



**Justice**  
Liquor &  
Gaming NSW

# **Regulatory Impact Statement**

## **Public Lotteries Regulation 2016**

**May 2016**

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## 1. EXECUTIVE SUMMARY

Commercial public lotteries have been in operation in NSW since 1931. While lotteries are generally viewed as entertainment and fund raising activities, they are nonetheless a form of gambling.

Public lottery operations provide employment opportunities and a revenue stream for certain small businesses. They also make a significant contribution to government revenue in the form of duties, which are used in areas such as health, education and law and order.

Community expectations demand proper regulatory oversight of lawful gambling and gambling-related activities to ensure that the public interest is protected against the risk of fraudulent activity, and that appropriate integrity safeguards and accountability standards are in place. There is also an expectation that these activities be conducted in accordance with understandings of social responsibility, and in a manner consistent with gambling harm minimisation and responsible gambling standards.

Public lotteries in NSW are regulated by the *Public Lotteries Act 1996* (the Act). These public lotteries include *Lotto* and *Lotto Strike*, *Oz Lotto*, *Powerball*, *Instant Scratch-Its*, *Lucky Lotteries*, *The Pools*, *Set for Life* and *keno*.<sup>1</sup>

The objects of the Act are to provide for the proper conduct of public lotteries in the public interest, and to minimise any harm associated with public lotteries. The Act also aims to ensure that revenue derived from the conduct of public lotteries is accounted for in a proper manner, and that the State and the community as a whole benefit from the conduct of public lotteries.

Section 83 of the Act provides a general regulation-making power with respect to any matter that is necessary or convenient to give effect to the Act. Section 83A of the Act specifies that the regulations may make provision with respect to requiring, or encouraging the adoption of responsible practices in the conduct of public lotteries.

The *Public Lotteries Regulation 2007* has been made under these provisions of the Act. It gives effect to the objects of the Act by prescribing certain matters and setting out obligations of licensees and agents.

The Government is proposing to make a new *Public Lotteries Regulation* to replace the existing 2007 regulation, which is due for automatic repeal under the staged repeal program of the *Subordinate Legislation Act 1989* on 1 September 2016.

Options for addressing those matters provided for by the existing regulation – via alternative regulatory mechanisms such as including the requirements in the *Public Lotteries Act 1996*, or taking no action and letting the existing regulation lapse – have been considered.<sup>2</sup>

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<sup>1</sup> The Act does not apply to other forms of lawful community based gambling activities such as lotteries, bingo, housie, raffles, art unions, tipping competitions and trade promotion lotteries, which are regulated under the *Lotteries and Art Unions Act 1901*.

<sup>2</sup> See chapter 7.1

Given the difficulties in quantifying the social and economic costs of making the proposed *Public Lotteries Regulation 2016*, particularly in relation to the economic value of public interest, the Regulatory Impact Statement uses a multi-criteria analysis method – known as the ‘balanced scorecard’ approach – to assess the costs and benefits of alternative options.

This approach enables each policy option to be compared and scored against a selected range of qualitative criteria, and an overall assessment to be made of the relative merits of each option.

The cost benefit analysis of each option indicated that remaking the regulation would be the preferred option for the following reasons:

- The regulation meets the objectives of the Act and provides for the administrative and machinery matters contemplated by the Act.
- The regulation includes only those clauses necessary to give effect to the proper administration of the Act and is consistent with the intention of the Parliament.
- The regulation is the only means of achieving the effective operation of some provisions of the Act, and it otherwise complements the provisions of the Act.

It is therefore proposed to remake the existing regulation with some changes that are of a machinery or ‘house-keeping’ nature. In addition, it is proposed that clause 17 (which relates to key employees of the keno licensee) be deleted entirely. It is also proposed that the requirement in schedule 1 of the existing regulation whereby a licensee must notify the Minister of the particulars of an employee who is to be remunerated at the rate of \$150,000 per year or more be deleted.

## 2. PUBLIC CONSULTATION

The *Subordinate Legislation Act 1989* requires that before a regulation is made, consultation must take place with appropriate representatives of the public, interest groups, and any sector of industry or commerce, likely to be affected by the proposed statutory rule. Accordingly, this RIS has been prepared to inform the consultation process for the making of the proposed Public Lotteries Regulation 2016.

The availability of these documents has been advertised through notices published in *The Sydney Morning Herald* and *The Daily Telegraph*, and by notice on the Liquor & Gaming NSW website at <http://www.liquorandgaming.justice.nsw.gov.au/>. Notice has also been published in the NSW Government Gazette at <http://nsw.gov.au/gazette>.

Notice of the availability of these documents has been provided to relevant Government agencies and key stakeholder groups. The full list of stakeholders that have been notified is contained in Chapter 10.

### 2.1 Submissions

Interested persons and organisations are invited to make a submission in response to this RIS and the proposed Public Lotteries Regulation 2016.

Liquor & Gaming NSW will review all submissions received and, following this review, the proposed regulation may be amended as appropriate.

Submissions can be emailed to [policy@olgr.nsw.gov.au](mailto:policy@olgr.nsw.gov.au) or posted to:

Public Lotteries Regulation 2016  
Liquor & Gaming NSW  
GPO Box 7060,  
SYDNEY NSW 2001

The closing date for the receipt of submissions is 5pm 8 July 2016.

This Regulatory Impact Statement and consultation draft of the proposed *Public Lotteries Regulation 2016* are available from <http://www.liquorandgaming.justice.nsw.gov.au/>

### 2.2 Confidentiality of Submissions

The consultation process is public. All submissions received will be published on the Liquor & Gaming NSW website. Requests for submissions to be treated as confidential must be accompanied by supporting reasons, and will be considered in the light of Government principles and requirements relevant to the public release of, and access to, information, including those established by the *Government Information (Public Access) Act 2009*.

Should such a request not be granted, opportunity will be provided for the submission to be withdrawn, if considered necessary.

If the proposed regulation is made, a copy of this Regulatory Impact Statement, together with copies of all written comments and submissions received, will be provided to the NSW Parliament's Legislation Review Committee.

## 2.3 Terms used in this Regulatory Impact Statement

The following list contains terms that are used in this Regulatory Impact Statement and their meaning.

the Act	=	the <i>Public Lotteries Act 1996</i>
the existing regulation	=	the <i>Public Lotteries Regulation 2007</i>
the proposed regulation	=	the draft <i>Public Lotteries Regulation 2016</i>
L&GNSW	=	Liquor & Gaming NSW
licensee	=	the holder of an operator licence or product licence issued under the Act
agent	=	an agent of a licensee appointed or approved in accordance with the conditions of the licence held by the licensee (agents usually sell the products offered by a licensee)
controlled contracts	=	contracts that relates to the supply of goods or services to a licensee or agent in connection with the conduct of a public lottery and that is: <ul style="list-style-type: none"> <li>(i) for the purchase and/or servicing equipment used in connection with the conduct of the public lottery or the security arrangements in relation to the conduct of the public lottery, or</li> <li>(ii) for a total cost of more than \$100,000 pa, or</li> <li>(iii) a contract or class of contracts that the Minister has specified as being in the public interest, or</li> <li>(iv) a contract of a class prescribed by the regulations.</li> </ul>
exempt contracts	=	(a) a contract that relates solely to the construction or alteration of premises used by a licensee or agent in connection with the conduct of a public lottery, or <ul style="list-style-type: none"> <li>(b) a contract of a class prescribed by the regulations.</li> </ul>
key employee	=	a person who is employed by the licensee in a managerial capacity in relation to the conduct of a public lottery, or is authorised to make decisions that regulate the operations of the licensee or an agent in relation to the conduct of a public lottery.

### 3. THE STAGED REPEAL PROGRAM

The existing Regulation is due to be repealed on 1 September 2016 in accordance with section 10 of the *Subordinate Legislation Act 1989*.

