



Justice

Proposed Public Lotteries Regulation 2016

Consultation Report
August 2016

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1 INTRODUCTION

The Public Lotteries Regulation 2007 (the Regulation) is due to expire on 1 September 2016 under the staged repeal program of the *Subordinate Legislation Act 1989*. The Government proposes to remake the Regulation with amendments.

The primary objective of the Regulation is to effectively support the operation of the *Public Lotteries Act 1996* (the Act) in providing for the proper conduct of public lotteries in the public interest; ensuring that revenue raised from public lotteries is accounted for in a proper manner; and minimising any harm associated with the conduct of public lotteries.

Before the Public Lotteries Regulation 2016 (the proposed Regulation) can be made, a formal process of review must be undertaken in accordance with the requirements of the *Subordinate Legislation Act 1989*. This includes consultation with the public, interest groups, and any sector of industry or commerce likely to be affected by the proposed Regulation.

2 CONSULTATION PROCESS

2.1 Public Consultation

A Regulatory Impact Statement was prepared to explain the clauses of the proposed Regulation, along with their costs and benefits. This statement, along with a consultation draft of the proposed Regulation, was released for public comment from 8 June to 8 July 2016.

Notices inviting public comment on these documents were published in *The Sydney Morning Herald* and *The Daily Telegraph* on Wednesday 8 June 2016, as well as the *NSW Government Gazette* on Friday 10 June 2016 (**Attachment A**). Similar notices were also published on the Liquor & Gaming NSW (L&GNSW) website and the NSW Government “Have Your Say” public consultation website.

2.2 Stakeholder Consultation

By letter dated Thursday 9 June 2016 (**Attachment B**) the following organisations were also informed of the release of the Regulatory Impact Statement and the consultation draft of the proposed Regulation:

Industry and Community Organisations

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

NSW Government Agencies

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

2.3 Response by Public and Stakeholders

One member of the public contacted L&GNSW asking that copies of the documents be posted to him. No other contact was made by, or submissions received from, members of the public.

Only two submissions were received - these were from NSW Lotteries and Tabcorp (in respect of keno). Both organisations support the making of the proposed Regulation and submitted that additional amendments be included. The additional amendments proposed in the two submissions and L&GNSW's response are set out in the analysis that follows.

The Australian Hotels' Association NSW and Wesley Mission acknowledged receipt of the consultation documents, but declined to make any submission. The Audit Office of NSW advised that there was nothing in the proposed Regulation that affected that office.

An analysis of the two submissions received is at **Attachment C**.

2.4 Additional Consultation & Advice

As certain amendments proposed by NSW Lotteries and Tabcorp in their submissions have a direct impact on their agents, L&GNSW sought additional comments from the Newsagents' Association of NSW and ACT, the Australian Hotels' Association NSW and ClubsNSW.

Advice was also sought from the L&GNSW Compliance & Enforcement Branch.

3 AMENDMENTS TO THE PUBLIC CONSULTATION DRAFT

Attachment C is a summary of the response from stakeholders and L&GNSW's response to their submissions.

A number of amendments have been made to the public consultation draft of the proposed Regulation to take into account feedback from stakeholders. The amendments are set out in the table below.

In the main, the amendments revise various prescribed amounts that trigger certain requirements of the Act and reduce red tape. The prescribed amounts have not been increased in a number of years (in some cases since 2002) and the amendments are roughly in line with CPI increases over that period. In all cases the amendments will be of some benefit to the licensees.

Two amendments have been given close consideration:

- (a) an increase in the prescribed amount for a public lottery prize that a NSW Lotteries agent will be required to pay from \$1,000 to \$1,500;
- (b) an increase in the prescribed amount for a keno prize that an agent will be required to pay by cheque or EFT from \$2,000 to \$5,000.

The proposed increase in the prescribed amount for a public lottery prize that an agent will be required to pay from \$1,000 to \$1,500 has been sought by NSW Lotteries. This amendment is not supported by the Newsagents' Association of NSW and ACT.

