

LOTTERIES BILL 1994

EXPLANATORY NOTE

GENERAL OUTLINE

Objectives of the Legislation

The objectives of this legislation are to amalgamate the conduct of lotteries under a single Act and to strengthen regulatory activities which would detract from the integrity of the conduct of lotteries.

Reasons for the Bill

Prior to this Bill lotteries were conducted by the Golden Casket Art Union Office and regulated by the *Soccer Football Pools Act 1976*, the *Golden Casket Art Union Act 1978* and the *Lotto Act 1981*. The amalgamation of these 3 Acts will greatly lessen the legislative and administrative burden for the conduct of lotteries.

Over the years since the commencement of lottery activity in Queensland there has been an increase in activities which have detracted from the integrity of the lotteries conducted by the State. Such activity not only detracts from the name of the lottery but also detracts from the name of the State. The current legislation does not cater for these activities.

Estimated Cost for Government Implementation

There will be no cost for the Government. The Corporation constituted by this Act is a continuation of that constituted by the *Golden Casket Art Union Act 1978*. The Corporation will be self funding.

Consultation

Over the period of development of the Bill all interested parties have been consulted and opinions considered.

NOTES ON PROVISIONS

Clause 1 sets out the short title of the Bill.

Clause 2 provides for the commencement of clause 85 on the day the Bill is assented to and for the commencement of the rest of the Bill by proclamation.

Clause 3 sets out the major objectives of the Bill.

Clause 4 clarifies the meaning of certain words and terms used within the Bill.

Clause 5 provides a meaning for computer system as being any part of the Corporation's computer system which is involved in a determination of an entry in a lottery. That part of the computer system which deals exclusively with the accounting and non-gaming functions of the Corporation does not fall within the meaning of 'computer system'.

The meaning of a 'gaming terminal' is also provided. Gaming terminals will be installed at all on-line licensees (an on-line licensee being one that may sell entries to all on-line games conducted by the Corporation—refer lottery licence in clause 4). A gaming terminal may also be installed at the Corporation's premises either for the sale of entries in a lottery or for the determination of winning entries in a lottery.

A gaming terminal will be connected to and form part of the computer system and is the only means by which a subscriber (refer clause 4) may purchase an on-line lottery entry form.

Clause 6 gives legal status to the Golden Casket Lottery Corporation as a Corporation sole constituted by the Chief Executive of the Department. At the time of proclamation of this Act the Chief Executive is the Under Treasurer.

Clause 7 provides that the Corporation will represent the State.

Clause 8 sets out the functions of the Corporation. The major function of the Corporation will be the efficient operation of lotteries in Queensland.

However the Corporation is not restricted in its ability to expand its operations into avenues which are designed to increase profits.

For example the Corporation may develop software which could be sold for profit to other Australian States or overseas.

Clause 9 confers upon the Corporation the powers of an individual.

Clause 10 permits the Corporation to enter into agreements with a foreign agency in relation to the conduct of lotteries.

For example, an agreement made under this clause would allow the Corporation to conduct a lottery on behalf of a foreign agency or for the foreign agency to conduct a lottery on behalf of the Corporation or for the Corporation in partnership to conduct a lottery.

For example, an agreement under this clause would permit the Corporation and the foreign agency to pool their sales for a lottery and to conduct one drawing to determine the winners and prizes payable in a lottery. Such an agreement has been made with Tattersall Sweep Consultation in Victoria, the South Australian Lotteries Commission and the Lotteries Commission of West Australia (this agreement is continued under clause 80(3)).

Clause 11 provides that due to the sensitive nature of some of the operations within the Corporation, the Corporation may examine the history of an individual applying for a position within the Corporation, or if an employee's duties change.

The clause is designed to offer the Corporation the ability to determine if a potential employee, or current employee, in a particular position would be a risk to the Corporation. Examinations of this nature may be carried out through the police services in Australia and overseas.

Clause 12 provides for the Corporation to delegate its powers to enable a more responsive commercial operation.

Clause 13 provides for the establishment of a Golden Casket Advisory Board with appropriate delegations among its members (refer clause 12). The functions of the Advisory Board will be prescribed by Regulation.

Clause 14 provides for the appointment of persons to the Golden Casket Advisory Board while the Regulations may, depending on the particular circumstances or requirements of the Corporation, prescribe the type of expertise necessary for the Board.

