



New South Wales

Gaming Machines Amendment Bill 2004

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make the necessary amendments to the *Gaming Machines Act 2001 (the Principal Act)* in consequence of a requirement, made in connection with the acquisition of TAB Limited (*TAB*) by Tabcorp Holdings Limited, that TAB divest itself of certain exclusive licences that it holds under the Principal Act. That Act, as amended by this Bill, will no longer provide that TAB is entitled to those exclusive licences and will permit the transfer of the licences (other than one form of licence that is abolished by the Bill).

The Bill also:

- (a) removes the requirements for the holders of certain of the licences concerned to have in place, and give effect to, certain commercial arrangements with the racing industry, and
- (b) repeals the provisions dealing with investment licences under the Principal Act, and
- (c) repeals and re-enacts a provision to reflect the fact that links licences under the Principal Act are held, not by individual hoteliers and registered clubs, but by a single licensee, and

(d) inserts savings and transitional provisions.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Gaming Machines Act 2001* set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [6] repeals and re-enacts section 137 of the Principal Act. Currently, that section provides that TAB is entitled to an exclusive licence, for the period up to 1 December 2016, to operate a centralised monitoring system for gaming machines in hotels and clubs (*a CMS licence*).

The section as re-enacted preserves the exclusive CMS licence granted to TAB for that period but it does not name the licensee. It provides, instead, for the transfer of the exclusive licence with the written consent of the Minister and subject to such terms and conditions as the Minister may determine. **Schedule 1 [5]** makes a consequential amendment.

Schedule 1 [4] repeals section 136 (4) and (5) of the Principal Act. Those subsections provide that a CMS licence is subject to a condition that the licensee must have in place, and must give effect to, certain commercial arrangements with the racing industry.

Schedule 1 [7] and [8] repeal and re-enact sections 147 and 152, respectively, of the Principal Act. Those sections are concerned with *linked gaming systems*—that is, systems in which two or more specially approved gaming machines are linked electronically to contribute a percentage of the money wagered on the gaming machines to a separate jackpot pool.

Currently, section 147 provides that TAB is entitled to an exclusive licence (*an inter-hotel links licence*), for the period up to 17 October 2017 (effectively), to operate a linked inter-hotel gaming system—that is, a linked gaming system that operates in a hotel but includes specially approved gaming machines that are kept in other hotels. Section 152 is to the same effect in relation to registered clubs, entitling TAB to an exclusive *inter-club links licence* for the same period.

The sections as re-enacted preserve the exclusive links licences granted to TAB for that period but they do not name the licensee. They provide, instead, for the transfer of the exclusive licences with the written consent of the Minister and subject to such terms and conditions as the Minister may determine.

Schedule 1 [9] repeals section 153 (3) and (4) of the Principal Act. Those subsections provide that a links licence is subject to a condition that the licensee must have in place, and must give effect to, certain commercial arrangements with the racing industry.

Schedule 1 [14] repeals and re-enacts section 170 (2) of the Principal Act. Section 170 (1) provides that a licence does not confer any right of property and is (among other things) incapable of being assigned. Currently, section 170 (2) makes it clear that section 170 (1) does not prevent certain activities of a holder of an investment licence. (The repeal of the subsection is consequent on the abolition of investment licences by Schedule 1 [10].) As re-enacted, section 170 (2) over-rides section 170 (1) to the extent necessary to permit the transfers of the exclusive licences.

Schedule 1 [10] repeals Part 11 (Investment licences) of the Principal Act. That Part provides for the granting of licences that authorise the sale or supply of gaming machines to hotels and the sharing in the profits from the operation of those machines. (Section 73 of the Principal Act prohibits hoteliers and registered clubs from sharing those profits otherwise than as provided for in Part 11 or as part of a linked gaming system.) **Schedule 1 [1]** (in part), [2], [11]–[13], [15] and [16] make consequential amendments.

