



Western Australia

Lotteries Commission Act 1990

Incorporating the amendments proposed
by the *Lotteries Commission Amendment
(COVID-19 Response) Bill 2020*
(Bill No. 184-1)

Lotteries Commission Act 1990

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Western Australia

Lotteries Commission Act 1990

An Act to provide for the continuation of the Lotteries Commission and the conduct of lotteries, to repeal the *Lotteries (Control) Act 1954* and the *Lotto Act 1981*, and for related purposes.

[Long title amended: No. 26 of 1998 s. 4.]

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Lotteries Commission Act 1990*.

2. Commencement

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

3. Terms used

- (1) In this Act, unless the contrary intention appears —

chairperson means the chairperson of the Commission;

Commission means the Lotteries Commission constituted by section 5 of the *Lotteries (Control) Act 1954* and continued in existence under this Act;

conduct includes promote, organize, manage or operate;

designated authority means a person designated under subsection (4);

entry form, in relation to a game of lotto, means entry form or coupon required by the rules to enable a person to enter or subscribe to the game of lotto;

game of lotto means a lottery within the meaning of subsection (2);

instant lottery means a lottery within the meaning of subsection (3);

lottery means a scheme or device in which the success or otherwise of participants is governed by numbers, tickets, events, etc., drawn or determined in a manner involving a degree of randomness or chance;

member means a member of the Commission;

permit means a permit granted under this Act;

soccer football pool means a lottery the results of which depend on a forecast of the outcome of soccer football matches;

sports lottery means a lottery the results of which depend on the outcome of one or more specified sporting events;

subscription means the entry fee, payable by a person under the rules to enable the person to participate in a lottery, exclusive of any add-on commission payable to an authorised retailer;

ticket includes an acknowledgement, whether in a physical form or in the form of an electronic message, that a subscription to a lottery has been accepted by the Commission.

- (2) A game of lotto is a form of lottery in which an attempt is made to choose, forecast, select or draw from a group of numbers, a smaller group of numbers to be drawn on an equally random basis.
- (3) An instant lottery is a lottery in which the holder of a ticket removes from the surfaces of the ticket opaque material covering certain amounts, pictures, figures, letters or other symbols printed on the ticket in order to ascertain whether or not the presentation of the ticket to the Commission will entitle that person, subject to this Act and to the conditions, if any, to which the relevant permit is granted —
 - (a) to receive a prize; or
 - (b) to receive a prize and to be eligible for further prizes to be awarded on the drawing of a lottery or lotteries in accordance with the rules; or
 - (c) to be eligible for prizes to be awarded on the drawing of a lottery or lotteries in accordance with the rules.
- (4) The Governor may prescribe a person, whether from this State or not, to be a **designated authority** for the purposes of section 6.

[Section 3 amended: No. 26 of 1998 s. 5.]

3A. Instant lottery tickets, meaning of instructions on

- (1) In or on any instant lottery ticket, whether issued under this Act or the *Lotteries (Control) Act 1954*, and whether issued before or after the commencement of the *Lotteries Commission Amendment Act 1993*, the phrase —
 - (a) **match 3 money amounts, match 3 cash amounts, match 3 identical dollar amounts** or **find 3 identical dollar amounts** means to win a prize the ticket must show 3 of an identical money amount, and does not include, and has never included, the possibility of matching 3 money amounts by finding a pair for each of 3 different money amounts;
 - (b) **match 3 symbols the same, match any 3 symbols, match 3 symbols, find 3 identical symbols** or **match 3 identical symbols** means to win a prize the ticket must show 3 of an identical symbol, and does not include, and

s. 3B

has never included, the possibility of matching 3 symbols by finding a pair for each of 3 different symbols;

- (c) *if 3 matching numbers appear, match any 3 numbers, match 3 numbers, find 3 identical numbers or match 3 identical numbers* means to win a prize the ticket must show 3 of an identical number, and does not include, and has never included, the possibility of matching 3 numbers by finding a pair for each of 3 different numbers;
- (d) *match 3 amounts, match the 3 amounts, match 3 identical amounts, find 3 identical amounts or match any 3 identical amounts* means to win a prize the ticket must show 3 of an identical amount, and does not include, and has never included, the possibility of matching 3 amounts by finding a pair for each of 3 different amounts;
- (e) *match 3 of the same or match 3* means to win a prize the ticket must show 3 of an identical thing, and does not include, and has never included, the possibility of matching 3 things by finding a pair for each of 3 different things;
- (f) *match 3 words/symbols* means to win a prize the ticket must show 3 of an identical word, or symbol, as the case may be, and does not include, and has never included, the possibility of matching 3 words (or symbols) by finding a pair for each of 3 different words (or symbols);
- (g) *find 3 identical symbols or numbers* means to win a prize the ticket must show 3 of an identical symbol, or number, as the case may be, and does not include, and has never included, the possibility of matching 3 symbols (or numbers) by finding a pair for each of 3 different symbols (or numbers).

- (2) In this section, the figure 3 includes the word “three”.

[Section 3A inserted: No. 9 of 1993 s. 4.]

3B. COVID-19 pandemic: emergency circumstances and emergency period

- (1) In this Act, unless the contrary intention appears —

emergency circumstances means prohibitions, restrictions or other adverse circumstances or conditions that arise out of —

- (a) the COVID-19 pandemic; or

(b) measures taken in response to the COVID-19 pandemic;

emergency period means the period beginning on 16 March 2020 and ending on —

(a) 15 September 2020; or

(b) if another day is fixed under subsection (2) — that day.

(2) The Minister may, during the emergency period, make a declaration in writing varying, or from time to time further varying, the duration of the emergency period by fixing a day on which the emergency period is to end.

(3) A declaration has effect according to its terms on and from the time it is made.

(4) As soon as practicable after making a declaration under subsection (2), the Minister must —

(a) give the Commission written notice of the declaration; and

(b) publish notice of the declaration in the *Gazette*; and

(c) publish notice of the declaration for public information in any manner that the Minister considers to be appropriate having regard to the circumstances and what is practicable.

