

WESTERN AUSTRALIA.

ACTS AMENDMENT (LOTTERIES).

No. 19 of 1985.

AN ACT to amend the Liquor Act 1970, the Lotteries (Control) Act 1954, the Police Act 1892 and the Stamp Act 1921 and for connected purposes.

[Assented to 19 April 1985.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY.

1. This Act may be cited as the *Acts Amendment (Lotteries) Act 1985*. Short title.

Commence-
ment.

2. (1) Subject to subsection (2), this Act shall come into operation on the day on which it is assented to by the Governor.

(2) Section 3, the provisions of section 9 other than paragraph (e), and section 10 shall come into operation on the day that is the appointed day within the meaning of section 108 of the Stamp Act 1921 as inserted by section 17 of this Act.

PART II—LIQUOR ACT 1970.

Section 126
amended.
Reprinted
as approved
27 July 1984.

3. Section 126 of the Liquor Act 1970 is amended—

(a) in subsection (1), by inserting before “lotteries” in paragraph (f) the following—

“ unauthorized ”; and

(b) by repealing subsection (2b) and substituting the following subsections—

“ (2b) It is a defence to a complaint of an offence against subsection (1) (f) relating to betting with any person or suffering betting, gaming or the playing of unlawful games or the conduct of an unauthorized lottery on the licensed premises of a licensed casino to show that that betting, gaming, playing of unlawful games or conduct of an unauthorized lottery constituted or formed part of an authorized game within the meaning of the Casino Control Act 1984 played in accordance with rules approved under that Act.

(2c) For the purposes of subsection (1) (f), an unauthorized lottery is one that is conducted other than under and in accordance with a permit granted by the Lotteries Commission under the Lotteries (Control) Act 1954. ”.

PART III—LOTTERIES (CONTROL) ACT 1954.

4. In this Part the Lotteries (Control) Act 1954 is referred to as the principal Act.

Principal Act.
Reprinted as approved 19 April 1979 and amended by Acts Nos. 103 of 1981, 24 and 72 of 1982, 21, 29 and 43 of 1983 and 22, 40 and 107 of 1984.

5. Section 4 of the principal Act is amended—

Section 4 amended.

(a) in subsection (1)—

(i) by inserting after the definition of “Commission” the following definition—

“ “continuing lottery” means a continuing lottery within the meaning of subsection (3); ”;

and

(ii) by inserting in the definition of “standard lottery”, after “than”, the following—

“ a continuing lottery or ”; and

(b) by inserting after subsection (2) the following subsection—

“ (3) A continuing lottery is a lottery in which the holders of tickets expose certain amounts or pictures or figures, letters, or other symbols that were printed on the tickets and were concealed at the time when the holders obtained the tickets in order to ascertain whether or not the presentation by them of the tickets to the person conducting the lottery will entitle them, subject to this Act and the terms and conditions, if any, subject to which the permit for the lottery is granted, to receive prizes, but does not include an instant lottery or any stage thereof. ”.

Section 6
amended.

6. Section 6 of the principal Act is amended in subsection (1) by inserting after "lotteries" in paragraph (a) the following—

“ other than continuing lotteries ”.

Section 7
amended.

7. Section 7 of the principal Act is amended in subsection (1) by inserting after "conduct a" the following—

“ standard lottery or instant ”.

Heading
amended.

8. The heading to Part IV of the principal Act is amended by deleting "STANDARD".

Section 18
amended.

9. Section 18 of the principal Act is amended—

(a) in subsection (1a), by deleting "unlicensed";

(b) by repealing subsection (1aa) and substituting the following subsection—

“ (1aa) Where the Commission grants a permit under subsection (1a) it is deemed to do so—

(a) subject to the term and condition that the proceeds (if any) of the game of bingo concerned are applied only for the benefit of the religious body or charitable organization to which the permit is granted and not for the benefit of any other person; and

(b) where the religious body or charitable organization to which the permit is granted is the holder of an unlicensed club permit, subject to the further term and condition that the only participants in the game of bingo concerned are members of that religious

body or charitable organization and their guests, but each such member shall have no more than 3 guests at any one time between such hours and on such days as are authorized by the unlicensed club permit for the sale and supply of liquor. ”;