While the Association did not make a formal submission, L&GNSW consulted with it by phone in relation to the proposal by NSW Lotteries. The Association argued that the proposal imposed an unwarranted burden on its members who would be required to carry additional cash to meet the increased prize payment amount. The Association was also of the view that this would result in an increased security risk to its members and customers.

NSW Lotteries submitted that the average prize level in NSW has been steadily increasing, while the prescribed amount payable by agents has remained at \$1,000 since 2002. An increase to \$1,500 would roughly be in line with CPI and an analysis of data in other jurisdictions indicates that a \$1,500 prize payout level for agents is in place in Victoria, Queensland, the Northern Territory and Tasmania. NSW Lotteries submitted that when this increase occurred in Queensland in 2009 there was no discernible impact on retailers.

NSW lotteries also argued that the introduction of twice weekly settlement sweeps in 2015 has resulted in a more accessible cash flow for agents. During these sweeps, NSW Lotteries removes funds due to it from the accounts into which agents deposit money. Importantly, this is also when NSW Lotteries reimburses agents for any prizes paid. NSW Lotteries argues that since this now occurs twice weekly instead of weekly, agents are reimbursed more frequently, thus enabling increased prize payments to be made without creating hardship for individual agents. It was also noted by NSW Lotteries that retailers may make payment by way of EFT if they choose to enter into such an arrangement with their EFT service provider.

While the Association's objections have been noted, it is the opinion of L&GNSW that the proposed increase is reasonable, given there has been no move in the prescribed amount since 2002. It is also reasonable that public lottery players in NSW are provided with a similar level of service, for the same product, as their counterparts in other jurisdictions.

The second proposed amendment relates to a proposal to increase the prescribed amount for a keno prize that an agent is required to pay by cheque or EFT from \$2,000 to \$5,000 and was submitted by Tabcorp. This amendment will bring the keno prize payment level into line with that which applies to gaming machines. L&GNSW notes that it will remove any confusion for clubs, hotels and their customers around the payment of prize money for the two forms of gambling.

L&GNSW undertook additional consultation in relation to this proposal with both ClubsNSW and the Australian Hotels' Association NSW. Both organisations indicated that they were supportive of the proposed amendment.

Table 1 – Amendments to public consultation draft of the proposed Regulation

Clause	Description	Change	Explanation or Benefit
8	Prizes paid by NSW Lotteries agents	Increase prescribed amount from \$1,000 to \$1,500	Increase is roughly in line with CPI since 2002 and will bring NSW into line with other jurisdictions.
15(1)	Payment of prize money for a game of keno by cheque or EFT	Increase prescribed amount from \$2,000 to \$5,000.	This will bring the provision into line with clause 30 of the Gaming Machines Regulation 2010 and remove confusion around the prize payment arrangements.
15(2)	Payment of prize money by cheque or EFT	Increase prescribed amount from \$1,000 to \$1,500. Also the words 'total' and 'if so requests' have been deleted from the subclause.	Amended as a consequence of the amendment to clause 8. Amended wording provides for a move to electronic payment arrangements in the future.
18(1)	Exempt contracts	The list of prescribed 'exempt contracts' has been expanded	Removes the reporting requirement in respect of certain contracts relating to the day to day operational aspects of the licensee. Reduces red tape.
18(2)	Exempt contracts	Increase the value of a contract that triggers the reporting requirements from \$11,000 to \$15,000.	Increase is roughly in line with CPI and will reduce the number of minor contracts that the licensee will be required to report. Reduces red tape.
Sch 1	Change of circumstances to be notified	Delete the notification requirement when any other business or enterprise commences to have the same registered office as the licensee.	Removal of the reporting requirement when registered offices are shared will not have any significant effect on integrity assurance measures. Reduces red tape.
Sch 1	Change of circumstances to be notified	Increase the prescribed level of debt that must be notified by the licensee from \$500,000 to \$650,000.	Increase is roughly in line with CPI since 2002. Reduces red tape.

