

## Explanatory note

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

### Overview of Bill

The object of this Bill is to authorise and facilitate the transfer to the private sector of the assets, rights and liabilities of New South Wales Lotteries Corporation (NSW Lotteries) which are referred to in the Bill as NSW Lotteries assets.

The Bill has detailed provisions dealing with the transfer of NSW Lotteries employees and their rights and entitlements on transfer. See Schedule 4.

The Bill also makes significant amendments to the Public Lotteries Act 1996 to establish a new system for licensing the operation of public lotteries in New South Wales which will regulate the conduct of public lotteries by the private sector. See Schedule 5.

### Outline of provisions

#### Part 1 Preliminary

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

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

Clause 3 contains definitions of key terms used in the proposed Act. Schedule 1 contains other definitions. The clause defines authorised transaction to mean the transfer of NSW Lotteries assets authorised by Part 2.

#### Part 2 The authorised transaction

Clause 4 authorises the transfer to the private sector of NSW Lotteries assets.

Clause 5 authorises the transfer of NSW Lotteries assets to one or more public sector agencies.

Clause 6 requires the proceeds of the transfer of NSW Lotteries assets pursuant to the authorised transaction, after deduction of certain amounts for debt repayment and payment of expenses, to be paid into the Consolidated Fund.

#### Part 3 Facilitating the authorised transaction

Clause 7 provides that the Treasurer has and may exercise all such functions as are necessary or convenient for the purposes of the authorised transaction.

Clause 8 provides for the establishment of companies as transaction companies for the purposes of the authorised transaction (including by means of the corporate conversion of NSW Lotteries).

Clause 9 provides that NSW Lotteries and each transaction company has and may exercise all such functions as are necessary or convenient for the purposes of the authorised transaction. The clause also authorises the Treasurer to act for and on behalf of and in the name of NSW Lotteries or a transaction company in the exercise of any of its functions for the purposes of the authorised transaction.

Clause 10 provides that NSW Lotteries and transaction companies are subject to the direction and control of the Treasurer in the exercise of any of their functions for the purposes of the authorised transaction.

Clause 11 establishes the Lotteries Assets Ministerial Holding Corporation to hold NSW Lotteries assets acquired by it or transferred to it and to carry on any activities or business that relate to any NSW Lotteries assets held by it.

Clause 12 authorises the Treasurer to make vesting orders under Schedule 3 for the purposes of the authorised transaction.

Clause 13 references Schedule 4 which provides for the transfer of employment of employees of NSW Lotteries in connection with the authorised transaction.

Clause 14 provides that various State taxes and charges are not payable by public sector agencies in connection with transactions for the purposes of the authorised transaction and authorises the Treasurer to exempt other persons from liability for

State taxes and charges in connection with the authorised transaction.

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Clause 15 exempts contracts for the sale of land from section 52A of the Conveyancing Act 1919 when entered into for the purposes of the authorised transaction.

Part 4 Miscellaneous

Clause 16 authorises the release of information by the Auditor-General for the purposes of the authorised transaction.

Clause 17 authorises the Treasurer to delegate any function of the Treasurer under the proposed Act to the Secretary of the Treasury or any other officer of the Government Service prescribed by the regulations.

Clause 18 provides for the proposed Act to bind the State and all other Australian jurisdictions.

Clause 19 provides for the provisions of the proposed Act to prevail in the event of an inconsistency between the proposed Act and other State legislation.

Clause 20 provides for the operation of the proposed Act outside the State.

Clause 21 provides for the interpretation of the proposed Act so as not to exceed the legislative power of the State.

Clause 22 prevents the operation of the proposed Act and the various arrangements and actions that it authorises from constituting a breach of various civil obligations.

Clause 23 protects the State from claims for compensation in connection with the enactment or operation of the proposed Act.

Clause 24 provides for the issue of evidentiary certificates by the Treasurer.

Clause 25 is a general regulation-making power.

Clause 26 provides a savings and transitional regulation-making power.

Clause 27 repeals the New South Wales Lotteries Corporatisation Act 1996.