Schedule 1 [17] enables regulations containing savings and transitional provisions to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [18] inserts a new Part into the Schedule of savings and transitional provisions in the Principal Act. That Part:

- (a) provides that any direct debit arrangements in force for the collection of the monitoring fee payable to the holder of a CMS licence, or for the collection of amounts payable to the holder of a links licence in connection with the operation of an authorised linked gaming system, continue to operate for the benefit of any persons to whom the relevant licences are transferred, and
- (b) prevents the withholding of any consents required to permit the assignment or novation of contracts necessary for the continued operation of the authorised centralised monitoring system or authorised linked gaming system from the holders of the licences to the persons to whom the relevant licences are transferred, and
- (c) cancels the investment licence held by TAB, and
- (d) provides for the completion of contracts and other arrangements entered into pursuant to the investment licence.

Schedule 1 [1] (in part) repeals the definition of **TAB** in consequence of the removal of references to TAB from the Principal Act (other than in the Schedule of savings and transitional provisions).

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Explanatory note

Schedule 1 [3] repeals and re-enacts section 73 (2) of the Principal Act so as to substitute the generic term “holder of the relevant links licence” for certain references to hoteliers and registered clubs (because the licences are currently held by a single licensee and not by individual hoteliers and registered clubs).

First print



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Gaming Machines Amendment Bill 2004

No. , 2004

A Bill for

An Act to amend the *Gaming Machines Act 2001* in consequence of a requirement that TAB Limited, the specified holder of certain exclusive licences under the Act, divest itself of those licences; to facilitate the transfer of those licences; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Gaming Machines Amendment Act 2004</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5
3 Amendment of Gaming Machines Act 2001 No 127	6
The <i>Gaming Machines Act 2001</i> is amended as set out in Schedule 1.	7

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 4 Definitions	3
	Omit the definitions of <i>investment licence</i> and <i>TAB</i> from section 4 (1).	4
[2]	Sections 73 (Sharing of receipts from gaming machines) and 74 (Granting interests in gaming machines)	5
	Omit “Subject to Part 11, a hotelier” from sections 73 (1) and 74 (1) wherever occurring.	6
	Insert instead “A hotelier”.	7
[3]	Section 73 (2)	8
	Omit the subsection. Insert instead:	9
	(2) This section does not apply in respect of the sharing of receipts arising from the operation of an approved gaming machine that is part of an authorised linked gaming system if the sharing of receipts is pursuant to an agreement, between the holder of the relevant links licence and the hotelier or registered club that operates the approved gaming machine, in relation to the linked gaming system.	10
[4]	Section 136 Grant of CMS licence	11
	Omit section 136 (4) and (5).	12
[5]	Section 136 (7)	13
	Insert “(other than the exclusive CMS licence referred to in section 137)” after “A CMS licence”.	14
[6]	Section 137	15
	Omit the section. Insert instead:	16
137	Exclusive CMS licence during exclusive licence period	17
	(1) The <i>exclusive CMS licence</i> is the CMS licence in force under section 136 immediately before the repeal and re-enactment of this section by the <i>Gaming Machines Amendment Act 2004</i> .	18
	(2) The exclusive CMS licence is the only CMS licence that can be granted under section 136 to be in force during the period up to 1 December 2016 (referred to in this section as the <i>exclusive licence period</i>).	19

