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South Australia

Lotteries Bill 2019

A BILL FOR

An Act to regulate the conduct of lotteries in the State, to make related amendments to the *Lottery and Gaming Act 1936* and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Lotteries Act 2019*.

2—Commencement

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

3—Objects

The objects of this Act are as follows:

(a) to ensure that lotteries are conducted in a fair and honest way;

(b) to maintain public confidence in the transparency and accountability of lotteries;

(c) to protect the community from fraudulent or exploitative activities relating to lotteries without creating undue regulatory burden;

(d) to support fundraising activities to benefit community and charitable purposes.

4—Interpretation

In this Act, unless the contrary intention appears—

Commissioner has the same meaning as in the *Gambling Administration Act 2019*;

distribution of property includes—

(a) distribution by sale, gift or other disposal; and

(b) distribution of a right relating to property,

and property may be taken to be distributed even if all the property is disposed of to a single person;

licensed lottery means a lottery authorised by licence under Part 3;

lottery—see section 6;

position of authority in a trust or corporate entity—see section 8;

property includes real or personal property (tangible or intangible) or money;

permitted lottery means—

(a) a lottery of a class declared by the regulations to be a lottery that is permitted without the need for a licence under Part 3; or

(b) a lottery that is authorised under another Act or law of the State;

trade promotion lottery means a scheme, competition, game or device for the distribution of property—

(a) where the distribution depends, at any stage of the scheme, competition, game or device, on an element of chance (even if the scheme, competition, game or device, in some other respects, involves a genuine or purported display of knowledge or skill); and

(b) that is conducted with a view to promoting any goods or services; and

(c) where entitlement to participation is free, except that—

(i) the right to participate in the lottery may be dependent on the purchase of any of the goods or services the subject of the promotion; and

(ii) the cost of entering the lottery by telephone, SMS or other electronic means must not exceed an amount prescribed by the regulations; and

(iii) the cost of entering the lottery by post must not exceed the normal cost of postage;

unlawful lottery means a lottery other than a licensed lottery or a permitted lottery.

5—Interaction with *Gambling Administration Act 2019*

This Act and the *Gambling Administration Act 2019* will be read together as a single Act (and a reference in a provision of this Act to "this Act" will be taken to include, where relevant, a reference to the *Gambling Administration Act 2019*).

6—Meaning of lottery

(1) A ***lottery*** means—

(a) a scheme, competition, game or device for the distribution of property where—

(i) entitlement to participation in the scheme, competition, game or device depends on the payment of money, the purchase of a ticket or the giving of some other valuable consideration by the participant; and

(ii) the distribution depends, at any stage of the scheme, competition, game or device, on an element of chance (even if the scheme, competition, game or device, in some other respects, involves a genuine or purported display of knowledge or skill); or

(b) a trade promotion lottery; or

(c) a scheme, competition, game or device of a kind prescribed by the regulations.

(2) The following are not lotteries for the purposes of this Act:

(a) any allotment of real or personal estate or interest which according to law is legally allottable, or may be allotted or held by, or by means of, any allotment or partition by lots;

(b) the distribution of any property among the owners of the property if such property is capable of being fairly apportioned among all the owners and is proposed to be apportioned equally so far as practicable among all the owners.

(3) For the purposes of this Act, a lottery may be determined by any means including—

(a) by lot or drawing; or

(b) by cards, token, coin or dice; or

(c) by any machine, electronic process, ticket, envelope or device.

7—Prohibited goods and services

(1) The Commissioner may, by notice in the Gazette, prohibit specified goods or services (or a specified class of goods or services) from being—

(a) a prize in a lottery; or

(b) offered as an inducement to enter or participate in a lottery; or

(c) promoted by a trade promotion lottery.

(2) The Commissioner may, by notice in the Gazette, vary or revoke a notice under subsection (1).

8—Position of authority in trust or corporate entity

(1) A person occupies a ***position of authority*** in a trust or corporate entity if the person—

(a) in the case of a body corporate—

(i) is a director of the body corporate;

(ii) exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs;

(iii) manages, or is to manage, the business of the body corporate to be conducted under a licence;

(iv) if the body corporate is a proprietary company—is a shareholder in the body corporate; or

(b) in the case of a trust—is a trustee or beneficiary of the trust.

(2) However—

(a) a minor who is a shareholder in a proprietary company, or a beneficiary under a trust, is not for that reason to be regarded as a person occupying a position of authority; and

(b) a charitable organisation that is a beneficiary of a trust is not, for that reason, to be regarded as occupying a position of authority in the trust.

