

Liquor and Gaming Amendment Regulation (No. 1) 2014

Explanatory notes for SL 2014 No. 160

made under the

Casino Control Act 1982

Charitable and Non-Profit Gaming Act 1999

Gaming Machine Act 1991

Interactive Gambling (Player Protection) Act 1998

Keno Act 1996

Liquor Act 1992

Lotteries Act 1997

Racing Act 2002

State Penalties Enforcement Act 1999

Wagering Act 1998

General Outline

Short title

Liquor and Gaming Legislation Amendment Regulation (No.1) 2014

Authorising law

Sections 20 and 127 of the *Casino Control Act 1982*

Sections 48 and 186 of the *Charitable and Non-Profit Gaming Act 1999*

Sections 120, 200 and 366 of the *Gaming Machine Act 1991*

Sections 35 and 263 of the *Interactive Gambling (Player Protection) Act 1998*

Sections 18 and 243 of the *Keno Act 1996*

Sections 43, 44(b), 169, 171 and 235 of the *Liquor Act 1992*

Sections 6, 14, 94 and 228 of the *Lotteries Act 1997*

Sections 212 and 355 of the *Racing Act 2002*

Section 165 of the *State Penalties Enforcement Act 1999*

Sections 24 and 312 of the *Wagering Act 1998*

Policy objectives and the reasons for them

The policy objectives of the amendment regulation are to—

- amend the *Casino Control Regulation 1999* (Casino Control Regulation); the *Charitable and Non-Profit Gaming Regulation 1999* (Charitable and Non-Profit Gaming Regulation); the *Gaming Machine Regulation 2002* (Gaming Machine Regulation); the *Interactive Gambling (Player Protection) Regulation 1998* (Interactive Gambling (Player Protection) Regulation); the *Keno Regulation 2007* (Keno Regulation); the *Lotteries Regulation 2007* (Lotteries Regulation); the *Racing Regulation 2013* (Racing Regulation) and the *Wagering Regulation 1999* (Wagering Regulation) to expand the current cost recoupment scheme relating to the suitability of participants in Queensland's casino and other gaming industries to include applicants for casino and other gaming licences and their associates;
- amend the *Liquor Regulation 2002* (Liquor Regulation) to introduce a new fee for online searches of the register of licences, permits and applications;
- amend the Lotteries Regulation to provide for the introduction of the new 'lucky lotteries' game in Queensland and repeal the provision of Golden Casket games;
- amend the Lotteries Regulation and Wagering Regulation to provide for the reinstatement of a registration within 12 months if the person's identity is subsequently verified after 90 days, and increases the period for which an operator must remit the account balances of restricted investors from 90 days to 12 months; and
- insert two new penalty infringement notice fines for offences under the *Liquor Act 1992* (Liquor Act) in the *State Penalties Enforcement Regulation 2000* (SPER).

Expansion of the probity cost recoupment scheme

The Office of Liquor and Gaming Regulation (OLGR) in the Department of Justice and Attorney-General regulates the gaming industry through seven gaming Acts which require licensees and their associates to be suitable to conduct gaming or be associated with the ownership, administration or management of the gaming licensees' business. The OLGR also administers various sections within the *Racing Act 2002* which require eligibility certificate holders (bookmakers) and their business or executive associates to be suitable to conduct gaming.

Probity investigations are conducted into the suitability of casino licence applicants and their associates prior to the granting of a casino licence. Probity investigations are also conducted to ensure the suitability of persons seeking to hold a major non-casino gaming licence, and their associates. Suitability requirements incorporate the suitability of both corporations and individuals and encompass matters such as character, reputation, business acumen, corporate structure and financial viability.

Unusually high costs can be incurred in conducting investigations, particularly in cases where large Australian or international or multi-national corporations with complex corporate structures are involved.

On 1 November 2013, the *Gaming Legislation Amendment Regulation (No.2) 2013* introduced a new fee system into the gaming regulation to enable the Government to recoup expenses incurred by the OLGR in undertaking probity investigations into the suitability of persons seeking to become a casino lessee, a casino operator or an associate of a casino lessee or operator; and business or executive associates of a

gaming licensee. The current system does not allow for the recoupment of costs of probity investigations into applicants for new casino and other gaming licences and their associates.

These amendments will expand the existing cost recoupment scheme to apply to the costs of investigations into the suitability of applicants for casino and other gaming licences and their associates with all costs to be borne by the applicant.

The amendments allow for the recoupment of significant costs of probity investigations associated with expression of interest (EOI) processes which were announced by the then Acting Premier, the Honourable Jeff Seeney MP, Minister for State Development, Infrastructure and Planning on 19 December 2013, for two new casino licences for the Integrated Resorts Developments (IRD) in regional Queensland and the development of the Queen's Wharf in Brisbane's CBD (QWB).