Clause 15 In keeping with the major function of the Corporation (the efficient conduct of lotteries—refer clause 8), the Corporation is empowered to invite tenders for a lottery licence.

In determining whether lotteries are being conducted efficiently the Corporation may examine and identify particular geographic regions within the State in which the Corporation's products do not achieve a desired exposure.

A tender process based on stringent commercial selection criteria will ensure that the Corporation's assets are employed to the best advantage.

For example, the Corporation may determine that due to the growth of a new regional area it would be desirable for one or more outlets to sell the Corporation's products in that area. In this instance the Corporation may invite local established businesses to tender for a lottery licence or it may invite for tenders generally.

Clause 16 empowers the Corporation to fix a tender fee. The tender fee will be commensurate with the estimated cost of the evaluating a tender application through the selection criteria.

Clause 17 dictates the procedure for the Corporation to determine a successful tender.

However, should, for example, a commercial advantage to the Corporation change after the invitation to tender is given or if the applicants are considered unsuitable (refer clause 22), the Corporation need not accept any tender.

The successful tenderer must apply for the lottery licence (refer clause 18).

Clause 18 All lottery licences issued by the Corporation will be based on application. Lottery licences will be issued to individual adults.

Clause 19 provides that an adult may apply for a lottery licence and sets out the form in which a lottery licence application must take. Criteria for lottery licences, prescribed by Regulation, will necessitate a considerable amount of information regarding the applicant, the proposed business for the lottery licence and the proposed site for the lottery licence, for the application to be evaluated.

Clause 20 empowers the Corporation to fix an application fee for a lottery licence. The application fee will be commensurate with the estimated cost of evaluating a lottery licence application based on the licensing criteria.

Clause 21 indicates how the Corporation may consider an application for a lottery licence. A decision must be made to either grant or refuse to grant a lottery licence.

Clause 22 provides for the Corporation to request the Queensland Police Service to provide a report on the applicant's criminal history. The lotteries business is very sensitive to accusations regarding the integrity of their

operations. This clause is designed to assist in the reduction of accusations which may have a detrimental effect on the revenue of the Corporation or a perceived negative effect on the integrity of the Corporation and its products.

Clause 23 provides for the granting of a lottery licence to a successful applicant and for a written contract between the Corporation and the licensee regarding the conduct of the lottery licence. The contract will be legally binding between the Corporation and the licensee.

This clause also empowers the prescription of lottery licence fees by Regulation.

Clause 24 specifies the process by which the Corporation informs the applicant of the Corporation's decision to refuse to grant a lottery licence to the applicant.

Clause 25 provides that the licensee must comply with the written contract between the Corporation and the licensee.

Clause 26 provides that a lottery licence cannot be transferred (subject to clause 27). The clause protects the Corporation and the integrity of lotteries conducted by the Corporation by, for example, requiring that a person must apply for a lottery licence if purchasing a business to which a lottery licence is relevant.

Clause 27 ensures, wherever possible, the continuity of the lottery operation if a joint holder of a lottery licence dies, and enables joint holders of a lottery licence to transfer their interest in the licence to one or more of them.

Clause 28 authorises an executor of a deceased or bankrupt licensee to apply to the Corporation to continue conducting business under the authority of the lottery licence.

Clause 29 refers to a time limit for an application made under clause 28.

Clause 30 provides grounds for the commencement of cancellation or suspension proceedings (refer clause 31).

Clause 31 specifies the procedure to be followed for the cancellation or suspension of a lottery licence under grounds provided for in clause 30.

Appeals against a decision of the Corporation to cancel or suspend a lottery licence may be made to a District Court.

Clause 32 specifies the procedure to be followed for the immediate suspension of a lottery licence under grounds provided for in clause 30(2). Immediate suspension of a lottery licence may only be considered to protect the public or the integrity of lotteries conducted by the Corporation.

Clause 33 empowers the Corporation to turn off the gaming terminal if the lottery licence is cancelled or suspended.

Clause 34 empowers the Corporation to seize and remove lottery property that is under the control of the holder of a cancelled or suspended lottery licence.

