

FIRST PRINT

NEW SOUTH WALES LOTTERIES (AMENDMENT) BILL 1993

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the New South Wales Lotteries Act 1990 to clarify the circumstances in which prizes are payable in instant lotteries in the light of the decision of the Court of Appeal on 19 May 1993 in *State Lotteries Office v. Burgin*.

To this end, the proposed Act provides that in an instant lottery a statement that a prize is won by matching 3 symbols (or matching 3 identical symbols) means, and is taken always to have meant, that a prize is won if the same symbol appears 3 times. In *Burgin's* case, it was decided that 3 different pairs of numbers would qualify for a prize. Examples of the operation of the proposed Act are as follows:

| | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|--------------|---|---|---|---|---|---|---|----------------------|
| <table border="1"><tr><td>7</td><td>1</td></tr><tr><td>3</td><td>7</td></tr><tr><td>4</td><td>7</td></tr></table> | 7 | 1 | 3 | 7 | 4 | 7 | wins a prize | <table border="1"><tr><td>7</td><td>1</td></tr><tr><td>3</td><td>7</td></tr><tr><td>3</td><td>1</td></tr></table> | 7 | 1 | 3 | 7 | 3 | 1 | does not win a prize |
| 7 | 1 | | | | | | | | | | | | | | |
| 3 | 7 | | | | | | | | | | | | | | |
| 4 | 7 | | | | | | | | | | | | | | |
| 7 | 1 | | | | | | | | | | | | | | |
| 3 | 7 | | | | | | | | | | | | | | |
| 3 | 1 | | | | | | | | | | | | | | |

The opportunity has been taken to transfer from the regulations under the Act provisions relating to verification codes and other tests for determining winning tickets. The purposes of those verification codes or other tests are to prevent forgery or fraudulent alteration of tickets and to provide a conclusive means of determining prize-winning tickets in accordance with the total amount allocated for prizes in that lottery. In *Burgin's* case, the purpose of those verification codes or other tests was construed as being limited to detecting forgery. Their wider purpose is confirmed by the proposed Act.

The proposed Act applies to all instant lotteries (including those promoted or conducted before the commencement of the proposed Act).

Since *Burgin's* case, legal proceedings have been instituted by persons who had retained instant lottery tickets. Some of the proceedings relate to tickets with 3 different pairs of numbers in lotteries in which the instruction was to match 3 numbers (as in *Burgin's* case), while others relate to similar tickets in subsequent lotteries in which the instruction was changed as a result of that case so as to refer to a prize being won only

New South Wales Lotteries (Amendment) 1993

if 3 identical symbols were matched. The proposed Act provides that the rights of a claimant to a prize in an instant lottery are to be determined in accordance with the proposed Act even if proceedings are pending, or the claimant has obtained a summary or other judgment for the payment of a prize in proceedings instituted before the commencement of the proposed Act. However, nothing in the proposed Act affects the judgment of the Court of Appeal in *Burgin's* case as between the parties to those proceedings.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences on the date of assent.

Clause 3 amends the New South Wales Lotteries Act 1990 as outlined above.