(5) A failure to comply with subsection (4) does not affect the validity of the declaration.

(6) Sections 8B(3) and 8C apply to a declaration made under subsection (2) as if it were a direction given under regulations referred to in section 8B(2).

[Section 3B inserted: Lotteries Commission Amendment (COVID-19 Response) Bill 2020 cl. 4.]

Part 2 — Constitution and administration of Commission

4. Commission continued; nature of body etc.

- (1) The body corporate constituted under section 5 of the *Lotteries (Control) Act 1954* and named the “Lotteries Commission” is preserved and continues in existence for the purposes of this Act as a body corporate retaining the same corporate name, corporate identity and common seal.
- (2) The Commission is a body corporate with perpetual succession and a common seal and is capable of —
 - (a) acquiring, holding and disposing of real and personal property; and
 - (b) suing and being sued; and
 - (c) doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.
- (3) The Commission is an agent of the Crown in right of the State and enjoys the status, immunities and privileges of the Crown.

5. Members of Commission, appointment of etc.

- (1) The Commission shall consist of 6 members appointed by the Minister.
- (2) The Minister shall appoint one of the members as chairperson of the Commission.
- (3) The Minister shall endeavour to ensure that the Commission has available to it from its own membership expertise relevant to the operations of the Commission, including expertise in the areas of management, finance, computer operations, marketing, health and community services.
- (4) Schedule 1 has effect with respect to the members and the procedure of the Commission.

6. Functions and powers of Commission

(1A) In this section —

grant administration services means administration services in relation to a programme of a person or body other than the Commission for making grants of money, including —

- (a) assessing and evaluating applications for grants under the programme; and

(b) monitoring compliance with conditions attached to grants made under the programme.

(1) The functions of the Commission are, subject to this Act —

(a) to conduct lotteries;

[(b), (c) deleted]

(d) to perform any other function vested in it by this Act.

(2) The Commission may do all things that are necessary or convenient to be done for or in connection with the performance of its functions, including the facilitation of syndicate entries to any games of lotto.

(3A) For the purpose of facilitating syndicate entries to games of lotto, the Commission may purchase entries into games of lotto and make portions of those entries available for sale as syndicate shares.

(3) The Commission may, with the approval in writing of the Minister —

(a) make agreements with one or more designated authorities for the joint conduct with those designated authorities of lotteries; and

(b) conduct lotteries jointly with the designated authorities referred to in paragraph (a) in accordance with agreements made under this subsection; and

(c) enter into a contract or arrangement with a person or body (including a local government or a department of the Public Service, or other agency or instrumentality, of the State or the Commonwealth) to provide any or all of the following services to that person or body, whether for a fee or not —

(i) consultancy services;

(ii) advisory services;

(iii) grant administration services in relation to a programme of that person or body.

~~consultancy or advisory services to that person or body, whether for a fee or not.~~

(4) A contract or arrangement under subsection (3)(c) can only be made with the Treasurer's concurrence and is void and unenforceable without it.

(5) Moneys of another person or body allocated or distributed in grants under a programme that is the subject of a contract or

s. 7A

arrangement under subsection (3)(c)(iii) are taken not to be moneys received by the Commission for the purposes of section 20 or 24.

- (6) Details of grants made by another person or body under a programme that is the subject of a contract or arrangement under subsection (3)(c)(iii) are not to be set out in the schedule required under section 26(1).

[Section 6 amended: No. 26 of 1998 s. 6; No. 21 of 2012 s. 4; Lotteries Commission Amendment (COVID-19 Response) Bill 2020 cl. 5.]

7A. Exemptions from s. 6(4)

- (1) The Minister, with the Treasurer's concurrence, may by order exempt a contract or arrangement, or class of contracts or arrangements, from the operation of section 6(4) either unconditionally or on specified conditions.
- (2) An order under subsection (1) is to show sufficient particulars of the contract or arrangement, or class of contracts or arrangements, to which it relates to enable the contract or arrangement, or class, to be identified.
- (3) The Minister must, within 6 sitting days after an order under subsection (1) is made, cause it to be laid before each House of Parliament.
- (4) Subject to subsection (5), an order made under subsection (1) is not subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- (5) The *Interpretation Act 1984* sections 43 (other than subsection (6)) and 44 and Part VIII apply to an order made under subsection (1) as if it were subsidiary legislation.

[Section 7A inserted: No. 21 of 2012 s. 5.]

7. Minister may give directions to Commission

- (1) Subject to subsection (2), the Minister may give directions in writing to the Commission with respect to its functions and powers, either generally or with respect to a particular matter, and the Commission shall give effect to any such direction.
- (2) Notwithstanding subsection (1), the Minister shall not give directions to the Commission with respect to the distribution of moneys under sections 22 and 24.

- (3) The text of any direction given under subsection (1) shall be included in the annual report submitted by the accountable authority of the Commission under Part 5 of the *Financial Management Act 2006*.
- (4) Subsection (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.
[Section 7 amended: No. 41 of 1996 s. 3; No. 77 of 2006 Sch. 1 cl. 103(1).]

8. Trading name or symbol, use of by Commission etc.

The Commission may use, and operate under, a trading name or symbol approved by the Minister, but the use of such a trading name or symbol does not prevent or affect any proceedings being taken by or against the Commission in its corporate name.

8A. Strategic development plan and statement of corporate intent, Commission to act under

The Commission is to perform its functions in accordance with its strategic development plan and its statement of corporate intent as existing from time to time.

[Section 8A inserted: No. 28 of 2006 s. 427.]

8B. Strategic development plan and statement of corporate intent, preparation and content of etc.