9—Application of Act

(1) This Act applies to a lottery in which persons resident in this State can participate, whether the lottery is conducted within or outside of the State.

(2) This Act binds the Crown not only in right of South Australia but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

(3) Nothing in this Act renders the Crown in any of its capacities liable to be prosecuted for an offence.

Part 2—Unlawful lotteries

10—Conducting unlawful lotteries

(1) A person must not conduct, or assist in the conduct of, an unlawful lottery.

Maximum penalty: $10 000.

(2) A person must not agree to pay any money or provide any goods or services in connection with an unlawful lottery.

Maximum penalty: $5 000.

Expiation fee: $315.

11—Participating in unlawful lotteries

(1) A person must not participate in an unlawful lottery.

Maximum penalty: $2 500.

Expiation fee: $210.

(2) Without limiting subsection (1), a person is taken to ***participate*** in an unlawful lottery if the person purchases or otherwise obtains a ticket, chance, or share in the lottery.

12—Advertising and promoting unlawful lotteries

(1) A person must not advertise or promote an unlawful lottery or a proposal for an unlawful lottery.

Maximum penalty: $5 000.

Expiation fee: $315.

(2) In this section—

advertise an unlawful lottery means take any action to publicise or encourage participation in the lottery.

13—Tickets etc for unlawful lotteries

(1) A person must not print or publish any ticket or other thing entitling, or intended or purporting to entitle, a person to a chance or share in an unlawful lottery.

Maximum penalty: $5 000.

Expiation fee: $315.

(2) A person must not sell or supply, or offer for sale or supply, any ticket, chance, or share in an unlawful lottery.

Maximum penalty: $5 000.

Expiation fee: $315.

(3) In this section—

publish means publish by print media, radio or television, or on the internet, or by other similar means of communication (whether to the public generally or to a section of the public).

14—General defence

It is a defence to a charge of an offence against this Part if the defendant proves that the defendant believed on reasonable grounds that the lottery was a licensed lottery or a permitted lottery.

Part 3—Licensed lotteries

15—Application for licence

(1) An application for a licence under this Part must be made to the Commissioner, in a manner and form determined by the Commissioner, and be accompanied by any prescribed fee.

(2) The Commissioner may grant a licence to an applicant if the Commissioner is satisfied that—

(a) the lottery will not involve any breach of a notice under section 7; and

(b) if the applicant is a natural person—the applicant is aged 18 years or over.

(3) The Commissioner may refuse to grant a licence—

(a) if the Commissioner is satisfied that a relevant person in relation to the application is not a fit and proper person; or

(b) if the Commissioner is satisfied as to any matter prescribed by the regulations; or

(c) if the Commissioner is satisfied that the grant of the licence would otherwise not be consistent with the objects of this Act; or

(d) on any other reasonable ground.

(4) The Commissioner may require an applicant to provide further information about or verification of a matter relevant to the application.

(5) In this section—

relevant person, in relation to an application for a licence, means—

(a) the applicant for the licence; or

(b) if the applicant is a trust or corporate entity—each person who occupies a position of authority in the entity; or

(c) a person nominated under section 17 in the application.

16—Licence may be conditional

(1) The grant of a licence under this Part—

(a) is subject to any conditions prescribed by the regulations in respect of such a licence; and

(b) may be subject to such other conditions as the Commissioner thinks fit.

(2) The Commissioner may, by notice in writing to a licensee, vary or revoke a condition of the licence or add any new conditions to the licence.

(3) In the event of a contravention of, or failure to comply with, a condition of a licence the licensee is guilty of an offence.

Maximum penalty: $5 000.

Expiation fee: $315.

(4) In any prosecution for an offence under subsection (3), it is a sufficient defence if the defendant proves to the satisfaction of the court that the defendant took all reasonable steps to prevent the occurrence of the contravention or failure to which the prosecution relates.

17—Nomination of responsible person for compliance

(1) If an application for a licence is made by an unincorporated organisation, or by a group of unincorporated organisations, the application must, with the consent of the person or persons concerned, nominate to the Commissioner a person or persons who will be responsible for complying with all conditions of the licence and any other obligations relating to the conduct of the lottery under this Act.

(2) A nomination of a person under this section is not effective unless the Commissioner has approved the person so nominated.

(3) A reference in this Act, or in an instrument under this Act, to a licensee under a licence to conduct a lottery or to a person who conducts a lottery will, in the case of a licence held by an unincorporated organisation or a group of unincorporated organisations, be taken to be a reference to the person or persons nominated and approved by the Commissioner under this section in respect of the lottery.

