EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Local Government, Territories and Roads

Subject- Christmas Island Act 1958

Lotteries Commission Amendment Ordinance 2005 (No. 1)

Subsection 9(1) of the Christmas Island Act 1958 ("the Act") provides that the Governor-General may make Ordinances for the peace, order and good government of Christmas Island ("the Territory").

Section 8A of the Act provides that the provisions of the law of Western Australia as in force in Western Australian from time to time are in force in the Territory and that those laws may be incorporated, amended or repealed by an Ordinance or a law made under an Ordinance.

The purpose of the Ordinance is to amend the Lotteries Commission Act 1990 (WA) (CI) ("the applied Lotteries Act") to:

- insert a new formula for the calculation of the levy payable to the Commonwealth by the designated authority that conducts lotteries in the Territory;
- ensure that the applied Lotteries Act covers lotteries conducted over the Internet if participants are in the Territory when they obtain tickets; and
- provide clearer definitions and simplify the language used in the applied Lotteries Act.

Background

The regulation of lotteries on Christmas Island has involved authorising, under the applied Lotteries Act, a designated authority in another jurisdiction (Victoria) to conduct lotteries on Christmas Island. The designated authority is required to remit a proportion of the monies collected to the Commonwealth as a levy. This levy is initially collected and remitted to the Victorian Commission for Gambling Regulation by the designated authority as part of broader arrangements under the Victorian Gambling Regulation Act 2003. The levy is then remitted to the Commonwealth pursuant to a revenue sharing agreement between the Victorian Treasurer and the Minister for Local Government, Territories and Roads. The proposed use of consistent terminology between the two jurisdictions to describe the way the levy is calculated by reference to player loss, following adoption of this term in the Victorian legislation, would promote transparency and be administratively more convenient. The levy would apply to lottery games such as lotto and football pools which would be set out in a determination made by the Minister and authorised by an agreement between the Minister and the designated authority.

The applied Lotteries Act does not contain specific provisions to make it clear that Internet gambling by participants in the Territory is regarded as being conducted in the Territory. Unless lotteries are deemed to be conducted in the Territory there is no legal basis for collection and remittal of levies with respect to these games as it would be outside the jurisdiction of the applied Lotteries Act. The proposed amendment would clarify that participation in lotteries by purchase of tickets through the Internet is regarded as being in the Territory of Christmas Island.

The Act specifies no conditions that need to be met before the power to make the Ordinance may be exercised. Details of the Ordinance are set out in the Attachment.
Details Of The Proposed Lotteries Commission Amendment Ordinance 2005 (No. 1)

Ordinance 1 – Name of Ordinance

This Ordinance provides that the title of the Ordinance is the Lotteries Commission Amendment Ordinance 2005 (No. 1).

Ordinance 2 - Commencement

This Ordinance provides for the Ordinance to commence on the day after it is registered on the Federal Register of Legislative Instruments.

Ordinance 3 - Amendment

This Ordinance provides that the Lotteries Commission Act 1990 (WA)(CI) is amended as set out in the Schedule.

Schedule - Amendments

Item [1] - Subsection 3 (1), definition of lottery

This item substitutes a new definition of lottery in section 3(1) of the applied Lotteries Act so as to ensure that the meaning of "lottery" includes lotteries such as soccer football pools and tipstar (an AFL footy tipping competition) which are based on the result of sporting events.

Item [2] - Subsection 3 (1), after definition of permit

This item inserts a new definition of player loss into section 3(1) of the applied Lotteries Act. This new definition is largely based on the definition of "player loss" in section 5.4.3(5) of the Victorian Gambling Regulation Act 2003 ("the Victorian Act"). In effect "player loss" is equivalent to the total subscriptions of participants in the lottery minus the return to those participants through prizes.


This item inserts a new provision to make it clear that lotteries will be regarded as being conducted “in the Territory” if participants in the lottery are in Territory when they obtain the tickets, even if they obtain the tickets using the Internet.

Item [4] - Section 6 – Functions and powers of Commission

This item substitutes a new section 6 in the applied Lotteries Act that retains the content of the current section but is expressed in clearer language.

Section 6 deals with the functions and powers of the Commission. New subsections 6(1) and 6(3) are identical to the existing subsections 6(1) and 6(2) respectively. New subsection 6(2) restates existing section 6(1A) in simpler and clearer language. In particular, the new subsection 6(2) does not refer to soccer football pools and games of lotto. They are included within the meaning of the proposed new definition of lottery.
New subsection 6(4) in effect restates former subsection 6(3) and subsection 6(4) in simpler and clearer language. A substantive change in new subsection 6(4) removes the option of permitting the Minister to conduct lotteries jointly with a designated authority. This process has never been used and it is not proposed to use it in the future. New subsection 6(5) restates existing subsection 6(5) in simpler and clearer language.

**Item [5] - Sections 24A and 24B**

This item substitutes new sections 24A and 24B. Former section 24A provided a complex formula for the calculation of a levy payable to the Commonwealth by the designated authority conducting a lottery. Applying the formula in the former section 24A became difficult in light of changes to the Victorian legislation governing the designated authority utilised by the Commonwealth to conduct lotteries in the Territory. The Victorian Act provides for a "public lottery tax" based on a percentage of player loss. The new section 24A also requires the designated authority which conducts lotteries in the Territory to pay to the Commonwealth a levy based on a percentage of player loss set out in a determination made by the Minister. The new section 24B restates former section 24B in clearer and simpler language.