



New South Wales

# Gaming and Liquor Administration Amendment Bill 2015

## Explanatory note

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

## Overview of Bill

The objects of this Bill are as follows:

- (a) to clarify that the Independent Liquor and Gaming Authority (the **Authority**) does not employ staff (being precluded by section 47A of the *Constitution Act 1902* from doing so) but that Public Service employees may be employed to enable the Authority to exercise its functions,
- (b) to abolish the position of Chief Executive of the Authority,
- (c) to make provision with respect to the Minister's control over the Authority,
- (d) to provide for the administrative review of certain decisions of the Authority by the Civil and Administrative Tribunal of New South Wales (**NCAT**),
- (e) to provide for review by the Authority of decisions made under a delegation given by the Authority,
- (f) to allow the Secretary of the Department of Justice (the **Secretary**) to make certain submissions to the Authority and provide that the Authority is to take those submissions into consideration,
- (g) to remove certain functions that the Authority has under the *Casino Control Act 1992* and to make other miscellaneous amendments to that Act.

## 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.

## **Schedule 1      Amendment of Gaming and Liquor Administration Act 2007 No 91**

**Schedule 1 [1]** omits the definition of *Chief Executive* so as to abolish the position of Chief Executive of the Authority. **Schedule 1 [4], [5], [7]–[9], [24] and [25]** make consequential amendments.

**Schedule 1 [2]** omits the definition of *member of staff* and inserts the definition of *designated Public Service employee* to clarify that the Authority does not employ staff but that Public Service employees may be employed to enable the Authority to exercise its functions. **Schedule 1 [3], [4], [10], [12] and [14]–[17]** make consequential amendments. **Schedule 1 [2]** also updates the definition of *Department* to refer to the Department of Justice and inserts a definition of *NCAT*.

**Schedule 1 [6]** provides that the Authority is subject to Ministerial control, except in relation to any advice, report or recommendation the Authority gives to the Minister and decisions of the Authority with respect to the following:

- (a) granting, suspending or cancelling gaming or liquor licences,
- (b) imposing, varying or revoking conditions of gaming or liquor licences,
- (c) taking disciplinary action under the gaming and liquor legislation.

**Schedule 1 [13]** inserts proposed section 13A to provide for the administrative review of decisions of the Authority by NCAT, except for decisions that confirm, vary or revoke certain decisions made by certain Public Service employees acting under a delegation given by the Authority (*delegated decisions*). **Schedule 1 [22]** makes a consequential amendment to ensure that notice of decisions that can be reviewed by NCAT under proposed section 13A are published on the website of the Department. It also provides that notice of certain other decisions of the Authority are to be published on the Department's website.

**Schedule 1 [18]** amends section 36A to enable the Authority to review delegated decisions. **Schedule 1 [20]** limits the persons who can apply for a review of a delegated decision to an applicant for, or holder of, a gaming or liquor licence, or a person who was required to be notified of the application the subject of the delegated decision, and who made a submission in respect of that application. **Schedule 1 [11]** provides that the Authority cannot delegate its function to review delegated decisions. **Schedule 1 [19] and [21]** make consequential amendments.

**Schedule 1 [23]** provides that the Secretary may make submissions to the Authority in relation to any application to the Authority under the gaming and liquor legislation and that the Authority must take any such submission into consideration, including any recommendations contained in the submission, before determining the application.

## **Schedule 2      Amendment of Casino Control Act 1992 No 15**

**Schedule 2 [1]** amends the *Casino Control Act 1992* to provide that the Authority will no longer have the functions under that Act of:

- (a) inspecting the operations and conduct of gaming in a casino, and
- (b) detecting offences committed in or in relation to a casino and prosecuting offences under the Act.

Those functions will, however, continue to be performed by inspectors appointed by the Secretary under the *Gaming and Liquor Administration Act 2007*.

**Schedule 2 [2]** provides that the Secretary may institute proceedings for an offence against the *Casino Control Act 1992*. **Schedule 2 [3]** makes a consequential amendment.



New South Wales

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New South Wales

# Gaming and Liquor Administration Amendment Bill 2015

No. , 2015

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## **A Bill for**

An Act to amend the *Gaming and Liquor Administration Act 2007* to make further provision with respect to the administration of the gaming and liquor legislation and the review of certain decisions made under that legislation.

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**The Legislature of New South Wales enacts:**

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**1 Name of Act**

2

This Act is the *Gaming and Liquor Administration Amendment Act 2015*.