(3)	Subsection (2) ceases to apply if the exclusive CMS licence is cancelled or surrendered in accordance with this Act or otherwise ceases to be in force.	1 2 3
(4)	The exclusive CMS licence may be transferred only:	4
(a)	with the written consent of the Minister, and	5
(b)	subject to such terms and conditions as the Minister may determine and specify in writing.	6 7
(5)	Nothing in any other Act prevents the holder for the time being of the exclusive CMS licence from operating a CMS under the authority of that licence, or from carrying out any of its functions as a CMS licensee.	8 9 10 11
(6)	Nothing in this section is intended to prevent any holder (or former holder) of the exclusive CMS licence or any other person (assuming that they are otherwise qualified) from applying for and being granted a CMS licence in respect of any period after the exclusive licence period.	12 13 14 15 16
[7]	Section 147	17
	Omit the section. Insert instead:	18
147	Exclusive inter-hotel linked gaming system licence during exclusive licence period	19 20
(1)	The <i>exclusive inter-hotel links licence</i> is the inter-hotel links licence in force under section 153 immediately before the repeal and re-enactment of this section by the <i>Gaming Machines Amendment Act 2004</i> .	21 22 23 24
(2)	The exclusive inter-hotel links licence is the only inter-hotel links licence that can be granted under section 153 to be in force during the exclusive licence period.	25 26 27
(3)	Subsection (2) ceases to apply if the exclusive inter-hotel links licence is cancelled or surrendered in accordance with this Act or otherwise ceases to be in force.	28 29 30
(4)	The exclusive inter-hotel links licence may be transferred only:	31
(a)	with the written consent of the Minister, and	32
(b)	subject to such terms and conditions as the Minister may determine and specify in writing.	33 34
(5)	Nothing in any other Act prevents the holder for the time being of the exclusive inter-hotel links licence from operating a linked gaming system in a hotel under the authority of that licence, or from carrying out any of its functions as a licensee.	35 36 37 38

	(6) Nothing in this section is intended to prevent any holder (or former holder) of the exclusive inter-hotel links licence or any other person (assuming that they are otherwise qualified) from applying for and being granted an inter-hotel links licence in respect of any period after the exclusive licence period.	1 2 3 4 5
[8]	Section 152	6
	Omit the section. Insert instead:	7
152	Exclusive inter-club linked gaming system licence during exclusive licence period	8 9
	(1) The <i>exclusive inter-club links licence</i> is the inter-club links licence in force under section 153 immediately before the repeal and re-enactment of this section by the <i>Gaming Machines Amendment Act 2004</i> .	10 11 12 13
	(2) The exclusive inter-club links licence is the only inter-club links licence that can be granted under section 153 to be in force during the exclusive licence period.	14 15 16
	(3) Subsection (2) ceases to apply if the exclusive inter-club links licence is cancelled or surrendered in accordance with this Act or otherwise ceases to be in force.	17 18 19
	(4) The exclusive inter-club links licence may be transferred only:	20
	(a) with the written consent of the Minister, and	21
	(b) subject to such terms and conditions as the Minister may determine and specify in writing.	22 23
	(5) Nothing in any other Act prevents the holder for the time being of the exclusive inter-club links licence from operating a linked gaming system in a registered club under the authority of that licence, or from carrying out any of its functions as a licensee.	24 25 26 27
	(6) Nothing in this section is intended to prevent any holder (or former holder) of the exclusive inter-club links licence or any other person (assuming that they are otherwise qualified) from applying for and being granted an inter-club links licence in respect of any period after the exclusive licence period.	28 29 30 31 32
[9]	Section 153 Granting of links licence	33
	Omit section 153 (3) and (4).	34
[10]	Part 11 Investment licences (sections 159–165)	35
	Omit the Part.	36

[11] Part 12, heading	1
Omit the heading. Insert instead:	2
Part 12 General provisions relating to CMS and links licences	3 4
[12] Section 166 Definitions	5
Omit paragraph (c) from the definition of <i>licence</i> .	6
[13] Section 169 Trade Practices exemption for exclusive licences	7
Omit “Part 9, 10 or 11” from section 169 (1) (a). Insert instead “Part 9 or 10”.	8
[14] Section 170 No proprietary right in licences	9
Omit section 170 (2). Insert instead:	10
(2) Despite subsection (1), a licence is capable of being transferred in accordance with section 137 (4), 147 (4) or 152 (4), as the case may be.	11 12 13
[15] Section 177 Directions to licensees and other relevant persons	14
Omit section 177 (1) (c).	15
[16] Section 210 Regulations	16
Omit “CMS licences, links licences and investment licences” from section 210 (2) (w).	17 18
Insert instead “CMS licences and links licences”.	19
[17] Schedule 1 Savings, transitional and other provisions	20
Insert at the end of clause 1 (1):	21
<i>Gaming Machines Amendment Act 2004</i>	22