The *Subordinate Legislation Act 1989* provides for regulations to have a limited life. In most cases, regulations are automatically repealed after five years. When a regulation is due for repeal, a decision must be made about whether to:

- postpone the repeal of the regulation; or
- remake the regulation (with or without changes); or
- allow the regulation to lapse without replacement.

On four previous occasions (2012, 2013, 2014 and 2015) the repeal of the Public Lotteries Regulation 2007 has been postponed. This was largely due to the Government's commitment to review the licence to conduct *keno* and the negotiations that ensued for the new *keno* licence. Legislation to give effect to the new *keno* arrangements was passed by the NSW Parliament in May 2016. It is considered appropriate that the staged repeal and remake process should now proceed.

Where it is proposed to remake a regulation and the matters dealt with in the regulation are not just machinery in nature, the *Subordinate Legislation Act 1989* requires a Regulatory Impact Statement (RIS) to be prepared. The RIS must address the objectives sought to be achieved by the proposed regulation, and discuss the reasons for them.

Those objectives must:

- be reasonable and appropriate; and
- accord with the objectives, principles, spirit and intent of the enabling Act; and
- not be inconsistent with the objectives of other Acts, statutory rules and stated government policies.

The RIS must consider alternative options for achieving the stated objectives, including the option of not doing anything (i.e. allowing the regulation to lapse without replacement), and an evaluation must be made of the costs and benefits expected to arise from each option.

Implementation of the objectives by means of a regulation should not normally be undertaken unless the anticipated benefits to the community from the proposed regulation exceed the anticipated costs to the community. The option that involves the greatest net benefit or the least net cost to the community should normally be chosen from the options available.

In determining the costs and benefits, the impact on the economy, consumers, the public, relevant interest groups, and any sector of the industry and commerce that may be affected, needs to be considered. These factors must be taken into account when considering all options.

All new and amending regulatory proposals must demonstrate that the NSW Government's better regulation principles have been applied. Those principles are:

1. The need for government action should be established.
2. The objective of government action should be clear.
3. The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options.
4. Government action should be effective and proportional.
5. Consultation with business and the community should inform regulatory development.
6. The simplification, repeal, reform or consolidation of existing regulation should be considered.
7. Regulation should be periodically reviewed, and if necessary, reformed to ensure its continued efficiency and effectiveness.

This RIS has been prepared in accordance with the requirements of the *Subordinate Legislation Act 1989* and the NSW Government's better regulation principles.

## 4. BACKGROUND TO THE REGULATORY FRAMEWORK

The *Public Lotteries Act 1996* regulates the law relating to the conduct of public lotteries in NSW. The objects of the Act are:

- to make provision for the proper conduct of public lotteries in the public interest and to minimise any harm associated with public lotteries; and
- ensure that revenue derived from the conduct of public lotteries is accounted for in a proper manner; and
- ensure that, on balance, the State and the community as a whole benefit from the conduct of public lotteries.

These objects are designed to meet community expectations that there be proper regulatory oversight of lawful gambling and gambling-related activities. The objects are also consistent with the NSW Government's recognition of the impact of gambling in the community and the importance of a public lotteries system which operates efficiently and with integrity.

Under the Act, two types of licences may be granted for the lawful conduct of public lotteries:

1. An operator licence which allows the licensee to conduct any public lottery for which it holds a licence.
2. A product licence for each particular public lottery issued under the operator licence.

In summary, the intention of the Act is to provide the framework for the conduct of public lotteries through the issuing of individual licences by the responsible Minister.

The requirements for the application and granting of a licence, as well as the conditions which may be included in a licence agreement, are set out in the Act. All licensees are required to develop rules for the conduct of their licensed public lotteries and have the rules approved by the Minister and then published.

The Act standardises the financial provisions for all public lotteries and ensures that appropriate accountabilities are in place. In addition, certain activities are prohibited by the Act to protect the general public from inappropriate gaming practices. Provision is made for the Minister to take disciplinary action against the holder of a licence for a breach of the Act and/or the conditions attached to a licence.

### 4.1 Regulation making powers

Various sections of the Act require that the regulations prescribe certain things including the level of prize money required to be paid directly to the prize winner, how a prize winner may seek anonymity, the types of change in circumstances that are required to be notified to the Minister by a licensee or agent, and the class of contracts that are considered to be 'controlled contracts' (i.e. contracts that are required to be notified to the Minister)<sup>3</sup>.

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<sup>3</sup> See chapter 2.3 – Terms used in this Regulatory Impact Statement p8

Consequently, a general regulation making power exists under section 83 of the Act which allows the making of regulations not inconsistent with the Act, with respect to any matter that is required, necessary or convenient for carrying out or giving effect to the Act.

Section 83A of the Act specifically addresses gambling harm minimisation and provides that the regulations may make provision with respect to requiring or encouraging the adoption of responsible gambling practices in the conduct of public lotteries.

The *Public Lotteries Regulation 2007* has been made under these sections of the Act and provides for (among other things):

- the manner in which unclaimed public lottery prizes are dealt with;
- licensee obligations with respect to responsible gambling practices;
- the definition of a 'key employee' of the licensee which conducts the game of keno<sup>4</sup>
- the kind of changes in a licensee's circumstances that must be notified to the Minister; and
- the classes of contracts which are prescribed as 'exempt contracts'<sup>5</sup> for the purposes of the Act. (i.e. contracts that do not need to be notified to the Minister).

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<sup>4</sup> See chapter 2.3 – Terms used in this Regulatory Impact Statement p8

<sup>5</sup> Ibid

## 5. NEED FOR GOVERNMENT ACTION

### 5.1 What is a public lottery?

A public lottery is essentially a game of chance whereby a person chooses, is allocated, or attempts to forecast, numbers that will be drawn at random; with the aim of correctly matching the prizewinning numbers. Examples of public lotteries that are conducted in this State include *Lotto*, *Powerball*, *Lucky Lotteries* and *keno*.

A public lottery can also take the form of a game of chance whereby certain numbers are designated as prizewinning numbers/tickets e.g. instant scratch lottery. In an instant lottery a person is randomly allocated numbers or tickets, and prizes are distributed to persons holding those prizewinning numbers/tickets.

In NSW, public lotteries are regulated under the *Public Lotteries Act 1996*. Other forms of lawful community based gambling activities such as lotteries, bingo, housie, raffles, art unions, tipping competitions and trade promotion lotteries are regulated under the *Lotteries and Art Unions Act 1901*.

### 5.2 Why are public lotteries conducted?

In 1930, the NSW government established the State Lotteries Office (later to become the NSW Lotteries Corporation) to conduct lawful public lotteries to raise revenue to fund public hospital infrastructure. The first lottery ticket was sold the following year.

Since that time public lotteries have continued to contribute to NSW government consolidated revenue and for specific purposes, such as the construction of the Sydney Opera House and funding the Sydney 2000 Olympic bid. Public lottery operations also provide employment opportunities and an important revenue stream for certain small businesses which act as agents for licence holders.

In the 2014/2015 financial year, NSW Lotteries paid \$327,087,069 in government duties, while *keno* contributed \$13,835,261 to government revenue.

### 5.3 Who conducts public lotteries?

A public lottery may only be conducted in NSW by a licensed lottery operator. Currently there are two (2) licensed lottery operators in NSW:

- (i) NSW Lotteries Corporation Pty Ltd, which conducts *Lotto* and *Lotto Strike*, *Oz Lotto*, *Powerball*, *The Pools*, *Lucky Lotteries*, *Set for Life* and *Instant Scratch-Its*.
- (ii) Keno (NSW) Pty Ltd and Club Keno Holdings, who as joint licensees conduct the game of *keno*.