- (1) The members of the Commission must, at the prescribed times, prepare and submit to the Minister —
 - (a) a strategic development plan for the Commission; and
 - (b) a statement of corporate intent for the Commission.
- (2) The regulations may make provision for the following —
 - (a) the manner and form in which the members of the Commission are to prepare, submit, revise or modify a strategic development plan or statement of corporate intent;
 - (b) the period a strategic development plan or statement of corporate intent is to cover;
 - (c) the matters to be set out in a strategic development plan or statement of corporate intent;

s. 8C

- (d) the functions of the members of the Commission, the Minister and the Treasurer in relation to the development, approval or modification of a strategic development plan or statement of corporate intent;
 - (e) the operation of a strategic development plan or statement of corporate intent.
- (3) If a regulation referred to in subsection (2) enables the Minister to give directions to the members of the Commission, the Minister must cause a copy of a direction given under the regulation to be laid before each House of Parliament or be dealt with in accordance with section 8C —
 - (a) within 14 days after the direction is given; or
 - (b) if the direction is the subject of a notice under section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*, within 14 days after it is confirmed under that section.
- (4) Regulations referred to in subsection (2) are not to be made except with the Treasurer's concurrence.

[Section 8B inserted: No. 28 of 2006 s. 427.]

8C. Directions by Minister under s. 8B(3), laying before Parliament

- (1) If —
 - (a) a House of Parliament is not sitting at the commencement of the applicable period referred to in section 8B(3) in respect of a direction; and
 - (b) the Minister is of the opinion that that House will not sit during that period,the Minister is to transmit a copy of the direction to the Clerk of that House.
- (2) A copy of a direction transmitted to the Clerk of a House is to be taken to have been laid before that House.
- (3) The laying of a copy of a direction that is regarded as having occurred under subsection (2) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

- (4) The text of a direction referred to in section 8B(3) is to be included in the annual report submitted by the accountable authority of the Commission under Part 5 of the *Financial Management Act 2006*.

[Section 8C inserted: No. 28 of 2006 s. 427; amended: No. 77 of 2006 Sch. 1 cl. 103(2).]

9. Staff

- (1) The Commission may appoint such employees, either full-time or part-time, as it considers necessary to enable it to carry out its functions.
- (2) Subject to any relevant order, award or industrial agreement the terms and conditions of office or employment of persons appointed under subsection (1), including the salary or wages payable, are such terms and conditions as the Commission determines after consultation with the Public Sector Commissioner.
- (3) The Commission may engage under a contract for services any consultant or person to provide administrative, professional, technical or other assistance as it considers necessary to enable the Commission to perform its functions.
- (4) Notwithstanding anything in this section, to the extent that there is in the case of a person who is appointed under subsection (1) to be an employee of the Commission and who is a member of the Senior Executive Service within the meaning of the *Public Sector Management Act 1994*¹ an inconsistency between this Act and that Act, that Act shall prevail.
- (5) The engagement of a person under subsection (3) does not —
- (a) render Part 3 of the *Public Sector Management Act 1994*, or any Act applying to persons as officers of the Public Service of the State, applicable to that person; or
 - (b) affect or prejudice the application to that person of those provisions if they applied to that person at the time of the engagement of that person.

[Section 9 amended: No. 32 of 1994 s. 3(2); No. 39 of 2010 s. 89.]

Part 3 — Conduct of lotteries

[Heading inserted: No. 26 of 1998 s. 7.]

10. Permit to conduct lottery, Commission to obtain etc.

- (1) When the Commission desires to conduct a lottery, it is to apply to the Minister for a permit to do so.
- (2) An application shall —
 - (a) be made at least 14 days before the lottery is conducted; and
 - (b) be duly executed by the Commission in accordance with this Act.
- (2a) An application for a permit to conduct a lottery shall state —
 - (a) the price of each subscription; and
 - (b) the details of the prize structure of the lottery including prize reserve funds; and
 - (c) the prescribed particulars, if any.
- (3) On receiving an application under subsection (1), the Minister shall —
 - (a) grant the application, either unconditionally or subject to such conditions as are specified in the permit, and issue to the Commission the permit applied for; or
 - (b) refuse to grant the application.
- (4) It is a condition of any permit granted under subsection (3) that the lottery may not be conducted unless rules have been made for the conduct of that lottery by the Commission under section 28.

[Section 10 amended: No. 26 of 1998 s. 8.]

[11.] *Deleted: No. 26 of 1998 s. 9.]*

12. Commission's powers to conduct permitted lotteries

Subject to the Commission having obtained a permit as provided by this Act, the Commission may —

- (a) conduct a lottery without fixing or specifying either an opening date or a closing date, or a date of drawing;
- (b) conduct 2 or more lotteries at the same time.

[Section 12 amended: No. 26 of 1998 s. 10.]

13. Commission's duties when conducting permitted lotteries

The Commission shall, in respect of all lotteries for which permits have been granted to it, conduct those lotteries in accordance with this Act and with such conditions as are imposed on the grant of those permits.

[Section 13 amended: No. 26 of 1998 s. 11.]

14. Prizes to be specified etc.

- (1) The Commission shall, in any lottery conducted by it, specify the value and form, whether of money or things of value, of the prizes offered by it in that lottery.
- (2) The Commission shall not in any lottery conducted by it distribute prizes otherwise than in the value and form specified by the Commission in relation to that lottery.

[Section 14 amended: No. 26 of 1998 s. 12.]

15. Prizes, payment of; evidence of winning entries

- (1) The Commission may pay or deliver a prize won by a participant in a lottery conducted by it on receipt of the winning entry, receipted entry form, or other ticket or evidence of participation provided to a participant by the Commission for the particular lottery, and may require the participant, where appropriate, to endorse that entry, entry form, etc., with the participant's name, address and signature.
- (2) If a participant alleges that a prize has been won in a lottery, but that the appropriate evidence of participation in that lottery has been lost or destroyed, the Commission may pay or deliver the prize won by the participant, if the participant satisfies the Commission that the participant is entitled to that prize.
- (3) The Commission is not obliged to satisfy itself that —
 - (a) the purported participant presenting evidence of a winning entry, etc., is lawfully entitled to claim possession or ownership of that evidence; or
 - (b) any signature presented as a part of a verification process is genuine; or
 - (c) the purported participant is not an infant or person under other legal disability.
- (4) If, as a result of holding unsold syndicate shares at the time of a lotto draw, the Commission is the holder of a winning entry in

s. 15A

that game of lotto, the prize allocated to that winning entry is to be treated as if it were an unclaimed prize under section 16, and the moneys credited to the relevant Account without the requirement to wait 12 months.

