of a public lottery) who, for fee or reward, purchases, for or on behalf of another person, an entry in, or a subscription to, a public lottery, is guilty of an offence.

Maximum penalty—100 penalty units.

#### **43D False claims for prizes**

Any person who lodges a claim for a prize in a public lottery knowing that it is false or misleading in a material respect is guilty of an offence.

Maximum penalty—100 penalty units.

## **Division 2 Minors**

### **44 Licensee or agent not to accept entry or payment from minor**

- (1) A licensee or agent who accepts from a person who is under the age of 18 years, whether personally, by mail, by electronic means or otherwise, a subscription to a public lottery is guilty of an offence.

Maximum penalty—50 penalty units.

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

### **45 Person not to enter or subscribe to public lottery on behalf of minor**

- (1) A person who, on behalf of a person under the age of 18 years, subscribes to a public lottery is guilty of an offence.

Maximum penalty—50 penalty units.

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

- (3) It is a defence to a prosecution under this section if the defendant proves that the defendant—

(a) was a parent or guardian of the person on whose behalf the entry to the public lottery was made, or

(b) was authorised to lodge the entry to the public lottery on behalf of the person by the parent or guardian.

### **46 Minor not to enter public lottery**

A person who, while under the age of 18 years, enters or subscribes to a public lottery is guilty of an offence.

Maximum penalty—20 penalty units.

### **47 Minors not to be detained**

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



## Division 3 Instant lotteries

### 48 Definitions

In this Division—

**instant lottery** means a public lottery that is an instant lottery, and includes a public lottery in which the prizes are determined (wholly or partly) by exposing the matter in panels on the tickets in the lottery (whether or not additional prizes are determined in any other manner).

**numbers** has the same meaning as in section 5 (2).

### 49 Application of Division

- (1) This Division applies to all instant lotteries promoted or conducted before or after the commencement of this Division, whether under the [New South Wales Lotteries Act 1990](#) or under this Act.
- (2) This Division has effect despite any other Act or law or any agreement.

### 50 Verification of tickets and prizes

- (1) A licensee may record on a ticket in an instant lottery a verification code by which the licensee can determine after the sale of the ticket whether it is a valid ticket and also whether it has won a prize.
- (2) A licensee may implement other tests in respect of instant lotteries for determining whether a ticket is a valid ticket and also whether it has won a prize.
- (3) Those verification codes or other tests have the following purposes—
  - (a) to prevent forgery or fraudulent alteration of tickets,
  - (b) to provide a conclusive means of determining prizewinning tickets in accordance with the total amount allocated for prizes in that lottery.
- (4) A prize is not payable in respect of a ticket in an instant lottery if the ticket does not satisfy any such verification code or other test.
- (5) This section has effect even though the ticket may indicate that a prize has been won.
- (6) The regulations may make additional provisions for or with respect to the payment of prizes in instant lotteries.

### 51 Clarification of certain rules for winning prizes in instant lotteries

- (1) In an instant lottery, a statement that a prize is won by matching 3 numbers or by matching 3 identical numbers (or a statement to the same effect) means, and is taken always to have meant, that a prize is won if the same number appears 3 times. For

example—

7 1

3 7 wins a prize

4 7

7 1

3 7 does not win a prize

3 1

- (2) In an instant lottery, a caption to a number (for example, the word “one” beneath the number “1”) forms part of the number and does not constitute a separate number for the purposes of counting the number of numbers.
- (3) This section applies to a statement on a ticket in the instant lottery or to a statement publicly advertised or used in connection with the instant lottery.

## **Part 7 Ministerial enforcement powers**

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

#### **52 Licensees and agents to inform Minister of changed circumstances**

- (1) If a change of a kind prescribed by the regulations occurs in the circumstances that existed in relation to a licensee at the time the licensee was granted the licence or in relation to an agent at the time the agent was appointed or approved—
- (a) the licensee, in the case of a change that relates to the licensee, or
- (b) the agent, in the case of a change that relates to the agent,
- must notify the Minister in writing, not later than 14 days after the change occurs, of the particulars relating to the change that the regulations prescribe.
- (2) Despite subsection (1), if the licensee or the agent is not aware, and could not reasonably be expected to be aware, of a relevant change at the time it occurs, the licensee or agent (as the case may be) must notify the Minister in writing not later than 14 days after becoming aware of the change.

Maximum penalty—20 penalty units.

#### **53 Minister may require information relating to licensees and agents**

- (1) The Minister may, by notice in writing, require a licensee or agent or a person who, in the opinion of the Minister, has a direct or indirect association with a licensee or agent—
- (a) to provide the Minister or an inspector, in accordance with directions in the notice, with the information relevant to the licensee or agent or that association (or relevant to any matter prescribed by the regulations) that is specified in the notice, or

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

A licensee, agent or person who fails to comply with a requirement of a notice is guilty of an offence.

Maximum penalty—50 penalty units.

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

#### **54 Minister may require person to provide particulars concerning key employees**

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

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

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

Maximum penalty—50 penalty units.

