

Western Australia

**Acts Amendment (Continuing Lotteries) Act
2000**

As at 11 Apr 2000

No. 6 of 2000

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Acts Amendment (Continuing Lotteries) Act 2000

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Western Australia

**Acts Amendment (Continuing Lotteries)
Act 2000**

No. 6 of 2000

An Act to amend —

- **the *Stamp Act 1921*; and**
 - **the *Gaming Commission Act 1987*,**
- to transfer administrative responsibility for continuing lotteries.**

[Assented to 11 April 2000]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Acts Amendment (Continuing Lotteries) Act 2000*.

2. Commencement

This Act comes into operation on a day fixed by proclamation.

Part 2 — Stamp Act 1921 amended

3. The Act amended

The amendments in this Part are to the *Stamp Act 1921**.

[* *Reprinted as at 23 January 1996.*

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 237, and Acts Nos. 2, 24, 25 and 26 of 1999.]

4. Section 9 amended

Section 9(1a) is amended after “under Part IVAA” by inserting —

“

as it was prior to its repeal by the *Acts Amendment (Continuing Lotteries) Act 2000*

”.

5. Part IVAA repealed

Part IVAA is repealed.

6. Section 120 amended

Section 120(1)(da) is deleted.

7. Second Schedule amended

The Second Schedule is amended by deleting item 1A.

Part 3 — Gaming Commission Act 1987 amended

8. The Act amended

The amendments in this Part are to the *Gaming Commission Act 1987**.

[* Reprinted as at 30 October 1998.]

9. Section 3 amended

Section 3(1) is amended as follows:

- (a) by inserting in the appropriate alphabetical positions the following definitions —

“

“**continuing lotteries levy**” means the levy imposed by the *Gaming Commission (Continuing Lotteries Levy) Act 2000*;

“**licence**” means a licence issued under Part V Division 7;

“**licensed supplier**” means a person licensed under Part V Division 7 as a licensed supplier;

”;

- (b) in the definition of “lottery” after paragraph (a) by inserting the following paragraph —

“

- (aa) any scheme in which such property is, or is proposed to be, given and in which (at any stage) the person eligible to receive the property as a prize, or to participate further in the scheme, is or is to be determined by lot or chance (whether by the throwing or casting of dice, or the drawing of tickets, cards, lots, numbers or figures, or by means

of a wheel, or otherwise howsoever) or by reference to any event or contingency dependent on chance, regardless of whether (at an earlier or a later stage) a test of knowledge or skill is or may be required to be passed by any person in order to qualify the person to receive a prize or to participate further in the scheme;

”;

- (c) in the definition of “trade promotion lottery” by deleting paragraph (b) and inserting the following paragraph instead —

“

- (b) by reason of the purchase of goods or the use of services, the cost of which is —
- (i) no more than that cost would be without the opportunity to take part in the lottery; or
 - (ii) no more than the maximum total cost per entry as is set out in the permit issued under section 104(1);

”.

10. Section 35 amended

Section 35 is amended by deleting from “is —” to the end of the section and inserting instead —

“

is, in the case of a person other than a body corporate, a fine of \$1 000 or imprisonment for 6 months, or both.

”.

11. Section 85 amended

Section 85(1)(a) is amended as follows:

- (a) after “a machine of that kind” by deleting the comma;
- (b) by deleting “used, at any public place to which the public have or are permitted to have access, for the playing of a game”.

12. Section 101 amended

- (1) Section 101(1) is amended by inserting in the appropriate alphabetical positions the following definitions —

“

“**batch**”, in relation to tickets in a continuing lottery, means a number of tickets that have the same series number and are distinguishable from the tickets in any other batch;

“**Commissioner of State Revenue**” means the chief executive officer of the State Revenue Department;

“**face value**”, in relation to a ticket intended to be sold in a continuing lottery, means the amount for which the ticket is intended to be sold to a person taking part in the lottery;

“**quarter**” means a period of 3 months commencing on 1 July, 1 October, 1 January or 1 April;

“**ticket**”, in relation to a continuing lottery, means a ticket that is intended for sale in a continuing lottery;

”.

(2) After section 101(2) the following subsection is inserted —

“

(2a) The sale of a ticket in a continuing lottery to a person taking part in that lottery is not, for the purposes of this Division, a supply of the ticket.