- (5) Notwithstanding any law to the contrary, whether relating to infants or to persons under other legal disability or otherwise, payment or delivery of a prize by the Commission under this section constitutes full satisfaction by, and a full and valid discharge to, the Commission.

[Section 15 amended: No. 26 of 1998 s. 13; No. 21 of 2012 s. 6.]

15A. Evidence of winning entries: provisions relating to COVID-19 pandemic

(1) This section applies during the emergency period.

(2) If the Commission is satisfied that, by reason of emergency circumstances, it is not reasonably practicable for a participant to provide the winning entry, receipted entry form, or other ticket or evidence of participation in accordance with section 15(1), the Commission may pay or deliver a prize in accordance with section 15 if other evidence or information, specified in the rules, is delivered or communicated to it in a manner specified in the rules.

(3) Evidence or information specified in the rules for the purposes of subsection (2) may include any or all of the following —

- (a) a copy, image or facsimile of the winning entry, receipted entry form, or other ticket or evidence of participation provided to a participant by the Commission for the lottery;
- (b) attestation, confirmation, verification or certification of the validity or correctness of the copy, image or facsimile referred to in paragraph (a);
- (c) evidence of the identity of the participant claiming the prize;
- (d) any other evidence or information necessary or convenient for paying or delivering the prize.

[Section 15A inserted: Lotteries Commission Amendment (COVID-19 Response) Bill 2020 cl. 6.]

16. Unclaimed prizes

- (1) Subject to subsection (2), if a prize in a lottery conducted by the Commission is not claimed within 12 months after the date on which the result of that lottery was publicly declared on behalf of the Commission, the participant's right to recover, and the Commission's liability to pay or deliver that prize, are extinguished.
- (2) If a prize in an instant lottery conducted by the Commission is not claimed within the period of 12 months next following the date when the last ticket or tickets in each lot of tickets were issued by the Commission to any person in respect of that particular series of instant lottery, the right to recover, and the liability of the Commission to pay or deliver, that prize are extinguished.
- [(3) deleted]*
- (4) For the purposes of this section, where a cheque has been issued by the Commission in payment of a prize in a lottery, the prize shall not be regarded as having been claimed if the cheque has not been presented for payment.

[Section 16 amended: No. 32 of 1992 s. 3; No. 9 of 1993 s. 5; No. 26 of 1998 s. 14.]

16A. Unclaimed prizes: provisions relating to COVID-19 pandemic

- (1) In this section —

closure day, in relation to an instant lottery, means the day on which the last ticket or tickets in each lot of tickets are issued by the Commission to any person in respect of that particular series of instant lottery.

- (2) This section has effect despite anything in section 16.

- (3) The right of a participant to recover a prize in a lottery (other than an instant lottery) conducted by the Commission, and the Commission's liability to pay or deliver that prize, are extinguished if the prize is not claimed by whichever of the following days applies —

(a) if the result of the lottery is publicly declared on behalf of the Commission in the period from 16 March 2019 to 15 March 2020 — 16 March 2021;

(b) if the result of the lottery is publicly declared on behalf of the Commission in the emergency period — the day

s. 17

which is 24 months after the day on which the result of the lottery is publicly declared.

(4) The right of a participant to recover a prize in an instant lottery conducted by the Commission, and the Commission's liability to pay or deliver that prize, are extinguished if the prize is not claimed by whichever of the following dates applies —

(a) if the closure day is in the period from 16 March 2019 to 15 March 2020 — 16 March 2021;

(b) if the closure day is in the emergency period — the day which is 24 months after the closure day.

(5) For the purposes of this section, where a cheque has been issued by the Commission in payment of a prize in a lottery, the prize is not to be regarded as having been claimed if the cheque has not been presented for payment.

[Section 16A inserted: Lotteries Commission Amendment (COVID-19 Response) Bill 2020 cl. 7.]

17. Fully subscribed lotteries, dealing with applications for tickets in

Where a lottery conducted by the Commission is fully subscribed and thereafter applications are received or subscriptions are offered for tickets in the lottery, if the amount tendered in the application or offered as a subscription so permits, the Commission shall allot to the applicant tickets in another lottery of a similar type if one is then being conducted by the Commission or in the next lottery of a similar type to be conducted by the Commission, whether or not the tickets are of the same price or the subscriptions are of the same amount as the tickets or subscriptions originally applied for or offered by the applicant.

[Section 17 amended: No. 26 of 1998 s. 15.]

18. Selling etc. lottery ticket to person under 16, offence

A person shall not knowingly —

- (a) sell a ticket in a lottery; or
- (b) cause or permit a ticket in a lottery to be sold,

to a child under 16 years of age.

Penalty: \$200.

[Section 18 inserted: No. 26 of 1998 s. 16.]

Part 4 — Financial provisions

19. Terms used

In this Part —

approved purpose means a benevolent or charitable purpose;

eligible organization means —

- (a) an institution, association, club, society, organization or body, whether incorporated or not —
 - (i) that is not a Minister of the Crown in right of the State, Government department, State trading concern, State instrumentality or State public utility; and
 - (ii) that is not operated for the purpose of profit or financial gain to individual members, shareholders or owners;

or

- (b) a local government, regional local government or regional subsidiary;

year means a period of 12 months ending on 30 June.

[Section 19 amended: No. 32 of 1992 s. 4; No. 74 of 1994 s. 4; No. 14 of 1996 s. 4; No. 26 of 2016 s. 68.]

20. Commission's funds, expenses etc.; Lotteries Commission Account

- (1) Subject to this Act, the Commission shall be responsible for managing its own finances.
- (2) The funds and property available to the Commission for the purposes of this Act are —
 - (a) moneys received by the Commission under this Act in respect of lotteries conducted by it; and
 - (b) any moneys derived from investment under section 21; and
 - (c) any other moneys or property that may lawfully be received by the Commission for the purposes of this Act.
- (3) The moneys referred to in subsection (2) shall be paid into, and placed to the credit of, banking accounts opened with the approval of the Treasurer and operated for the purposes of this Act, which together shall be taken to constitute an account known as the Lotteries Commission Account.