In 2010, the Tatts Group paid the NSW government \$850 million for the granting of an exclusive 40 year licence to conduct public lotteries (except *keno*) in NSW and for the purchase of the NSW Lotteries Corporation. As part of the agreement, a further \$160 million in cash and assets were transferred from the NSW Lotteries

Corporation to the State government. In addition, the State continues to benefit from the payment of duties by the Tatts Group of over \$320 million per annum.

Keno (NSW) Pty Ltd and Club Keno Holdings were jointly issued with the licence to conduct *keno* in 2007, with an expiry date in 2022. In 2010, the Government entered into a Memorandum of Understanding with ClubsNSW that included a commitment to review and extend the existing *keno* arrangements. The review found that there was significant scope to modernise the *keno* regulatory regime by aligning it with the regulatory regime that applies to NSW Lotteries.

As a result, the Government entered into negotiations with the incumbent licensees to reach an agreement that would:

- a) modernise the regulatory framework;
- b) remove the confusion that arose from having *keno* regulation effectively frozen from the sale of NSW Lotteries in 2010; and
- c) grant a new *keno* operator and product licence to the incumbent licensees until 1 April 2050.

Legislation was recently passed by the NSW Parliament to give effect to these new arrangements.

## 5.4 Why is there a need for regulation?

While lotteries are generally viewed as a form of entertainment or as a fundraising activity, they are nonetheless a form of gambling.

Community expectations demand proper regulatory oversight of lawful gambling and gambling-related activities. There is also an expectation that the government takes steps to minimise the harm associated with problem gambling.

The licensees conducting public lotteries, their agents and the government have an interest in ensuring that public lotteries are run in a manner that is fair and free from fraud and corruption. A loss of public confidence in the conduct of a lottery would likely result in reduced community participation with consequential impacts on revenue derived from public lotteries.

A 2012 report commissioned by the NSW Government found that 65% of the State's population had participated in at least one form of gambling activity in the previous 12 months. The most popular gambling activity was lottery products, followed by instant scratchies. Keno was ranked the fifth most popular gambling activity after poker/gaming machines and horse/greyhound racing.<sup>6</sup> In 2013/14, NSW residents spent over \$1.6 billion on public lotteries.<sup>7</sup>

Given the number of members of the NSW community who participate in public lotteries and the amount of money involved, government action to ensure that the public lotteries system operates efficiently and with integrity is appropriate.

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<sup>6</sup> Prevalence of Gambling and Problem Gambling in NSW, Ogilvy Illumination, April 2012

<sup>7</sup> Australian Gambling Statistics 31<sup>st</sup> Edition, August 2015

## 6. OBJECTIVES OF THE PUBLIC LOTTERIES REGULATION 2016

It is proposed to make the Public Lotteries Regulation 2016, which will commence on 1 September 2016, when the existing 2007 Regulation will be automatically repealed.

The primary objective of the proposed regulation is to provide for certain matters that are required to be prescribed under the Act.

The proposed regulation is consistent with the objectives of the Act and makes provision with respect to the following:

- a) the time within which claims for unclaimed public lottery prizes must be made;
- b) the disposal of certain unclaimed public lottery prizes and of certain money in prize funds;
- c) the manner in which an entrant in a public lottery may request anonymity;
- d) responsible practices in the conduct of public lotteries;
- e) prescribing certain people as key employees in relation to keno;
- f) prescribing the changes in circumstances in relation to licensees for public lotteries that need to be notified to the Minister;
- g) prescribing certain contracts as exempt contracts;
- h) prescribing the fee for the review of a controlled contract;
- i) savings related to certain matters under expired licences;
- j) certain other miscellaneous provisions.

This RIS contains information supporting the notion that prescribing these matters is reasonable and appropriate, and accords with the objectives, principles, spirit and intent of the Act. This course of action represents a proportional response to the issues sought to be addressed.

### 6.1 Amendments to be included in the proposed regulation

The proposed regulation is essentially a remake of the existing *Public Lotteries Regulation 2007*. However, it omits or changes certain provisions which are redundant or outdated.

#### 6.1.1 Clause 17 – Key employees

It is proposed that clause 17 of the existing regulation will be deleted entirely. This clause prescribes additional persons that are “key employees” of the licensee that conducts *keno*.

Section 4 of the Act defines a key employee as a person who:

- (a) is employed in a managerial or supervisory capacity in relation to the conduct of a public lottery by a licensee, or
- (b) is authorised to make decisions, involving the exercise of his or her discretion, that regulate the operations of a licensee or an agent in relation to the conduct of a public lottery by the licensee, or
- (c) is concerned or engaged, in any manner prescribed by the regulations, in the conduct of a public lottery by a licensee.

Clause 17 of the existing regulation makes it clear that a person who is employed by the keno licensee in one of two types of role is considered to be a key employee. The clause also captures persons employed in certain roles by companies related to the keno licensee.

It is considered that the definition in the Act sufficiently covers key employees of the licensee and that there is no need to define any specific further role(s). The relationship between the keno licensee and the companies prescribed in clause 17 is no longer of significance and it is considered that the provision is now redundant.

The social benefit of defining and monitoring the key employees of the keno licensee so as to ensure that only appropriate persons are involved in the conduct of keno remains appropriate.

### **6.1.2 Clause 18 – Schedule 1 – Notification of employee particulars**

Section 52 of the Act provides that the regulations may prescribe the type of changes in circumstances of which a licensee must notify the Minister. Schedule 1 of the existing regulation sets out the type of change and the particulars to be notified.

One such type of change that is prescribed is when a licensee commences to remunerate an employee at a level of \$150,000 per year or more. This requirement was carried over from the Lotto Regulation 1995 and the designated amount of remuneration was increased to \$150,000 in 2002.

The amount of \$150,000 was intended to reflect the level of responsibility and/or authority of the employee within the licensee's operation. However, it could be argued that a certain level of remuneration is not necessarily commensurate with the level of influence an employee may have on the activities of the licensee.

As suggested in chapter 6.1.1, the Act sufficiently defines a key employee in accordance with their role within the organisation. Provisions within the Act enable the regulator to obtain a wide range of information about key employees. Such provisions will continue to allow oversight by the regulator, where appropriate. In the circumstances, it is considered that the requirement in schedule 1 is also redundant.

The removal of the need to report these types of change in circumstances by the licensee represents a reduction in red tape and associated costs. The social benefits of the provision are not diminished as the intention of the requirement (i.e. maintaining a level of monitoring over certain employees of the licensee) is maintained by other provisions of the Act and the proposed regulation.

## 7. OPTIONS FOR ACHIEVING THE OBJECTIVES

The *Subordinate Legislation Act 1989* requires that alternative options for achieving the objectives of the proposed regulation be considered before a regulation may be made. Not proceeding with any action is one option that must be considered.

### 7.1 The options

There are five options for achieving the objectives referred to in Chapter 6.

Option 1	Take no action.
Option 2	Implement self-regulation or co-regulation.
Option 3	Address matters through the Act rather than by regulation.
Option 4	Address matters through administrative procedures.
Option 5	Remake the regulation with amendments.

### 7.2 Impact Assessment

The social and economic costs and benefits of each option are difficult to quantify, particularly in relation to the economic value of public interest and integrity. Accordingly, a multi-criteria analysis (MCA) method – known as the ‘balanced scorecard’ approach – was used to assess the costs and benefits of each option<sup>8</sup>.

This MCA method requires judgments about how proposals will contribute to a set of criteria that are chosen to judge the benefits and costs associated with the proposals. It is expressed in a table under each option which rates each criteria as negative 1, zero, or positive 1. A total score is then derived for each option.

The three objects of the Act have been identified as criteria to consider the benefits and costs associated with each option. An additional criterion considered is the policy objective of reducing red tape.

### 7.3 Option 1 – Take no action

Option 1 would result in the current regulation lapsing on 1 September 2016. It would not be replaced by another regulation.

The Act requires that a range of matters be prescribed by regulation. To not prescribe these matters would result in the absence of regulatory provisions required to support the objectives of the Act. It would significantly hinder the achievement of those objectives. Therefore this option is not considered feasible.