FIRST PRINT

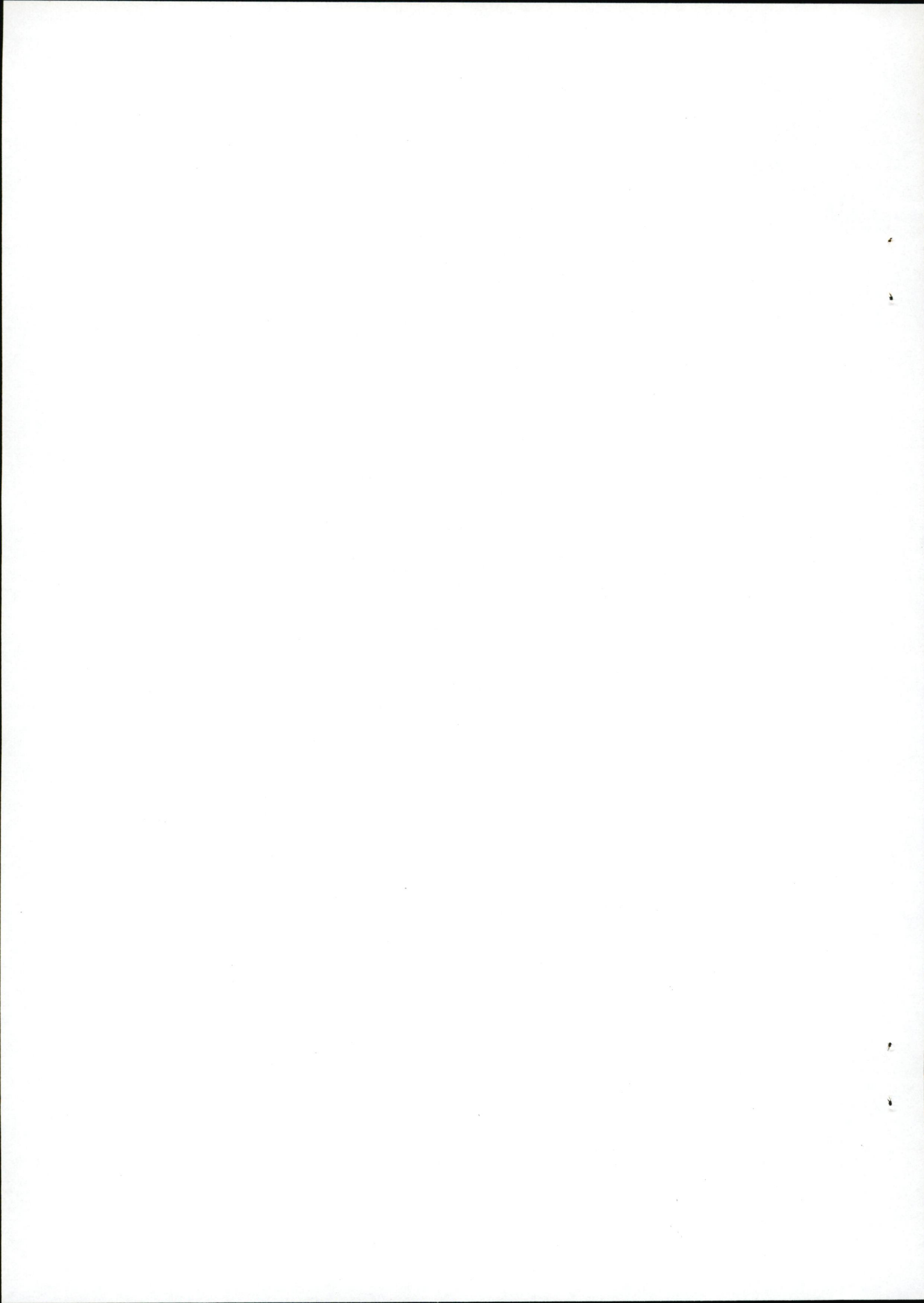
**NEW SOUTH WALES LOTTERIES (AMENDMENT) BILL
1993**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Amendment of New South Wales Lotteries Act 1990 No. 78
-



**NEW SOUTH WALES LOTTERIES (AMENDMENT) BILL
1993**

NEW SOUTH WALES



No. , 1993

A BILL FOR

An Act to amend the New South Wales Lotteries Act 1990 with respect to the payment of prizes in instant lotteries.

New South Wales Lotteries (Amendment) 1993

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the New South Wales Lotteries (Amendment) Act 1993.

5 Commencement

2. This Act commences on the date of assent.

Amendment of New South Wales Lotteries Act 1990 No. 78

3. The New South Wales Lotteries Act 1990 is amended by inserting after Part 2 the following Part:

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PART 2A—INSTANT LOTTERIES

Definitions

33A. In this Part:

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“**instant lottery**” means a public lottery that is an instant lottery, and includes a public lottery in which prizes are determined (wholly or partly) by exposing the matter in panels on the tickets in the lottery (whether or not additional prizes are determined in any other manner);

“**symbol**” includes amount, number, word or picture.

Verification of tickets and prizes

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33B. (1) NSW Lotteries may record on a ticket in an instant lottery a verification code by which NSW Lotteries can determine after the sale of the ticket whether it is a valid ticket and also whether it has won a prize.

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(2) NSW Lotteries may implement other tests in respect of instant lotteries for determining whether a ticket is a valid ticket and also whether it has won a prize.

(3) Those verification codes or other tests have the following purposes:

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(a) to prevent forgery or fraudulent alteration of tickets;

(b) to provide a conclusive means of determining prize-winning tickets in accordance with the total amount allocated for prizes in that lottery.

(4) A prize is not payable in respect of a ticket in an instant lottery if the ticket does not satisfy any such verification code or other test.