- (c) by repealing subsection (1c);
- (d) in subsection (1d)—
 - (i) by deleting “or (1c)”; and
 - (ii) by deleting “unlicensed premises” and substituting the following—

“ premises generally ”;
- (e) by inserting after subsection (1d) the following subsection—

“ (1e) The Commission may grant to a religious body or charitable organization a permit to conduct any continuing lottery for such length of time not exceeding 12 months, and subject to such terms and conditions, as the Commission thinks fit to specify in the permit but a permit shall not be granted under this subsection to a licensed supplier within the meaning of section 108 of the Stamp Act 1921. ”; and
- (f) in subsection (3), by deleting the definitions of “canteen licence”, “hotel licence”, “limited hotel licence”, “tavern licence”, “unlicensed premises”, and “winehouse licence”.

10. After section 18 of the principal Act the following section is inserted—

Section 18A
inserted.

- “ 18A. (1) Subject to subsection (2) a permit for continuing lotteries granted under section 18 (1e) is deemed to be granted

Certain
ticket
vending
machines
prohibited.

subject to the term and condition that tickets in a continuing lottery shall not be sold or offered for sale by means of a vending machine.

(2) Subsection (1) does not apply in respect of a continuing lottery if—

(a) all of the tickets in the lottery are sold or offered for sale by means of a vending machine located on premises, or 2 or more vending machines located on the same premises, where those premises are of a kind prescribed in subsection (4); and

(b) there is not, and is not to be, distributed in the lottery any money or any other prize except in the form of goods or services that are provided in the ordinary course of business at those premises.

(3) In this section “vending machine” means a machine, device, or contrivance that is constructed to contain tickets that may be obtained therefrom by an operation that involves the insertion in the machine, device, or contrivance of a coin, token, or similar object.

(4) The kinds of premises prescribed for the purposes of subsection (2) (a) are premises to which—

- (a) an hotel licence;
- (b) a tavern licence;
- (c) a limited hotel licence;
- (d) a canteen licence;
- (e) a winehouse licence; or
- (f) a club licence,

within the meaning of the Liquor Act 1970, relates.

(5) The term and condition deemed by subsection (1) to be imposed on the grant of a permit for continuing lotteries under section 18 (1e) is in addition to and not in substitution for such other terms and conditions as the Commission thinks fit to impose under section 18 (1e) on the grant of the permit. ”.

11. Section 19 of the principal Act is amended by inserting after “art union” the following— Section 19 amended.

“ or conducting any continuing lottery ”.

12. Section 20 of the principal Act is amended in paragraph (a) by deleting “standard” in both places where it occurs. Section 20 amended.

13. Section 24 of the principal Act is amended in subsection (1) by inserting after paragraph (h) the following paragraph— Section 24 amended.

“ (ha) as to the conduct of continuing lotteries; ”.

PART IV—POLICE ACT 1892.

14. Section 89A of the Police Act 1892 is amended in subsection (3) by deleting paragraph (c) and substituting the following paragraph— Section 89A amended.
Reprinted as approved
18 April 1983
and amended by
Acts Nos. 21
and 30 of
1983 and
22 and 23
of 1984.

“ (c) certainly yields—

- (i) previously ascertained goods of which the sale, or exposure for sale, is not prohibited by any law of the State; or
- (ii) tickets, having a previously ascertained face value, in a lottery conducted under and in accordance with a permit granted by the Lotteries Commission under the Lotteries (Control) Act 1954; ”.

PART V—STAMP ACT 1921.

Principal Act.
Reprinted as approved 25 March 1980 as amended by Acts Nos. 47 of 1979, 63 of 1980, 81 and 106 of 1981, 1, 10, 15, 45, 93, 99 and 112 of 1982 and 14 and 61 of 1983 and 81 and 109 of 1984.

15. In this Part the Stamp Act 1921 is referred to as the principal Act.

Section 9 amended.

16. Section 9 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection—

“ (1a) The Commissioner or any person authorized in writing by him may communicate to the Lotteries Commission constituted under the Lotteries (Control) Act 1954 any information respecting the affairs of any person disclosed or obtained under Part IVAA of this Act. ”; and

(b) in subsection (2), by inserting after “(1)” in paragraph (a) the following—

“ or (1a) ”.

17. After section 107 of the principal Act the following Part is inserted—

Part IVAA
inserted.

“ PART IVAA—CERTAIN LOTTERY TICKETS.