For example, section 52 of the Act requires that licensees and agents are to notify the Minister within 14 days of a change in their circumstances and provides that the regulations will prescribe the types of change in circumstances that require notification.

<sup>8</sup> Better Regulation Office, Department of Premier and Cabinet, *Guide to Better Regulation*, 2009 p.38

This provision relates to the proper conduct of public lotteries and is aimed at ensuring the integrity of the public lottery system. It would not operate if no action was taken and the regulation lapsed.

Similarly, the Act provides that the regulations make provision with respect to requiring or encouraging the adoption of responsible practices in the conduct of public lotteries (section 83A). If no action is taken and the regulation is automatically repealed, problem gambling information and harm minimisation requirements expected by the community and envisaged by the Act will no longer apply.

**Table 1 - Multi-criteria analysis of option 1**

Option 1 criterion	Score	Summary
Provide for the proper conduct of public lotteries and minimise any associated harm.	-1	<p>The repeal of the regulation would impact the regulatory effect of the Act where it contemplates the making of regulations.</p> <p>The regulation of matters relating to the proper conduct of public lotteries and the minimisation of any associated harm will be greatly diminished. This is particularly the case in respect of contracts entered into by a licensee relating to the conduct of a public lottery, changes in circumstances of licensees and agents, and gambling harm minimisation requirements.</p>
Ensure that revenue is accounted for in a proper manner.	-1	<p>If the regulation should lapse, the manner in which prize money is paid and unclaimed prize money is managed will no longer be prescribed.</p> <p>Inconsistency could arise in the manner and timeliness that a licensee and agents pay prize money. In addition, the liability for unclaimed prizes would become open-ended and revert back to the licensee (the Crown currently carries the liability).</p> <p>The Act sets out strict requirements for the management of funds and for the production of documentation. However, matters such as the mechanism for the payment of prize money and associated matters are left to be prescribed by the regulations.</p>
Ensure that, on balance, the State and the community as a whole benefit.	-1	<p>If the regulation lapses then the disclosure requirements would no longer apply for contracts and changed circumstances. Requirements for managing revenue from public lotteries would also no longer apply.</p> <p>Without these requirements mandated, there will be reduced vision over the operations of licensees and agents and an equivalent reduction in the ability to protect the public interest in commercial lotteries.</p>

<b>Option 1 criterion</b>	<b>Score</b>	<b>Summary</b>
Reduces red tape.	+1	Licensees and agents would still be subject to the regulatory requirements of the Act if the regulation should lapse. Nevertheless it is likely that there would be a small reduction in red tape in that licensees and agents would no longer be required to notify certain changes in key employees/close associates or submit proposals for new or varied contracts that are currently deemed to be controlled contracts.
<b>Total score</b>	<b>-2</b>	<b>Not recommended as the preferred option</b>

## 7.4 Option 2 – Implement self-regulation or co-regulation

As with Option 1, this option would result in no regulation being made or a regulation being made that only provides for some of the matters currently dealt with by regulation.

This option is not considered feasible. While some matters in the proposed regulation could possibly be dealt with by self-regulation or co-regulation, such as the value of prizes that may be paid by agents and the manner in which prize payments are made, a higher level of industry integrity and public confidence can be assured by mandating legal requirements.

The Parliament has determined that it is appropriate that certain matters provided for in the Act are supported by regulations. This includes various enabling provisions that prescribe the manner in which revenue derived from public lotteries is accounted for and the implementation of responsible gambling practices.

Regardless of this, if the government's role in the regulatory framework was reduced, the effectiveness of any self-regulatory or co-regulatory framework would be uncertain. This uncertainty could lead to a loss of public confidence in the conduct of public lotteries in this State.

**Table 2 - Multi-criteria analysis of option 2**

Option 2 criterion	Score	Summary
Provide for the proper conduct of public lotteries and minimise any associated harm.	-1	<p>While there are particular matters in the proposed regulation that could be achieved by self-regulation or co-regulation by the industry, a higher level of integrity and public confidence can be assured by mandating statutory requirements. In addition, addressing matters through self-regulation or co-regulation would result in the repeal of the Public Lotteries Regulation 2007 which would impact the regulatory effect of the Act where it contemplates the making of regulations.</p> <p>Ensuring the proper conduct of public lotteries and the minimisation of any associated harm will be less effective without regulations underpinning the licensing structure. In particular, the implementation of gambling harm minimisation measures would be problematic in the absence of enabling provisions and sanctions for failing to implement such measures.</p>

Option 2 criterion	Score	Summary
Ensure that revenue is accounted for in a proper manner.	-1	<p>If the regulation should lapse in order for it to be replaced by a self or co-regulatory approach, the manner in which prize money is paid and unclaimed prize money is managed would no longer be prescribed.</p> <p>Self-regulation and co-regulation may result in inconsistency in the manner and timeliness that a licensee and agents pay prize money. In addition, the liability for unclaimed prizes would become open-ended and revert back to the licensee. Remaking the regulation would see the Crown continue to carry the liability.</p> <p>The Act sets out strict requirements for the management of funds and for the production of documentation. However, matters such as the mechanism for the payment of prize money and associated matters are left to be prescribed by the regulations. A self-regulatory or co-regulatory approach would not be a robust enough mechanism through which to regulate these matters.</p>
Ensure that, on balance, the State and the community as a whole benefit.	-1	<p>While the current reporting requirements for licensees and agents could be achieved by self-regulation or co-regulation, there would be no certainty in the absence of penalties for failure to comply. Requirements for properly managing revenue from public lotteries would also no longer be assured.</p> <p>Without these requirements mandated, there will be reduced vision over the operations of licensees and agents and an equivalent reduction in the ability to protect the public interest in commercial lotteries.</p>
Reduces red tape.	0	<p>Licensees and agents would still be subject to the regulatory requirements of the Act if the regulation should lapse. Accordingly there would be a need to preserve the existing reporting requirements in some form or another. It is considered that any reduction in red tape under this option would not be of significance.</p>
<b>Total score</b>	<b>-3</b>	<b>Not recommended as the preferred option</b>

## 7.5 Option 3 – Address matters through the Act

As with Options 1 and 2, this option would result in no regulation being made. Instead, the matters addressed by the existing regulation would be addressed by the Act itself.

Parliament has determined that substantive matters of regulation for public lotteries should be dealt with by principal legislation (i.e. an Act) and that lesser, routine matters are provided for in subordinate legislation (e.g. a regulation).

It is clear from the wording of the Act that regulations were envisaged to give effect to the Act. There is no expressed intention that the matters which are covered by the existing regulation were to be specified in the Act at some later point in time.

Maintaining these provisions in a regulation instead of the Act allows for a degree of flexibility in the regulatory framework. Should changes or enhancements be required, effecting such changes by regulation is a simpler and more efficient process than that involved in amending the Act.

Dealing with changes by regulation means that amendments can be made quickly and at less cost than is the case for principal legislation. Scrutiny of subordinate legislation by the Legislation Review Committee of the NSW Parliament, along with the ability of Parliament itself to disallow regulations, ensures that there is an appropriate review procedure.