”.

13. Section 102 amended

Section 102 is amended by inserting after “unless it is” —

“

a trade promotion lottery that complies with prescribed conditions,

”.

14. Section 104 amended

(1) Section 104(1)(b) is amended by inserting after “lottery” —

“

that does not comply with the conditions referred to in section 102

”.

(2) Section 104(1b) is amended by deleting “section 108 of the *Stamp Act 1921.*” and inserting instead —

“ section 3(1). ”.

15. Sections 104B to 104M inserted

After section 104A the following sections are inserted —

“

104B. Licensing of suppliers

(1) A person, other than a person holding a permit, may, in accordance with subsection (2), apply to the Commission to be licensed under this Division as a licensed supplier.

- (2) An application under subsection (1) shall be made in writing, in a form approved by the Commission, specifying —
- (a) the address of the place of business within the State at which tickets and records required under this Division to be maintained are to be kept; and
 - (b) such other particulars as the Commission requires,
- and shall be accompanied by the prescribed fee.
- (3) In considering an application under subsection (1), the Commission may have regard to the financial circumstances of the applicant and such other matters as the Commission considers relevant and, without limiting the grounds on which an application may be refused, the Commission may refuse an application on the ground that —
- (a) the applicant has an interest in a body corporate that holds a licence;
 - (b) the applicant is a body corporate and a person having an interest in the body corporate holds a licence or has an interest in another body corporate that holds a licence; or
 - (c) the applicant or, where the applicant is a body corporate, the body corporate or a person having an interest in the body corporate has previously held a licence, or had an interest in a body corporate that held a licence, which licence was cancelled under this Division.
- (4) For the purposes of subsection (3), a person has an interest in a body corporate if the person —
- (a) holds office as a director of the body corporate;

- (b) holds any share, or has a beneficial interest in any share, in that body corporate;
 - (c) holds any unit in a unit trust scheme, as defined in section 63 of the *Stamp Act 1921*, of which the body corporate is the trustee;
 - (d) has an interest as a beneficiary under a trust of which the body corporate is the trustee; or
 - (e) may, as the result of the exercise of a power or discretion by the body corporate, benefit under a discretionary trust.
- (5) The Commission may issue to a person making an application under subsection (1) a licence in a form approved by the Commission and a licence so issued —
- (a) is not transferable and relates only to the person to whom it is issued but extends to the conduct of business by that person in the capacity of a trustee; and
 - (b) has effect for 5 years, or until it is cancelled or surrendered under this Division.

104C. Termination of licence

- (1) Where —
- (a) the Commission has reason to believe that a licensed supplier has contravened this Division, whether or not the licensed supplier has been convicted of, or proceedings have been instituted against the licensed supplier in respect of, that contravention;

- (b) a licensed supplier ceases to carry on the business by reason of which the licensed supplier was required to be licensed; or
- (c) the Commission has reason to believe that the person is no longer a fit and proper person to hold the licence,

the Commission may, by notice in writing given to the licensed supplier, cancel the licence held by the licensed supplier.

- (2) For the purposes of subsection (1)(b) a licensed supplier is taken to have ceased to carry on the relevant business if, upon the Commission giving to the licensed supplier notice in writing requiring the licensed supplier to show that the licensed supplier has not ceased to carry on the business, the licensed supplier fails within one month after the notice was given to satisfy the Commission that, in the 3 months before the notice was given, the licensed supplier has, in the ordinary course of business, supplied any tickets for the supply of which a licence is required by this Division.
- (3) A licensed supplier may, by notice in writing given to the Commission, surrender the licence held by that person.
- (4) Where the licence of a person is cancelled or surrendered under this section, that person shall —
 - (a) within 14 days after the cancellation or surrender, or such further time as the Commission may approve in writing, lodge with the Commission a return in such form as the Commission requires in writing showing the total face value of all tickets supplied by that person under the licence since

the last period in respect of which the person has lodged a return under section 104F and showing such other information as the Commission requires in writing; and

- (b) at the time of lodging the return required by paragraph (a) or within such further time as the Commission may approve in writing, pay to the Commission the continuing lotteries levy in respect of all tickets supplied by that person as shown in the return.

Penalty: \$5 000.