The intent of this clause is to protect both the lottery property of the Corporation and the games conducted by the Corporation and to take whatever steps are necessary to protect that lottery property and those games. However the Corporation will try to remove lottery property by agreement with the licensee whose licence is cancelled or suspended.

Clause 35 Appeals against a decision of the Corporation regarding a lottery licence lie with a District Court.

Clause 36 specifies the time period in which an appeal must be commenced. The time period commences from the time that a statement of reasons for the decision is provided to the person.

Clause 37 outlines the manner in which an appeal must be started.

Clause 38 empowers a District Court or higher court to grant a stay of operation of a decision of the Corporation in relation to a lottery licence. A stay of operation is the only way which affects the carrying out of a decision.

For example, a decision to cancel or suspend a lottery licence permits the Corporation to remove lottery property (refer clause 34) and turn the gaming terminal off (refer clause 33) even if that decision is appealed. However, if a stay of operation is granted then the Corporation will not be permitted to remove lottery property or turn the gaming terminal off.

Clause 39 outlines the powers of the court in the case of an appeal.

The court has the power to agree with the decision originally made or change the original decision or abrogate the original decision and direct that the matter be further considered.

In reaching its decision on an appeal the court may take into account any information which it deems necessary or pertinent to the appeal. The court must also comply with natural justice.

Clause 40 makes it clear that the decision of the court over-rides the decision of the Corporation.

Clause 41 empowers rules to be made for appeals in a District Court.

This clause also indicates that an appeal against a decision of the District Court in relation to a decision of the Corporation may only be made on a question of law.

Clause 42 protects the decision of the Corporation regarding refusal to grant a lottery licence where the decision was based on the efficient conduct of lotteries.

For example, an application for a lottery licence may be made for a geographic region that is already supplied with a number of lottery licensees. The application is refused because the Corporation believes that the geographic region is adequately serviced for the efficient conduct of lotteries. The District Court must not overturn that decision purely because it believes that the region in question is not adequately serviced for the efficient conduct of lotteries.

Clause 43 indicates a time period (42 days) for the voluntary surrender of a lottery licence. Because the Corporation is working in a commercial environment it may arrange surrender of the lottery licence at another time more suitable to the licensee and the Corporation.

For example, the Corporation may agree to accept surrender of a lottery licence before or after the 42 day period has elapsed depending on the circumstances of each case.

Clause 44 requires payment to the Corporation of outstanding amounts owed to it, and the return of lottery property owned by the Corporation, when a lottery licence has ceased.

The clause also protects the holder of a suspended lottery licence in that at the end of the suspension period the Corporation must return the lottery licence to the licensee.

Clause 45 permits the Corporation to conduct lotteries in any manner or form.

Clause 46 provides that the entry form is evidence of a subscriber's participation in a lottery.

Clause 47 enables the Corporation to use security procedures as a means of protecting the Corporation and the integrity of lotteries from fraudulent

claims and to provide a secure method of determining the prize won by a winning entry form.

Clause 48 provides for independent supervision of lotteries by the Auditor-General in order to further enhance the integrity of lotteries conducted by the Corporation.

Clause 49 specifies the minimum amount, based as a percent of total subscriptions for a lottery, that must be paid as prizes to winners in that lottery.

Clause 50 permits the retention by the Corporation, pursuant to a rule for a lottery, of a certain amount of subscriptions from the amount specified in clause 49 which will be used at a latter date as additional prizes in a lottery.

For example, if a lottery fixes a prize distribution of 50% of subscriptions for winners in each drawing the Corporation may withhold say 3% of that prize money. This amount withheld may be accumulated with other similar amounts and used to boost prize pools in future lottery drawings.

The intention of this clause is to allow the Corporation to create public interest in a lottery drawing by increasing the available prize money for a lottery drawing (for example superdrawings).

Clause 51 specifies the manner in which winners may claim prizes. A lottery licensee will be permitted to pay certain prizes for a period of time after each drawing.

For example, the Corporation may determine that licensees may pay prizes up to a value of \$500.00 for a period of 13 weeks after each drawing.

All other claims for prizes must be made on the Corporation directly.

Winners have 7 years from the date of the close of the lottery to claim a prize.

Clause 52 permits the Corporation or a lottery licensee to assume that the holder of an entry form is the rightful owner of that entry form.

The obligation to pay a prize on a winning entry form is complete once the prize has been paid.

