



## Lotteries And Art Unions Amendment Bill.

### Second Reading

**Mr McBRIDE** (The Entrance—Minister for Gaming and Racing) [10.30 a.m.]: I move:

That this bill be now read a second time.

The Government has brought forward this bill to amend the Lotteries and Art Unions Act 1901 following a national competition policy review of the Act. That Act regulates community-based lottery activities, which include raffles, art unions, bingo, sweeps, tipping competitions and trade promotion lotteries. These types of lottery activities are of significant importance to the community. They allow charities and not-for-profit organisations to raise much-needed funds, and they also provide community entertainment. Commercial-based lottery activities are not affected by this legislation; they are regulated under the Public Lotteries Act.

The accepted principle under which lotteries and art unions may proceed is that no-one can claim a right to provide this type of gaming. It is a privilege to be granted by government, subject to thorough probity controls and only in accordance with community expectations. Hence, the Lotteries and Art Unions Act imposes a blanket prohibition on the selling or disposing of money or property by chance. It then provides exceptions to the prohibition. Certain community-based lotteries are authorised on the basis that they accord with the Act, regulations and any applicable permit conditions. For example, raffles, guessing competitions, mini number lotteries and scratch-and-break open lotteries run by non-profit organisations do not require permits.

There are restrictions on these operations that control the value of prizes on offer or the minimum value of profit that must be returned to the organisation. As a protection for the community, the Act also restricts who can conduct lottery or gaming activities, what activities can be undertaken and how those activities are to occur. Essentially, the Act restricts the conduct of lottery activities to charities and other non-profit organisations. The proposal to amend the Act has come about because of a combined national competition policy review of the Lotteries and Art Unions Act and the Charitable Fundraising Act, which was undertaken as part of the New South Wales Government's commitment to the Competition Principles Agreement.

The Charitable Fundraising Act regulates the charitable fundraising sector—a very important sector in our community. The sector comprises donors, charities, professional fundraisers and persons in beneficial receipt of charitable services. The Act imposes a general prohibition on charitable fundraising unless the person who, or organisation which, conducts the appeal is properly authorised. The national competition policy review confirmed the broad objectives of the Charitable Fundraising Act and the Lotteries and Art Unions Act.

One objective is to ensure the integrity of charitable fundraising and authorised lottery activities. That is why the Act provides a regime that requires operation by responsible and accountable persons and eliminates practices that could undermine public confidence. Another objective is to assist with the ongoing viability of organisations that conduct charitable fundraising and authorised lottery activities. This should ensure that such activities contribute positively to the community and develop and operate in the public interest. Charitable fundraising and authorised lottery activities must be conducted with fairness. This is an important objective because such activities have a significant effect on members of the community.

In line with government policy, one objective is to promote gambling harm minimisation. Community-based lotteries are no less important than other more significant forms of gambling. Another objective is to ensure that the industries are free from criminal influence and exploitation. Finally, an objective is to ensure that the proceeds are applied to the particular purpose or organisation represented during the conduct of the charitable fundraising or authorised lottery activities. The last two objectives are important because if anyone does the wrong thing it may undermine public confidence and the ability of charities to raise much-needed income.

The review identified a number of restrictions on competition. These are entry restrictions, restrictions on conduct, cross-border restrictions, and that all persons or organisations are not placed on equal terms. The review of the Lotteries and Art Unions Act occurred in an environment of increased community concern about the expansion of gaming and the associated potential for adverse social consequences for some members of the community. The development of gaming harm minimisation and other social policy developments in New South Wales and at the Commonwealth level have shaped the recommendations of the review.

The national competition policy review of the Charitable Fundraising Act gave due regard to other inquiry processes into charitable fundraising. One was the Commonwealth's Productivity Commission inquiry into

charitable organisations in June 1995, which recommended, in part, that consideration should be given to achieving greater efficiency and effectiveness of fundraising regulation among the States and Territories. Another is the formation of an inter-jurisdictional working party comprising representatives from the various States and Territories to investigate the feasibility of developing greater uniformity of regulation for charities. At this stage the working party has not resolved its position.