18—Term of licence

(1) A licence has effect for—

(a) if the regulations specify a period, or a manner of determining a period, during which a licence of that kind has effect—the period so specified or determined; or

(b) in any other case—the period determined by the Commissioner and specified in the licence.

(2) A licence of a prescribed class may be renewed in accordance with the regulations.

19—Variation of licence

(1) An application for variation of a licence granted under this Part must be made to the Commissioner, in a manner and form determined by the Commissioner, and be accompanied by any prescribed fee.

(2) The Commissioner may require the licensee to provide further information about or verification of a matter relevant to the application.

20—Cancellation, suspension or surrender of licence

(1) A licensee may, with the consent of the Commissioner, surrender a licence.

(2) If an application is made, or notice is given, for the winding up or dissolution of an incorporated association that holds a licence (including a licence that has been suspended), the association must, within 7 days, advise the Commissioner, in writing, of the proposal.

Maximum penalty: $2 500.

Expiation fee: $210.

(3) The Commissioner may, by giving written notice to a licensee, cancel the licence, or suspend it for a specified period if—

(a) the licence was improperly obtained; or

(b) the licensee contravenes or fails to comply with a condition to which the licence is subject or any requirement of this Act or the regulations; or

(c) the licence is held by an incorporated association that is being wound up or dissolved; or

(d) the Commissioner is of the opinion that the lottery authorised by the licence has become financially unviable.

(4) The Commissioner may, in a notice of consent to the surrender of a licence or in a notice of cancellation or suspension of a licence, give such directions to the licensee as to the winding up of a lottery being conducted under the licence, the provision of financial statements, the payment of licence fees or any other matter relating to the licence as the Commissioner thinks appropriate.

(5) A person that fails to comply with a direction given under subsection (4) is guilty of an offence.

Maximum penalty: $2 500.

Expiation fee: $210.

(6) If any direction given under subsection (4) has not been complied with before the association ceases to exist, the person who last occupied the position of treasurer of the association must take such steps as are reasonably practicable to ensure compliance with the direction.

Maximum penalty: $2 500.

Expiation fee: $210.

(7) The holder of a licence that has been suspended will be taken to be unlicensed during the period of the suspension.

21—Licensee to notify change of particulars

(1) A licensee must, within 14 days after a change in any prescribed particulars, notify the Commissioner in writing of that change.

Maximum penalty: $2 500.

Expiation fee: $210.

(2) In this section—

prescribed particulars means—

(a) any address for service or other email address, telephone number or street or postal address provided by the licensee to the Commissioner for purposes connected with the licence (including, where a person has been nominated in accordance with section 17 for the purposes of the licence, any such details provided in relation to the nominated person); and

(b) any other particulars of a kind prescribed by the regulations.

Part 4—Licensing of suppliers of lottery products

22—Interpretation

In this Part—

lottery product means a product of a kind prescribed by the regulations;

supply, in relation to lottery products, means to sell, or supply for fee or reward, lottery products to a person for the purposes of the resale of the products by that person.

23—Suppliers must be licensed

(1) A person who carries on a business of supplying lottery products without being licensed to do so under this Part is guilty of an offence.

Maximum penalty: $10 000.

(2) This section does not apply to a person who is exempted, or who is of a class of persons exempted, from this section by the regulations.

24—Application for licence

(1) An application for a licence under this Part must be made to the Commissioner, in a manner and form determined by the Commissioner, and be accompanied by—

(a) any documents or information prescribed by the regulations; and

(b) any prescribed fee.

(2) The Commissioner may grant a licence to an applicant if the Commissioner is satisfied that—

(a) if the applicant is a natural person—the applicant is aged 18 years or over; and

(b) the grant of the licence would be consistent with the objects of this Act and any limitations or requirements prescribed by the regulations.

(3) The Commissioner may refuse to grant a licence—

(a) if the Commissioner is satisfied that a relevant person in relation to the application is not a fit and proper person to hold the licence; or

(b) on any other reasonable ground.

(4) The Commissioner may require an applicant to provide further information about or verification of a matter relevant to the application.

(5) In this section—

relevant person, in relation to an application for a licence, means—

(a) the applicant for the licence; or

(b) if the applicant is a trust or corporate entity—each person who occupies a position of authority in the entity.

25—Licence may be conditional

(1) The grant of a licence under this Part may be subject to such conditions as the Commissioner thinks fit.