**Table 3 - Multi-criteria analysis of option 3**

Option 3 criterion	Score	Summary
Provide for the proper conduct of public lotteries and minimise any associated harm.	0	<p>The advantage of regulating matters relating to the proper conduct of public lotteries and minimising any harm associated with public lotteries by subordinate legislation (i.e. a regulation) is that it allows for a greater degree of flexibility and responsiveness.</p> <p>If the matters provided for by the regulation were addressed through the Act, an amending Bill would be required each time any change was proposed.</p> <p>This would limit the Government's ability to react in a timely manner to specific issues that may arise, including changes in harm minimisation practices. It would also result in delays which may impact the operations of licensees and agents, resulting in a loss of revenue opportunity.</p>

Option 3 criterion	Score	Summary
Ensure that revenue is accounted for in a proper manner.	0	<p>The Act already sets out strict requirements for the management of funds and for the production of documentation.</p> <p>However, matters such as the mechanism for the payment of prize money and associated issues are left to be prescribed by the regulations.</p> <p>Including these types of matters in the Act would reduce the ability to amend them at short notice if it became apparent that change is required as a result of circumstances, such as changes in technology or changes in commercial and consumer needs.</p>
Ensure that, on balance, the State and the community as a whole benefit.	0	<p>Addressing matters prescribed by the regulation in the principal Act would not alter the benefit or cost of the conduct of public lotteries to the State and the community.</p> <p>It would, however, reduce the capacity of regulators to promptly amend those requirements as necessary (thereby making them less agile), which may impact on the overall benefit of the regulatory process to the State and the community.</p>
Reduces red tape.	-1	<p>Addressing matters prescribed by the regulation in the principal Act would not affect current levels of red tape, as the reporting requirements for licensees and agents would remain mandated.</p> <p>Any changes to regulatory requirements would need to be achieved by amending the Act, which would increase regulatory costs for the government.</p> <p>The additional time needed to amend the Act may also have an adverse impact on public lotteries revenue, licensees, agents and the wider community, as the industry could become stalled in expectation of potential legislative change.</p>
<b>Total score</b>	<b>-1</b>	<b>Not recommended as the preferred option</b>

## **7.6 Option 4 – Address matters through administrative procedures**

No regulation would be made under this option. Instead, the matters addressed by the existing regulation would be addressed through administrative procedures. These could take the form of published standards for revenue accounting, codes of practice in respect of harm minimisation and strict codes of ethics for agents and employees of a licensee. This could be overseen by a body made up of industry representatives, government and the community.

This option is not considered feasible as there are limits to the matters that can be dealt with administratively. In some circumstances the Act requires that regulations be made to give effect to its objectives. For example, the Act permits the making of regulations to prescribe:

- the manner in which an entrant in a public lottery may request anonymity, and
- the types of changes in circumstances of which licensees and agents are required to inform the Minister.

It could be argued that if these matters were not prescribed by the proposed regulation as envisaged by the Act, it could lead to a loss of public confidence in the conduct of public lotteries. There would be no certainty for prize winners who may wish to remain anonymous for personal security reasons. The absence of regulatory provisions for monitoring the activities of licensees and agents may be seen as a lack of commitment by the Government to ensuring that public lotteries are conducted in the public interest.

The Act also allows for the regulations to make provision for:

- the manner in which prizemoney is managed by a licensee,
- how unclaimed prizes are dealt with, and
- the method by which prizes are paid.

These are important measures to ensure that revenue is accounted for in a proper manner.

Even where it is possible that some matters in the proposed regulation may be able to be addressed by administrative procedures; there may be little assurance that appropriate standards will be achieved without sanctions for non-compliance. This option would also not provide the same degree of regulatory certainty for licensees, agents and the community that would be provided by the proposed regulation.

**Table 4 - multi-criteria analysis of option 4**

<b>Option 4 criterion</b>	<b>Score</b>	<b>Summary</b>
Provide for the proper conduct of public lotteries and minimise any associated harm.	-1	<p>There are limitations on matters that can be addressed administratively as the Act contemplates the making of regulations.</p> <p>The regulation currently contains penalties for non-compliance with certain provisions. Penalties cannot be imposed administratively.</p> <p>In addition, section 83A of the Act specifies that the regulations may make provision with respect to requiring, or encouraging the adoption of responsible practices in the conduct of public lotteries.</p> <p>While it is possible that some matters could be addressed administratively, there is a risk that appropriate standards will not be met or maintained in the absence of sanctions.</p>
Ensure that revenue is accounted for in a proper manner.	0	<p>It is possible that matters relating to such things as the payment of prize money could be dealt with administratively.</p> <p>However this would not provide regulatory certainty or promote public confidence in the management of revenue derived from public lotteries.</p>
Ensure that, on balance, the State and the community as a whole benefit.	-1	<p>Addressing matters in the regulation through administrative procedures would make it more difficult to secure the objectives of the Act.</p> <p>While this option may achieve a reduction in the cost to government of regulating public lotteries, the community would not be provided with the certainty it demands regarding the integrity of lawful gambling activities and the management of revenue derived from public lotteries.</p>
Reduces red tape.	+1	<p>It is likely that there would be a relaxation of the regulatory regime that could result in an overall reduction in red tape.</p> <p>However any reduction would be offset by the establishment of a separate bureaucracy to administer the new arrangements.</p>
<b>Total score</b>	<b>-1</b>	<b>Not recommended as the preferred option</b>

## 7.7 Option 5 – Remake the regulation with amendments

This option would result in the proposed regulation being made to replace the existing regulation when it lapses on 1 September 2016.

This approach is consistent with the intention of the Parliament as reflected in the provisions of the Act. In some instances, regulations are the only means of achieving the efficient operation of substantive provisions. In other instances, the proposed regulation will complement relevant provisions of the Act.

By making a regulation, licensees and agents will have certainty about what is expected of them in the conduct of their activities so that public confidence is maintained in those activities. A regulation provides confidence that provisions of the Act can be legally enforced. A regulation is also the only means by which certain exceptions to provisions of the Act may be made (e.g. the exempt contracts).

The option of maintaining the status quo through the making of a regulation to support the objects of the Act will have minimal impact and ensure stability of the public lotteries framework in NSW. In addition, many of the requirements prescribed by the regulation could not be achieved by the other options.

**Table 5 - multi-criteria analysis of option 5**

Option 1 criterion	Score	Summary
Provide for the proper conduct of public lotteries and minimise any associated harm.	+1	<p>Making the proposed regulation supports the objects of the Act and will allow appropriate provisions to continue where the Act contemplates the making of regulations.</p> <p>The option of maintaining the status quo through the making of the proposed regulation will have minimal impact. It will continue to ensure the proper conduct of public lotteries in the public interest and provide certainty to licensees and agents. Importantly, the proposed regulation will continue the existing problem gambling and harm minimisation measures and provide a platform for future developments in this area.</p>

Option 1 criterion	Score	Summary
Ensure that revenue is accounted for in a proper manner.	+1	<p>While the Act sets out strict requirements for the management of funds and for the production of documentation, matters such as the mechanism for the payment of prize money and associated matters will continue to be prescribed by the regulations.</p> <p>In addition, the regulations will continue to prescribe the types of contract that are subject to regulatory controls and the types of change in circumstances that a licensee or agent must report. These are important measures to ensure the integrity of the conduct of a public lottery.</p> <p>Maintaining these provisions in the regulation will allow for flexibility in the regulatory framework, providing ease of changes or enhancements as may be required. Effecting such changes by regulation is a simpler and more efficient process than that involved in amending the Act.</p>
Ensure that, on balance, the State and the community as a whole benefit.	+1	<p>Remaking of the existing regulatory arrangements for the conduct of public lotteries meets community expectations which demand proper regulatory oversight of lawful gambling and gambling-related activities.</p> <p>The arrangements ensure that there are integrity measures and appropriate safeguards against fraudulent activity with the aim of protecting the public interest and revenue derived from public lotteries.</p>
Reduces red tape.	0	<p>The proposed amendment to Schedule 1 of the regulation (which will remove the requirement that licensees must notify the Minister when they commence to remunerate an employee at over \$150,000 per annum) will like have minimal impact (either positive or negative) on licensees.</p> <p>Notifications made in relation to this provision are usually included in correspondence covering a range of other notification requirements. This correspondence will continue to be required in relation to these other requirements irrespective of the proposed amendment to Schedule 1.</p>
<b>Total score</b>	<b>3</b>	<b>Recommended as the preferred option</b>

## 7.8 Conclusion

The recommended option, which is the preferred option for supporting the objects and provisions of the Act, is to make the proposed regulation (i.e. option 3). It is considered that the making of the proposed regulation provides the most appropriate means of achieving the policy objectives of the Act.