Attachment A – Notice inviting public comment



Draft Public Lotteries Regulation 2016 and Regulatory Impact Statement Invitation for public comment

The Public Lotteries Regulation 2007 is due to expire on 1 September 2016. It is proposed to replace this regulation with the Public Lotteries Regulation 2016.

The primary objective of the draft Regulation is to effectively support the operation of the *Public Lotteries Act 1996* in providing for the proper conduct of public lotteries in the public interest and minimising any harm associated with public lotteries.

Before the draft Regulation can be made, a formal process of review must be undertaken in accordance with the requirements of the *Subordinate Legislation Act 1989*.

A Regulatory Impact Statement has been prepared to explain the clauses of the draft Regulation, along with their costs and benefits. Liquor & Gaming NSW is inviting comment on the draft Regulation and Regulatory Impact Statement.

The Regulatory Impact Statement and draft Regulation will be available for public comment until Friday 8 July 2016.

Copies of the Regulatory Impact Statement and draft Regulation can be obtained from the Liquor & Gaming NSW website at www.liquorandgaming.justice.nsw.gov.au. Requests for copies can also be made via email, to policy@olgr.nsw.gov.au, or by telephoning (02) 9995 0491.

Submissions can be emailed to 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 receipt of submissions is 5:00pm 8 July 2016.



323 Castlereagh Street,
HAYMARKET NSW 2000
GPO Box 7060, SYDNEY NSW 2001
Tel (02) 9995 0300 | Fax (02) 9995 0644
www.liquorandgaming.justice.nsw.gov.au

DOC16/048570

Title
Position
Organisation
Address
SUBURB STATE Postcode

By email:

Dear salutation

Draft Public Lotteries Regulation 2016

The Public Lotteries Regulation 2007 (the Regulation) is due for staged repeal on 1 September 2016. It is proposed to replace this regulation with the Public Lotteries Regulation 2016 (the draft Regulation).

The primary objective of the draft Regulation is to effectively support the operation of the *Public Lotteries Act 1996* in regulating entities that conduct public lotteries in NSW.

Before the draft Regulation can be made, a formal process of review must be undertaken in accordance with the requirements of the *Subordinate Legislation Act 1989*. As part of this review process, 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 draft Regulation.

A Regulatory Impact Statement has been prepared to help facilitate this review. It explains the clauses of the draft Regulation and explores a number of options for addressing matters contained in the draft Regulation via alternative regulatory mechanisms. The Regulatory Impact Statement also explains why remaking the Regulation is the preferred option. Liquor & Gaming NSW (L&GNSW) is inviting comment on the Regulatory Impact Statement and the draft Regulation.

Copies of both documents can be obtained from the L&GNSW website at www.liquorandgaming.justice.nsw.gov.au. Requests for copies can also be made via email, to policy@olgr.nsw.gov.au, or by telephoning (02) 995 0491.

Submissions can be emailed to policy@olgr.nsw.gov.au or posted to:

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

From Tuesday 14 June, formal submissions can also be made via the NSW Government *Have Your Say* website by visiting www.haveyoursay.nsw.gov.au.

Please note that submissions close at 5:00 pm on 8 July 2016.

I look forward to hearing from you.