Clause 53 permits the Corporation to convert a prize into money if it remains unpaid 3 months after the drawing. Winners will still have up to 7 years to claim their prize (refer clause 51).

For example, a prize in a lottery may be a motor vehicle. If the winner of the motor vehicle does not claim the prize within 3 months the Corporation may convert the prize to money by public auction or tender.

It is the intention of this clause to allow the Corporation to deal with unclaimed prizes that may be inconvenient to store for long periods of time.

Clause 54 directs the Corporation to identify unclaimed prizes for 1 year before those prizes can be used as additional prizes.

It is intended that such unclaimed prizes would be used as additional prizes to players in Queensland only.

It is also intended that additional prizes could take the form of promotions or as any other means to boost the prize pool for a lottery.

Clause 55 Under the *Financial Administration and Audit Act 1977* an authority whose receipts are paid into the public accounts is considered to be a department and would be treated as such under that Act. This clause identifies the Corporation as a Statutory Body, and not a department as would otherwise be the case given that surplus receipts of the Corporation are paid into the public accounts (refer clause 56).

Clause 56 directs the Corporation to pay surplus moneys to the public accounts as directed by the Minister. Surplus moneys includes moneys that are not required for the administration of the Corporation. Surplus moneys will not include, for example, moneys required for the payment of prizes in a future or past lottery.

Clause 57 provides the Corporation with the power to invest moneys retained by it. Such moneys may include amounts retained as referred to in clauses 50 and 54 as well as amounts that are retained for the payment of prizes in a past lottery draw.

Clause 58 It is the policy of the Corporation that minors not be permitted to enter or participate in a lottery in Queensland. It is intended that it be an offence to knowingly sell a lottery entry form to a minor.

Clause 59 The winners of lotteries conducted under this Act are determined, in the main, by chance or guessing an outcome of an event (refer clause 4 for the definition of 'gaming scheme'). It is therefore not possible for any scheme, etc, for reward to forecast the outcome of a lottery prior to the draw. A number of schemes, etc have been marketed in the past which attempt to indicate that they provide a means of winning a lottery. It will therefore be an offence to sell or advertise such a scheme.

Clause 60 provides a means by which the Corporation protects its name and its lotteries both in Queensland and overseas. Persons who are not licensed under this Act will not be entitled to sell lotteries conducted under this Act.

Clause 61 allows the Corporation to prosecute persons who attempt to defraud the Corporation, or another person, by forging or altering an entry form. A number of instances have already been found, particularly with Instant Scratch-Its lotteries, where losing entry forms are altered to make them appear to be winning entry forms.

Clause 62 prohibits offensive terms on entry forms. Some winning entry forms require a name and address to be written on the entry form prior to payment of any prize. Additionally with the use of the on-line gaming system subscribers may have their name and a syndicate or 'lucky' name placed on a database with the Corporation to protect ownership of any prizes.

For example it would be an offence under this clause to use an expletive as a syndicate name.

Clause 63 prohibits alteration of conditions on an entry form without the Corporation's authority. For example a condition on an entry form may be that all prizes greater than \$1,000.00 must be returned directly to the Corporation for payment of that prize. It would be an offence under this clause for that condition to be obliterated or altered in any way.

Clause 64 prohibits unauthorised gaming schemes. The clause protects the integrity and revenue of lotteries conducted by the Corporation.

Clause 65 provides for offences. The clause protects the integrity of lotteries in Queensland by ensuring that only authorised persons may do certain acts or render changes in relation to the conduct of lotteries by the Corporation.

Clause 66 permits persons to enter lotteries by way of a syndicate. A syndicate is a group of persons who amalgamate their resources to purchase an entry form in a lottery.

For example, if 10 people amalgamate their resources to purchase an entry form which has a cost price from a licensee of \$100.00 the cost to each person in the syndicate would be \$10.00 only.

Clause 67 ensures that fees, commissions, etc charged by licensees to people entering a lottery conducted under this Act do not exceed the amount

that is either indicated within the contractual arrangement between the Corporation and the licensee or prescribed by Regulation.

Clause 68 makes it an offence to accept a consideration (fee) for enticing people to enter a lottery using a partially completed entry form without the Corporation's authority.