## 8. SUMMARY OF PROPOSED CHANGES FROM 2007 REGULATION

It is proposed to remake the existing Regulation, with some changes. The following table sets out the proposed changes and amendments to the Public Lotteries Regulation 2007.

**Table 6 - summary of proposed changes from existing regulation**

Clause in 2007 Regulation	Clause in 2016 Regulation	CHANGE for 2016 Regulation
3	3	Delete definition of <b>Authority</b> Insert definition of <b>Liquor &amp; Gaming NSW</b> Insert definition of <b>Secretary</b>
5(1)	5(1)	Delete "...or, in the case of an unclaimed keno prize, for any other purpose approved by the Minister."
9(1)(b)	9(1)(b)	Delete "...the NSW Office of Liquor, Gaming and Racing of the Department of the Arts, Sport and Recreation." Insert "...Liquor & Gaming NSW."
9(2)	9(2)	Delete "...Authority..." Insert "...Secretary..."
9(3)	9(3)	Delete "...Authority..." Insert "...Secretary..."
9(5)	9(5)	Delete "...Authority..." Insert "...Secretary..."
9(6)	9(6)	Delete "...Authority..." Insert "...Secretary..."
10(1)(a)	10(1)(a)	Delete "...Authority..." Insert "...Secretary..."
10(2)(a)	10(2)(a)	Delete "...Authority..." Insert "...Secretary..."
10(3)	10(3)	Delete "...Authority..." Insert "...Secretary..." Delete "...NSW Office of Liquor, Gaming and Racing." Insert "...Liquor & Gaming NSW."
10(4)	-	Delete entire subclause
11(3)	11(3)	Delete "...Authority..." Insert "...Secretary..." Delete "...NSW Office of Liquor, Gaming and Racing." Insert "...Liquor & Gaming NSW."
11(4)	-	Delete entire subclause
12(4)(a)	12(4)(a)	Delete "...Authority..." Insert "...Secretary..."
12(5)	-	Delete entire subclause

Clause in 2007 Regulation	Clause in 2016 Regulation	CHANGE for 2016 Regulation
13(4)	13(4)	Delete "...Authority..." Insert "...Secretary..." Delete "...NSW Office of Liquor, Gaming and Racing." Insert "...Liquor & Gaming NSW."
13(5)	-	Delete entire subclause
14(3A)	-	Delete entire subclause
17	-	Delete entire clause
19	18	Clause renumbered
19(2)	18(2)	Delete subclauses 19(2)(a), (b), (c) and (d) Insert new subclauses 18(2), (a), (b) and (c):  “(2) <i>Despite subclause (1), the following contracts, or classes of contracts, are not exempt contracts:</i>  <i>(a) any contract relating to the supply of gaming equipment if the amount payable under the contract, or contracts, is \$11,000 or more during any 12-month period,</i>  <i>(b) any contract relating to the maintenance of gaming equipment if the amount payable under the contract, or contracts, is \$11,000 or more during any 12-month period,</i>  <i>(c) any contract relating to the supply or maintenance of security or surveillance equipment if the amount payable under the contract, or contracts, is \$110,000 or more during any 12-month period.”</i>
Schedule 1	Schedule 1	Delete the requirement to notify the particulars of an employee of the licensee when that employee is to be remunerated at a level of \$150,000 or more per annum.

## 9 ANALYSIS OF PROPOSED PUBLIC LOTTERIES REGULATION

This Chapter examines the costs and benefits of each clause in the proposed *Public Lotteries Regulation 2016*.

### 9.1 Part 1 – Preliminary

#### 9.1.1 Clauses 1 to 3

Clause 1 states how the proposed regulation is to be cited. It is to be named the *Public Lotteries Regulation 2016*.

Clause 2 states the proposed regulation will commence on 1 September 2016.

Clause 3 contains definitions of certain terms used in the proposed regulation.

#### Costs and Benefits

There are no costs associated with Part 1 of the proposed regulation. These provisions are interpretation tools which promote a proper understanding and functioning of the regulation.

These provisions are of a machinery nature and are necessary for the effective operation of the proposed regulation.

### 9.2 Part 2 – Prizes

#### 9.2.1 Clauses 4 and 5 – Unclaimed public lottery prizes

Section 27A of the Act provides that the regulations may make provision for or with respect to the time within which claims for unclaimed prizes must be made.

Section 27A also provides that unclaimed prizes in a prize fund kept by a licensee are to be paid into the Consolidated Fund as directed by the Minister with the approval of the Treasurer and after consultation with the licensee. After an unclaimed prize is paid into the Consolidated Fund, any liability to pay the prize to the prize winner becomes a liability of the Crown.

Clause 4 provides, inter alia, that a prize must be claimed within six years of the date on which the lottery is conducted. Clause 5 provides for the disposal of an unclaimed prize by the licensee in a manner and for a purpose approved by the Minister.

The rationale behind the imposition of a statutory time limit for unclaimed prizes stems from the financial strain of keeping the time limit open ended. At the time these provisions were introduced in 2004, NSW Lotteries was exposed to a liability for unclaimed prizes of around \$115 million.

#### Costs and Benefits

The unclaimed prize provisions represent a cost to those people who may hold a winning entry in a public lottery but neglect to claim the prize within the mandatory six (6) year period. However, they provide an economic benefit to licensees by establishing a mechanism to reduce a licensee's exposure to liability for unclaimed prizes.

The vast majority of unclaimed prizes are of minor value and the cost of maintaining open-ended verification systems for such prizes is difficult to justify. The current time limit in which to claim a prize significantly reduces the exposure of licensees to liability without depriving lottery subscribers of a reasonable time in which to make a claim.

These arrangements for the regulation of unclaimed prizes are an effective means for discharging long-term liability, while not unduly limiting the rights of public lottery subscribers.

### **9.2.2 Clause 6 – Disposal of certain money in prize fund if licence not in force**

Section 25A of the Act requires that a separate prize fund is to be kept in respect of a licensee for each kind of public lottery that the licensee is licensed to conduct.

Section 27 of the Act stipulates the manner in which prize funds are managed and the purposes for which this money can be used by the licensee. Section 27(10) provides that the regulations may make provision for the disposal by the Minister of money in a prize fund when a licence is no longer in force (i.e. when a licence has been cancelled or surrendered).

Clause 6 allows the Minister, with the approval of the Treasurer, to distribute money referred to in section 27(10) for the benefit of subscribers to public lotteries generally, by payment to the Consolidated Fund or for such other purposes as the Minister determines.

#### Costs and Benefits

Clause 6 is a common sense provision that involves minor administrative costs. It provides flexibility in the disposal of residual funds by the Minister for the benefit of lottery subscribers and other public purposes. At the same time it ensures oversight and proper management of such funds.

It is considered that this provision meets the objectives of the Act by providing for the proper accounting of revenue derived from a public lottery and for the utilisation of these funds for public benefit.

### **9.2.3 Clause 7 – Publicity concerning prize-winners**

Section 38(1) of the Act makes it an offence for a licensee to publish or cause the publication of the identity of a person who claims a prize in a public lottery when that person has requested anonymity.

Section 38(2) provides that the regulations may prescribe the manner in which an entrant in a public lottery may request anonymity.

Clause 7 gives effect to this requirement by providing that an entrant may have their request for anonymity recorded by the licensee, or by indicating that they do not want their identity published when they are claiming a prize.

Anonymity when participating in public lotteries is a right to which the community has become accustomed. It is designed to protect the personal security of public lottery prize winners and their families.

#### Costs and Benefits

There are administrative costs for a licensee in complying with section 38 of the Act, but these are outweighed by the social benefits to members of the public in guarding their privacy.