New South Wales Lotteries (Amendment) 1993

(5) This section has effect even though the ticket may indicate that a prize has been won.

(6) The regulations may make additional provisions for or with respect to the payment of prizes in instant lotteries.

Clarification of certain rules for winning prizes in instant lotteries 5

33C. (1) In an instant lottery, a statement that a prize is won by matching 3 symbols or by matching 3 identical symbols (or a statement to the same effect) means, and is taken always to have meant, that a prize is won if the same symbol appears 3 times. For example:

| | | | | | |
|---|---|--------------|---|----------------------|---|
| 7 | 1 | wins a prize | 7 | does not win a prize | |
| 3 | 7 | | 3 | | 7 |
| 4 | 7 | | 3 | | 1 |

10

(2) In an instant lottery, a caption to a symbol (for example, the word "one" beneath the symbol "1") forms part of the symbol and does not constitute a separate symbol for the purposes of counting the number of symbols. 15

(3) This section applies to a statement on a ticket in the instant lottery or to a statement publicly advertised or used in connection with the instant lottery.

Application of Part 20

33D. (1) This Part applies to all instant lotteries promoted or conducted before or after the commencement of this Part, whether under the State Lotteries Act 1930 or under this Act.

(2) This Part has effect despite any other Act or law or any agreement. 25

Pending or previous proceedings

33E. (1) The rights of a claimant to a prize in an instant lottery are to be determined in accordance with this Part even if proceedings in relation to the payment by NSW Lotteries of a prize in the instant lottery to the claimant are pending at the commencement of this Part. 30

(2) If, before or after the commencement of this Part:

(a) the claimant of a prize in an instant lottery has obtained a judgment with respect to the claim in proceedings instituted before that commencement; and

(b) the rights of the claimant have not been determined in accordance with this Part, 35

the judgment is, by force of this section, vacated and set aside.

New South Wales Lotteries (Amendment) 1993

(3) Nothing in this Part affects the judgment of the Court of Appeal of the Supreme Court in *State Lotteries Office v. Burgin* (No. CA 40133/93) as between the parties to those proceedings.

5 (4) In this section, “**judgment**” includes a summary or default judgment or order.

NEW SOUTH WALES LOTTERIES (AMENDMENT) BILL 1993
SECOND READING SPEECH
LEGISLATIVE COUNCIL

MR PRESIDENT,

I MOVE:

THAT THIS BILL BE NOW READ A SECOND TIME.

THE PURPOSE OF THE NEW SOUTH WALES LOTTERIES (AMENDMENT) BILL 1993 IS TO CONFIRM THE CIRCUMSTANCES UNDER WHICH PRIZES HAVE ALWAYS BEEN PAID IN INSTANT LOTTERY GAMES.

IN ADDITION, CERTAIN PROVISIONS IN THE REGULATIONS WILL BE TRANSFERRED TO THE ACT AND CLARIFIED, TO ENSURE THAT THERE WILL BE NO DOUBT ABOUT WHAT IS OR IS NOT A WINNING INSTANT LOTTERY TICKET.

THESE PROVISIONS WILL MAKE IT CLEAR THAT NEW SOUTH WALES LOTTERIES MAY USE THE VERIFICATION CODES ON INSTANT LOTTERY TICKETS TO DETERMINE IF A TICKET IS VALID AND IF IT HAS WON A PRIZE.

MR PRESIDENT, INSTANT LOTTERIES WERE INTRODUCED BY THE STATE LOTTERIES OFFICE IN 1982. IN 1986, WORDING ON TICKETS WAS INTRODUCED WHICH SAID "MATCH THREE TO WIN" OR SIMILAR. THE WINNING COMBINATION IN THESE GAMES WAS ALWAYS THE MATCHING OF THREE IDENTICAL NUMBERS OR SYMBOLS - THAT IS THREE OF A KIND.

IN JANUARY 1990, MR DAVID BURGIN BOUGHT A TICKET IN SUCH A GAME AND CLAIMED A PRIZE ON THE BASIS THAT HE HAD MATCHED THREE PAIRS OF NUMBERS. MR BURGIN ON HIS TICKET HAD TWO SEVENS, TWO ONES AND TWO THREES. NOT A WINNING COMBINATION AS NORMALLY ACCEPTED.