108. (1) In this Part, except so far as the context otherwise requires—

Definitions in
Part IVAA.

“appointed day” means the day fixed by the Minister under subsection (2);

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

“continuing lottery” has the meaning given to that expression by the Lotteries (Control) Act 1954;

“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;

“licence” means a licence issued under this Part;

“licensed supplier” means a person licensed under this Part as a licensed supplier;

“permit” means a permit granted under the Lotteries (Control) Act 1954 to conduct any continuing lottery;

“ticket” means a ticket that is intended for sale in a continuing lottery.

(2) The Minister shall, by notice published in the *Gazette*, fix a day to be the appointed day for the purposes of the provisions of this Part that refer to the appointed day.

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

Licensing of
suppliers.

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

(2) An application under subsection (1) shall be made in writing, in a form approved by the Commissioner, specifying—

- (a) the address of the place of business within the State at which tickets and records required under this Part to be maintained are to be kept; and
- (b) such other particulars as the Commissioner requires,

and shall be accompanied by a fee of the prescribed amount or, where no amount is prescribed, \$25.

(3) The fee mentioned in subsection (2) shall be refunded if the application is refused.

(4) In considering an application under subsection (1), the Commissioner may have regard to the financial circumstances of the applicant and such other matters as the Commissioner considers relevant and, without limiting the grounds on which an application may be refused, the Commissioner 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 Part.

(5) For the purposes of subsection (4), a person has an interest in a body corporate if—

(a) he holds office as a director of the body corporate;

(b) he holds any share, or has a beneficial interest in any share, in that body corporate;

(c) he holds any unit in a unit trust scheme as defined in section 63 of which the body corporate is the trustee;

(d) he has an interest as a beneficiary under a trust of which the body corporate is the trustee; or

(e) he may, as the result of the exercise of a power or discretion by the body corporate, benefit under a discretionary trust.

(6) The Commissioner may issue to a person making an application under subsection (1) a licence in the prescribed form 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 until it is cancelled or surrendered under this Part.

Termination
of licence.

110. (1) Where—

- (a) the Commissioner has reason to believe that a licensed supplier has contravened this Part, whether or not he has been convicted of, or proceedings have been instituted against him in respect of, that contravention; or
- (b) a licensed supplier ceases to carry on the business by reason of which he was required to be licensed,

the Commissioner 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 deemed to have ceased to carry on the business by reason of which he was required to be licensed if, upon the Commissioner giving to the licensed supplier notice in writing requiring him to show that he has not ceased to carry on the business, the licensed supplier fails within 1 month after the notice was given to satisfy the Commissioner 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 Part.

(3) A licensed supplier may, by notice in writing given to the Commissioner, surrender his licence.

(4) Where the licence of a person is cancelled or surrendered under this section, that person shall—

- (a) within 14 days thereafter or such further time as the Commissioner may approve in writing, lodge with the Commissioner a return in such form as the Commissioner requires in writing showing the total face value of all tickets supplied by him under his licence since the last period in respect of which he has lodged a return under section 111B or, where he has not lodged a return under section 111B, since the appointed day, and showing such other information as the Commissioner requires in writing; and
- (b) at the time of lodging the return required by paragraph (a) or within such further time as the Commissioner may approve in writing, pay to the Commissioner as duty on the return an amount equal to 5% of the total face value of all tickets supplied by him as shown in the return.

Penalty: \$10 000.

(5) Subsections (1) and (2) apply on and after the appointed day.

111. (1) Where the Commissioner—

Appeal.

- (a) under section 109, refuses the application of a person for a licence;

or

- (b) under section 110, cancels the licence of a person,

the Commissioner shall give to that person reasons for the refusal or cancellation, and that person may, within 42 days after the reasons are so given, appeal to a Local Court.

(2) A Local Court to which an appeal is made under subsection (1) has jurisdiction to hear and determine the appeal and—

- (a) the appeal shall be brought and the proceedings conducted in such manner as may be prescribed by the rules of court in relation to appeals against the decision of a tribunal, or if in relation to any such matter no such rules of court are applicable, in such manner as may be directed by the court; and
- (b) the appeal shall, unless the court otherwise orders be in the nature of a rehearing.