The review generally recommends that the current restrictions on competition in the legislation be retained on the basis that the potential public benefits of these restrictions outweigh the costs. The review considered alternatives to the restrictions. However, in each case it recommended retention of these restrictions. It was considered that they achieve the best result in terms of community benefits. Nevertheless, the review recommended that there should be ongoing discussion between the States and Territories to explore the possibility of greater uniformity. The main reason for such recommendations is the need to retain controls that maintain integrity and to ensure adherence to the Government's gaming harm minimisation policy.

At the same time, the retention of these controls seeks to provide an environment that assists the ongoing viability of charitable organisations so that they may continue to contribute positively to the community and develop and operate in the public interest. The bottom line is that the national competition policy report gave due regard to the potential economic and social impacts of maintaining restrictions. It is obvious that the absence of any regulation might well result in an expansion of gaming, with an associated increase in the incidence of problem gambling. There could be an increase in criminal influence and exploitation and an increase in practices that undermine public integrity and threaten revenue for legitimate community groups and charities.

Also, community-based organisations might not be able to offer a competitive product against commercial operators, thereby losing much-needed revenue to finance their worthwhile activities. Although the national competition policy report on the Charitable Fundraising Act does not recommend any amendment to the legislation, the national competition policy report on the Lotteries and Art Unions Act recommends that it be amended in three areas. Those areas are: first, to include explicit objects; secondly, to remove the requirement for a registered club to hold a permit to conduct certain games of chance; and, thirdly, to remove the prohibition on a person conducting a lottery in another State or Territory of Australia from advertising and selling tickets in New South Wales, provided the lottery complies with the same standards expected of a lottery conducted in New South Wales.

The Lotteries and Art Unions Act was drafted in 1901, before the practice of stating objects, and therefore has no explicit objects. The review found that the underlying implicit objectives of the Act are valid but concluded that they need to be stated explicitly. Accordingly, the bill proposes a new section 2 to provide for the objects of the Act. In particular, it provides that the principal object of the Act is to ensure that, on balance, the State and the community as a whole benefit from certain community-based lottery activities. Under the Act, registered clubs are authorised to conduct club bingo and promotional raffles provided a permit has been granted. Since 1998 an authorising permit has been granted to all registered clubs regardless of whether they wish to conduct the game. The review concluded that, although the current system works well, far greater efficiency and less administrative burden would be attained if registered clubs were authorised to conduct certain lotteries without the need for a licence.

Accordingly, the bill proposes to amend section 4C of the Act to remove the requirement that a permit be issued and makes consequential amendments to other provisions of section 4C. The Act provides for penalties in respect of foreign lotteries. A foreign lottery—I admit that it is an unusual term—is any lottery conducted outside New South Wales irrespective of whether it is legal in the place where it is conducted. The foreign lottery provisions prohibit publication of advertisements for, and the sale of tickets in, foreign lotteries. The restriction means that persons and organisations in other Australian jurisdictions cannot advertise or sell tickets in lotteries in New South Wales, even if the lottery activity is lawful in that other jurisdiction.

For example, a Victorian-based charity, which is authorised under Victorian law to conduct a fundraising lottery, cannot sell tickets in New South Wales. However, the restriction also means that gaming suppliers whose bona fides are questionable cannot openly establish a marketing presence in New South Wales. In order for the Government to pursue the objective of ensuring a safe and responsible gaming environment for the community, it must have regard to the marketing of gaming products into New South Wales by out-of-jurisdiction gaming operators. If all restrictions were to be lifted, it may have an adverse impact on the ability of the Government to control the provision of gaming services to the people of New South Wales, and could potentially exacerbate any social and economic problems.

The restriction ensures that the Government remains capable of controlling gambling. Although other Australian jurisdictions do not exercise a restriction similar to New South Wales, it must be concluded that without uniform standards between Australian jurisdictions the mutual recognition of lotteries authorised in other States would be hazardous. In this respect, unscrupulous persons would choose the jurisdiction with the least restrictive controls from which to operate and to promote their lotteries into New South Wales.