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- (4) All expenditure incurred by the Commission for the purpose of performing its functions under this Act shall be paid from an account forming a part of the Lotteries Commission Account referred to in subsection (3) and moneys standing to the credit of the Lotteries Commission Account shall be applied only for the purposes of this Act.
- (4a) The Commission shall not permit the bank accounts constituting the Lotteries Commission Account to be overdrawn except with the approval of, and subject to any terms and conditions imposed by, the Treasurer.
- (5) The total expenses of conducting lotteries in any one year including add-on commissions payable on subscriptions, the allowances and remuneration of the members of the Commission and all other expenses attributable to those lotteries shall not in that year exceed 25% of the gross amount received from commissions and subscriptions.
- (6) The Commission may, with the approval in writing of the Minister, apply part or all of the balance of moneys remaining after the deductions and repayments referred to in section 24(a) to (f) on the purchase, acquisition, maintenance and improvement of lands and buildings held or intended to be held for an approved purpose or for the purposes of this Act.

[Section 20 amended: No. 26 of 1998 s. 17.]

21. Temporary investment of moneys

Moneys standing to the credit of the Account referred to in section 20(3) may, until required by the Commission for the purposes of this Act, be temporarily invested by the Commission as trust funds may be invested under Part III of the *Trustees Act 1962* or in an investment, or class or kind of investment, approved by the Treasurer.

[Section 21 amended: No. 1 of 1997 s. 18.]

22. Net subscriptions from lotteries, distribution of to sports, arts etc.

- (1a) In this section —

fixed prize game means a lottery game in which all winning participants are entitled to a prize, the amount of which is determined before the commencement of the game;

net subscriptions are calculated —

- (a) in the case of a fixed prize game, as being the subscriptions received for that game less the prize liability;
- (b) in the case of a pari-mutuel prize game, as being the subscriptions received for that game less the prize fund;

pari-mutuel prize game means a lottery game in which the prize paid to any winning participant depends on the size of the prize pool and the number of winning participants;

prize fund means a prescribed percentage of subscriptions (inclusive of any prize reserve) that is allocated for distribution among winning participants in a pari-mutuel prize game;

prize liability means the amount needed in a fixed prize game to pay all winning entries in that game, in addition to prize reserve fund allocations as authorized by the permit.

- (1) The following agency special purpose accounts are established under section 16 of the *Financial Management Act 2006* —
 - (a) an account called the Sports Lotteries Account;
 - (b) an account called the Arts Lotteries Account.
- (2) Of the net subscriptions received by the Commission in respect of lotteries conducted by it, the Commission shall pay during each year —
 - (a) 12.5% to such eligible organizations as the Commission thinks fit and the Minister approves for such approved purposes as the Commission thinks fit and the Minister approves; and
 - (b) 40% to the credit of the Consolidated Account for subsequent appropriation to the State Pool Account of the State established under the *National Health Funding Pool Act 2012*; and
 - (c) 5% to the credit of the Consolidated Account for subsequent appropriation to the Sports Lotteries Account established under subsection (1); and
 - (d) 5% to the credit of the Consolidated Account for subsequent appropriation to the Arts Lotteries Account established under subsection (1); and
 - (e) an amount not exceeding 5% —
 - (i) as recommended by the Commission and approved by the Minister to such body corporate as the Commission thinks fit and the Minister

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approves, for the purpose of funding incentives to undertake, or projects to facilitate the undertaking of, commercial film production in the State; and

- (ii) as recommended by the Commission and approved by the Minister to The University of Western Australia or any other body corporate which is, at the time of the payment, administering or managing the Festival of Perth, for the purpose of assisting the funding of the Festival of Perth.

(2a) An amount equal to the amount credited to the Consolidated Account under subsection (2)(b) shall be —

- (a) paid into the State Pool Account of the State established under the *National Health Funding Pool Act 2012*; and
- (b) charged to the Consolidated Account.

(2b) An amount equal to the amount credited to the Consolidated Account under subsection (2)(c) shall be —

- (a) credited to the Sports Lotteries Account established under subsection (1); and
- (b) charged to the Consolidated Account.

(2c) An amount equal to the amount credited to the Consolidated Account under subsection (2)(d) shall be —

- (a) credited to the Arts Lotteries Account established under subsection (1); and
- (b) charged to the Consolidated Account.

(2d) This section appropriates the Consolidated Account for the purposes mentioned in subsections (2a), (2b) and (2c).

(3) The moneys paid into the State Pool Account of the State under subsection (2a) are to be applied in accordance with the *National Health Funding Pool Act 2012* section 14.

(4) The moneys credited to the Sport Lotteries Account under subsection (2b) shall be distributed by or on behalf of the Minister for Sport and Recreation in such proportions and among such bodies engaged in the conduct of sport in the State as the Minister for Sport and Recreation thinks fit.

(5) The moneys credited to the Arts Lotteries Account under subsection (2c) shall be distributed by or on behalf of the Minister for the Arts in such proportions and among such bodies

engaged in the conduct of cultural activities, and persons engaged in cultural activities, in the State as the Minister for the Arts thinks fit.

- (6) The Minister for Sport and Recreation and the Minister for the Arts may for the purpose of deciding on the distribution of moneys under subsections (4) and (5) respectively consult such persons and bodies as they think fit and such persons or bodies may be paid, out of the moneys received in respect of lotteries conducted by the Commission under this Act, such remuneration and allowances as are determined by the Minister to whom the administration of this Act is for the time being committed by the Governor to be appropriate.
- (7) The Minister for Sport and Recreation and the Minister for the Arts may, for the purpose of distribution of moneys under subsections (4) and (5) respectively, make use of such persons, bodies or departments of the Government as they think fit and such persons, bodies or departments shall be paid, out of the moneys received in respect of lotteries conducted by the Commission under this Act, such of the costs and expenses of that distribution as are determined by the Minister to whom the administration of this Act is for the time being committed by the Governor to be appropriate.
- (8) The Minister shall carry out a review of the operation of subsection (2)(e) as soon as is practicable after the expiration of 3 years from the commencement of the *Lotteries Commission Amendment Act 1992* and thereafter as soon as is practicable after the expiration of every period of 3 years from the date on which a report is laid before each House of Parliament in accordance with subsection (10).
- (9) In the course of a review under subsection (8) the Minister shall consider and have regard to whether —
 - (a) the application by recipients of the payments made under subsection (2)(e) in the preceding 3 years has been appropriate; and
 - (b) the future continuation of the payments referred to in subsection (2)(e) is appropriate.