The OLGR will be required to undertake probity investigations in relation to each shortlisted applicant selected through the current EOI processes. These applicants may comprise a number of consortia partners, potentially including the developer, proposed casino licensee and proposed casino operator. Parties are likely to be members of large corporate groups with international or multinational interests.

The proposed expanded framework for cost recovery is similar to the regulatory framework provided in other Australian jurisdictions such as New South Wales, Victoria and South Australia.

Annual fee for online inspections of the Register under the *Liquor Act 1992*

Section 43 of the Liquor Act requires the Commissioner for Liquor and Gaming to keep a register of licences, permits and applications (the Register). Under section 44(b) of the Liquor Act, the Register must be available for inspection by any person on payment of the fee prescribed. The OLGR maintains an online database that users can search to obtain summary or detailed information from the Register.

As at 1 July 2014, online database searches where *detailed* information is obtained attract a fee of \$34.25. This fee is payable for each search undertaken. This results in significant costs for users that conduct a large number of searches, such as industry bodies, liquor consultants and lawyers.

An amendment to the Liquor Regulation is required to prescribe a fee, to be paid annually, which will allow unlimited access to detailed online searches of the Register.

Introduction of Lucky Lotteries game

(a) *Golden Casket*

The Golden Casket Lottery Corporation Limited (GCLCL) has been operating a game called Golden Casket since 1917. After many years of declining sales, the company has decided to withdraw the game from the Queensland market. The last Golden Casket game took place on 3 April 2013 (Draw 301).

(b) Lucky Lotteries

Tatts Group Ltd (Tatts Group), which operates GCLCL, intends to expand its 'lucky lotteries' product which currently exists in New South Wales into the Queensland and Victorian jurisdictions.

Lucky lotteries is comprised of a:-

- a \$2 game; and
- a \$5 game.

Lucky lotteries games are conducted in the following way:

- A total of 270,000 tickets are sold for the \$2 game and 200,000 tickets for the \$5 game;
- First prize for the \$2 game is \$100,000 and for the \$5 game \$200,000.
- Once all tickets have been sold a draw is conducted. Currently in New South Wales the number of draws across both games averages three times per week. However, with the conduct of the game to be expanded into Queensland and Victoria, the frequency of the draw is expected to increase;
- A random number generator identifies 3965 winning numbers for the \$2 game and 4218 for the \$5 game. Prizes are awarded in the order that they are drawn. In addition, consolation prizes are given for certain entries;
- A jackpot prize is also offered as part of the games. A ticket number is drawn from the total number of tickets sold. If the ticket drawn is a winning ticket the jackpot is won. If not, the jackpot increases.

The lottery will apply across multiple jurisdictions and will possess a significant jackpot component. Players will need to be registered.

Changes to the Queensland Lotteries Regulation are required to facilitate the introduction of the lucky lotteries products. This is chiefly comprised of prescribing lucky lotteries products as a 'declared lottery' under Schedule 4 (Dictionary) of the Lotteries Regulation. Current declared lotteries are the approved lotteries Oz Lotto, Powerball, Saturday Gold Lotto, Super 66 or Monday and Wednesday Gold Lotto.

(c) Taxation

Under section 94 of the *Lotteries Act 1997*, lottery operators must pay a lottery tax, calculated in accordance with the Lotteries Regulation. While section 7(4) of the Lotteries Regulation prescribed a taxation rate of 45% of the lottery operator's monthly gross revenue for the month from the approved lottery known as Golden Casket, the Government determined that the new lucky lotteries product attract the same taxation rate as other declared lotteries (73.48%). OLGR has advised that the rationale for the change in taxation policy includes the following:

- The lucky lotteries games include a guaranteed minimum jackpot, whereas the previous casket game had no jackpot component;
- The jackpot component has, in New South Wales, gone above \$38 million and more recently was above \$20 million;

- There will be significantly more tickets available in the lucky lotteries games than there was for Golden Casket, and the games will operate across multiple jurisdictions;
- The current New South Wales lucky lotteries games usually sell out (and are drawn) within the space of a week. This is compared to the previous \$2 Golden Casket games, which would usually be drawn after eight weeks, rarely selling all tickets, with a top prize of \$100,000.

Registration as a restricted investor for lotteries and wagering

When a person registers with Tatts Group either to make lotteries or wagering investments they are initially registered as a restricted investor. Being a restricted investor means the person's identity, age and place of residence have not been verified in accordance with Tatts Group's identification procedures. In this capacity a person can make deposits and place wagers, but there is a restriction on how much a person can deposit each day, and the person is not able to withdraw any funds.

Sections 17AC of the Lotteries Regulation and 15H of the Wagering Regulation provide that an operator must not register a person as an unrestricted player unless the person's identity has been authenticated under the operator's control system and the person's age has been verified under the operator's control system to be at least 18.