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

- (1) The Minister may, by notice in writing served on a key employee, require the key employee—
  - (a) to consent, in accordance with directions in the notice, to having his or her photograph, finger prints and palm prints taken, and
  - (b) to provide, in accordance with directions in the notice, the information (verified by statutory declaration) relevant to the key employee that is specified in the notice, and
  - (c) to produce, in accordance with directions in the notice, the documents relevant to the key employee that are specified in the notice and to permit examination of the documents and the taking of extracts from, and the making of copies of, them, and
  - (d) to furnish the authorities and consent that the Minister may require for the purpose of obtaining further information (including financial and other confidential information) from other persons and institutions.
- (2) The Minister is to refer to the Commissioner of Police copies of photographs, finger prints and palm prints obtained in respect of a key employee under this section and with any supporting information that the Minister considers should be referred to the Commissioner.
- (3) The Commissioner of Police is to inquire into, and report to the Minister on, any matters concerning the key employee that the Minister may request.
- (4) A key employee is not excused from complying with a notice under this section on the ground that compliance might tend to incriminate the employee. However, if the employee claims, before complying with the notice, that compliance might tend to incriminate the employee, information provided in compliance with the notice is not admissible in evidence against the employee in any criminal proceedings other than proceedings under this Act.
- (5) A key employee who complies with a requirement of a notice under this section does not on that account incur a liability to another person.

**56 Failure of key employee to provide required information**

- (1) The Minister may, if a key employee refuses or fails to comply with a requirement of a notice served on the key employee under section 55, by notice in writing, direct—
  - (a) the licensee, or

(b) any other appropriate person,

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

(2) A person who does not give effect to a direction given to the person under this section is guilty of an offence.

Maximum penalty—100 penalty units.

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

(1) This section applies in respect of a direction given by the Minister under this Division or Division 2 to an employer to terminate the employment of a key employee or the other arrangement by reason of which a key employee is a key employee of the employer.

(2) It is taken to be a condition of any agreement or other arrangement entered into between an employer and a key employee that the employer has the rights required to enable the employer to give effect to a direction to which this section applies.

(3) The termination of an employment or arrangement in accordance with this section has effect despite any other Act or law, or any contract, award or enterprise or other agreement, and the State does not incur any liability because of such a termination.

(4) In this section, **employer** means a licensee or other person to whom a direction to which this section applies is given.

### **58 Destruction of finger and palm prints of former key employees**

(1) Any finger prints or palm prints obtained under this Division, and any copies of them, are to be destroyed as soon as the key employee from whom they were obtained is no longer a key employee.

(2) A person—

(a) who has possession of finger prints or palm prints obtained by the Minister under this Division, or copies of them, and

(b) who fails to deliver them to the Minister, in accordance with the written directions of the Minister, to enable subsection (1) to be complied with,

is guilty of an offence.

Maximum penalty (subsection (2)): 20 penalty units.

## **Division 2 Directions by Minister**

### **59 Prejudice to integrity of public lottery involving licensees or other persons**

- (1) The Minister may give a direction under this section if the Minister is of the opinion that the integrity or apparent integrity of a public lottery conducted by a licensee is likely to be seriously prejudiced because of—
  - (a) any irregularity or alleged irregularity of any kind, or
  - (b) the character or reputation of any person concerned in the management or supervision of the public lottery, or
  - (c) any other fact or circumstance reported to the Minister.
- (2) The Minister may, for the purpose of avoiding the prejudice referred to in this section, by notice in writing, direct—
  - (a) the licensee, or
  - (b) any other person engaged, in whatever capacity, in the conduct of a public lottery on the licensee's behalf,to take (or to refrain from taking) any action specified in the notice in relation to all or any specified public lottery conducted by the licensee.
- (3) A person who does not comply with a direction given to the person under this section is guilty of an offence.

Maximum penalty—50 penalty units.

### **60 Minister may direct licensee to terminate certain agency arrangements**

- (1) If a person who is an agent does not comply with a direction given to the person under section 59, the Minister may, by notice in writing, direct the licensee by whom the person is engaged to terminate, within a time specified in the notice, the arrangement under which the person is appointed as the agent of the licensee.
- (2) A licensee who does not comply with a notice given to the licensee under this section is guilty of an offence.  
Maximum penalty—50 penalty units.
- (3) It is taken to be a condition of any arrangement entered into between a licensee and an agent that the licensee has the rights required to enable the licensee to give effect to a direction to which this section applies.
- (4) The termination of an arrangement in accordance with this section has effect despite any other Act or law and neither the State nor the Minister incurs any liability by

reason of that termination.

### **61 Prejudice to integrity of public lottery involving key employee**

- (1) The Minister may give a direction under this section if the Minister is of the opinion that the integrity or apparent integrity of a public lottery conducted by a licensee is likely to be seriously prejudiced because of—
  - (a) the criminal record of a key employee, or
  - (b) the character or reputation of a key employee.
- (2) The Minister may, by notice in writing, direct—
  - (a) the licensee, or
  - (b) any other appropriate person,to terminate immediately and not to renew the employment or arrangement by reason of which the key employee is a key employee of the licensee or other person.
- (3) A person who does not comply with a direction given to the person under this section is guilty of an offence.

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

## **Division 3 Contracts**

### **62 Definitions**

In this Division—

**contract** includes any kind of agreement or arrangement.

**controlled contract** means—

- (a) a contract that relates wholly or partly to the supply of goods or services to a licensee or agent in connection with the conduct of a public lottery and that is—
  - (i) for the purchase or servicing, or purchase and servicing, of any device or equipment used in connection with the conduct of the public lottery or the security arrangements in relation to the conduct of the public lottery, or
  - (ii) for a total consideration that exceeds \$100,000 per annum, or
  - (iii) a contract, or a contract of a class, the Minister has specified in the conditions of the licence because it involves the public interest, or
- (b) a contract of a class that is prescribed by the regulations as a controlled contract for the purposes of this definition,

but does not include an exempt contract.

**exempt contract** means—

- (a) a contract that relates solely to the construction or alteration of premises used or to be used by a licensee or agent in connection with the conduct of a public lottery, or
- (b) a contract of a class that is prescribed by the regulations as exempt from the definition of controlled contract.