104D. Appeals to the Minister

- (1) Where the Commission —
 - (a) under section 104B, refuses the application of a previous licence holder for a further licence; or
 - (b) under section 104C, cancels the licence of a person,

the Commission, after having given an opportunity to the person to make submissions in relation to the matter and considered any submissions so made, shall make a report and recommendations to the Minister in accordance with section 62.

- (2) A person aggrieved by a determination of the Commission may submit an appeal to the Minister in accordance with section 62.

104E. Tickets to be delivered up

- (1) Where —
 - (a) under —
 - (i) section 104C, the licence of a person is cancelled; or

- (ii) section 104B, a further licence for a person is refused;
- (b) the person has not submitted an appeal against the cancellation or refusal; and
- (c) the time for submitting an appeal has passed,

the person commits an offence against this Act if that person does not, within 30 days after the passing of the appeal time, deliver to the Commission all tickets that are in that person's possession or dispose of those tickets in such other manner as the Commission approves in writing.

Penalty: \$5 000.

(2) Where —

- (a) under —
 - (i) section 104C, the licence of a person is cancelled; or
 - (ii) section 104B, a further licence for a person is refused;
- (b) the person has appealed against the cancellation or refusal;
- (c) the appeal has been dealt with by the Minister; and
- (d) the Minister has confirmed the cancellation of the licence or confirmed the refusal to issue a further licence,

the person commits an offence against this Act if that person does not, within 30 days after the confirmation, deliver to the Commission all tickets that are in that person's possession or dispose of those tickets in such other manner as the Commission approves in writing.

Penalty: \$5 000.

- (3) Where the licence of a person is surrendered under section 104C the person commits an offence against this Act if that person does not, within 14 days after the licence is surrendered, deliver to the Commission all tickets that are in that person's possession or dispose of those tickets in such other manner as the Commission approves in writing.

Penalty: \$5 000.

104F. Returns to be lodged and levy paid

- (1) A licensed supplier shall —
- (a) within 90 days after the end of each quarter during which the licensed supplier has supplied tickets under the licence or such further time as the Commission may approve in writing, lodge with the Commission a return in such form as the Commission requires in writing showing the total face value of all tickets supplied by the licensed supplier under the licence during that quarter, and showing such other information as the Commission requires in writing; and
 - (b) at the time of lodging each return required by paragraph (a) or within such further time as the Commission may approve in writing, pay to the Commission the continuing lotteries levy in respect of all tickets supplied by the licensed supplier as shown in the return.

Penalty: \$5 000.

- (2) The Commission may, where upon application made to the Commission in writing the Commission sees fit in the circumstances of the case to do so, approve in

writing of the lodging of returns under subsection (1)(a) —

- (a) in respect of a period other than a quarter; and
- (b) within 60 days, or such further time as the Commission sees fit, after the end of a period approved under paragraph (a),

and may vary or revoke any such approval.

- (3) Where an approval under subsection (2) is for the time being in force, subsection (1) shall, in relation to a case to which that approval applies, have effect as modified by that approval as for the time being in force.
- (4) Where a licensed supplier has not supplied tickets under his or her licence during any quarter or other period in respect of which the licensed supplier has approval under subsection (2)(a) to lodge returns, the licensed supplier shall lodge with the Commission a return in respect of that quarter or other period showing that no tickets were so supplied and showing such other information as the Commission requires under subsection (1)(a).
Penalty: \$5 000.
- (5) Where the Commission considers that circumstances warrant so doing, the Commission may, by notice in writing given to a licensed supplier, require the lodgement by that licensed supplier of returns under this section and payment of the continuing lotteries levy, at a time specified in the notice that is earlier than the time when the licensed supplier would otherwise be required to lodge returns under this section and pay the continuing lotteries levy, and may, by subsequent notice so given, vary or revoke any notice under this

subsection and this section shall have effect as modified by any such notice.

104G. Levy to be divided

- (1) Of the continuing lotteries levy received by the Commission after the commencement of this section but before 1 July 2000 —
 - (a) 83.3% (five-sixths) is to be credited to the Consolidated Fund; and
 - (b) 16.7% (one-sixth) is to be paid into and placed to the credit of the Gaming Commission Account established under section 9(2).
- (2) Of the continuing lotteries levy received by the Commission on or after 1 July 2000 —
 - (a) 69.23% (nine-thirteenths) is to be credited to the Consolidated Fund; and
 - (b) 30.77% (four-thirteenths) is to be paid into and placed to the credit of the Gaming Commission Account established under section 9(2).