Schedule 1 Interpretative provisions

Schedule 1 contains definitions and other interpretative provisions for the purposes of the proposed Act.

Schedule 2 Corporate conversion of NSW Lotteries

Schedule 2 provides the procedure for the corporate conversion of NSW Lotteries into a transaction company.

Schedule 3 Vesting of assets, rights and liabilities

Schedule 3 provides for the making of vesting orders by the Treasurer for the purposes of the authorised transaction. Vesting orders operate to vest assets, rights

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and liabilities of NSW Lotteries or a transaction company in the transferee specified in the order.

Schedule 4 Employee protections

Schedule 4 provides for the transfer of employees of NSW Lotteries either to an employer in the private sector or to a Public Service Department as an excess employee of the Department. Permanent and temporary employees can elect not to be transferred to the private sector.

The following employment protections will apply for the benefit of transferred employees:

(a) the terms and conditions of employment of an employee transferred to the private sector are to be the same as applied to the employee immediately before transfer,

(b) those terms and conditions will not be able to be varied for permanent and temporary employees for their employment guarantee period (which is

3 years, or a shorter period for those temporary employees who have less than 3 years to run on their appointment),

(c) employment of permanent and temporary employees with the private sector employer will not be able to be terminated for the employment guarantee period (with exceptions for such things as serious misconduct and disciplinary termination),

(d) employees transferred to a Public Service Department will be employed on the terms and conditions that applied before their transfer and their employment will be managed in accordance with the Public Service excess employee policy,

(e) employees will be entitled to remain as members of or contributors to their current superannuation schemes and will retain any rights to accrued leave,

(f) service with NSW Lotteries will count as service with the new employer.

The Schedule also authorises the payment of transfer payments to transferred employees.

#### Schedule 5 Amendment of Acts

Schedule 5 amends various Acts in connection with the authorised transaction. The Schedule makes significant amendments to the Public Lotteries Act 1996 (the Act) to change the arrangements for licensing the conduct of public lotteries in New South Wales.

The following are the significant features of the new licensing arrangements:

(a) there will be 2 kinds of licence—an operator licence (which is a licence to conduct any public lottery for which the licensee holds a product licence) and a product licence (which is a licence to authorise the conduct of the particular

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public lottery for which it is issued by the holder of the operator licence to which it is granted),

(b) the Minister will be required to undertake an integrity and capability assessment of a prospective licensee and their close associates to determine suitability to hold an operator licence,

(c) the Minister will be authorised to impose conditions on the grant of a licence (with some conditions to be mandatory) but licence conditions will usually only be able to be amended with the agreement of the licensee and (in the case of an operator licence) with the approval of the Treasurer,

(d) a licensee will be able to be required to pay amounts as consideration payments for the grant or continuation of the licence,

(e) the maximum term for which a licence can be granted will be 30 years and the grant of an exclusive operator licence will be permitted,

(f) a significant change to the ownership structure of a licensee will require the consent of the Minister,

(g) there will be provision for ongoing review of the integrity and capability of an operator licensee and their close associates,

(h) there will be a revised procedure for the taking of disciplinary action against a licensee, including revised grounds for disciplinary action, limited grounds for suspending or cancelling a licence and provision for immediate suspension in certain circumstances,

(i) there will be provision for the grant of a temporary licence following the suspension, cancellation or surrender of a licence, and arrangements for the former licensee to assist a temporary licensee,

(j) unclaimed prizes held by a licensee will be required to be paid into the Consolidated Fund (with liability to pay unclaimed prizes transferred to the Crown).

The Act is also amended to include provision for the following savings and transitional arrangements:

(a) the existing provisions of the Act will continue to apply to the existing keno licence,

(b) the grant of a new operator and product licences will be authorised in connection with the authorised transaction before the amendments commence, with those licences not to operate until commencement of the amendments,

(c) arrangements to ensure the continuity of existing lotteries,

(d) there will be power to require an existing licensee to pay the surplus in any lotteries prize fund to the Treasurer for payment into the Consolidated Fund.