**63 Notice of proposed controlled contracts or variations of controlled contracts to be given**

- (1) This section applies only to controlled contracts that the conditions of a licence or the regulations require to be notified to the Minister and so applies in respect of—
  - (a) such controlled contracts that are entered into after the commencement of this section, and
  - (b) variations of such controlled contracts, whether the contracts were entered into before or after that commencement.
- (2) A licensee or agent must not enter into or become a party to a controlled contract, or the variation of a controlled contract, to which this section applies until the licensee or agent has given the Minister written notice of the details of the proposed contract or variation of contract that are specified in the conditions of a licence or prescribed by the regulations and the investigation time that the Minister is allowed by this section has elapsed.
- (3) The notice must be accompanied by the fee specified by the conditions of the licence or prescribed by the regulations.
- (4) The Minister may object to the proposed contract or variation of contract by notice in writing given to the licensee or agent during the investigation time that the Minister is allowed by this section, in which case the licensee or agent must not enter into or become a party to the contract or variation of contract.
- (5) The Minister is not required, despite any rule of law to the contrary, to give reasons for an objection made under subsection (4).
- (6) The Minister is allowed 28 days investigation time (starting from when the notice under subsection (2) is given to the Minister) but that time can be shortened or extended in a particular case by the Minister by notice in writing to the licensee or agent.
- (7) Investigation time is not to be extended unless the Minister is of the opinion that the special circumstances of the case (such as, for example, the complex nature of the inquiries that need to be made or the need to consult other agencies) make the



extension necessary or desirable and that public interest considerations justify the extension.

(8) Investigation time can be extended more than once but cannot in any case be extended to more than 6 months after the notice was given to the Minister.

(9) It is a condition of—

(a) a licence that the licensee must comply with this section, or

(b) the approval or appointment of an agent that the agent must comply with this section,

but failure to comply with this section does not affect the validity of any contract or variation of contract.

#### **64 Notice to show cause why controlled contract should not be terminated**

(1) The Minister may serve on each party to a controlled contract a notice in writing affording the party an opportunity to show cause within 14 days why the contract should not be terminated on the ground that it is not in the public interest for the contract to remain in force.

(2) The notice is to specify the reasons why it is considered that it is not in the public interest for the contract to remain in force.

(3) A party to the contract may, within the period specified in the notice, arrange with the Minister for the making of submissions as to why the contract should not be terminated.

(4) The Minister may—

(a) after considering any submissions so made, or

(b) if no arrangements are made within the period specified in the notice, or no submissions are received in accordance with arrangements made,

by notice in writing served on each party to the contract, require the contract to be terminated within a time specified in the notice.

(5) If a contract is not terminated as required by a notice, it is terminated by this Act as and from the expiration of the time specified in the notice for the termination of the contract.

(6) This section applies to controlled contracts whether entered into before or after the commencement of this section.

## **65 Effect of termination**

If a contract is terminated in accordance with this Division—

- (a) the termination does not affect a right acquired, or a liability incurred, before the termination by a person who was a party to the contract, as a result of the performance before the termination of any obligation imposed by the contract, and
- (b) no liability for breach of contract is incurred by a person who was a party to the contract by reason only of that termination, and
- (c) neither the State nor the Minister incurs any liability by reason of that termination.

## **66 Parties to terminated contract must not give effect to it**

A party to a contract terminated in accordance with this Division who gives further effect to the contract is guilty of an offence.

Maximum penalty—100 penalty units.

## **67 Parties to contract may be required to provide information**

Section 53 (Minister may require information relating to licensees and agents) applies to a party to a controlled contract in the same way as it applies to a licensee.

# **Division 4 Investigations**

## **68 Investigations**

- (1) The Minister may appoint a person to investigate and report on matters and circumstances specified by the Minister relating to—
  - (a) the conduct of any public lottery, or
  - (b) a licensee or agent or a person who, in the opinion of the Minister, is an associate of a licensee or agent, or
  - (c) a specified person who, or a specified class of persons that includes persons who, in the opinion of the Minister, could be in a position to exercise direct or indirect control over a licensee or agent, in relation to the conduct of a public lottery.
- (2) A person appointed to carry out an investigation may, for the purpose of the investigation, exercise—
  - (a) the functions conferred by section 53 (Minister may require information relating to licensees and agents) on the Minister, and
  - (b) any other functions of the Minister specified by the Minister in the instrument of appointment.

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

## **Part 7A Investigation and enforcement powers generally**

### **69 Definitions**

In this Part—

**GALA Act** means the *Gaming and Liquor Administration Act 2007*.

**Secretary** has the same meaning as in the *Gaming and Liquor Administration Act 2007*.

### **70 Purposes for which powers under this Part may be exercised**

Powers may be exercised under this Part for the following purposes—

- (a) for determining whether there has been compliance with or a contravention of this Act, and the regulations and instruments made under it,
- (b) for obtaining information or records for purposes connected with the administration of this Act and the regulations and instruments made under it,
- (c) in connection with exercising the functions of an inspector under this Act and the regulations and instruments made under it,
- (d) generally for administering this Act, and the regulations and instruments made under it, and promoting its objects.

### **71 Appointment and identification of inspectors**

- (1) The Secretary may appoint a Public Service employee to be an inspector for the purposes of this Act and the regulations and instruments made under it.
- (2) The Secretary is taken to have been appointed as an inspector.
- (3) The Secretary is to cause each inspector to be issued with a means of identification in the form approved by the Secretary.
- (4) In the course of exercising the functions of an inspector under this Act and the regulations and instruments made under it, the inspector must, if requested to do so by any person affected by the exercise of any such function, produce the inspector's identification for inspection by the person unless to do so would defeat the purpose for which the functions are to be exercised.