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- (10) The Minister shall prepare a report based on the review made under subsection (8) and as soon as is practicable after the preparation of the report shall cause it to be laid before each House of Parliament.

[Section 22 amended: No. 32 of 1992 s. 5; No. 6 of 1993 s. 4; No. 74 of 1994 s. 5; No. 49 of 1996 s. 64; No. 26 of 1998 s. 18; No. 28 of 2006 s. 428; No. 77 of 2006 s. 4 and Sch. 1 cl. 103(3)-(5); No. 8 of 2009 s. 89; No. 44 of 2012 s. 37.]

[23. Deleted: No. 26 of 1998 s. 19.]

24. Residual moneys, distribution of to organizations

The balance of moneys received by the Commission under this Act remaining after appropriate provision has been made for —

- (a) deduction from the amount referred to in section 20(5) of the total expenses referred to in that subsection; and
- (b) payment of the prize moneys; and
- (c) payment of the moneys required to be paid under section 22(2); and
- (d) payment of the remuneration and allowances referred to in section 22(6); and
- (e) payment of the costs and expenses referred to in section 22(7); and
- [(f) deleted]*
- (g) deduction of the moneys applied under section 20(6),

shall be distributed to such eligible organizations as the Commission thinks fit and the Minister approves for such approved purposes as the Commission thinks fit and the Minister approves.

[Section 24 amended: No. 32 of 1992 s. 7; No. 26 of 1998 s. 20.]

24A. Distribution of residual moneys to organizations: provisions relating to COVID-19 pandemic

(1) In this section —

distributable balance means the balance of moneys referred to in section 24;

public authority means any of the following —

- (a) a Minister of the Crown;

(b) an agency or an organisation as those terms are defined in the *Public Sector Management Act 1994* section 3(1);

(c) a local government or regional local government;

(d) a body or instrumentality, whether incorporated or not, or the holder of an office, that is established or continued for a public purpose under a written law and that, under the authority of a written law, performs a statutory function on behalf of the State.

(2) This section applies despite anything in section 24.

(3) During the emergency period the distributable balance must be distributed to such eligible organizations and public authorities as the Commission thinks fit and the Minister approves.

(4) An eligible organization receiving money distributed under subsection (3) must apply the money to such approved purposes as the Commission thinks fit and the Minister approves.

(5) A public authority receiving money distributed under subsection (3) must apply the money to such purposes as the Commission thinks fit and the Minister approves.

[Section 24A inserted: *Lotteries Commission Amendment (COVID-19 Response) Bill 2020* cl. 8.]

25. *Financial Management Act 2006 and Auditor General Act 2006, application of*

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Commission and its operations.

[Section 25 amended: No. 77 of 2006 Sch. 1 cl. 103(6).]

26. *Annual report to Parliament of grants etc.; Minister entitled to information*

- (1) The Commission shall at the end of each year present to each House of Parliament a schedule setting out the names of all bodies, persons and eligible organizations to which money has been granted, and the amounts given in each case, during that year.
- (2) For parliamentary purposes or for the proper conduct of the Minister's public business, the Minister is entitled to have information in the possession of the Commission and to have and retain copies of documents.

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- (3) For the purposes of subsection (2) the Minister may —
- (a) request the Commission to furnish information to the Minister;
 - (b) request the Commission to give the Minister access to information;
 - (c) for the purposes of paragraph (b) make use of the staff of the Commission to obtain the information and furnish it to the Minister.
- (4) The Commission shall comply with a request under subsection (3) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (5) In this section —
- document*** includes any data that is recorded or stored mechanically, photographically, or electronically and any tape, disc or other device or medium on which it is recorded or stored;
- information*** means documents or other information relating to the functions of the Commission being information, as so defined, specified, or of a description specified, by the Minister;
- parliamentary purposes*** means the purpose of —
- (a) answering a question asked in a House of Parliament; or
 - (b) complying with a written law, or an order or resolution of a House of Parliament, that requires information to be furnished to a House of Parliament.

Part 5 — Miscellaneous

27. Offences

- (1) A person who, with intent to defraud, takes, or by any fraudulent trick, scheme or device converts to that person's own use, or to the use of any other person, any prize or moneys raised by a lottery, commits an offence.
- (2) A person who, with intent to defraud —
 - (a) alters or falsifies any book, document, or voucher relating to a lottery; or
 - (b) makes or concurs in making any false or fraudulent entry in any book, document, or voucher relating to a lottery; or
 - (c) omits or concurs in omitting any material particular from any book, document, or voucher relating to a lottery,
 commits an offence.
- (3) A person who, without the written authority of the Commission, for fee or reward promotes or takes part in the formation of a syndicate to pay to participate in a lottery conducted by the Commission commits an offence.
- (4) A person who commits an offence under this section is liable to a penalty of \$5 000, or imprisonment for one year, or both.

[Section 27 amended: No. 26 of 1998 s. 21.]

28. Rules about conduct of lotteries etc.

- (1) The Commission may make rules relating to the conduct under this Act of —
 - [(a), (b) deleted]*
 - (c) lotteries, and in particular, to —
 - (i) the places at which different prizes or different amounts of prize money may be claimed; and
 - (ii) the publication of the names and addresses of all or any of the winners of prizes; and
 - (iii) the circumstances in which a ticket becomes void and therefore incapable of winning a prize; and
 - (iv) the circumstances in which the Commission may substitute a valid ticket for a ticket which is void; and

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- (v) the means by which tickets are to be delivered to the Commission; and
 - (vi) the procedure in accordance with which the second stage of an instant lottery is to be conducted.
- (2) In the event of any inconsistency between rules made under subsection (1) and regulations made under section 29 or any conditions subject to which a permit is granted in respect of a lottery, those regulations or conditions shall prevail to the extent of that inconsistency.
- (3) Without prejudice to the operation of the other provisions of the *Interpretation Act 1984*, section 43 of that Act applies to rules made under subsection (1).