NEW SOUTH WALES LOTTERIES DID NOT ACCEPT MR BURGIN'S CLAIM AND MR BURGIN TOOK THE MATTER TO THE DISTRICT COURT. ON 12 MARCH 1993, THE COURT RULED IN HIS FAVOUR.

AN APPEAL BY NEW SOUTH WALES LOTTERIES TO THE COURT OF APPEAL WAS DISMISSED IN MAY THIS YEAR, AND A SUBSEQUENT APPLICATION TO TAKE THE MATTER TO THE HIGH COURT WAS DENIED IN AUGUST 1993.

THE USE OF THE WORDING ON MR BURGIN'S TICKET IS NOT UNIQUE TO NEW SOUTH WALES. THE WORDING AT ISSUE HAS BEEN USED ON TICKETS IN EVERY AUSTRALIAN STATE AS WELL AS OVERSEAS LOTTERY JURISDICTIONS.

THE GAME THAT MR BURGIN PLAYED WAS IN FACT A REPLICA OF A SUCCESSFUL GAME USED IN QUEENSLAND.

THE WORDING ON INSTANT LOTTERY TICKETS WAS CHANGED IN 1990 TO READ "MATCH THREE IDENTICAL NUMBERS OR SYMBOLS" OR SIMILAR WORDS. THE LAST GAME TO USE THE OLD WORDS WAS ONE LAUNCHED IN MAY 1990.

SINCE THE PUBLICITY OVER MR BURGIN'S CASE, THERE HAVE BEEN MANY HOLDERS OF INSTANT LOTTERY TICKETS APPROACHING NEW SOUTH WALES LOTTERIES WITH CLAIMS FOR PRIZES.

THIS INCLUDES A VAST NUMBER OF PEOPLE WITH TICKETS WITH WORDING THAT IS DIFFERENT TO THAT ON MR BURGIN'S TICKET. THESE TICKETS WERE BOUGHT AFTER THE WORDING WAS CHANGED IN 1990.

IT IS IMPOSSIBLE TO PREDICT THE NUMBER OF CLAIMS THAT COULD BE RECEIVED FOR THE GAME PLAYED BY MR BURGIN AND GAMES WITH SIMILAR WORDING. HOWEVER, IT IS KNOWN THAT THE TOTAL VALUE OF ALL RELEVANT TICKETS IF PRIZES WERE CLAIMED WOULD BE \$253 BILLION.

CLEARLY, THIS AMOUNT WOULD NEVER BE CLAIMED SINCE MOST PEOPLE WHO PLAYED THESE GAMES HAVE DISPOSED OF THEIR TICKETS IN THE BELIEF THAT THEY DID NOT CONTAIN WINNING COMBINATIONS.

HOWEVER, IF LESS THAN HALF OF ONE PERCENT WERE RETAINED AND WERE NOW CLAIMED, THE TOTAL POSSIBLE PAYOUT WOULD EXCEED \$1 BILLION.

AS AT THE END OF AUGUST 1993, NEW SOUTH WALES LOTTERIES HAD RECEIVED CLAIMS TOTALLING \$30.5 MILLION FOR THE SAME OR SIMILAR GAMES AS MR BURGIN'S, AND \$40.9 MILLION FOR UNRELATED GAMES.

THE GOVERNMENT AS A GENERAL RULE DOES NOT SUPPORT RETROSPECTIVE LEGISLATION. MOST RETROSPECTIVE LEGISLATION SEEKS TO CHANGE PREVIOUS RULES. THE PURPOSE OF THIS BILL, HOWEVER, IS TO RE-ENFORCE AND CONFIRM EXISTING RULES.

THE FACT OF THE MATTER IS THAT THE VAST MAJORITY OF PLAYERS UNDERSTOOD AND ACCEPTED WHAT THE RULES FOR WINNING WERE IN INSTANT LOTTERIES.

THIS LEGISLATION WILL IN FACT PREVENT AN INJUSTICE TO THOSE PERSONS WHO UNDERSTOOD THE INTENDED MEANING OF WORDING ON TICKETS AND THREW AWAY LOSING TICKETS.

IT WOULD HARDLY BE FAIR TREATMENT IF THE PLAYERS WHO PLAYED BY THE RULES AND DISCARDED "NON WINNING" TICKETS WERE DISADVANTAGED, WHILE THOSE WHO KNEW THEIR TICKETS WERE LOSERS BUT KEPT THEM WERE NOW TO DERIVE A WINDFALL GAIN.