Clause 7 does not compound the cost to licensees and provides convenient and economical methods for licensees and public lottery subscribers to achieve the intention of the legislation. The benefits of the clause are that it provides guidance to licensees in meeting their obligations under the Act and certainty for public lottery entrants who wish to remain anonymous when claiming a prize.

#### **9.2.4 Clause 8 – Prizes paid by agents**

Section 39A of the Act states that the rules of a particular lottery can provide for a licensee to authorise an agent to pay the prize won in a public lottery, provided it does not exceed the amount prescribed in the regulations. Clause 8 of the regulation prescribes this prizemoney amount for *keno* as up to \$9,999, and for public lotteries other than *keno* as up to \$1,000 in prizemoney. It should be noted that clause 15 prescribes the prize levels for which payment must be made by cheque or electronic funds transfer.

The game of keno is restricted to the premises of clubs and hotels that hold the appropriate licences as issued under the *Liquor Act 2007*. In addition, most of these clubs and hotels operate gaming machines. Consequently, a club or a hotel is more likely to have a cash flow which would place it in a position to meet the payment of prizes up to \$9,999. Club and hotel operations also take place in a controlled environment and often include security provisions for both staff and patrons.

This contrasts with public lottery agents, which are, in the main, small businesses such as news agents. Organisations such as these do not generally have a cash flow similar to that of a club or hotel. As a result, it would be unreasonable to expect that they could make the same level of payments to prize winners as a club or hotel. In addition, the majority of public lottery agents do not have the types of security measures in place that are often found in club and hotel businesses. Requiring agents to make prize payments commensurate with clubs and hotels would place both the agents and prize-winners at risk.

#### Costs and Benefits

The smaller prescribed amount for public lottery agents is of benefit as it assists in reducing an agent's security risk in having to carry large sums of cash. However there is a cost in that winners of prizes of over \$1,000 are required to seek payment from the licensee, which will result in a delay in receiving their prize.

Nevertheless, these arrangements provide certainty to public lottery entrants as to where and from whom they may claim a prize. At the same time, control over the proper management of funds is maintained. In addition, requiring prize-winners to claim large prizes from licensees mitigates the risk of harm associated with them

having to carry large sums of cash on their person in public spaces, with no security present.

### **9.3 Part 3 –Responsible gambling practices**

#### **9.3.1 Clauses 9 to 13 – approval and provision of player information brochures, publication of warnings and display of counselling services information**

A 2012 study commissioned by the NSW Government found that the prevalence of problem gambling in the community was 0.8%. A further 2.9% of the State's population were at moderate risk of problem gambling and 8.4% at low risk.<sup>9</sup>

The Federal Government puts the annual cost of problem gambling in Australia at \$4.7 billion dollars and estimates that the actions of one problem gambler negatively impacts on the lives of 5 to 10 other people.<sup>10</sup>

The regulatory framework for gambling activity in NSW recognises the balance between the vast majority of those in the community who participate in gambling as an enjoyable pastime, and those for whom gambling causes significant problems.

Section 83A of the Act provides that the regulations may make provision for or with respect to requiring or encouraging the adoption of responsible practices in the conduct of public lotteries.

In particular, the regulations may make provision for the information to be provided and signs to be displayed with respect to the conduct of, entry into and subscription to public lotteries, including warning notices about gambling, and the name and contact details of a gambling counselling service specified by the regulations. Section 83A also provides that the regulations may create offences for failure to comply with these requirements.

Clauses 9 to 11 provide for the approval and provision of player information brochures in English and other community languages. Clause 12 requires the licensee to ensure that each printed entry form must contain a specific message conveying a warning and the contact details of the specified counselling service. It also requires that any written material provided by the licensee to explain to the public how to enter a public lottery contains an explanation of the chances of winning a prize, and carries the abovementioned warning together with the specified counselling service contact details. These requirements extend to any website used by the licensee.

Clause 13 requires that the licensee provides an agent with signage that displays a specified warning notice and the specified counselling service contact details. An agent must display this signage in a conspicuous manner at each point of sale for entries in a public lottery.

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<sup>9</sup> Prevalence of Gambling and Problem Gambling in NSW, Ogilvy Illumination, April 2012

<sup>10</sup> <https://www.problemgambling.gov.au/facts>

The above provisions are consistent with the gambling harm minimisation requirements provided for by the Casino Control Regulation 2009 and Gaming Machines Regulation 2010, as well as the Betting and Racing Regulation 2012 and Totalizator Regulation 2012 (which apply to betting on racing and sports).

### Costs and Benefits

Compliance with these clauses requires an initial financial outlay by the licensee (who is required to provide an agent with the necessary signage etc.), Thereafter, there are few ongoing costs.

The costs of compliance are offset by the social benefits gained from ensuring that consumers are sufficiently warned, or educated, about key matters associated with the activity. The provisions are aimed at ensuring that those who may have problems as a result of their participation in public lotteries know where to get appropriate help, and are quickly able to access that help.

In 2010, the Productivity Commission found that, overall, the evidence suggests that some gamblers do change their behaviour based on in-venue information, as well as it being an important source of referrals for gambling help services<sup>11</sup>.

This is supported by the NSW Responsible Gambling Fund, which reported that in 2014/2015 the most common means of obtaining information about its Gambling Helpline was by way of the Internet, closely followed by gambling venue notices and signage. During 2014/15 calls to the Gambling Helpline were up 7% and the number of clients accessing face-to-face gambling counselling services increased by 27%.<sup>12</sup>

This would indicate that the modest cost of producing and distributing problem gambling notices and associated materials is outweighed by the benefit to the community.

### **9.3.2 Clause 14 – Advertising of public lotteries**

Section 39 of the Act makes it an offence for a licensee or other person to publish, or cause to be published, any public lottery advertising that is false, misleading or deceptive, or is in contravention of a requirement of the regulations. For the purposes of section 39, clause 14 prescribes that a licensee or agent must not publish, or cause to be published, any public lottery advertising that:

- (a) encourages a breach of the law, or
- (b) depicts children, or
- (c) suggests that winning will be a definite outcome of participating in a public lottery, or
- (d) suggests that entering a public lottery will definitely improve a person's financial prospects, or
- (e) is not conducted in accordance with decency, dignity and good taste and in accordance with the Commercial Television Industry Code of Practice as in force at the time the public lottery advertising is published.

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<sup>11</sup> Productivity Commission 2010, Gambling, Report no. 50, Canberra

<sup>12</sup> Responsible Gambling Fund, Annual report 2014/2015

Comparable clause can be found in the Casino Control Regulation 2009, Betting and Racing Regulation 2012 and Totalizator Regulation 2012.

### Costs and Benefits

Restricting the type of advertising which may be conducted in relation to public lotteries results in a loss of opportunity for licensees. This may translate into an economic cost for licensees who are unable to advertise their product as aggressively as other businesses may be able to. However, these restrictions are applied equally to each licensee and therefore do not result in any competitive advantage for one party of another. In addition, any costs associated with loss of opportunity and potential revenue are offset by the social benefits provided by the prohibitions.

Clause 14 specifically prohibits the targeting of children by commercial lottery operators. It also prohibits false and misleading advertising that may raise unrealistic expectations and/or encourage persons who are vulnerable to participate frequently in public lotteries. The clause also maintains advertising standards that are expected by the community. This helps ensure that lottery activities are not targeted in any way towards the more vulnerable sections of society and are conducted in a manner that aligns with community expectations.

Overall, the regulation of advertising related to public lotteries is an important tool to encourage responsible gambling practices and harm minimisation in the conduct of public lotteries.

### **9.3.3 Clause 15 – Payment of prizemoney by cheque or EFT**

Clause 15 of the regulation requires that *keno* prize money in excess of \$2,000 must be paid by a crossed cheque payable to the person or by electronic funds transfer (EFT). A similar requirement is made for payment of public lottery prize money in excess of \$1,000. This clause is made under section 83(2)(b) of the Act which provides that the regulations may make provision for or with respect to the payment of prizes in a public lottery.