Clause 69 prohibits the selling of an entry form into a lottery that has closed. The clause provides protection for the integrity of the Corporation and particularly the lotteries conducted by the Corporation.

Clause 70 provides that an attempt at an offence is in fact an offence. The clause provides protection for the integrity of the Corporation and particularly the lotteries conducted by the Corporation.

Clause 71 Offences under this Act may be dealt with as summary offences.

Clause 72 provides that if a document appears to be signed by the Chief Executive Officer of the Corporation then it is taken to be so signed until proven otherwise.

For example, if a document appears to be a lottery licence to sell lotteries under this Act and if it is signed by a person as the Chief Executive Officer then that document can be taken to be a lottery licence under this Act until otherwise shown.

Clause 73 clarifies the position of the Corporation in relation to other legislation.

Clause 74 indicates how the Corporation's seal (refer clause 6(2)(b)) is to be used.

Clause 75 If a document is signed by the Chief Executive Officer or a delegated person that document is considered to be a legitimate document.

Clause 76 Each gaming scheme conducted by the Corporation will be conducted under strict rules. These rules will be made by the Corporation and must be approved by the Minister.

Clause 77 allows the Governor in Council to make a Regulations regarding specific matters to be dealt with under this Act.

Clause 78 *The Golden Casket Art Union Act 1978*, the *Lotto Act 1981* and the *Soccer Football Pools Act 1976* are repealed by this Act. The Golden Casket Art Union Office (by this Act known as the Golden Casket Lotteries Corporation—refer clause 6) conducted lotteries under those Acts.

Clause 79 permits persons who have Agency Agreements with the Golden Casket Art Union Office, effective under the repealed Acts (refer clause 78), to continue to act under that agreement as lottery agents for the Corporation for up to 1 year after the commencement of this Act or such other date under the Regulations. After the expiration of this clause these persons may be appointed as licensees under revised contractual arrangements.

Clause 80 ensures that the current staff or agents of the Golden Casket Art Union Office are not disadvantaged by the transition of the Corporation sole.

It also ensures that any current agreements, such as the Australian Lotto Bloc Agreement, made under the repealed Acts (refer clause 78) are not effected by the transition of the Corporation sole.

Clause 81 permits this Act to substitute for the repealed Acts (refer clause 78) where the repealed Acts may be referenced in any other document that is current at the commencement of this Act.

For example, a reference to the *Lotto Act 1981* in a document will be a reference to this Act.

Clause 82 clarifies the intention of clause 67. Mail order operators sell entry forms into other countries. The fees charged vary and do not bear any relationship to the selling fees to be prescribed by Regulation.

It is the intention of the Corporation that until such time as the necessary administrative matters can be resolved (lottery licence criteria, contractual agreements, etc) those mail order operators operating at the commencement of this Act will be given written authority under clause 65 to continue their operations.

Any restriction on pricing or fees placed on mail order operators will be included within the individual contractual agreement between the Corporation and the operator/s (if any such operators are granted a lottery licence).

Clause 83 allows the provisions of the Regulations made under the repealed Acts (refer clause 78) to remain in force for 1 year after the commencement of this Act.

Clause 84 allows the provisions of the rules made under the repealed Acts (refer clause 78) to remain in force for 1 year after the commencement of this Act.

Clause 85 puts to rest any confusion regarding powers of the Golden Casket Art Union Office to develop and expenditure moneys on the Government Revenue Collection project and on Instant Casket opportunities outside Queensland.

Clause 86 indicates the Acts that are no longer in force as a result of this Act. All these Acts dealt specifically with the conduct of lotteries by the Golden Casket Art Union Office which through this Act becomes the Golden Casket Lotteries Corporation (refer clause 6).

Clause 87 indicates the Acts that are amended by this Act. In particular section 72A of the *Stamp Act 1894* is repealed.

Section 72A imposed a duty on all lotteries conducted for which there was a prize of cash or other negotiable instrument. The Golden Casket Art Union Office was the only organisation to pay this duty to the Office of State Revenue.

This duty imposed an extra administrative burden on the Golden Casket Art Union Office, and will also be on the Corporation without the repeal of this section, with no extra revenue benefit to the State due to the fact that all profits of that Office were directed to the Public Accounts. All profits of the Corporation will also be directed to the Public Accounts (refer clause 56).