(3) A Local Court hearing an appeal under this section may—

- (a) confirm or quash the decision appealed against;
- (b) remit the matter to the Commissioner, with or without directions;
- (c) make such other order, including an order as to costs, as the court thinks fit,

and effect shall be given to an order made under this subsection.

111A. (1) Where the licence of a person is cancelled under section 110 and, the time within which an appeal may be made under section 111 having elapsed, the person—

Tickets to be delivered up upon cancellation or surrender.

- (a) has not appealed against the cancellation; or
- (b) has appealed against the cancellation and the appeal has been dismissed,

the person commits an offence against this Act if he does not, within 14 days after the elapsing of the time within which an appeal may be made or, where an appeal has been made and dismissed, within 14 days after the appeal is dismissed, deliver to the Commissioner all tickets that are in his possession or dispose of those tickets in such other manner as the Commissioner approves in writing.

(2) Where the licence of a person is surrendered under section 110 the person commits an offence against this Act if he does not, within 14 days after the licence is surrendered, deliver to the Commissioner all tickets that are in his possession or dispose of those tickets in such other manner as the Commissioner approves in writing.

111B. (1) A licensed supplier shall—

Returns to be lodged.

- (a) within 3 months after the end of each month during which he has supplied tickets under his licence or such further time as the Commissioner may approve in writing, lodge with the Commissioner a return in such form as the Commissioner requires in writing showing the total face value of all tickets supplied by him under his licence during that month, and showing such other information as the Commissioner requires in writing; and

(b) at the time of lodging each return required by paragraph (a) or within such further time as the Commissioner may approve in writing, pay to the Commissioner as duty on the return an amount equal to 5% of the total face value of all tickets supplied by him as shown in the return.

(2) The Commissioner may, where upon application made to him in writing he 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 month; and

(b) within 3 months, or such further time as the Commissioner 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 licence during any month or other period in respect of which he has approval under subsection (2) (a) to lodge returns, he shall lodge with the Commissioner a return in respect of that month or other period showing that no tickets were so supplied and showing such other information as the Commissioner requires under subsection (1) (a).

(5) Where the Commissioner considers that circumstances warrant his so doing, he may, by notice in writing given to a licensed supplier, require the lodgement by that

licensed supplier of returns and payment of duty under this section at a time specified in the notice that is earlier than the time when the licensed supplier would otherwise be required to lodge returns and pay duty under this section 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.

(6) This section applies in relation to tickets supplied on or after the appointed day.

Penalty: \$10 000.

111C. Duty shall not be charged on a return lodged under this Part by a licensed supplier to the extent that the return relates to the supply of tickets to—

*Exemption
from duty.*

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

111D. (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, duty is not payable in respect of that supply and, if paid, is refundable to the licensed supplier, and the person who returned the tickets to the licensed supplier may recover the amount of duty, if any, concerned in a court of competent jurisdiction as a civil debt due from the licensed supplier.

*Refund of
duty.*

(2) Where, under subsection (1), an amount of duty is refundable to a licensed supplier, the Commissioner may set the amount off against duty payable under this Act by that person.

Memo-
randum
may be
created in
certain cases.

111E. (1) A licensed supplier shall not destroy or cause to be destroyed any ticket that is in his possession except with the written approval of the Commissioner.

(2) A licensed supplier shall take reasonable precautions to prevent the theft or loss, or the destruction without the approval of the Commissioner, of tickets that are in his possession or are being consigned to him.

(3) A licensed supplier shall, at such times as the Commissioner by notice in writing requires, take stock of the tickets in his possession and provide to the Commissioner, in a form approved by the Commissioner, particulars of—

- (a) the number of tickets found upon the stocktake to be in his possession; and
- (b) any discrepancy between the number of tickets so found to be in his possession and records maintained in accordance with the regulations.

(4) Where it appears to the Commissioner, 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 Commissioner or under section 111F; or

- (c) the number of tickets in the possession of a licensed supplier and being kept as required by section 111G (5) is less than the number of tickets that is shown by the records maintained in accordance with the regulations as being in his possession,

the Commissioner may create a memorandum thereof and cause an assessment to be made of the amount of duty that, in his judgment, would have been payable if the tickets concerned had been supplied by the licensed supplier and had been the subject of a return under this Part, and this Act applies to and in relation to a memorandum so created as if it had been created under section 31A (1).