### **72 Powers of inspectors**

An inspector has and may exercise the functions of an inspector under Divisions 2, 3, 4 and 6 of Part 4 of the GALA Act (as applied by section 73) for any of the purposes referred to in section 70.

### **73 Application of GALA Act**

- (1) Sections 14 and 15 of the GALA Act apply to the appointment of an inspector under section 71 in the same way that they apply to the appointment of an inspector under the GALA Act.
- (2) The provisions of Divisions 2, 3, 4 and 6 of Part 4 of the GALA Act and sections 17 (Secrecy) and 37 (Protection from personal liability) apply to and in respect of this Act and the regulations and instruments made under it as if those provisions were part of this Act, but modified so that—
  - (a) references in those provisions to the gaming and liquor legislation were references to this Act and the regulations and instruments made under it, and
  - (b) references in those provisions to “this Act” and “this Part” were references to this Act and this Part, respectively, and
  - (c) references in those provisions to an inspector were references to inspectors appointed under section 71, and
  - (d) references in sections 28 (2) and 30 (2) of the GALA Act to “the Authority” were references to the Secretary, and
  - (e) the reference in section 24 (1) of the GALA Act to section 18 were a reference to section 70, and
  - (f) section 35 (2) of the GALA Act does not apply to the extent that it prevents a person from being excused from answering a question on the ground that the answer may tend to incriminate the person, and
  - (g) section 35 (5) (b) of the GALA Act does not apply to the extent that it makes information obtained as a result of an answer given that might incriminate a person admissible.
- (3) For the avoidance of doubt, a prosecution of a person for an offence against a provision of the GALA Act (as applying under this section) is to be taken as if the offence were an offence under this Act.
- (4) The functions that an inspector has under Part 4 of the GALA Act are, for the purposes of any provision of this Act and the regulations and instruments made under it, taken to be functions under this Act and the regulations and instruments made under it.
- (5) If an inspector has functions in respect of a matter under both the GALA Act (as applying under this section) and under any other provision of this Act or the regulations made under it, the fact that there is a restriction on the exercise of a function under this Act or the regulations does not of itself operate to restrict the exercise by an inspector of any similar or the same function under the GALA Act.

## **74 (Repealed)**

## **Part 7B Proceedings for offences**

### **75 Proceedings for offences**

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Local Court.

### **75A Penalty notices**

- (1) An inspector may issue a penalty notice to a person if it appears to the inspector 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) However—
  - (a) section 22A (1) of the *Fines Act 1996* does not apply in relation to disciplinary action under Part 3 of this Act, and
  - (b) despite section 22A (2) of the *Fines Act 1996*, when an amount is paid under this section in respect of a penalty notice issued to a person, the person is, for the purposes of Part 3 of this Act, taken to have been convicted of the offence to which the penalty notice relates.
- (5) 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).
- (6) 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.

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

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

## **77 Persons who may bring proceedings**

Proceedings for an offence under this Act may be brought by—

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

## **78 Offences by corporations**

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

## **Part 8 Miscellaneous**

### **79 Act binds Crown**

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

### **79A Administrative review by Civil and Administrative Tribunal of certain decisions**

A person may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) 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.

### **80 Secrecy**

- (1) A person who—
  - (a) acquires information in the exercise of a function under this Act, and
  - (b) directly or indirectly, makes a record of the information or divulges it to another person,

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

Maximum penalty—50 penalty units.

- (2) Despite subsection (1), information may be divulged—
  - (a) to a particular person or persons, if the Minister certifies that it is necessary in the public interest that the information be divulged to the person or persons, or
  - (b) to a person who is expressly or impliedly authorised to obtain it by the person to whom the information relates, or
  - (c) to a person or authority prescribed by the regulations.
- (3) It is not an offence under this section if, in legal proceedings, a person—
  - (a) divulges information in answer to a question that the person is compellable to answer, or
  - (b) produces a document or other thing that the person is compellable to produce.
- (4) An authority or person to whom information is divulged under this section, and a person or employee under the control of that authority or person, are, in respect of that information, subject to the same rights, privileges and duties under this section as they would be if that authority, person or employee were a person exercising functions under this Act and had acquired the information in the exercise of those functions.
- (5) This section does not apply to the divulging of information to any of the following—
  - (a) the Independent Commission Against Corruption,
  - (b) the Australian Crime Commission,
  - (c) the New South Wales Crime Commission,
  - (d) the Ombudsman,
  - (e) any other person or body prescribed by the regulations for the purposes of this subsection.
- (6) This section does not prevent a person being given access to a document in accordance with the [Government Information \(Public Access\) Act 2009](#) unless the document—
  - (a) contains matter the disclosure of which could reasonably be expected to do any of the following—
    - (i) prejudice the investigation of any contravention or possible contravention of

- the law (including any revenue law) whether generally or in a particular case,
- (ii) enable the existence or identity of any confidential source of information, in relation to the enforcement or administration of the law, to be ascertained,
  - (iii) prejudice the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law (including any revenue law), or
- (b) is a document the disclosure of which would disclose any of the following information—
- (i) information concerning the business, commercial, professional or financial affairs of a licensee, agent or key employee,
  - (ii) information obtained in the course of an investigation of a licensee, agent or key employee.
- (7) In this section, a reference to the divulging of information includes a reference to the production of a document or other thing and the provision of access to the document or other thing.

## **81 Delegation**

- (1) The Minister or Treasurer may delegate to a public servant or an officer of a class prescribed by the regulations all or any of the functions conferred or imposed on the Minister or Treasurer by or under this Act, other than this power of delegation.
- (2) The Secretary of the Department of Enterprise, Investment and Trade 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 Public Service, or
  - (b) any person, or any class of persons, authorised for the purposes of this subsection by the regulations.