Accordingly, the review concluded that to support the stated objectives of the Act, lotteries based in other

Australian jurisdictions must meet the standards of probity and fairness expected of New South Wales based lotteries in order to be authorised to operate here. Where necessary, this would also require non-New South Wales based operators to be authorised under a permit scheme similar to that required of New South Wales based operators. The bill replaces the existing definition of foreign lottery and defines a foreign lottery as: a lottery that is conducted, or is to be conducted, outside Australia whether or not it is legal in the place where it is, or is to be, conducted; or is conducted, or is to be conducted, in another State or Territory and is declared by the Minister, by order published in the gazette, to be a lottery that fails to comply with the standards expected of lottery activities conducted in New South Wales.

An intent of the proposed amendment is to allow a person to advertise and sell tickets in a community-based lottery in New South Wales even though the lottery is conducted in another State or Territory of Australia provided the lottery complies with the same requirements as a lottery conducted entirely in New South Wales. However, a lottery conducted in another jurisdiction may be declared by the Minister, by order published in the gazette, to fail to comply with the standards expected of lottery activities conducted in New South Wales. In that case, the lottery activity would be declared a foreign lottery and would not be able to be sold or advertised in New South Wales. The bill does not propose to amend the Act to allow gaming operators outside Australia to market their products in New South Wales.

During the drafting of the bill it was necessary to make consequential amendments to other provisions. The bill proposes that section 4B be amended to allow an interstate club within the meaning of the Registered Clubs Act also to conduct trade promotional lotteries in New South Wales, provided a permit has been granted. This is essential in respect of clubs operating in cross-border areas. The bill also proposes to replace section 22A of the Act with proposed sections 22A and 22AA. Section 22A currently provides that the Minister may seek orders from the Supreme Court to prevent the conduct of a particular lottery activity or to prohibit a person or organisation from conducting any lottery activity for a period not exceeding two years.

Proposed section 22A provides that if the Minister is satisfied that it is likely that the provisions of the Act or the regulations of the conditions of a permit have not been, or will not be, complied with in relation to a lottery activity, or that it would be against the public interest for the lottery activity to be conducted, the Minister may give a direction prohibiting the conduct of the lottery activity. Proposed section 22AA provides that if the Minister is satisfied that a person or organisation has persistently failed to comply with the provisions of the Act or the regulations or the conditions of a permit, and that the person or organisation is likely to continue to do so, the Minister may give a direction prohibiting the person or organisation from conducting any community-based lottery activities for a period not exceeding two years.

These new provisions are similar to current section 22A, but remove the need for the Minister to seek an order from the Supreme Court. This should provide a more efficient and less costly process. Under the proposal, a person or organisation dissatisfied with a decision made by the Minister to prohibit the conduct of a lottery activity, or to prohibit a person or organisation from conducting lottery activities, may apply to the Administrative Appeals Tribunal for a review of the decision. Sections 3 and 20 of the Act create offences relating to publishing certain advertisements, information or notices with respect to unlawful lottery activities. The bill proposes to insert a new definition of "publish" in section 2A (1).

Part of the definition will include the words "cause to be published". The proposed definition will clarify the legislative intent of preventing persons from publishing or causing to be published advertisements, information or notices relating to unlawful lotteries. This will improve enforcement functionality, which may reduce the number of unlawful lotteries advertised and therefore protect the community from unscrupulous operators. The bill also makes consequential amendments to the Administrative Decisions Tribunal Act 1997 and the Licensing and Registration (Uniform Procedures) Act 2002. These amendments will streamline the operation of the bill, while maintaining the worthy objectives now stated in it. It has been developed with a view to protecting the integrity of lotteries while not restricting the opportunity of charities to obtain much-needed funds. Representatives of the Charities Ministerial Advisory Council and key stakeholders have been involved in the review of this legislation. I commend the bill to the House.

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