



New South Wales

Community Gaming Bill 2018

Explanatory note

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

Overview of Bill

The object of this Bill is to provide a framework for the regulation of gaming activities for community or charitable purposes and trade promotion purposes.

Outline of provisions

Part 1 Preliminary

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 sets out the objects of the proposed Act and the way in which those objects are sought to be achieved. The principal objects include allowing the conduct of gaming activities for charitable, not-for-profit or trade promotion purposes and ensuring the integrity and fairness of permitted gaming activities.

Clause 4 defines certain words and expressions used in the proposed Act.

Clause 5 defines the gaming activities to which the proposed Act applies, including games of chance, games partly of skill and partly of chance and the awarding of a prize by lot or on the basis of a chance contingency related to a horse race, sporting event or competition. The gaming activity must involve the sale or other disposal of property or services and the proposed Act will apply whether or not consideration is paid for participation in the gaming activity. A person will be considered to be a participant in a gaming activity if the person enters, competes or otherwise

participates in a gaming activity or another person does so on behalf of the person. Regulations may be made to exempt games and other activities from being a gaming activity.

Clause 6 defines the persons who are taken to conduct (including organise) a gaming activity. They include a person who authorises the conduct of a gaming activity in the capacity of an officer, trustee or member of the governing body of an incorporated or unincorporated body, a person or body that authorises an agent, contractor or employee to conduct a gaming activity, a person who assists in the conduct of a gaming activity and a person or body that solicits or receives a benefit in the course of conducting a gaming activity (other than as a prize winner or participant).

Clause 7 applies the proposed Act and regulations made under the proposed Act to gaming activities in which persons who reside in this State participate or can participate, even though the activities may be conducted from outside the State. The proposed section also recognises permitted gaming activities authorised under the law of another State or Territory if the law is prescribed as a corresponding law by regulations made under the proposed Act.

Part 2 Regulation of gaming activities

Division 1 General prohibitions

Clause 8 makes it an offence to conduct a gaming activity, to receive money paid for a ticket or right to participate in a gaming activity, to sell or offer to sell a ticket or right to participate in a gaming activity or to print or make available in electronic form tickets or rights to participate in a gaming activity.

Clause 9 prohibits the publishing of advertising or other information promoting a gaming activity and provides for defences to the offence.

Division 2 Permitted gaming activities

Clause 10 enables the regulations to provide for gaming activities that are permitted by the proposed Act, including authorities to conduct gaming activities.

Clause 11 provides for the grant by the Secretary of authorities to conduct permitted gaming activities and for matters related to authorities.

Clause 12 provides that a gaming activity is not a permitted gaming activity if any of the prizes consist of tobacco, firearms, ammunition, imitation firearms or prohibited weapons. The regulations may provide for exceptions to this in exceptional circumstances.

Clause 13 makes it an offence for a person or body that conducts a gaming activity to fail to award a prize to the winner of the prize for the gaming activity.

Clause 14 makes it an offence for a person who is concerned in the conduct of a gaming activity, or conducts a gaming activity as the agent or employee of a person who is concerned in the conduct of a gaming activity, to convert to the person's own use any money raised by means of the gaming activity or any prize connected with the activity. The offence may be dealt with on indictment and will have a maximum penalty of \$220,000 or imprisonment for 5 years, or both.

Clause 15 makes it an offence for a person to conduct a permitted gaming activity (other than a game partly of skill and partly of chance) with intent to defraud so that not all participants have an equal chance of winning or to fraudulently conduct a permitted gaming activity that is a game partly of skill and partly of chance.

Clause 16 makes it an offence for a person, with intent to defraud or deceive another person, to alter or falsify a record relating to a permitted gaming activity, to make or concur in the making of a false or fraudulent record relating to a permitted gaming activity or to omit or concur in the omission of a material particular from any such record. The offence may be dealt with on indictment and will have a maximum penalty of \$220,000 or imprisonment for 5 years, or both.

Clause 17 makes it an offence for a person who conducts or proposes to conduct a gaming activity, or who acts on behalf of any such person, to represent to an employee or agent involved in the conduct of the activity that a requirement under the proposed Act or a condition precedent

to the conduct of the activity has been complied with, if the person knows the representation is false or is reckless as to whether or not it is false.

Clause 18 prevents a person from being punished for both the offence relating to false records and the offence relating to false representations about compliance with requirements of the proposed Act.

Part 3 Enforcement

Division 1 Investigation powers

Clause 19 requires an authorised officer to be issued with an identity card in a form approved by the Secretary (who may be the Commissioner for Fair Trading in the Department of Finance, Services and Innovation, or the Secretary of that Department if no one is employed as Commissioner). The card must be returned to the Secretary if an authorised officer ceases to be an authorised officer or the Secretary requests the return of the card. Authorised officers include the Secretary, persons authorised by the Secretary, fair trading investigators and police officers.

Clause 20 requires an authorised officer to carry his or her identity card at all times when exercising functions as an authorised officer and to produce the card when requested to do so by a person in respect of whom the authorised officer is exercising a power.

Clause 21 provides that the investigation powers may be used if the Secretary or an authorised officer reasonably believes that it is necessary to do so to determine whether there has been a contravention of the proposed Act, regulations made under the proposed Act or an authority issued under the proposed Act.

Clause 22 permits an authorised officer to enter premises (other than residential premises) without the occupier's consent and without a search warrant. An authorised officer may enter residential premises with the occupier's consent or if authorised by a search warrant.