Yours sincerely

Mr Feargus O'Connor
A/Deputy Secretary

9 June 2016

Attachment C – Summary of Stakeholder Submissions

Stakeholder	Support proposed Regulation	Submission details	L&GNSW response
AHANSW	Not stated	Declined to make a submission at this time.	Noted.
ClubsNSW	No response	N/A	Noted.
Department of Premier & Cabinet	No response	N/A	Noted.
Newsagents' Association of NSW & ACT	No response	N/A	Noted.
NSW Council of Social Services	No response	N/A	Noted.
NSW Lotteries	Yes, with amendments	<p>Clause 8 – Prizes by agents Prescribed amount should be increased from \$1,000 to \$1,500.</p> <p>Rationale</p> <ul style="list-style-type: none"> • The average prize payment level in NSW has been steadily increasing while the prescribed amount payable by agents has remained at \$1,000 since 2002. • An increase to \$1,500 would roughly be in line with CPI and general inflation. • Analysis of data in other jurisdictions indicates that the potential impact on individual agents will be minimal. • This amount was implemented in Queensland in 2009 and had no discernible negative impact on retailers. • In July 2015 NSW Lotteries introduced twice weekly settlement sweeps from retailers, resulting in more accessible cash flows to enable increased prize payments to be made without creating hardship for individual agents. • Retailers may make payments by way of EFT if they choose to enter into such an arrangement with their EFT service provider. 	Supported. L&GNSW notes that the proposed increase is roughly in line with CPI and that the amendment will bring NSW in to line with Victoria, Queensland, the Northern Territory and Tasmania.

Attachment C – Summary of Stakeholder Submissions

Stakeholder	Support proposed Regulation	Submission details	L&GNSW response
NSW Lotteries	Yes, with amendments	<p>Clauses 12, 13 & 14 – Responsible gambling requirements and advertising Remove the reference to ‘www’ from the Gambling Help web address</p> <p>Rationale</p> <ul style="list-style-type: none"> The use of ‘www’ when referencing URLs is no longer necessary and has dropped out of the nomenclature. 	<p>Not supported. The Parliamentary Counsel’s Office advises that the use of ‘www’ when referencing websites in subordinate legislation remains current practice.</p>
		<p>Clause 15 – Payment of prize money by cheque or EFT Increase the level of prize money for which payment must be made from \$1,000 to \$1,500; replace the word ‘must’ with ‘may’, and delete the words ‘total’ and ‘if so requests’ from the subclause.</p> <p>Rationale</p> <ul style="list-style-type: none"> This will accommodate a transition towards electronic prize payments and give NSW Lotteries more flexibility to determine the preferred form of prize payment for its customers. Banks are likely to phase out the use of cheques as a payment option in the future. Prize payments currently processed at the request of the customer are mostly by way of EFT. NSW Lotteries is investigating an addition to its Lotteries App to allow registered players to manage their account and prize payments. 	<p>The increase from \$1,000 to \$1,500 is consequential to the amendment in clause 8.</p> <p>L&GNSW does not support replacement of the word ‘must’ with ‘may’ as this would imply that there are circumstances where the licensee would not pay the prize money.</p> <p>The deletion of the words ‘total’ and ‘if so requests’ is supported to accommodate future electronic public lottery prize payment arrangements.</p>
		<p>Subclause 19(1) – Exempt contracts NSW Lotteries wishes to expand the list of prescribed ‘exempt contracts’ to include contracts that are required as part of the day to day operational aspects of the business and do not have an impact on the actual conduct of lotteries, i.e. IT contracts surrounding data governance and cloud services, waste services, document destruction, auditing and research services, sponsorship agreements.</p> <p>Rationale</p> <ul style="list-style-type: none"> It would be prohibitive for the licensee to be required to submit such contracts on an ongoing basis. 	<p>Supported. L&GNSW’s Compliance Branch advises that the proposed expansion of prescribed exempt contracts will not have any significant effect on integrity assurance measures.</p>