3

**2 Commencement**

4

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

5

<b>Schedule 1</b>	<b>Amendment of Gaming and Liquor Administration Act 2007 No 91</b>	1
		2
<b>[1] Section 3 Definitions</b>		3
	Omit the definition of <i>Chief Executive</i> from section 3 (1).	4
<b>[2] Section 3 (1), definitions of “Department” and “member of staff”</b>		5
	Omit the definitions. Insert in alphabetical order:	6
	<i>Department</i> means the Department of Justice.	7
	<i>designated Public Service employee</i> means a Public Service employee who is designated by the Secretary and who is employed to enable the Authority to exercise its functions.	8
		9
		10
	<i>NCAT</i> means the Civil and Administrative Tribunal of New South Wales.	11
<b>[3] Section 3 (1), definition of “key official”</b>		12
	Omit paragraph (d). Insert instead:	13
	(d) a designated Public Service employee who is the subject of a written order by the Secretary (or an order by the Authority in force immediately before the substitution of this paragraph by the <i>Gaming and Liquor Administration Amendment Act 2015</i> ) that has been served on the employee and is to the effect that the employee is a key official for the purposes of the gaming and liquor legislation,	14
		15
		16
		17
		18
		19
<b>[4] Section 3 (1), definition of “key official”</b>		20
	Omit “(other than a member of staff or the Chief Executive)” from paragraph (d1).	21
	Insert instead “(other than a designated Public Service employee)”.	22
<b>[5] Section 3 (1), definition of “member of the Authority”</b>		23
	Omit “the Chief Executive and”.	24
<b>[6] Section 6 Constitution of Authority</b>		25
	Omit section 6 (3) (including the note). Insert instead:	26
	(3) The Authority is, in the exercise of its functions, subject to the control and direction of the Minister, except in relation to the following:	27
		28
	(a) the contents of any advice, report or recommendation given to the Minister,	29
		30
	(b) decisions in relation to:	31
	(i) the granting, suspension or cancellation of a gaming or liquor licence, or	32
		33
	(ii) the imposition, variation or revocation of conditions of a gaming or liquor licence, or	34
		35
	(iii) the taking of disciplinary action under the gaming and liquor legislation.	36
		37
	(4) Subsection (3) (b) is subject to any provision to the contrary in the gaming and liquor legislation.	38
		39

<b>[7] Section 7 Members of Authority</b>	1
Omit section 7 (1). Insert instead:	2
(1) The Authority consists of such number of members as are appointed by the Governor on the recommendation of the Minister.	3 4
<b>[8] Section 7 (2)–(4)</b>	5
Omit “(other than the Chief Executive)” wherever occurring.	6
<b>[9] Section 8 Chief Executive to manage the Authority</b>	7
Omit the section.	8
<b>[10] Section 9 General functions of Authority</b>	9
Omit “Section 59 of the <i>Government Sector Employment Act 2013</i> provides that the persons so employed (or whose services the Authority makes use of) may be referred to as officers or employees, or members of staff, of the Authority.” from the note to section 9 (2).	10 11 12
<b>[11] Section 13 Delegation of Authority’s functions</b>	13
Omit section 13 (2). Insert instead:	14
(2) The Authority cannot, however, delegate its functions under:	15
(a) section 36A in respect of a review of a delegated decision, or	16
(b) sections 18, 19, 22, 23, 28 and 59 of the <i>Casino Control Act 1992</i> .	17
<b>[12] Sections 13 (3) (paragraph (a1) of definition of “authorised person or body”) and 37 (c)</b>	18 19
Omit “member of staff” wherever occurring.	20
Insert instead “designated Public Service employee”.	21
<b>[13] Section 13A</b>	22
Insert after section 13:	23
<b>13A Review by NCAT of certain decisions of Authority</b>	24
(1) A relevant person who is aggrieved by a decision of the Authority in relation to an application made under a provision of the gaming and liquor legislation prescribed by the regulations for the purposes of this section (a <b><i>prescribed application</i></b> ) may apply to NCAT for an administrative review under the <i>Administrative Decisions Review Act 1997</i> of that decision.	25 26 27 28 29
(2) An administrative review under this section is by way of rehearing rather than a new hearing.	30 31
(3) An application for administrative review made under subsection (1) must:	32
(a) be made within 28 days of notice of the decision being published on the website of the Department, and	33 34
(b) be accompanied by the fee prescribed by the regulations.	35
<b>Note.</b> Section 36C requires notice of the decision to be published on the Department’s website.	36 37
(4) Subsection (1) does not apply in relation to a decision of the Authority that confirms, varies or revokes a decision made by a designated Public Service employee or other Public Service employee acting under a delegation given by the Authority.	38 39 40 41