## **82 Service of documents**

- (1) A document required or permitted by or under this Act to be served on a person may, if the person is a natural person, be served—
  - (a) by delivering the document to the person, or
  - (b) by sending the document by post addressed to the person at the person's last known place of residence, or
  - (c) by leaving the document at the person's last known place of residence with a person apparently resident at that place and apparently not less than 16 years of



age, or

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

### **83 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following—
  - (a) the days on which and the hours between which a licensee or an agent may not accept entries in a public lottery,
  - (b) the payment of prizes in a public lottery,
  - (c) any other matter for which the conditions of a licence may make provision.
- (3) A regulation may create an offence punishable by a penalty not exceeding 50 penalty units.

### **83A Responsible conduct of gambling activities**

- (1) The regulations may make provision for or with respect to requiring or encouraging the adoption of responsible practices in the conduct of public lotteries.
- (2) In particular, the regulations may make provision for or with respect to the following—
  - (a) the standards to be observed for the conduct of responsible gambling activities,
  - (b) the prohibition or restriction of the offering of inducements, or inducements of a kind, specified by the regulations,
  - (c) the information to be provided and signs to be displayed with respect to the conduct of, entry into and subscription to public lotteries,
  - (d) without limiting paragraph (c), the inclusion on each entry or ticket for a public lottery of—
    - (i) a warning notice about gambling, and
    - (ii) the name and contact details of a gambling counselling service specified, or of a kind specified, by the regulations.
- (3) The regulations under this section may create offences punishable by a penalty not exceeding 50 penalty units.
- (4) It is the intention of Parliament that regulations under this section will be made as soon as practicable after the date of assent to the *Gambling Legislation Amendment (Responsible Gambling) Act 1999*.

### **84 Repeals**

The following Acts and regulations are repealed—

- *Soccer Football Pools Act 1975 No 45*
- *Lotto Act 1979 No 53*
- *Lotto (Amendment) Act 1981 No 37*
- *New South Wales Lotteries Act 1990 No 78*
- *New South Wales Lotteries (Amendment) Act 1993 No 49*
- *New South Wales Lotteries (Elected Staff Member) Regulation 1991*
- *New South Wales Lotteries (Instant Lotteries) Regulation 1994*
- *New South Wales Lotteries (General) Regulation 1995*
- *Lotto Regulation 1995*

- [Soccer Football Pools \(General\) Regulation 1996](#)

## **85 (Repealed)**

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

Schedule 2 has effect.

## **87 Review of Act**

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

## **Schedule 1 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.

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

(Section 86)

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

#### **1 Regulations**

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

this Act

*New South Wales Lotteries Corporatisation Act 1996*

*Intergovernmental Agreement Implementation (GST) Act 2000*

*Public Lotteries Legislation Amendment Act 2004*

*NSW Lotteries (Authorised Transaction) Act 2009*, but only to the extent that it

amends this Act

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

## Part 2 Provisions consequent on enactment of **Public Lotteries Act 1996**

### 2 Definitions

In this Part—

**New South Wales Lotteries Corporation** means New South Wales Lotteries Corporation constituted by the [New South Wales Lotteries Corporatisation Act 1996](#).

**repealed Act** means the [Soccer Football Pools Act 1975](#), the [Lotto Act 1979](#) or the [New South Wales Lotteries Act 1990](#).

**Lotteries Act** means the [New South Wales Lotteries Act 1990](#).

**Lotto Act** means the [Lotto Act 1979](#).

**Soccer Football Pools Act** means the [Soccer Football Pools Act 1975](#).

### 3 Special provision relating to licences granted to New South Wales Lotteries Corporation

- (1) In this clause, **the transition period** means the period from the repeal of the Lotteries Act until 1 July 2007.
- (2) New South Wales Lotteries Corporation is entitled to a licence during the transition period for the conduct of the public lotteries that were being conducted by New South Wales Lotteries immediately before its dissolution. The licence may, when granted or after a later amendment, authorise the conduct of variations of those public lotteries.
- (3) No other person may, during the transition period, be granted a licence for the conduct of a public lottery for which New South Wales Lotteries Corporation has been granted a licence under this clause.

- (4) This clause ceases to apply to a public lottery if the licence of the New South Wales Lotteries Corporation for that public lottery is cancelled or otherwise ceases to have effect under this Act.
- (5) This clause ceases to apply to a public lottery if the New South Wales Lotteries Corporation applies for the grant of a licence for the conduct of that public lottery jointly with some other person.

#### **4 Special provision relating to grant of licences for certain new public lotteries**

- (1) This clause applies in respect of games that—
  - (a) immediately before the repeal of the Lotteries Act were regarded as lotteries for the purposes of section 4 of that Act, and
  - (b) are considered by the Minister to be games to which this clause should apply because of the nature and degree of developmental and related resources that have been expended on their development by New South Wales Lotteries, and
  - (c) are described in, and declared by, the Minister by notice in writing published in the Gazette on or before the repeal of the Lotteries Act, to be games to which this clause applies.
- (2) The Minister may grant to New South Wales Lotteries Corporation or a statutory authority, or to New South Wales Lotteries Corporation and a statutory authority jointly, one or more licences to conduct the public lotteries to which this clause applies.
- (3) No other person may, during the transition period, be granted a licence for the conduct of a public lottery to which this clause applies.
- (4) This clause ceases to apply to a public lottery if the licence granted in pursuance of this clause for that public lottery is cancelled or otherwise ceases to have effect under this Act.
- (5) In this clause—