[18] Schedule 1	1
Insert at the end of the Schedule, with appropriate Part and clause numbers:	2
Part Provisions consequent on enactment of Gaming Machines Amendment Act 2004	3 4
Definitions	5
In this Part:	6
<i>amending Act</i> means the <i>Gaming Machines Amendment Act 2004</i> .	7 8
<i>investment licence</i> means the investment licence granted to TAB and in force under Part 11 immediately before the repeal of that Part by the amending Act.	9 10 11
<i>TAB</i> means the company known as TAB Limited established by the <i>Totalizator Agency Board Privatisation Act 1997</i> .	12 13
Arrangements for collection of certain fees after transfer of licence	14
An authorisation in writing, executed by or on behalf of a hotelier or registered club, that is, immediately before any transfer of a CMS licence or links licence in accordance with this Act, effective to permit the holder of that licence (<i>the current holder</i>) to appropriate, by automatic debit from the accounts of the hotelier or club at a bank or financial institution, amounts payable:	15 16 17 18 19 20 21
(a) as or in respect of the monitoring fee payable under section 134, or	22 23
(b) in connection with the operation of an authorised linked gaming system,	24 25
continues to have effect after a transfer of the licence and so has effect as if a reference in the authorisation to the current holder were a reference to the person to whom the licence is transferred.	26 27 28
Arrangements necessary for continued operation of authorised CMS or authorised linked gaming system after transfer of licence	29 30
(1) The Minister may, by order published in the Gazette, identify such contracts between a holder of a CMS licence or a links licence and other parties as are, in the Minister's opinion, necessary for the continued operation of the authorised CMS or authorised linked gaming system to which the licence relates.	31 32 33 34 35
(2) The publication of such an order operates to require the other parties to the contracts to give any consents that are necessary to	36 37

permit the assignment or novation of such contracts by the holder of the CMS licence or links licence concerned to the person to whom the licence is transferred in accordance with this Act.	1 2 3
(3) The consents may be given either unconditionally or subject to such conditions as the Minister considers reasonable.	4 5
(4) However, if a consent required to be given under this clause is not given within 60 days after it has been duly sought, the consent is taken to have been given unconditionally.	6 7 8
(5) Neither the transfer under this Act of a CMS licence or a links licence nor the operation of this clause is to be regarded:	9 10
(a) as a breach of contract or confidence or otherwise as a civil wrong, or	11 12
(b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or	13 14 15
(c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or	16 17 18 19
(d) as an event of default under any contract or other instrument.	20 21
Cancellation of investment licence	22
The investment licence is taken to be cancelled on the repeal of Part 11.	23 24
Preservation of certain arrangements under investment licence	25
(1) Any contract or other arrangement between TAB and a hotelier entered into pursuant to the investment licence and in force immediately before the cancellation of that licence may be completed despite that cancellation and despite the other provisions of this Act.	26 27 28 29 30
(2) However:	31
(a) the contract or arrangement may not be varied so as to extend its term, and	32 33
(b) no further contract or arrangement of the same kind may be entered into pursuant to the contract or arrangement, and	34 35

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| (c) | failure to extend the term of the contract or arrangement, or to enter into any further such contract or arrangement, does not constitute a breach of, or default under, any contract or arrangement. | 1
2
3
4 |
| (3) | This clause has effect despite the provisions of the contract or arrangement concerned. | 5
6 |
| (4) | For the purposes of this clause, section 169 applies as it was in force immediately before its amendment by the amending Act. | 7
8 |