The regulations provide 90 days for this process to be completed. Sections 17AD of the Lotteries Regulation and 15I of the Wagering Regulation provide that a person's registration as a restricted player ends 90 days after the day the person was registered as a restricted player. For administrative process convenience for the Tatts Group, the Amendment Regulation amends these provisions to allow for the reinstatement of a registration within 12 months of the initial registration if the person's identity is subsequently verified after the 90 day period.

Remittance of lotteries and wagering restricted investor account balances

Sections 17AN of the Lotteries Regulation and 15O of the Wagering Regulation provide that if a person's registration as a restricted investor ends (due to their identity and age not being verified), the operator must pay the account balance to the chief executive.

The Amendment Regulation extends the period when the operator must remit the account balance to the chief executive from 90 days after the restricted registration began to 12 months after the restricted registration began. This will reduce the inconvenience to players who delay verifying their account.

Tatts Group has also requested that the reference to *Financial Transaction Reports Act 1988* (Cth) in sections 17AN(4) of the Lotteries Regulation and 15O(4) of the Wagering Regulation be omitted and replaced by a reference to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), which is the current legislation that provides for the financial reporting obligations of gaming companies.

Introduction of new *State Penalties Enforcement Regulation 2000* penalties

The Department of Justice and Attorney-General (DJAG) has identified two Liquor Act offences relating to selling liquor without a licence (section 169) and carrying/exposing liquor for sale without a licence (section 171) that are suitable for prescription as penalty infringement notice (PIN) offences.

The new PINs reflect the principles of the *Guidelines for the Prescription of Penalty Infringement Notice Offences and Amounts under the State Penalties Enforcement Regulation 2000* in that the maximum penalties prescribed do not exceed 20 penalty units.

For operational reasons the OLGR has requested that these amendments commence by 1 August 2014 in order to coincide with the cancellation or suspension of licensees due to non-payment of licence fees.

Achievement of policy objectives

Expansion of the probity cost recoupment scheme

- The policy objectives are achieved by amending the Casino Control Regulation; Charitable and Non-Profit Gaming Regulation; Gaming Machine Regulation; Interactive Gambling (Player Protection) Regulation; Keno Regulation; Lotteries Regulation; Racing Regulation and Wagering Regulation to expand the current cost recoupment scheme relating to the suitability of participants in Queensland's casino and other gaming industries to include applicants for a casino and other gaming licence and their associates.
- It is proposed that the existing fee system will apply, whereby the fee payable by the casino or other gaming licence applicant will be calculated on a case by case basis. This will ensure that consideration may be given to the nature and scope of the investigation and different factors specific to the applicant's structure.
- The amendments also allow the chief executive, commissioner or gaming executive to require the licence applicant to make specified payments towards the cost of the investigation during the course of the investigation if the actual costs exceed the estimated costs.
- The amendments will apply existing provisions to the licence applicant requiring the chief executive, commissioner or gaming executive to provide an itemised account of the costs claimed as soon as practicable after the investigation is finished, and refund any overpayment made, or require, in writing, the investigated party to pay the amount of any shortfall between the amount already paid on the account and the reasonable costs of conducting the investigation, within 28 days after the requirement is made.
- The written itemised account of the costs claimed by the chief executive, commissioner or gaming executive, is evidence of the costs in a proceeding to recover the amount of a shortfall between the amount already paid on the account and the reasonable costs of conducting the investigation.

Other amendments

For all other proposals, the policy objectives are achieved by:

- Amending Schedule 1 of the Liquor Regulation to provide for an annual fee of \$3,500.00 that will allow users to undertake an unlimited number of inspections of the Register using the OLGR's detailed online search facility;

- Amending section 5 of the Lotteries Regulation to omit the term ‘casket’;
- Amending section 7(4)(c) to omit the taxation rate applied to the approved lottery known as Golden Casket;
- Amending section 17AQ to insert a new provision which only allows a ticket in a lucky lotteries game to be cancelled if the cancellation can be made on the day the ticket was purchased;
- Amending the definition of *classified lottery* in Schedule 4 to omit ‘golden casket’;
- Amends the definition of *declared lottery* in Schedule 4 to include a reference to ‘lucky lotteries games’;
- Insertion of a new section 17ADA into the Lotteries Regulation to provide that a person’s registration can be reinstated if a person’s identity is subsequently authenticated after 90 days but less than one year after the day the person was registered as a restricted player;
- Amending section 17AN to specify that the lottery operator must close the account and pay the account balance to the chief executive one year after the day the person registered as a restricted investor;
- Amending section 17AN(4) of the Lotteries Regulation to substitute a reference to the *Financial Transaction Reports Act 1988* (Cth) with a reference to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth);
- Insertion of a new section 15IA into the Wagering Regulation to provide that a person’s registration can be reinstated if a person’s identity is subsequently authenticated after 90 days but less than one year after the day the person was registered as a restricted player;
- Amending section 15O of the Wagering Regulation to specify that the wagering operator must close the account and pay the account balance to the chief executive one year after the day the person registered as a restricted investor;
- Amending section 15O(4) of the Wagering Regulation to substitute a reference to the *Financial Transaction Reports Act 1988* (Cth) with a reference to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth); and
- Amending the Liquor Act entry for SPER to insert sections 169 and 171 of the Liquor Act as infringement notice offences. The amount for each PIN is 20 penalty units.