**statutory authority** means a person or body referred to in section 11 (3) (a) or (b).

**the transition period** means the period from the repeal of the Lotteries Act until 1 July 2007.

#### **5 Saving of licences in force under repealed Acts**

- (1) This clause applies to—
  - (a) a licence in force under the Lotteries Act and the repealed *New South Wales Lotteries (General) Regulation 1995* made under that Act for the conduct of the game of powerball immediately before the repeal of that Act and Regulation, and

- (b) a licence in force under the Lotto Act for the conduct of games of Lotto, Oz Lotto, Lotto Strike and Keno immediately before the repeal of that Act, and
  - (c) a licence in force under the Soccer Football Pools Act for the promotion, conduct and operation of Soccer Football Pools immediately before the repeal of that Act.
- (2) A licence to which this clause applies—
- (a) is taken to be a licence, granted under this Act, to conduct the public lottery to which the licence under the relevant repealed Act related, and
  - (b) continues in force, subject to this Act, as if granted for a term expiring on 1 July 2007.
- (3) The requirements as to the payment of duty of—
- (a) the repealed Acts, and
  - (b) a licence referred to in subclause (1),
- are taken to be conditions of a licence continued in force under this clause until such time as the licence is replaced under this clause or is duly amended under this Act.
- (4) For the purposes of the application of this clause, a licence issued under the Lotteries Act and the repealed *New South Wales Lotteries (General) Regulation 1995* made under that Act for the conduct of the game of powerball—
- (a) is taken to be a licence granted under the Lotto Act, and
  - (b) the rules made for or with respect to the conduct by a licensee of a game of powerball are taken to have been made under the Lotto Act.
- (5) Nothing in this clause affects the power of the Minister to amend a licence, including a licence continued in force under this clause, in accordance with this Act.
- (6) This clause does not apply if the Minister, in accordance with this Act, grants a licence, in replacement of a licence referred to in subclause (1), to take effect on and from the appointed day.

## **6 Saving of Keno Prize Fund**

The prize fund account known as the Keno Prize Fund established under the licence in force immediately before the repeal of the Lotto Act in respect of the conduct of the public lottery known as keno is taken to be a prize fund account established under section 27 (Prize fund account).

## **7 Regulations may provide for continued conduct of certain public lotteries**

- (1) The regulations under clause 1 may make provision for the continued conduct by New



South Wales Lotteries Corporation of a draw lottery, instant lottery or other public lottery after the repeal of the Lotteries Act and pending the grant of a licence under this Act for the public lottery.

- (2) Without limiting subclause (1), a regulation to which this clause applies may provide for the continued operation of provisions of any one or more of the following—
  - (a) the Lotteries Act,
  - (b) the *New South Wales Lotteries (Instant Lotteries) Regulation 1994*,
  - (c) the *New South Wales Lotteries (General) Regulation 1995*.

## **8 Rules**

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

## **9 Current lotteries**

- (1) Any public lottery that was being conducted under the Lotteries Act immediately before the repeal of that Act may be completed under this Act.
- (2) This Act applies to and in respect of a public lottery referred to in this clause in the same way as it applies to a public lottery conducted under this Act.

## **10 Current games of powerball**

- (1) Any game of powerball that was being conducted under the Lotteries Act immediately before the repeal of that Act may be completed under this Act.
- (2) This Act applies to and in respect of a game of powerball referred to in this clause in the same way as it applies to a game of powerball conducted under this Act.

## **11 Current games of lotto**

- (1) Any game of lotto that was being conducted under the Lotto Act immediately before the repeal of that Act may be completed under this Act.
- (2) This Act applies to and in respect of a game of lotto referred to in this clause in the same way as it applies to a game of lotto conducted under this Act.

## **12 Current soccer football pools**

- (1) Any soccer football pool that was being promoted, conducted or operated under the Soccer Football Pools Act immediately before the repeal of that Act may be completed under this Act.

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

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

- (1) An agreement in force under—
  - (a) section 9 of the Lotteries Act, or
  - (b) section 13A of the Lotto Act, or
  - (c) section 14B of the Soccer Football Pools Act,immediately before the repeal of that section is taken, for the balance of the term of the agreement, to be an arrangement made for the purposes of section 33 (Sharing of duty with participating areas).
- (2) The Treasurer is to continue to make payments in respect of duty under an agreement referred to in this clause on the same basis on which duty was paid under the agreement before the repeal of the relevant section for the balance of the term of the agreement (unless otherwise lawfully varied), despite any requirement of section 33.

### **14 Disclosure of certain contracts**

Nothing in this Act requires a licensee to disclose to the Minister the existence or making of a contract or the making of a variation to a contract if the making or existence of the contract or the making of the particular variation to the contract was disclosed to the Minister before the commencement of section 63 (Notice of proposed controlled contracts or variations of controlled contracts to be given) of this Act pursuant to a licence in force immediately before that commencement.

### **15 Agents**

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

### **16 Approved representatives**

- (1) A person who, immediately before the repeal of section 10 of the Soccer Football Pools Act, was duly appointed as an approved representative of a licensee under that section is taken to have been appointed or approved as an agent of the licensee in accordance with the conditions of a licence granted under this Act.
- (2) A reference in any other Act, in any instrument made under an Act or in any other document to an approved representative of a licensee is to be read as a reference to an agent of the licensee.