Clause 23 limits entry to premises to reasonable times during the day, a time when gaming activities are being conducted, a time when premises are open for entry and a time that is permitted by the occupier or a search warrant. The Secretary may certify other times when an authorised officer may enter premises.

Clause 24 sets out the powers of an authorised officer who enters premises, including to make inquiries of persons at the premises, to require documents to be produced, to take photos and make recordings and to seize documents.

Clause 25 enables an authorised officer to require accounts and statements to be produced and to make copies of and examine any accounts and statements that are produced.

Clause 26 enables an authorised officer to apply for a search warrant to inspect premises if the authorised officer has reasonable grounds for believing that a provision of the proposed Act or regulations under the proposed Act is being contravened on the premises.

Clause 27 requires an authorised officer to do as little damage as possible when exercising a function and allows reasonable compensation to be recovered from the Crown if damage is caused by a person exercising a power to enter premises.

Clause 28 enables the Minister administering the proposed Act (the *Minister*) to direct a person or body to pay the remuneration and expenses of an authorised officer for the exercise of investigation functions in relation to the person or body, if a person has been found guilty of an offence.

Clause 29 establishes offences relating to non-compliance with requirements of authorised officers, including hindering or obstructing an authorised officer exercising functions, failing to comply with requirements and failing to produce documents or things.

Division 2 Other general enforcement powers

Clause 30 enables an authorised officer to issue a compliance notice to a person or body conducting, or proposing to conduct, a gaming activity. The notice may require the person or body

to remedy or prevent a contravention of the proposed Act or the regulations under the proposed Act or to remedy things or operations causing or likely to cause the contravention.

Clause 31 enables an authorised officer to extend the period for complying with a compliance notice given to a person or body.

Clause 32 enables an authorised officer to make minor changes to a compliance notice and confers power on the Secretary to revoke or vary a compliance notice. The proposed section also preserves the validity of a compliance notice in the case of certain errors in the notice.

Clause 33 enables the Secretary to make an order directing a person or body not to conduct a gaming activity if the Secretary is satisfied that the proposed Act, regulations under the proposed Act or conditions of an authority have not been, or will not be, complied with or that it is against the public interest for the gaming activity to be conducted.

Clause 34 enables the Secretary to make an order prohibiting a person or body from conducting a gaming activity for a period of up to 2 years if the Secretary is satisfied that the person or body has persistently failed to comply with the proposed Act, regulations under the proposed Act or conditions of an authority and is likely to continue to do so. An application for an administrative review of the Secretary's decision to make the order may be made to the Civil and Administrative Tribunal.

Clause 35 confers jurisdiction on the Local Court and the Supreme Court to order the payment of specified amounts to participants in gaming activities who are entitled to those amounts and also to order the payment of the proceeds of a gaming activity to persons who are entitled to them. The proposed section also confers jurisdiction on the Supreme Court to make orders requiring persons or bodies that have conducted, or are conducting, a gaming activity to pay prizes for an activity or to cease to conduct an activity. The Supreme Court may also order a person or body to comply with an authority or to give effect to a rule of a gaming activity.

Clause 36 sets out the procedure for the enforcement (as a judgment debt) of orders made under proposed section 35 for the payment of money.

Division 3 Enforceable undertakings

Clause 37 provides for the Secretary to accept written undertakings by a person in connection with a contravention or alleged contravention of the proposed Act or the regulations under the proposed Act. The undertaking will be enforceable once the Secretary's decision is notified to the person making the undertaking.

Clause 38 requires the Secretary to give notice of a decision about accepting or rejecting an enforceable undertaking and requires notice of a decision to accept an undertaking, and of the reasons for the decision, to be published.

Clause 39 makes it an offence for a person to contravene an enforceable undertaking that is in force.

Clause 40 confers jurisdiction on the Local Court, on application by the Secretary, to direct a person who contravenes an enforceable undertaking to comply with the undertaking or make an order discharging the undertaking. The person may also be ordered to pay the costs of the proceedings and the reasonable costs of the Secretary in monitoring future compliance with the undertaking.

Clause 41 enables a person who makes an enforceable undertaking to withdraw or vary the undertaking at any time with the consent of the Secretary.

Clause 42 prohibits proceedings for a contravention of the proposed Act from being brought against a person if an enforceable undertaking is in effect in relation to that contravention. An undertaking may be given before proceedings are finalised and, if that occurs, the Secretary is to take all reasonable steps to discontinue the proceedings.

Division 4 Offences

Clause 43 requires proceedings for offences under the proposed Act (other than offences identified as indictable offences) to be dealt with summarily by the Local Court.

Clause 44 makes a director of a corporation, or other person concerned in the management of a corporation, liable for the same contravention of a provision of or under the proposed Act as the corporation if the director or other person knowingly authorised or permitted the contravention.

Clause 45 confers on a court jurisdiction to make an order suspending, revoking or varying an authority granted under the regulations under the proposed Act. The action may be taken in addition to, or as an alternative to, imposing a penalty for an offence.

Clause 46 enables penalty notices to be issued for offences against the proposed Act or regulations under the proposed Act.

Part 4 Miscellaneous

Clause 47 enables the Minister and the Secretary to delegate their functions under the proposed Act.

Clause 48 sets out the manner in which notices and other documents given under the proposed Act may be served.

Clause 49 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 50 repeals the *Lotteries and Art Unions Act 1901* and the *Lotteries and Art Unions Regulation 2014*.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Acts

Schedule 2 amends the Acts specified in the Schedule.