Consistency with policy objectives of authorising law

The subordinate legislation is consistent with the main purpose and objectives of the Acts.

Inconsistency with policy objectives of other legislation

The subordinate legislation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

Expansion of the probity cost recoupment scheme

The amendments will provide a consistent regime for the recoupment of costs for significant probity investigations into new casino and other gaming licence applicants and their associates.

The amendments will enable the Queensland gaming regulator to conduct satisfactory investigations to the extent necessary to ensure the ongoing probity and integrity of the Queensland casino and other gaming industries. Investigations will be able to be undertaken independent of cost restraints which will expedite the decision making process for new licence applications.

Annual fee for online inspections of the Register under the *Liquor Act 1992*

The cost of implementing the online annual search fee is estimated to be between \$50,000 and \$75,000. This cost will be sourced from the OLGR's approved budget. The new annual search fee will be beneficial for those users that conduct a large number of searches each year, as it will result in a significant cost reduction.

Introduction of Lucky Lotteries game

The benefit of the lucky lotteries provisions is that they introduce a lotteries game to replace the Golden Casket; and increase taxation revenue for the Government.

Restricted lotteries and wagering investor player accounts

The benefit of the restricted player provisions is that they reduce unnecessary regulatory and administrative burden for business, the Government and consumers.

Introduction of new *State Penalties Enforcement Regulation 2000* penalties

The benefit of the SPER provisions is that they increase the provision of an effective, appropriate and cost-effective alternative to court proceedings for minor offending behaviour in relation to liquor laws.

There are no other additional costs identified in implementing these initiatives.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles as it does not affect the rights and liberties of individuals and does not erode the institution of Parliament.

Expansion of the probity cost recoupment scheme

However, the Amendment Regulation provides significant administrative powers to the regulator to require the payment of fees (estimated by the regulator, in advance) and for that purpose to decide when an investigation is finished. However, in the final collection of fees, provision is made for the refunding of any overpayment by the applicant. Further, the Amendment Regulation involves the use of administrative power only in appropriate cases and by appropriate persons and the power is fettered by a reconciliation process whereby actual costs are the final determining factor for the calculation for a final invoice or a refund.

Except for the amendments to the Casino Control Regulation, the Amendment Regulation will mean that for a licence application, an investigation is finished if the regulator considers the relevant person has failed to comply with a requirement made by the regulator in relation to the investigation, under the relevant Act section.

It is considered appropriate to allow for the regulator to determine whether the requirements have been complied with, for the purpose of deciding whether an investigation is finished, as it is the regulator who conducts the investigation. However, the effect of the Amendment Regulation is to provide for administrative power only in appropriate cases and by appropriate persons. Further, such discretionary power for the regulator in regard to determining when an investigation is finished for the purposes of fee calculations is consistent with the scope of power already provided to the regulator to determine non-compliance with the investigation requirements.

Consultation

The Department of the Premier and Cabinet and Queensland Treasury and Trade were consulted in relation to the amendments and are supportive.

The Office of Best Practice Regulation was consulted in relation to Regulatory Impact Statement (RIS) requirements and advised that no RIS was required.

The Office of Racing within the Department of National Parks, Recreation, Sport and Racing has no issues with the proposal to expand the probity cost recoupment scheme.

The Department of State Development, Infrastructure and Planning was consulted and has consulted with the proponents for the IRD and QWB projects in relation to the Government's intention to recoup the costs of probity investigations and that an initial upfront payment will be required from each proponent. The proponents were also advised that there may be a need to seek additional costs or alternatively, less cost may be incurred than estimated in which case a refund will be provided at the end of the investigation.

There has been no community consultation in relation to the expansion of the probity cost recoupment scheme as this proposal does not affect the community. There are no plans to consult with affected stakeholders as, until an entity makes an application for a licence, the OLGR is not aware of who may apply for a licence. The exception to this is the IRD and QWB projects.

Consultation was undertaken with Queensland Hotels Association and Clubs Queensland in relation to the fee for online inspections, and both bodies indicated support for the proposal.