## 17 Inspectors

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

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

## 18 Delegations

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

## 19 Disclosure of information

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

## 20 Pending or previous proceedings (instant lotteries)

- (1) The rights of a claimant to a prize in an instant lottery are to be determined in accordance with Division 3 (Instant lotteries) of Part 6 (Other provisions relating to public lotteries) of this Act even if proceedings in relation to the payment of a prize in the instant lottery to the claimant are pending at the commencement of that Division.
- (2) If, before or after the commencement of that Division—
  - (a) the claimant of a prize in an instant lottery has obtained a judgment with respect to the claim in proceedings instituted before that commencement, and
  - (b) the rights of the claimant have not been determined in accordance with that Division,the judgment is, by force of this clause, vacated and set aside.
- (3) Nothing in this clause or Division 3 of Part 6 affects the judgment of the Court of Appeal of the Supreme Court in *State Lotteries Office v Burgin* (No CA 40133/93) as between the parties to those proceedings.
- (4) In this section, **judgment** includes a summary or default judgment or order.

## 21 Directions to licensee or other person if prejudice to integrity of public lottery involved (lotto)

A direction given by the Minister to a licensee or other person under section 9A of the Lotto Act that has not been complied with before the repeal of that Act is taken to be a direction given under section 59 (Prejudice to integrity of public lottery involving licensees

or other persons) of this Act and is to have effect accordingly.

## **22 Directions concerning key employees (lotto)**

A direction given by the Minister to a licensee or other person under section 9B of the Lotto Act that has not been complied with before the repeal of that Act is taken to be a direction given under section 56 (Failure of key employee to provide required information) or 61 (Prejudice to integrity of public lottery involving key employee) of this Act and is to have effect accordingly.

## **23 Information relating to licensees or agents (lotto)**

Any information notified to the Minister by a licensee or agent in accordance with the requirements of section 17 (1) of the Lotto Act before the repeal of that Act is taken to be information provided for the purposes of this Act.

## **24 Notices to key employees (lotto)**

A notice served by the Minister on a key employee under section 17AA of the Lotto Act that has not been complied with before the repeal of that Act is taken to be a notice served under section 55 (Minister may require key employees to provide information) of this Act and is to have effect accordingly.

## **25 Investigations (lotto)**

An investigation undertaken under section 17A of the Lotto Act that is pending immediately before the repeal of that Act is taken to be an investigation under section 68 (Investigations) of this Act and may be continued and completed in accordance with the requirements of this Act.

## **26 Termination of certain contracts (lotto)**

- (1) Section 17B of the Lotto Act and clause 13 of the repealed [Lotto Regulation 1995](#) continue to apply to and in respect of a notice, served by the Minister on the parties to a prescribed contract under section 17B (1) of the Lotto Act, that has not been dealt with before the repeal of that Act.
- (2) Any decision concerning the termination of a contract that results from the service of a notice to which this clause applies is taken to have been made or effected under Division 3 (Contracts) of Part 7 (Enforcement) of this Act as if the prescribed contract concerned was a controlled contract, and is to have effect accordingly.

## **27 Revocation or suspension of licences (lotto)**

- (1) Section 10 of the Lotto Act continues to apply to and in respect of the revocation or suspension, before the repeal of that Act, of a licence granted under that Act.
- (2) The Minister may authorise the completion of any game of lotto that was in the course

of being conducted on the revocation or suspension of a licence to which this clause applies in the manner provided for by section 20 (Completion of public lottery following cancellation, revocation or suspension of licence).

## **28 General saving**

- (1) If anything done or commenced under a provision of a repealed Act or a regulation repealed by this Act before the repeal of that provision and still having effect or not completed immediately before that repeal could have been done or commenced under this Act if this Act had been in force when the thing was done or commenced—
  - (a) the thing done continues to have effect, or
  - (b) the thing commenced may be completed,as if it had been done or commenced under this Act.
- (2) This clause is subject to any express provision of this Act on the matter.

## **Part 3 Provisions consequent on enactment of [Public Lotteries Legislation Amendment Act 2004](#)**

### **29 Definition**

In this Part—

**amending Act** means the [Public Lotteries Legislation Amendment Act 2004](#).

### **30 Time limits for claiming unclaimed prizes**

The amendment made by Schedule 1 [12] to the amending Act extends to prizes that are unclaimed prizes on the commencement of that amendment.

### **31 Validation**

Anything done before the commencement of section 37A (as inserted by Schedule 1 [13] to the amending Act) which would have been validly done had that section been in force when it was done is validated.

### **32 Pending proceedings for offences against section 41 or 42**

- (1) Any proceedings for an offence against section 41 that were instituted but not finally determined before the commencement of the amendment made to that section by Schedule 1 [16] to the amending Act are to be determined as if that amendment had not commenced.
- (2) Any proceedings for an offence against section 42 that were instituted but not finally determined before the commencement of the amendment made to that section by Schedule 1 [17] to the amending Act are to be determined as if that amendment had

not commenced.

## **Part 4 Provisions consequent on enactment of [NSW Lotteries \(Authorised Transaction\) Act 2009](#)**

### **Division 1 Preliminary**

#### **33 Definitions**

(1) In this Part—

**authorised transaction** means the authorised transaction under the Transaction Act.

**existing keno licence** means the licence in force under this Act immediately before the commencement of this clause in respect of games of keno.

**existing lottery** means a public lottery conducted by NSW Lotteries pursuant to a licence under this Act immediately before the commencement of the new licensing arrangements.

**new licensing arrangements** means the provisions of this Act as amended by the Transaction Act.

**Transaction Act** means the [NSW Lotteries \(Authorised Transaction\) Act 2009](#).

**transaction completion date** means the date determined by the Treasurer to be the date on which the authorised transaction of NSW Lotteries under the Transaction Act is completed.

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

### **Division 2 General provisions**

#### **34 Special arrangements for existing keno licence**

This Act continues to apply to and in respect of the existing keno licence as if this Act had not been amended by the Transaction Act.