(5)	In this section, <i>relevant person</i> in relation to a prescribed application means:	1
(a)	the applicant, or	2
(b)	a person:	3
(i)	who was required to be notified of the prescribed application, and	4
(ii)	who made a submission to the Authority or the Secretary in respect of the prescribed application.	5
		6
<b>[14]</b>	<b>Section 14 Persons engaged in administration of gaming and liquor legislation to be of highest integrity</b>	7
	Omit section 14 (1) (b)–(b2). Insert instead:	8
		9
(b)	designated Public Service employee nominated by the Secretary in writing (or designated by the Authority in writing before the substitution of this paragraph by the <i>Gaming and Liquor Administration Amendment Act 2015</i> ) for the purposes of this section,	10
		11
		12
		13
(b1)	inspector,	14
<b>[15]</b>	<b>Section 14 (3) (b)–(d)</b>	15
	Omit the paragraphs. Insert instead:	16
(b)	the Authority—in the case of the position of consultant to the Authority, or	17
		18
(c)	the Secretary—in the case of the position of designated Public Service employee or inspector.	19
		20
<b>[16]</b>	<b>Section 14 (12) and (13)</b>	21
	Omit the subsections. Insert instead:	22
(12)	In the case of the position of consultant to the Authority, the Authority may waive the operation of subsection (10) in a particular case.	23
		24
(13)	In the case of the position of designated Public Service employee or inspector, the Secretary may waive the operation of subsection (10) in a particular case.	25
		26
<b>[17]</b>	<b>Section 16 Restrictions relating to key officials and former key officials</b>	27
	Omit paragraphs (a) and (a1) from the definition of <i>appropriate authority</i> in section 16 (4).	28
	Insert instead:	29
(a)	in the case of a designated Public Service employee or other Public Service employee, or former designated Public Service employee or other former Public Service employee—the Secretary, or	30
		31
		32
<b>[18]</b>	<b>Section 36A Review by Authority of certain decisions</b>	33
	Insert at the end of paragraph (c) of the definition of <i>reviewable decision</i> in section 36A (1):	34
		35
	, or	35
(d)	a decision of a designated Public Service employee, or other Public Service employee, acting under a delegation given by the Authority in respect of an application made under a provision of the gaming and liquor legislation prescribed by the regulations for the purposes of this section ( <i>delegated decision</i> ).	36
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		38
		39
		40
<b>[19]</b>	<b>Section 36A (2)</b>	41
	Omit “Any”. Insert instead “Subject to subsection (2A), any”.	42

<b>[20] Section 36A (2A)</b>	1
Insert after section 36A (2):	2
(2A) An application for a review of a delegated decision may only be made by:	3
(a) an applicant for, or the holder of, a gaming or liquor licence, or	4
(b) a person:	5
(i) who was required to be notified of the application the subject of the delegated decision, and	6
(ii) who made a submission to the Authority or the Secretary in respect of that application.	8
<b>[21] Section 36A (3)</b>	10
Omit “of the Secretary”.	11
<b>[22] Section 36C Notice of certain decisions required to be published on relevant website</b>	12
Omit section 36C (1) and (2). Insert instead:	13
(1) This section applies to:	14
(a) any decision by the Authority or the Secretary under the gaming and liquor legislation prescribed by the regulations for the purposes of this section, and	15
(b) any decision by the Authority in relation to an application made under a provision of the gaming and liquor legislation prescribed by the regulations for the purposes of section 13A.	18
(2) As soon as practicable after a decision to which this section applies is made, notice of the decision is to be published on the website of the Department.	21
<b>[23] Section 37A</b>	23
Insert after section 37:	24
<b>37A Submissions to Authority by Secretary</b>	25
(1) The Secretary may make a submission to the Authority in relation to any application made to the Authority under the gaming and liquor legislation.	26
(2) If any such submission is made to the Authority, the Authority is to take the submission into consideration, including any recommendations contained in the submission, before determining the application.	28
<b>[24] Section 41</b>	31
Omit the section. Insert instead:	32
<b>41 Seal of Authority</b>	33
The seal of the Authority is to be kept by the Chairperson of the Authority and may be affixed to a document only:	34
(a) in the presence of the Chairperson of the Authority or a designated Public Service employee authorised in that behalf by the Chairperson, and	36
(b) with an attestation by the signature of the Chairperson of the Authority or that designated Public Service employee of the fact of the affixing of the seal.	39

<b>[25] Schedule 1 Provisions relating to the members and procedure of the Authority</b>	1
Omit “other than the Chief Executive” from the definition of <i>appointed member</i> in clause 1.	2

<b>Schedule 2</b>	<b>Amendment of Casino Control Act 1992 No 15</b>	1
<b>[1]</b>	<b>Section 141 Functions of Authority under this Act</b>	2
	Omit section 141 (2) (j) and (k).	3
<b>[2]</b>	<b>Section 168 Prosecution for offences</b>	4
	Insert at the end of section 168 (4) (c):	5
	, or	6
	(d) the Secretary of the Department of Justice or a person acting with the written authority of the Secretary, given generally or in relation to the particular case.	7 8 9
<b>[3]</b>	<b>Section 168 (5)</b>	10
	Omit “or the Authority”.	11
	Insert instead “, the Authority or the Secretary of the Department of Justice”.	12