104H. Exemption from levy

A continuing lotteries levy is not payable on a return lodged under this Division by a licensed supplier to the extent that the return relates to the supply of tickets to —

- (a) another licensed supplier; or
- (b) a person outside the State.

104I. Refund of levy

- (1) Where tickets have been supplied by a licensed supplier and are subsequently returned to the licensed

supplier without having been sold in a continuing lottery, the continuing lotteries levy is not payable in respect of that supply and, if paid, shall be refunded to the licensed supplier.

- (2) A person who returns the tickets to the licensed supplier under subsection (1) may recover the amount, if any, of the continuing lotteries levy concerned in a court of competent jurisdiction as a civil debt due from the licensed supplier.
- (3) Where, under subsection (1), a levy is to be refunded to a licensed supplier, the Commission may set the amount off against any other amount of continuing lotteries levy payable by that person.

104J. Memorandum may be created in certain cases

- (1) A licensed supplier shall not destroy or cause to be destroyed any ticket that is in his or her possession except with the written approval of the Commission.
- (2) A licensed supplier shall take reasonable precautions to prevent the theft or loss, or the destruction without the approval of the Commission, of tickets that are in the possession of, or are being consigned to, the licensed supplier.
- (3) A licensed supplier shall, at such times as the Commission by notice in writing requires, take stock of the tickets in his or her possession and provide to the Commission, in a form approved by the Commission, particulars of —
 - (a) the number of tickets found upon the stocktake to be in his or her possession; and

- (b) any discrepancy between the number of tickets so found to be in his or her possession and records maintained in accordance with the regulations.
- (4) Where it appears to the Commission, whether from an examination of any form or records or otherwise, that —
 - (a) a licensed supplier has destroyed or caused to be destroyed any tickets contrary to subsection (1);
 - (b) tickets in the possession of, or being consigned to, a licensed supplier have been lost or stolen, or have been destroyed other than with the approval of the Commission or under section 104K; or
 - (c) the number of tickets in the possession of a licensed supplier and being kept as required by section 104L(3) is less than the number of tickets that is shown by the records maintained in accordance with the regulations as being in the possession of the licensed supplier,

the Commission may create a memorandum of, and cause an assessment to be made of the amount of, the continuing lotteries levy that, in its judgment, would have been imposed, if the tickets concerned had been supplied by the licensed supplier and had been the subject of a return under this Division.

- (5) The Commission shall not create a memorandum under subsection (4) in respect of tickets where it is satisfied that —
 - (a) the tickets were lost, stolen or destroyed and the licensed supplier had taken all reasonable precautions to prevent the theft, loss or destruction; or

- (b) the licensed supplier has otherwise provided a satisfactory explanation for the deficiency.
- (6) Where an assessment of the continuing lotteries levy is made under subsection (4), there is chargeable in addition to the continuing lotteries levy as a result of that assessment, a fine equal to that levy and that fine is payable at the same time and recoverable in the same manner as that levy but the Commission may remit wholly or in part any fine chargeable under this subsection.

104K. Destruction of tickets on which levy not paid

A licensed supplier may deliver any ticket to the Commission for destruction and the Commission may cause any ticket delivered under this section to be destroyed.

104L. Certain offences by licensed supplier

- (1) A licensed supplier shall not cause to be produced, nor obtain from or supply to any person, tickets that are, or are part of, a batch comprising more than such number of tickets as is prescribed by the regulations to be the maximum number of tickets that may be in one batch.
Penalty: \$5 000.
- (2) A licensed supplier shall not supply tickets to any person within the State unless —
 - (a) the licensed supplier supplies to that person all of the tickets in the batch;
 - (b) there is printed on each ticket —
 - (i) the face value of the ticket;

- (ii) a series number that is common to all of the tickets in the same batch and distinguishes the ticket from tickets in any other batch; and
- (iii) the licence number allocated to the licensed supplier by the Commission or, where the tickets have been previously supplied by another licensed supplier, the licence number so allocated to that licensed supplier;

and

- (c) the tickets are otherwise in accordance with the regulations.