IN MORE THAN 10 YEARS OF OPERATION PRIOR TO THE BURGIN CASE, NEW SOUTH WALES LOTTERIES HAD NEVER FACED ANY COURT ACTION IN RELATION TO INSTANT LOTTERY TICKETS. DURING THAT PERIOD MORE THAN 1.5 BILLION TICKETS WERE SOLD. THIS REINFORCES THE POINT THAT THE WORDING ON TICKETS WAS PROPERLY UNDERSTOOD AND ACCEPTED BY THE MAJORITY OF PLAYERS.

THIS IS NOT A CASE WHERE PEOPLE PLAYED A GAME TO GAMBLE ON AN OUTCOME AND ARE NOW HAVING THE RULES CHANGED. THE REVERSE IS THE CASE. THE GENERAL UNDERSTANDING OF THE RULES IS BEING CONFIRMED.

MR PRESIDENT, LOTTERIES ARE CONDUCTED IN ORDER TO BENEFIT BOTH THE PLAYERS AND THE PEOPLE OF NEW SOUTH WALES. THE PLAYERS HAVE THE OPPORTUNITY TO WIN THE ALLOCATED PRIZES - IN THE CASE OF INSTANT LOTTERIES, 63.4% OF ALL SUBSCRIPTIONS ARE PAID AS PRIZES. THE GENERAL PUBLIC BENEFITS BECAUSE PART OF THE REMAINING SUBSCRIPTIONS IS RETURNED TO CONSOLIDATED REVENUE TO HELP FUND ESSENTIAL PROGRAMS SUCH AS HEALTH AND EDUCATION.

NEW SOUTH WALES LOTTERIES, AS A SUCCESSFUL DIVIDEND PAYING ENTERPRISE, CONTRIBUTES IN EXCESS OF \$200 MILLION PER YEAR TO STATE REVENUE.

THE GOVERNMENT IS NOT PREPARED TO SURRENDER ANY PART OF THIS REVENUE NOR IS IT PREPARED TO ASK THE PEOPLE OF NEW SOUTH WALES TO SUBSIDISE ANY INSTANT LOTTERY CLAIMS.

~~MR~~ ^{PRESIDENT} SPEAKER, THE OPPORTUNITY IS BEING TAKEN UNDER THIS LEGISLATION TO TRANSFER FROM THE REGULATIONS UNDER THE ACT PROVISIONS RELATING TO VERIFICATION CODES AND OTHER TESTS FOR DETERMINING WINNING TICKETS.

THE VERIFICATION CODES ARE THE NUMBERS AND LETTERS THAT ARE FOUND ON THE FRONT AND BACK OF TICKETS.

THE PURPOSES OF THESE VERIFICATION CODES ARE TO PREVENT FORGERY OR FRAUDULENT TICKET ALTERATION, AND TO PROVIDE A CONCLUSIVE MEANS OF IDENTIFYING AND DETERMINING WINNING TICKETS IN ACCORDANCE WITH THE TOTAL AMOUNT ALLOCATED FOR PRIZES IN THAT LOTTERY.

NOTHING IN THE LEGISLATION BEFORE THE HOUSE TODAY AFFECTS THE JUDGEMENT OF THE COURTS IN MR BURGINS CASE.

~~MR~~ ^{PRESIDENT} SPEAKER, NEW SOUTH WALES IS NOT ALONE IN HAVING TO INTRODUCE LEGISLATION TO PREVENT SIGNIFICANT LOSSES TO STATE REVENUE AS A RESULT OF THE BURGINS MATTER. THE QUEENSLAND LABOR GOVERNMENT HAS RECENTLY PASSED LEGISLATION TO CLARIFY, RETROSPECTIVELY, THE INTENTION OF SCRATCH LOTTERY GAMES WHICH USED WORDING SIMILAR TO THE BURGINS GAME.

VICTORIA AND WESTERN AUSTRALIA HAVE ALSO ANNOUNCED THEIR INTENTION TO LEGISLATE.

MR PRESIDENT, NO GOVERNMENT FEELS COMFORTABLE ABOUT INTRODUCING RETROSPECTIVE LEGISLATION. I REPEAT THE POINT THAT I HAVE PREVIOUSLY MADE. THIS LEGISLATION DOES NOT CHANGE PRE-EXISTING RULES. IT SIMPLY CONFIRMS THE EXISTING RULES, BY CLARIFYING WHAT HAS ALWAYS BEEN THE INTENTION OF INSTANT LOTTERY GAMES.