#### **35 Grant of licence for purposes of authorised transaction**

(1) The Minister may, in connection with the authorised transaction, grant a licence under the new licensing arrangements before those arrangements commence.

(2) Any function of the Minister or Treasurer under this Act and the new licensing arrangements may be exercised for the purposes of or in connection with the grant of a licence under this clause (including any function with respect to requiring the payment of any fee or consideration payment).

- (3) Any determination to be made by the Minister in connection with the grant of a licence pursuant to this clause is to be made as if the licence were being granted immediately after the completion of the authorised transaction and on the basis of the state of affairs that the Minister considers is likely to exist immediately after completion of the authorised transaction.
- (4) A licence can be granted under this clause to authorise the conduct of a lottery even if the lottery is of the same kind as an existing lottery.
- (5) Any licence granted under the new licensing arrangements pursuant to this clause does not operate until the commencement of those arrangements.

### **36 Provisions to ensure continuity of lotteries**

- (1) The rules relating to the conduct of an existing lottery, as in force immediately before the commencement of the new licensing arrangements, are deemed to be the rules (the **transitional rules**) of a public lottery that is of the same kind as the existing lottery and authorised to be conducted under a product licence that takes effect on the commencement of the new licensing arrangements.
- (2) An existing lottery being conducted by NSW Lotteries immediately before the commencement of the new licensing arrangements is to be completed—
  - (a) by the licensee under a product licence that takes effect on the commencement of the new licensing arrangements and that authorises the conduct of a lottery of the same kind as the existing lottery, and
  - (b) in accordance with any directions given to that licensee by the Minister.
- (3) This clause does not prevent the subsequent amendment of the transitional rules in accordance with this Act.

### **37 Payment to Consolidated Fund of surplus prize money on transaction completion**

- (1) The Minister may, with the approval of the Treasurer, require a licensee to pay to the Treasurer for payment into the Consolidated Fund the fund surplus as at the transaction completion date for each prize fund kept in respect of the licensee.
- (2) The **fund surplus** for a prize fund is the amount determined by the Minister to be the amount standing to the credit of the prize fund as at the transaction completion date that as at that date is not required for payment of prizes won in a public lottery to which the prize fund relates.
- (3) A licensee must pay money from a prize fund in compliance with the Minister's direction and such a payment is authorised despite the requirements of section 27.
- (4) This clause does not apply to the licensee under the existing keno licence.

### 38 Revocation of existing NSW Lotteries licences

- (1) Any licence held by NSW Lotteries immediately before the commencement of the new licensing arrangements is revoked on the commencement of those arrangements.
- (2) Compensation is not payable by or on behalf of the State because of the revocation of a licence under this clause, or for any consequence of the revocation of a licence under this clause.

## Division 3 Protections for existing lotteries agents

### 39 Definitions

In this Division—

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

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

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

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

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

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

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

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

### 40 Protections for existing agency agreements

- (1) The following protections apply to an existing retail agency agreement—
  - (a) the agreement continues in force after the commencement of the new licensing arrangements on the same terms and conditions as applied to the agreement



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

**Note—**

Notice of intention to terminate can be given during the agency protection period (but so that the 6-month period of notice expires after the end of the agency protection period). Paragraph (f) does not extend to an agency agreement that is extended under paragraph (c) (because the agreement expires at the end of the agency protection period).

- (2) A restriction imposed by this clause on the right of a licensee to terminate an agency agreement pursuant to a termination for convenience provision of the agreement does not affect any right of the agent to terminate pursuant to such a provision or any right of the licensee or agent to terminate for a breach of the agreement.
- (3) This clause does not prevent the termination of an agency agreement pursuant to a direction of the Minister under section 21H (Withdrawal of approval or appointment of agent under conditions of licence) or 60 (Minister may direct licensee to terminate certain agency arrangements).

**41 Restrictions on new agency agreements**

- (1) A licensee must not enter into an agency agreement before the end of the agency protection period that authorises the agent to sell lottery tickets at the premises of a retail business unless the premises are the premises of a newsagency, convenience store or a business that is (or that is of a kind) prescribed by the regulations.
- (2) A licensee must not enter into an agency agreement during the 6 months after the end of the agency protection period that authorises the agent to sell lottery tickets at

the premises of a retail business unless—

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

#### **42 Restriction on increase in number of retail agents**

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

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

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

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

#### **44 Variation of fit-out obligations of existing agents**

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

#### **45 Funds transfer obligations of existing agents**

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

#### **46 Training and operational support for existing agents**

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

#### **47 Minister's approval of changes to commission rates**

- (1) The Minister must not approve any change to an existing agent commission rate (or any rule or amendment of a rule that would have the effect of changing an existing agent commission rate) during the agency protection period without first consulting

on the proposed change with the persons or bodies that the Minister considers represent the views and interests of existing retail agents.

- (2) An **existing agent commission rate** is the rate at which commission is payable to an agent under an existing retail agency agreement in respect of sales of entries in a public lottery conducted by the licensee.

#### **48 Establishment of industry forum**

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

#### **49 Inconsistency with existing agreements**

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

#### **50 Keno not affected**

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

### **Part 5 Provisions consequent on enactment of [Liquor and Gaming Legislation Amendment Act 2018](#)**

#### **51 Definition**

In this Part—

**amending Act** means the [Liquor and Gaming Legislation Amendment Act 2018](#).

#### **52 Inspectors**

A person who, immediately before the repeal of section 69 by the amending Act, was an inspector for the purposes of this Act is taken, on that repeal, to have been appointed as an inspector under section 71 as inserted by the amending Act.

#### **53 Search warrants**

Section 72, as in force immediately before its repeal by the amending Act, continues to

apply to a search warrant issued under that section before its repeal.