[Section 28 amended: No. 26 of 1998 s. 22.]

29. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to this Act.

30. Review of Act

- (1) The Minister shall carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 5 years from its commencement, and in the course of that review the Minister shall consider and have regard to —
 - (a) the effectiveness of the operation of the Commission; and
 - (b) the need for the continuation of the functions of the Commission; and
 - (c) such other matters as appear to be relevant to the operation and effectiveness of this Act.
- (2) The Minister shall prepare a report based on the review made under subsection (1) and shall, as soon as practicable after the preparation thereof, cause the report to be laid before each House of Parliament.

31. Repeals

- (1) The *Lotteries (Control) Act 1954* is repealed.
- (2) The *Lotto Act 1981* is repealed.

- (3) Division 3 of Part V of the *Gaming Commission Act 1987*² is repealed.

32. Transitional and savings

Schedule 2 has effect in relation to the repeals effected by section 31.

[33. *Omitted under the Reprints Act 1984 s. 7(4)(e).*]

34. Validation of soccer football pools conducted before 1 Jan 1991

The conduct of soccer football pools by the Commission before the coming into operation of this Act is hereby validated and declared to have been lawful to the extent that that conduct complied with the *Gaming Commission Act 1987*².

Schedule 1 — Provisions concerning members and the procedure of the Commission

[s. 5(4)]

[Heading amended: No. 19 of 2010 s. 4.]

1. Term of office of members

- (1) A member shall be appointed for such term not exceeding 3 years as is specified in the member's instrument of appointment and is eligible for reappointment.
- (2) A member, unless the member sooner resigns, is removed from office or the member's office otherwise becomes vacant under clause 2, shall continue in office until a successor comes into office, notwithstanding that the term for which the member was appointed may have expired.

2. When office becomes vacant

The office of a member becomes vacant if the member —

- (a) resigns office by written notice addressed to the Minister; or
- (b) is removed from office by the Minister on the grounds of misbehaviour, incompetence, or mental or physical incapacity impairing the performance of the member's duties and proved to the satisfaction of the Minister; or
- (c) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
- (d) is absent without leave of the Commission from 3 consecutive meetings of which the member has had notice.

[Clause 2 amended: No. 18 of 2009 s. 54.]

3. Remuneration of members

A member is entitled to such remuneration and other allowances as the Minister from time to time determines on the recommendation of the Public Sector Commissioner.

[Clause 3 amended: No. 39 of 2010 s. 89.]

4. Relationship to Public Service

The fact that a person is a member does not —

- (a) render Part 3 of the *Public Sector Management Act 1994*, or any Act applying to persons as officers of the Public Service of the State, applicable to that person; or

- (b) affect or prejudice the application to that person of those provisions if they applied to that person when that person became a member.

[Clause 4 amended: No. 32 of 1994 s. 3(2).]

5. Validity of proceedings not affected by defect in appointment etc.

All acts and proceedings of the Commission or of any person acting under any direction of the Commission are, notwithstanding the subsequent discovery of any defect in the appointment of any member or defect in the constitution of the Commission, as valid as if the member had been duly appointed and as if the Commission had been properly constituted.

6. Protection from personal liability for members etc.

- (1) No matter or thing done by the Commission, and no matter or thing done by a member or by any person acting under the direction of the Commission shall, if the matter or thing was done in good faith for the purposes of this Act, subject a member, or a person so acting, personally to any action, liability, claim or demand.
- (2) Subclause (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.

[Clause 6 amended: No. 41 of 1996 s. 3.]

7. Meetings, procedure at etc.

The procedure for the calling of meetings of the Commission and the conduct of business at those meetings shall, subject to this Act, be as determined by the Commission.

8. Quorum; who presides; voting etc.

- (1) Three members of the Commission form a quorum.
- (2) At a meeting of the Commission —
 - (a) the chairperson; or
 - (b) in the absence of the chairperson, a person elected by the members present at the meeting from among their number,shall preside.
- (3) Questions arising at a meeting of the Commission shall be decided, in open voting, by a majority of the votes of members present.
- (4) The person presiding at a meeting of the Commission has a deliberative vote and, if that vote has been exercised and there is an equality of votes, also has a casting vote.

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9. Minutes

The Commission shall cause accurate minutes of each meeting of the Commission to be recorded and preserved.

10. Resolution may be passed without meeting

- (1) A resolution in writing signed or assented to by letter, telex, facsimile transmission or lettergram by each member shall be as valid and effectual as if it had been passed at a meeting of the Commission.
- (2) The chairperson shall report the passing of a resolution under subclause (1) to the next meeting of the Commission.

11. Leave of absence

The Commission may grant leave of absence to a member on such terms and conditions as it thinks fit.

12. Execution of documents by Commission

- (1) A document is duly executed by the Commission if —
 - (a) the common seal of the Commission is affixed to it in accordance with subclauses (2) and (3); or
 - (b) it is signed on behalf of the Commission by the member or members or officer or officers of the Commission authorised by the Commission to do so.
- (2) The common seal of the Commission shall not be affixed to any document except by resolution of the Commission.
- (3) The common seal of the Commission shall be affixed to a document in the presence of the chairperson and another member, or the chairperson and an officer of the Commission authorised by the Commission either generally or in any particular case to do so, and each of them shall sign the document to attest that the common seal was so affixed.
- (4) A document purporting to be executed in accordance with this clause shall be presumed to be duly executed until the contrary is shown.
- (5) When a document is produced bearing a seal purporting to be the common seal of the Commission, it shall be presumed that that seal is the common seal of the Commission until the contrary is shown.
- (6) All courts and persons acting judicially shall take notice of the common seal of the Commission.