I COMMEND THE BILL.

NEW SOUTH WALES LOTTERIES (AMENDMENT) ACT 1993
No. 49

NEW SOUTH WALES

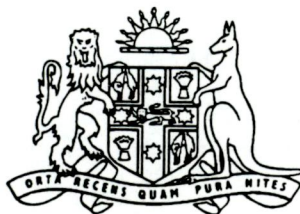


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NEW SOUTH WALES LOTTERIES (AMENDMENT) ACT 1993
No. 49

NEW SOUTH WALES



Act No. 49, 1993

An Act to amend the New South Wales Lotteries Act 1990 with respect to the payment of prizes in instant lotteries. [Assented to 21 September 1993]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the New South Wales Lotteries (Amendment) Act 1993.

Commencement

2. This Act commences on the date of assent.

Amendment of New South Wales Lotteries Act 1990 No. 78

3. The New South Wales Lotteries Act 1990 is amended by inserting after Part 2 the following Part:

PART 2A—INSTANT LOTTERIES

Definitions

33A. In this Part:

“**instant lottery**” means a public lottery that is an instant lottery, and includes a public lottery in which prizes are determined (wholly or partly) by exposing the matter in panels on the tickets in the lottery (whether or not additional prizes are determined in any other manner);

“**symbol**” includes amount, number, word or picture.

Verification of tickets and prizes

33B. (1) NSW Lotteries may record on a ticket in an instant lottery a verification code by which NSW Lotteries can determine after the sale of the ticket whether it is a valid ticket and also whether it has won a prize.

(2) NSW Lotteries may implement other tests in respect of instant lotteries for determining whether a ticket is a valid ticket and also whether it has won a prize.

(3) Those verification codes or other tests have the following purposes:

- (a) to prevent forgery or fraudulent alteration of tickets;
- (b) to provide a conclusive means of determining prize-winning tickets in accordance with the total amount allocated for prizes in that lottery.

(4) A prize is not payable in respect of a ticket in an instant lottery if the ticket does not satisfy any such verification code or other test.

New South Wales Lotteries (Amendment) Act 1993 No. 49

(5) This section has effect even though the ticket may indicate that a prize has been won.

(6) The regulations may make additional provisions for or with respect to the payment of prizes in instant lotteries.

Clarification of certain rules for winning prizes in instant lotteries

33C. (1) In an instant lottery, a statement that a prize is won by matching 3 symbols or by matching 3 identical symbols (or a statement to the same effect) means, and is taken always to have meant, that a prize is won if the same symbol appears 3 times. For example:

| | | | | | |
|---|---|--------------|---|---|----------------------|
| 7 | 1 | wins a prize | 7 | 1 | does not win a prize |
| 3 | 7 | | 3 | 7 | |
| 4 | 7 | | 3 | 1 | |

(2) In an instant lottery, a caption to a symbol (for example, the word "one" beneath the symbol "1") forms part of the symbol and does not constitute a separate symbol for the purposes of counting the number of symbols.

(3) This section applies to a statement on a ticket in the instant lottery or to a statement publicly advertised or used in connection with the instant lottery.

Application of Part

33D. (1) This Part applies to all instant lotteries promoted or conducted before or after the commencement of this Part, whether under the State Lotteries Act 1930 or under this Act.

(2) This Part has effect despite any other Act or law or any agreement.

Pending or previous proceedings

33E. (1) The rights of a claimant to a prize in an instant lottery are to be determined in accordance with this Part even if proceedings in relation to the payment by NSW Lotteries of a prize in the instant lottery to the claimant are pending at the commencement of this Part.

(2) If, before or after the commencement of this Part:

(a) the claimant of a prize in an instant lottery has obtained a judgment with respect to the claim in proceedings instituted before that commencement; and

(b) the rights of the claimant have not been determined in accordance with this Part,

the judgment is, by force of this section, vacated and set aside.

New South Wales Lotteries (Amendment) Act 1993 No. 49

(3) Nothing in this Part affects the judgment of the Court of Appeal of the Supreme Court in *State Lotteries Office v. Burgin* (No. CA 40133/93) as between the parties to those proceedings.

(4) In this section, “**judgment**” includes a summary or default judgment or order.

[*Minister's second reading speech made in—
Legislative Assembly on 8 September 1993
Legislative Council on 14 September 1993*]