Attachment C – Summary of Stakeholder Submissions

Stakeholder	Support proposed Regulation	Submission details	L&GNSW response
NSW Lotteries	Yes, with amendments	<p>Subclause 19(2) – Exempt contracts The value of a contract that triggers the reporting requirements should be increased from \$11,000 to \$15,000.</p> <p>Rationale</p> <ul style="list-style-type: none"> • There has been no increase since the introduction of the Regulation in 2007. • An increase to \$15,000 would roughly be in line with CPI over that period. 	Supported. L&GNSW notes that there has been no increase in the prescribed amount since 2007 and that the proposed amendment is roughly in line with CPI. The amendment is expected to reduce red tape.
		<p>Clause 20 – Review of controlled contracts Amend the clause so that the prescribed fee “is up to \$2,000 and to align with actual costs of the review of each controlled contract”.</p> <p>Rationale</p> <ul style="list-style-type: none"> • The prescribed fee should be reflective of the actual costs incurred by the regulatory authority in reviewing a contract. 	Not supported. The current prescribed fee is considered reasonable. L&GNSW notes that in recent years there have only been three contracts relating to the public lottery licensee, and six contracts relating to the keno licensee that have been subject to review.
		<p>Schedule 1 – Change of circumstances It is proposed that the reporting requirement when any other business or enterprise commences to have the same registered office as the licensee should be deleted; and that the prescribed increase in debt of more than \$500,000 in debts be increased to \$650,000.</p> <p>Rationale</p> <ul style="list-style-type: none"> • The need to report shared registered offices is superfluous. • There has been no increase since the introduction of the Regulation in 2007. • An increase to \$650,000 would roughly be in line with CPI over that period. 	Supported. L&GNSW’s Compliance Branch advises that removal of the reporting requirement when registered offices are shared will not have any significant effect on integrity assurance measures. L&GNSW notes that there has been no increase in the prescribed amount since 2007 and that the proposed amendment is roughly in line with CPI. The amendment is expected to reduce red tape.
NSW Treasury	No response	N/A	Noted.
Salvation Army	No response	N/A	Noted.

Attachment C – Summary of Stakeholder Submissions

Stakeholder	Support proposed Regulation	Submission details	L&GNSW response
Tabcorp (Keno)	Yes, with amendments	The Keno Rules should be updated in due course to be consistent with the Regulation.	Noted.
Tabcorp (Keno)	Yes, with amendments	<p>Clauses 9,10,11,12 & 13 – Responsible gambling requirements The regulation requires that signage etc. must be purchased from L&GNSW. Tabcorp wishes to produce the necessary material in-house.</p> <p>Rationale</p> <ul style="list-style-type: none"> This would reduce administrative costs and streamline delivery of the material to agents. 	Not supported. This issue can be further examined by L&GNSW in conjunction with Tabcorp, separate from the current regulatory review.
		<p>Clause 15 - Payment of prize money by cheque or EFT Replace reference to ‘electronic funds transfer’ with ‘any secure electronic means’.</p> <p>Rationale</p> <ul style="list-style-type: none"> To cater for future developments in electronic payment methods. <p>Increase the level of keno prize money for which payment must be made from \$2,000 to \$5,000.</p> <p>Rationale</p> <ul style="list-style-type: none"> Will bring in to line with gaming machine prize payouts. 	Not supported. It is considered that the existing term sufficiently covers consumer electronic payment transactions, which are regulated by the ePayments Code administered by ASIC.
		<p>Clause 19 – Exempt contracts Tabcorp believes that the regulation should be flexible to cater for new technology and provide certainty to the licensee in respect of the controlled contract process. There should also be a specific exemption for whole of business contracts, of which keno may only be a small part.</p>	Supported. L&GNSW notes that there have been cases where clubs and hotels have breached this clause due to confusion between the maximum prize payment level for gaming machines and keno, and vice versa. The proposed amendment will remove this confusion for clubs, hotels and customers.
<p>Clause 19 – Exempt contracts Tabcorp believes that the regulation should be flexible to cater for new technology and provide certainty to the licensee in respect of the controlled contract process. There should also be a specific exemption for whole of business contracts, of which keno may only be a small part.</p>	Exemption for whole of business contracts is not supported. Vision over certain contracts by the regulator is central to the integrity assurance measures in the Act. Proposed amendments to clause 19 will address certain concerns of Tabcorp.		

Attachment C – Summary of Stakeholder Submissions

Stakeholder	Support proposed Regulation	Submission details	L&GNSW response
		Schedule 1 – Change of circumstances Supports removal of need to report employees paid more than \$150K pa	Noted.
The Audit Office of NSW	Not stated	There is nothing that affects the Audit Office.	Noted.
Wesley Mission	Not stated	Declined to make a submission.	Noted.