Schedule 2 — Transitional and savings provisions

[s. 32]

[Heading amended: No. 19 of 2010 s. 4.]

1. Term used: commencement

In this Schedule —

commencement means the commencement of this Act.

2. Members as at 1 Jan 1991

The persons holding office as members of the Commission under the *Lotteries (Control) Act 1954* immediately before the commencement shall upon the commencement be deemed to have been appointed members under section 5 of this Act and, subject to this Act, shall continue to hold office until the expiration of their terms of appointment and be eligible for reappointment.

3. Rules in force as at 1 Jan 1991

On and after the commencement any rule that is in force under the *Lotteries (Control) Act 1954* or the *Lotto Act 1981* immediately before the commencement shall, subject to this Act and in so far as it is not inconsistent with this Act, continue in force and be deemed to be a rule made by the Commission under section 28 of this Act.

4. Appointments etc. in effect as at 1 Jan 1991

Unless the contrary intention appears in this Act, all appointments, agreements, things and circumstances made or created by or under the *Lotteries (Control) Act 1954*, the *Lotto Act 1981* or Division 3 of Part V of the *Gaming Commission Act 1987*² and existing or continuing immediately before the commencement shall, under and subject to this Act, continue to have the same status, operation and effect for the purposes of this Act as they had immediately before the commencement.

5. Gaming Commission Act 1987, transitional provisions as to

- (1) A permit issued to the Commission under Division 3 of Part V of the *Gaming Commission Act 1987*² and which is in force immediately prior to the coming into operation of this Act shall be deemed to continue in force as if that permit were a permit issued by the Minister under section 11 of this Act in relation to the soccer football pool to which that permit refers for the period specified in that permit.
- (2) A permit referred to in subclause (1) is renewable by way of a permit issued in accordance with this Act.

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6. *Interpretation Act 1984* not affected

The provisions of this Schedule do not prejudice or affect the application of the *Interpretation Act 1984* to and in relation to the repeals effected by section 31 of this Act.

[Schedule 3 omitted under the Reprints Act 1984 s. 7(4)(e).]

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Notes

This is a compilation of the *Lotteries Commission Act 1990* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Lotteries Commission Act 1990</i>	16 of 1990	31 Jul 1990	s. 1 and 2: 31 Jul 1990; Act other than s. 1 and 2: 1 Jan 1991 (see s. 2 and <i>Gazette</i> 28 Dec 1990 p. 6369)
<i>Lotteries Commission Amendment Act 1992</i>	32 of 1992	19 Jun 1992	17 Jul 1992
<i>Financial Administration Legislation Amendment Act 1993 s. 4</i>	6 of 1993	27 Aug 1993	27 Aug 1993 (see s. 2(2))
<i>Lotteries Commission Amendment Act 1993</i>	9 of 1993	24 Sep 1993	24 Sep 1993 (see s. 2)
<i>Acts Amendment (Public Sector Management) Act 1994 s. 3(2)</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Lotteries Commission Amendment Act 1994</i> ³	74 of 1994	13 Dec 1994	13 Dec 1994 (see s. 2)
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Statutory Corporations (Liability of Directors) Act 1996 s. 3</i>	41 of 1996	10 Oct 1996	1 Dec 1996 (see s. 2 and <i>Gazette</i> 12 Nov 1996 p. 6301)
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Trustees Amendment Act 1997 s. 18</i>	1 of 1997	6 May 1997	16 Jun 1997 (see s. 2 and <i>Gazette</i> 10 Jun 1997 p. 2661)
<i>Lotteries Commission Amendment Act 1998</i>	26 of 1998	30 Jun 1998	s. 1 and 2: 30 Jun 1998; Act other than s. 1 and 2: 22 Jul 1998 (see s. 2 and <i>Gazette</i> 21 Jul 1998 p. 3825)
Reprint of the <i>Lotteries Commission Act 1990</i> as at 6 Aug 1999 (includes amendments listed above)			
<i>Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 17 Div. 6</i>	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)

Lotteries Commission Act 1990

Notes

Other notes

Short title	Number and year	Assent	Commencement
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4 and Sch. 1 cl. 103	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
Reprint 2: The Lotteries Commission Act 1990 as at 23 Mar 2007 (includes amendments listed above)			
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009</i> s. 89	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
<i>Acts Amendment (Bankruptcy) Act 2009</i> s. 54	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
<i>Standardisation of Formatting Act 2010</i> s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Public Sector Reform Act 2010</i> s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<i>Lotteries Commission Amendment Act 2012</i>	21 of 2012	29 Aug 2012	s. 1 and 2: 29 Aug 2012 (see s. 2(a)); Act other than s. 1 and 2: 30 Aug 2012 (see s. 2(b))
<i>National Health Funding Pool Act 2012</i> Pt. 8 Div. 2	44 of 2012	29 Aug 2012	28 Aug 2013 (see s. 2(b) and <i>Gazette</i> 27 Aug 2013 p. 4015)
Reprint 3: The Lotteries Commission Act 1990 as at 2 Nov 2012 (includes amendments listed above except those in the <i>National Health Funding Pool Act 2012</i>)			
<i>Local Government Legislation Amendment Act 2016</i> Pt. 3 Div. 21	26 of 2016	21 Sep 2016	21 Jan 2017 (see s. 2(b) and <i>Gazette</i> 20 Jan 2017 p. 648)
Lotteries Commission Amendment (COVID-19 Response) Bill 2020	Current Bill No. 184-1		

Other notes

- ¹ Under the *Public Sector Management Act 1994* s. 112(1), a reference to the *Public Service Act 1978* is to be read as a reference to the *Public Sector Management Act 1994*. The reference was changed under the *Reprints Act 1984* s. 7(3)(g).
- ² Now known as the *Gaming and Wagering Commission Act 1987*.
- ³ The *Lotteries Commission Amendment Act 1994* s. 4(2) reads as follows:
 - (2) Any payment made under the principal Act before the commencement of this Act is declared to be and to have always been as valid as it would have been if it were made after the commencement of this Act.