(2) The Commissioner may, by notice in writing to a licensee, vary or revoke a condition of the licence or add any new conditions to the licence.

(3) A licensee who contravenes or fails to comply with a condition of the licence under this Part is guilty of an offence.

Maximum penalty: $5 000.

Expiation fee: $315.

26—Term of licence

(1) A licence granted under this Part has effect until the following 30 June (unless it is cancelled, suspended or surrendered before that day).

(2) The Commissioner must renew the licence for a period of not less than 1 year if an application for renewal is made, and the prescribed fee is paid, to the Commissioner—

(a) before the licence ceases to have effect; or

(b) at a later time, if the Commissioner is satisfied that it is appropriate to renew the licence at that time.

27—Cancellation, suspension or surrender of licence

(1) The Commissioner may, by written notice to a licensee—

(a) cancel the licence if the licensee obtained the grant of the licence improperly; or

(b) cancel the licence or suspend it for a specified period or until further notice, if the licensee has contravened a provision of this Act or a condition of the licence.

(2) A notice of suspension under subsection (1) may specify action to be taken by the licensee to remedy any breach of this Act or the licence conditions.

(3) A licensee may, with the consent of the Commissioner, surrender a licence.

28—Licensee to notify change of particulars

(1) A licensee must, within 14 days after a change in any prescribed particulars, notify the Commissioner in writing of that change.

Maximum penalty: $2 500.

Expiation fee: $210.

(2) In this section—

prescribed particulars means—

(a) any address for service or other email address, telephone number or street or postal address provided by the licensee to the Commissioner for purposes connected with the licence; and

(b) any other particulars of a kind prescribed by the regulations.

Part 5—Miscellaneous

29—Commissioner may grant exemptions

(1) The Commissioner may, on application by a person or on the Commissioner's own initiative, exempt a lottery, or a class of lotteries, from specified provisions of this Act.

(2) An application for the grant of an exemption under this section must be made in a manner and form determined by the Commissioner and be accompanied by any prescribed fee.

(3) The Commissioner may grant an exemption to an applicant if the Commissioner is satisfied that—

(a) the lottery will not involve any breach of a notice under section 7; and

(b) the grant of the exemption would otherwise be consistent with the objects of this Act.

(4) The Commissioner may refuse to grant an application for an exemption on any reasonable ground.

(5) The Commissioner may require an applicant for an exemption to provide further information about or verification of a matter relevant to the application.

(6) An exemption may be granted—

(a) by notice in writing given to the person who is conducting, or who proposes to conduct, the lottery; or

(b) where the exemption relates to a class of lotteries—by notice in the Gazette.

(7) An exemption granted by the Commissioner under this section may be subject to any conditions the Commissioner thinks fit and specifies in the notice of exemption.

(8) The Commissioner may, at any time, by further notice given in the same manner as notice of the exemption was given—

(a) vary or revoke an exemption; or

(b) vary or revoke a condition of the exemption.

(9) A person who contravenes, or fails to comply with, a condition imposed under subsection (7) is guilty of an offence.

Maximum penalty: $5 000.

Expiation fee: $315.

(10) In any prosecution for an offence under subsection (9), it is a sufficient defence if the defendant proves to the satisfaction of the court that the defendant took all reasonable steps to prevent the occurrence of the contravention or failure to which the prosecution relates.

30—Dishonest, deceptive or misleading conduct

A person involved (whether as principal, agent or employee) in the conduct, or promotion, of any lottery who acts in a dishonest, deceptive or misleading manner in connection with the lottery is guilty of an offence.

Maximum penalty: $50 000 or 2 years imprisonment.

31—Restriction on sale of lottery tickets by children

A person must not cause or permit a child under the age of 15 years to sell lottery tickets, unless the child is accompanied by and under the supervision of an adult.

Maximum penalty: $5 000.

Expiation fee: $315.

32—Evidentiary provisions

(1) In proceedings for an offence against this Act, an allegation in the information—

(a) that a person was, or was not, at a specified time the holder of a specified licence, permit or exemption under this or another Act; or

(b) that a lottery named or described in the information was, or was not, at a specified time a licensed lottery or a permitted lottery; or

(c) that a specified licence, permit or exemption under this or under another Act was, at a specified time, subject to specified conditions,

will be accepted as proved in the absence of proof to the contrary.

(2) In every information laid in respect of an offence relating to a lottery alleged to have been, or intended to be, conducted elsewhere than in the State, the court may in its discretion receive and act on such secondary or other evidence as may be adduced for the purpose of proving the conduct, or intention to conduct such lottery.

