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NSW Lotteries (Authorised Transaction) Bill 2009

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NSW LOTTERIES (AUTHORISED TRANSACTION) BILL 2009

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Bill introduced on motion by Mr Kevin Greene, on behalf of Mr Joseph Tripodi.

Agreement in Principle

Mr KEVIN GREENE (Oatley—Minister for Gaming and Racing, and Minister for Sport and Recreation) [10.05 a.m.]: I move:

That this bill be now agreed to in principle.

In summary, the NSW Lotteries (Authorised Transaction) Bill has two main functions. The first is to authorise the transfer of NSW Lotteries to a new private operator, while at the same time retaining Government ownership of intellectual property presently owned by the business, including games and brands. The second function of the bill is to enable amendments to the regulatory regime to ensure that public lotteries continue to be operated in a manner that protects community interests and provides harm minimisation measures. The bill will allow taxpayer resources currently locked up in NSW Lotteries to be redirected to community priorities such as health, education and roads. The bill will ensure that net proceeds from this transaction will be transferred directly to the Consolidated Fund, to support the Government's ongoing commitment to important social infrastructure.

It is important to note that the Government will continue to receive duties on the sale of lottery products. In the last financial year these levies were more than \$300 million, which were allocated to core social infrastructure and front-line services. In relation to workplace issues, the bill authorises the transfer of employees to the new operator, and the continuation of their existing leave and superannuation entitlements, as well as a three-year employment guarantee. The bill empowers the Treasurer to provide transfer payments to those employees who choose to move across to the new private operator. The bill also includes a provision to allow NSW Lotteries award employees to remain with the public sector if that is their preference.

A key feature of the bill is the transfer structure, which will allow for the Government's retention of NSW Lotteries' intellectual property. This will ensure that the community will retain the value of these important assets at the expiration of the licence. To provide flexibility, the bill authorises the transfer of the NSW Lotteries business through various methods: firstly, through direct vesting of assets and liabilities; or secondly, through the conversion of NSW Lotteries to a Corporations Act 2001 company and the subsequent transfer of its shares; or thirdly, through the establishment and transfer of a new company. The bill provides the Treasurer with the necessary powers and functions to effect the transfer to a new private operator via one of these means.

The bill includes a provision allowing the new licence holder to be excluded from the payment of State taxes relating to the transaction, such as stamp duty. As I outlined earlier, the NSW Lotteries (Authorised Transaction) Bill 2009 also includes amendments to the Public Lotteries Act 1996 to ensure that public lotteries continue to be operated in a manner which protects community interests and provides harm minimisation measures—that is, to ensure public lotteries are conducted in a responsible and orderly manner. Amendments to the legislation are needed to ensure that current probity and integrity protections that are inherent with government ownership will now apply to the new operator.

The proposed amendments are designed to: provide a fair, transparent, flexible and practical regulatory regime that promotes accountability; protect players and the community by ensuring the integrity of public lotteries and promoting the implementation of harm minimisation measures; require lottery operators to meet integrity and capability standards, and facilitate innovation and growth in public lotteries for the benefit of the entire community. The overriding objective is to ensure that, on balance, the State and the community as a whole benefit from public lotteries. The key features of this bill include provision for the issue of an exclusive operator licence to conduct public lotteries in New South Wales.

The Minister for Gaming and Racing would issue the licence, subject to the approval of the Treasurer. The proposed operator will be required to satisfy integrity and capability requirements to be eligible for an operator licence. The Minister, as regulator, will have the power to conduct integrity and capability reviews from time to time during the term of the operator licence. The licensed operator will be required to apply for product licences, which will be granted only if the game meets integrity, harm minimisation, consumer protection and other game-specific criteria. Regulatory requirements relating to harm minimisation will remain in place. It should be noted that the existing Keno licence is not impacted by the new licensing arrangements. The bill retains the current protections for consumers, and strengthens these with a disciplinary process that provides transparency and certainty for both the operator and the Government.

The bill sets out the grounds for disciplinary action against the licensee. These include the licensee failing to comply with provisions of the Act or the regulations under the Act; the licensee failing to comply with the licence conditions and the rules of the public lottery conducted by the licensee; the licensee or a close associate of the licensee being convicted of certain offences; and, importantly, the licensee or close associate of the licensee no longer being a suitable person to be concerned with the operation of public lotteries. Should grounds for disciplinary action exist, the bill specifies the actions that can be taken: immediate suspension of the licence, cancellation of the licence, amendment of the licence, and issue of a direction to rectify and censure the licensee.

Before taking disciplinary action, the Minister in most cases is required to first follow a show cause procedure. This process enables the licensee to make a submission to the Minister to show cause why a proposed action should not be taken. The Minister cannot cancel or suspend a licence except with the approval of the Treasurer. The bill also allows the Minister, with the approval of the Treasurer, to amend an operator licence, but only with the agreement of the operator. In addition, the Minister can also amend a product licence with the agreement of the operator. Nevertheless, the Minister has the power to unilaterally amend an operator or product licence under the bill's disciplinary process.

The transfer of NSW Lotteries to a new private operator does not impact on harm minimisation provisions. The bill maintains the prohibitions and obligations in the current legislation and regulation on marketing and harm minimisation of lottery games. These include information pamphlets, display of notices, access to rules, access to counselling services, prohibition of liquor as inducement, sale to minors and the use of minors for advertisement, and misleading and deceptive advertisements. The bill clarifies what constitutes the offer of credit. Prior to this bill a customer would be required to purchase a lottery entry using cash, electronic funds transfer or cheque. There has been some uncertainty about whether this permits purchasing a ticket using a credit card.

Due to the increasingly common use of credit cards for everyday purchases, this often meant separate transactions at the point of sale, inconveniencing both the agent and the customer. The bill will prohibit the licensee or agent from offering credit to a person to play the game; however, it will not prohibit a customer purchasing an entry via credit cards. The NSW Lotteries (Authorised Transaction) Bill follows the Government's endorsement of a detailed strategic review of the NSW Lotteries business, which included preliminary consultation with representatives of newsagents. The strategic review considered a number of important factors including current market conditions, the performance and readiness of the business, the current regulatory framework, licence terms, transaction structure, and overall process and timetable.

This was an exhaustive process undertaken by the Government's expert financial, legal, accounting and tax advisers. The bill I am introducing today is part of the Government's responsible program of transferring non-core assets to the private sector to strengthen the State's financial position. This, in turn, improves the Government's ability to focus more resources to core social services such as health, education, roads and transport. Significantly, it removes the Government's conflict of interest as owner and regulator of the State's lottery products. While divesting ownership of the NSW Lotteries, the Government will continue through the licence regime to regulate the operation and sale of lottery products in New South Wales to ensure the continued protection of community interests. I commend this bill to the House.

Debate adjourned on motion by Mr Russell Turner and set down as an order of the day for a future day.

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