Penalty: \$5 000.

- (3) A licensed supplier shall keep, at the address specified under section 104B(2)(a) or such other address as is for the time being approved in writing by the Commission —
 - (a) all tickets that are in his or her possession; and
 - (b) all records that he or she is required by the regulations to maintain that relate to the preceding 5 years.

Penalty: \$5 000.

- (4) The Commission may, by notice in writing, revoke any approval given for the purposes of subsection (3).

104M. Certain offences

- (1) A person who is not a licensed supplier shall not —
 - (a) obtain tickets for sale in a continuing lottery from a person who is not a licensed supplier; or

s. 16

- (b) alter anything printed on a ticket as required by section 104L(2)(b).

Penalty: \$5 000.

- (2) A person shall not sell or offer for sale in a continuing lottery any ticket for more than the face value of the ticket printed on the ticket.

Penalty: \$5 000.

- (3) A person shall not sell or offer for sale in a continuing lottery —

- (a) any ticket that has not been obtained from a licensed supplier; or
- (b) any ticket not having printed on it each of the things mentioned in section 104L(2)(b).

Penalty: \$5 000.

”.

16. Section 109 amended

After section 109(a) the following paragraph is inserted —

“

- (aa) in respect of the records to be maintained by licensed suppliers and the manner in which those records are to be kept;

”.

Part 4 — Savings and transitional provisions

17. Interpretation

In this Part —

“**commencement day**” means the day on which this Act comes into operation;

“**Commission**” means the Gaming Commission of Western Australia, established under the *Gaming Commission Act 1987*;

“**Commissioner of State Revenue**” means the chief executive officer of the State Revenue Department;

“**Gaming Commission Act**” means the *Gaming Commission Act 1987* as amended by this Act;

“**Stamp Act**” means the *Stamp Act 1921* as in force immediately prior to the commencement day.

18. Licences

A licence issued under Part IVAA of the Stamp Act and in force immediately before the commencement day —

- (a) is taken to be a licence issued under Part V Division 7 of the Gaming Commission Act; and
- (b) subject to that Division, continues in force until —
 - (i) the day on which the licence would have expired under Part IVAA of the Stamp Act; or
 - (ii) 5 years after the commencement day,whichever is the earlier.

19. Cancellation of licence

For the purposes of section 104B(3)(c) of the Gaming Commission Act, the cancellation of a licence under Part IVAA

of the Stamp Act is to be treated as if it were a cancellation under the Gaming Commission Act, Part V Division 7.

20. Pending appeals

- (1) Subject to subsection (2), an appeal commenced under section 111 of the Stamp Act before the commencement day, may be continued and dealt with as if the amendments in Parts 2 and 3 of this Act had not been passed.
- (2) For the purposes of continuing and dealing with pending appeals, if a Local Court wishes to exercise its power, under section 111(3)(b) of the Stamp Act, to remit a matter under appeal, it is to remit that matter to the Commission, instead of the Commissioner of State Revenue.

21. Continuing effect of approvals

Any approval granted under section 111B of the Stamp Act continues in force until that approval is varied or revoked by the Commission under section 104F(2) of the Gaming Commission Act.

22. Returns

If duty payable to the Commissioner of State Revenue under section 111B of the Stamp Act on a return lodged, or to be lodged, with the Commissioner of State Revenue under section 111B of the Stamp Act has not been paid prior to the commencement day then, despite this Act, the duty payable continues as a debt due to the Commissioner of State Revenue.

23. Refund of duty

Where a licensed supplier is entitled to a refund of duty from the Commissioner of State Revenue under section 111D of the Stamp Act, and that duty has not been refunded before or on the commencement day, then despite this Act, the licensed supplier is entitled to a refund of that amount of duty from the Commissioner of State Revenue.

24. Memoranda

- (1) Where the Commissioner of State Revenue was entitled to create a memorandum under section 111E of the Stamp Act, and that entitlement had not been exercised by the Commissioner of State Revenue before or on the commencement day, then on and from the commencement day the Commission is instead entitled to create that memorandum.
- (2) In addition to the entitlement under subsection (1), the Commission is entitled to assess the amount to be paid (including any fine), and to collect the outstanding amount, in relation to a memorandum created under subsection (1).

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