33—Regulations

(1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

(a) declare that lotteries of a specified class are permitted lotteries, or are permitted lotteries if they comply with prescribed conditions; and

(b) limit the lotteries for which licences may be granted under this Act or specify different classes of lottery licence that may be granted under this Act; and

(c) prescribe the persons or organisations, or classes or groups of persons or organisations, to which licences, or any classes of licences, may be granted; and

(d) prescribe conditions under which licences may be granted or make any other provision in relation to conditions of licences; and

(e) prescribe rules for the conduct of lotteries or particular classes of lotteries and provide for waiver of such rules; and

(f) make any other provision with respect to the conduct, advertisement or promotion of a lottery; and

(g) prescribe and provide for the payment of fees and provide for any exemptions from fees; and

(h) impose duties on persons who hold licences, or persons responsible for the conduct of permitted lotteries, and their agents and servants; and

(i) provide for the furnishing of security for the due performance of any conditions of a licence or exemption under this Act and of the duties and obligations to be performed by persons who hold a licence or other persons in relation to a lottery; and

(j) provide for a penalty, not exceeding $10 000, for a contravention of, or failure to comply with, any regulation; and

(k) provide for an expiation fee, not exceeding $750, for an alleged contravention of, or failure to comply with, any regulation.

(3) Without limiting the generality of subsection (2)(a) or (d), a condition that may be prescribed under either of those paragraphs may be a condition precedent or a condition subsequent to the granting of an exemption or licence (as the case may be).

(4) The Governor may, in a regulation prescribing a fee for a licence to conduct a lottery, fix the amount of the fee by reference to a specified percentage of—

(a) the aggregate of all or part of the money paid for the right to participate in the lottery; or

(b) the total value of all or some of the prizes in the lottery; or

(c) the total face value of lottery tickets purchased by the licensee for resale.

(5) Regulations under this Act may—

(a) be of general application or limited application; and

(b) make different provision according to the persons, things or circumstances to which they are expressed to apply; and

(c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister, the Commissioner, or another person; and

(d) include evidentiary provisions to facilitate proof of contraventions of the regulations for the purposes of proceedings for offences.

Schedule 1—Related amendments and transitional provisions

Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Related amendments to *Lottery and Gaming Act 1936*

2—Amendment of long title

Long title—delete "lotteries and" and substitute:

unlawful

3—Amendment of section 1—Short title

Section 1—Delete "Lottery and Gaming" and substitute:

Gaming Offences

4—Repeal of section 3A

Section 3A—delete the section

5—Amendment of section 4—Interpretation

Section 4, definitions of ***authorised lottery***, ***exempted lottery***, ***instant lottery ticket***, ***lottery***, ***lottery inspector***, or ***inspector***, ***sweepstakes***, ***trade-promotion lottery***—delete the definitions

6—Repeal of Parts 2, 2A, 3 and 4

Parts 2, 2A, 3 and 4—delete Parts 2, 2A, 3 and 4

7—Repeal of section 56

Section 56—delete the section

8—Amendment of section 60—Public betting and advertising

(1) Section 60(b)—delete paragraph (b)

(2) Section 60(c)—delete "to subscribe to any sweepstakes or"

9—Repeal of sections 101 and 102

Sections 101 and 102—delete the sections

10—Amendment of section 113A—Dishonest, deceptive or misleading conduct

Section 113A—delete "lawful or unlawful lottery,"

11—Repeal of section 116—Exemption of certain sweepstakes

Section 116—delete the section

Part 3—Transitional provisions etc

12—Interpretation

In this Part—

former Act means the *Lottery and Gaming Act 1936*, as in force before the commencement of Part 2 of this Schedule.

13—Prohibited goods and services

A notice in force under regulation 4 of the *Lottery and Gaming Regulations 2008* continues in force, on the commencement of section 7, as if it were a notice of the Commissioner under that section.

14—Licences under former Act

(1) A licence to conduct a lottery in force under the former Act immediately before the commencement of clause 6 of this Schedule continues as if it were a licence granted by the Commissioner under Part 3 of this Act.

(2) A licence in force under Part 3 of the former Act immediately before the commencement of clause 6 of this Schedule continues as if it were a licence granted by the Commissioner under Part 4 of this Act.

15—Inspectors appointed under repealed Act

A person who was, immediately before the commencement of clause 6 of this Schedule, a lottery inspector under the former Act is, on the commencement of clause 6 of this Schedule, taken to be an inspector authorised for the purposes of this Act under the *Gambling Administration Act 2019*.