(5) The Commissioner shall not create a memorandum under subsection (4) in respect of tickets where he 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 is made under subsection (4) of an amount of duty, there is chargeable in addition to the duty payable as a result of that assessment a fine equal to that duty and that fine is payable at the same time and recoverable in the same manner as that duty but the Commissioner may remit wholly or in part any fine chargeable under this subsection.

(7) This section applies on and after the appointed day.

Destruction
of tickets
on which
duty not
paid.

111F. A licensed supplier may, on or after the appointed day, deliver any ticket to the Commissioner for destruction and the Commissioner may cause any ticket delivered to him under this section to be destroyed.

Certain
offences by
licensed
supplier.

111G. (1) A licensed supplier shall not cause to be produced, or 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.

(2) A licensed supplier shall not supply tickets to any person within the State unless—

(a) he 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;

(iii) the passage “W.A. Stamp Duty Paid”; and

(iv) the licence number allocated to the licensed supplier by the Commissioner 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.

(3) A licensed supplier shall not supply to a person outside the State any ticket on which there is printed the passage "W.A. Stamp Duty Paid" or any passage to the like effect.

(4) A licensed supplier shall not—

(a) lodge with the Commissioner under section 110 or 111B a return; or

(b) make in any record required by the regulations to be maintained an entry,

that is false in any material particular.

(5) A licensed supplier shall keep, at the address specified under section 109 (2) (a) or such other address as is for the time being approved in writing by the Commissioner—

(a) all tickets that are in his possession;

(b) all records that he is required by the regulations to maintain that relate to the preceding 5 years.

(6) The Commissioner may, by notice in writing, revoke any approval given by him for the purposes of subsection (5).

(7) This section applies on and after the appointed day.

Penalty: \$10 000.

111H. (1) Subject to section 111A, a person who is not a licensed supplier shall not supply to any person other than a licensed supplier any ticket on which there is printed the passage "W.A. Stamp Duty Paid" or any passage to the like effect. Certain offences.

(2) A person who is not a licensed supplier shall not, on or after the appointed day—

- (a) obtain tickets for sale in a continuing lottery from a person who is not a licensed supplier;
- (b) alter anything printed on a ticket as required by section 111G (2) (b).

(3) A person shall not, on or after the appointed day, sell or offer for sale in a continuing lottery any ticket for more than the face value of the ticket printed thereon.

(4) A person shall not, on or after the day that is 3 months after the appointed day, 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 thereon each of the things mentioned in section 111G (2) (b).

Penalty: \$10 000.

Offences by
bodies
corporate.

111J. (1) Where a body corporate is guilty of an offence against this Act under this Part any officer of the body corporate who was knowingly a party to the commission of the offence is also guilty of that offence and liable to the penalty for that offence.

(2) In this section “officer”, in relation to a body corporate, includes a person who is an officer of the body corporate within the meaning of section 5 (1) of the *Companies (Western Australia) Code*.

Limitation
of criminal
proceedings.

112. A prosecution for an offence against this Act under this Part may be instituted at any time within 5 years after that offence was committed and not afterwards. ”.

18. The heading after section 112G of the principal Act is amended by deleting "PART IVAA." and substituting the following—

Heading amended.

" PART IVBA. "

19. Section 116 of the principal Act is amended by deleting "A person" and substituting the following—

Section 116 amended.

" Unless otherwise expressly provided, a person "

20. Section 117 of the principal Act is amended by deleting "A" and substituting the following—

Section 117 amended.

" Subject to section 112, a "

21. Section 120 of the principal Act is amended in subsection (1) by inserting after paragraph (d) the following paragraph—

Section 120 amended.

" (da) the records to be maintained by licensed suppliers under Part IVAA and the manner in which those records are to be kept; "

22. The Second Schedule to the principal Act is amended by inserting after item 1 the following item—

Second Schedule amended.

" The licensed supplier 1A. RETURNS RELATING TO CERTAIN LOTTERY TICKETS See Part IVAA. "

PART VI—VALIDATION.

Validation
of certain
permits.

23. Where before the day on which this Act is assented to by the Governor the Lotteries Commission under the Lotteries (Control) Act 1954 purported to grant a permit for a lottery that, had this Act then been in operation, would have been a continuing lottery within the meaning of that Act, that permit shall be taken to have been as effectively granted as if this Act had then been in operation.