These provisions complement clause 8 which prescribes the maximum level of prize money that a *keno* agent and public lottery agent may pay. As discussed at chapter 9.2.4, *keno* agents have higher prize payment threshold levels due to the fact that they are more likely to have large amounts of cash on hand and more robust security measures in place. Requiring prizes in excess on \$2,000 to be paid via crossed cheque or EFT strikes a balance between ensuring winners have access to their winnings quickly and mitigating the risk that large cash prizes will be used for other gambling activity. Requiring prizes exceeding \$1,000 for other public lotteries to be paid by crossed cheque or EFT reflects the fact that winners must claim these prizes from the licensee.

### Costs and Benefits

The economic cost to a licensee and to agents of complying with this clause is almost negligible, while the social benefits are twofold:

1. An agent does not bear the security risk of carrying large sums of cash to meet the payment of significant prizes, and the person collecting the prize is not faced with a similar threat.
2. By making cashless prize payments for larger prizes, the chance of a person immediately using the monies in a gambling activity is reduced.

#### **9.3.4 Clause 16 – Gambling inducements**

Clause 16 prohibits a licensee or agent from offering or supplying any free or discounted liquor as an inducement to participate in a public lottery. This clause is made under section 83A of the Act which provides that the regulations may prohibit or restrict the offering of inducements of a kind specified by the regulations.

Almost identical clauses can be found in the Casino Control Regulation 2009, Gaming Machines Regulation 2010, Betting and Racing Regulation 2012 and Totalizator Regulation 2012.

##### Costs and Benefits

There is an economic cost to licensees and agents in that the prohibition on offering liquor as an inducement to participate removes a possible revenue opportunity. Given that alcohol consumption has been associated with problem and risky gambling, there is considerable benefit in prohibiting the offering of free or discounted liquor to participate in a gambling activity, and it is therefore contended that the benefits of this restriction outweigh the costs.

#### **9.3.5 Clause 17 – Notification of change of circumstances & Schedule 1 – Change of circumstances to be notified**

Section 52 of the Act provides that the regulations may prescribe the type of changes in circumstances of which a licensee or agent must notify the Minister. Schedule 1 of the regulation sets out the type of change and the particulars to be notified. These include such things as any change in name of the licensee or the licensee's business, a change in corporate governance of the licensee, any civil or criminal proceedings involving the licensee and any judgement made against the licensee.

The requirement in clause 17 is to inform the Minister of matters which may go to the integrity or probity of a licensee and is designed to enhance oversight of the conduct of commercial lotteries.

The grant of a licence to conduct a public lottery not only imposes contractual obligations on licensees and their agents, but charges the Government with ensuring that the NSW public and customers who participate in public lotteries are protected from persons who are unfit to be involved in the conduct of a gambling activity.

##### Costs and benefits

These provisions impose a level of red tape and administrative cost to licensees in complying with the requirements. However, the Government is committed to ensuring that public lotteries are conducted with integrity and some level of red tape will inevitably come with achieving this goal.

The need for licensees to report these changes in circumstances provide an important means of monitoring the activities of licensees and regulating the proper conduct of commercial lotteries. The provisions are consistent with the objectives of the Act.

### **9.3.6 Clause 18 – Exempt contracts**

Part 7, Division 3 of the Act deals with contracts entered into by licensees and agents for the supply of goods and services in connection with the conduct of a public lottery. The Government's primary interests are to safeguard the interests of players, to ensure public confidence in the integrity of the activity, and to secure the protection of public funds and government revenue. The intention of these provisions of the Act is to ensure the integrity of all aspects surrounding the conduct of public lotteries in this State.

Section 62 of the Act defines what is considered to be a controlled contract (i.e. a contract which is required to be notified to the Minister)<sup>13</sup>. Controlled contracts relate to the supply of goods and services that may be a key element in the conduct of a public lottery. The level of scrutiny placed on these contracts is aimed at protecting the public interest and confidence in the fair and proper conduct of public lotteries.

In practice, a controlled contract cannot be entered into or varied until written notice is given to the Minister, and the Minister's 'investigation time' (28 days) has elapsed. Further, the Act provides that after investigating a proposed contract or variation of a controlled contract, the Minister may object to the licensee or agent entering into the proposed agreement. The Act also provides that the Minister may terminate a controlled contract.

Certain contracts are exempt (i.e. they are explicitly stated not to be contracts that are subject to regulatory control)<sup>14</sup> and includes the range of contracts prescribed by clause 18 of the proposed regulation. In general, exempt contracts relate to arrangements for the supply of goods and services that do not have any direct impact on the conduct of a public lottery.

However, subclause 18(2) explicitly states that certain contracts that are not exempt, due to the threshold value of the contract and its purpose. Subclauses 18(2)(b) to (d) clarify that the types of contracts prescribed in these provisions include one or more contracts '*during any 12 month period*'. The intention is to capture an aggregate of contracts that add up to \$11,000 (or \$110,000, in respect of contracts described in subclause 18(2)(d)) to avoid contract splitting.

#### Costs and Benefits

The number of contracts that may be entered into by licensees and agents can be many and varied. As a consequence it is not possible to quantify with any certainty the financial cost to licensees and agents in complying with these requirements.

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<sup>13</sup> Terms used in this Regulatory Impact statement

<sup>14</sup> Ibid

However, it is considered that the cost is overridden by the need to ensure that the public interest is protected against the risk of fraudulent activity, and that appropriate integrity safeguards around the conduct of a public lottery are in place. The community expects oversight of the operations of licensees and agents. Closely monitoring relevant contracts is an appropriate part of that oversight.

Licensees also receive a benefit through the clause making it clear that certain contracts are not controlled contracts that would otherwise be subject to regulatory oversight. This ensures that the scope of Division 3 of Part 7 of the Act is appropriately narrowed to limit costs to licensees.

### **9.3.7 Clause 19 – Review of controlled contracts**

Section 63(3) of the Act requires that a notification of a proposed controlled contract or variation of a controlled contract must be accompanied by the fee specified by the conditions of the licence or prescribed by the regulations. Clause 19 prescribes that the cost for the review of each controlled contract is \$2,000.

#### Costs and Benefits

It is appropriate for the Government, in providing a framework for the conduct of public lotteries, to require that licensees and agents contribute to the cost of ensuring the integrity of commercial lotteries through the operation of this framework.

The prescribed fee is not imposed for revenue raising purposes. It is considered to be a reasonable impost that is intended to assist in meeting the costs of investigating a proposed controlled contract or a variation to a controlled contract.

### **9.3.8 Clause 20 – Saving of certain matters under expired licences**

This clause provides for circumstances when a licence expires and is to be immediately replaced by a new licence. It is a provision of a machinery nature that preserves the terms and conditions of the expired licence and the rules relating to the conduct of the relevant public lottery. Importantly, it safeguards any money kept in a prize fund for the payment of prizes in the relevant public lottery.

### **9.3.9 Clause 21 – Savings provision**

This provision is of a machinery nature and carries over any act, matter or thing that had effect under the Public Lotteries Regulation 2007 is taken to have effect under the new regulation.

## 10. CONSULTATION PROGRAM

The following organisations have been informed of the release of this RIS and the consultation draft of the proposed Public Lotteries Regulation 2016:

### **Industry and Community Organisations:**

- Australian Hotels' Association
- ClubsNSW
- Newsagents' Association of NSW and ACT
- NSW Lotteries
- Keno (NSW) Pty Ltd
- Salvation Army
- Wesley Mission
- NSW Council of Social Service (NCOSS)

### **Government Agencies:**

- Department of Premier and Cabinet
- NSW Treasury
- The Audit Office of NSW