

## EXPLANATORY MEMORANDUM

### *Racing and Wagering Legislation Amendment Bill 2009*

#### OVERVIEW

Three Bills have been prepared to establish the legislative framework authorising the collection and disbursement of the racing bets levy to be paid by domestic and offshore betting operators publishing or otherwise making available Western Australian race fields:

- *Racing and Wagering Legislation Amendment Bill 2009;*
- *Racing Bets Levy Bill 2009; and*
- *Bookmakers Betting Levy Amendment Bill 2009.*

Only the *Racing and Wagering Amendment Bill 2009* (the Bill) is summarised in this Explanatory Memorandum and is separated into 4 Parts. The Bill also contains minor technical amendments in relation to the operations of Racing and Wagering Western Australia (RWWA).

**Part 1** provides that the commencement of the Bill will come into operation the day after it receives Royal Assent and that the remaining parts will come into operation on a day fixed by proclamation in which different days may be fixed for different provisions.

**Part 2** amends the *Betting Control Act 1954* to:

- repeal the provisions prohibiting the betting through, establishment and operation betting exchanges in Western Australia;
- establish a licensing framework for the publication or use of WA race fields by betting operators, that will;
  - authorise domestic betting operators, licensed in Australia (including RWWA) to engage in or conduct betting on races, to publish or otherwise make available Western Australian race fields;
  - allow offshore betting operators, with the approval of the Gaming and Wagering Commission (Commission), to publish or otherwise make available Western Australian race fields;
  - impose conditions on authorisation/approvals so all betting operators must:
    - pay a racing bets levy (including RWWA) in accordance with the *Racing Bets Levy Act*; and
    - provide the Commission, or an officer of RWWA approved by the Commission, prescribed information in order to preserve the integrity and reputation of racing in Western Australia.
  - enable the Commission to suspend or cancel an authorisation of a domestic betting operator provided the Commission has given the operator an opportunity to show cause why the authorisation should not be suspended/cancelled. Where an operator who has had an authorisation cancelled the Commission must provided the operator with reasons in writing for the decision. An operator will have the ability to apply, after a specified period, to the Commission for restoration of an authorisation.

In regard to offshore betting operators, provision for the suspension/cancellation of an approval already exists under section 27D of the *Betting Control Act 1954*;

- require betting operators to lodge returns and pay the racing bets levy within a prescribed period on all bets accepted on races conducted in Western Australia on and from 1 September 2008. It will be an offence for a betting operator not complying with this requirement and attracts a penalty of \$10,000 and a continuing penalty of \$1,000 for each separate and further offence;
- provide transitional provisions to allow Western Australian bookmakers to be credited any amounts paid under the *Bookmakers Betting Levy Act 1954* for the period 1 September 2008 to the day this Act comes into operation (the retrospective period) against any amount that the bookmaker is liable to pay under the *Racing Bets Levy Act*.
- establish confidentiality provisions by making it an offence for the release of information by existing or former members, officers or consultants of the Commission, and officers or former officers of RWWA (who are approved by the Commission), unless it is:
  - in the course of their duty under the *Betting Control Act 1954*, or any other written law; or
  - in the case of preserving the integrity and reputation of the Western Australian racing industry; or
  - with the written consent of the person who the information relates to.

However the Bill provides an exemption from the confidentiality provisions where the information disclosed is summary or statistical and does not identify the particulars of any person.

- makes minor technical amendments in relation to:
  - section 28G to clarify that is not an offence for any employee or agent of RWWA to accept a bet on a sporting event after the event has commenced (betting in running) provided it is an event approved by the Commission or is conducted in accordance with RWWA's participation in a combined totalisator pool scheme or fixed odds wagering arrangement; and
  - section 23 and 24 to clarify that when these provisions are read in conjunction with section 27A regarding offshore betting, that bets are placed in Western Australia.

**Part 3** amends the *Gaming and Wagering Commission Act 1987* to:

- enable a trust account (the Racing Bets Levy Account) to be established and administered by the Gaming and Wagering Commission for the collection and distribution of levy to Western Australian race clubs registered with RWWA. The Commission will have the ability to pay the levy collected either directly to a race club or through RWWA, and subject to the approval of the Minister, may retain a fee for expenses incurred in administering the trust account; and
- extend the authorisation under section 43A to betting operators licensed in an Australia jurisdiction, who are approved to engage in or bet on race and sporting events, to advertise their wagering operations in Western Australia. However, advertising guidelines will be prescribed relating to consumer protection measures (including prohibiting advertisements/inducements not in the public interest), for gambling service providers to observe when advertising in Western Australia.

**Part 4** amends the *Racing and Wagering Western Australia Act 2003* to:

- remove the authority that allows RWWA to provide WA race field information on a commercial basis. This will now be the responsibility of the Gaming and Wagering Commission;
- require RWWA, in the event that it receives monies from the Gaming and Wagering Commission out of the Racing Bets Levy Account to:
  - maintain a specific Racing Bets Levy Account for the sole purpose of distributing money to thoroughbred, harness and greyhound racing clubs registered with RWWA; and
  - include in both its Strategic Development Plan and Statement of Corporate Intent the proportions in which the funds will be distributed to those racing clubs registered with RWWA; and
- makes technical amendments to:
  - sections 59 and 61 of the Act to clarify only the contractual arrangement between RWWA and the hosts of a combined totalisator pool scheme or fixed odds wagering arrangement need to be approved by the Minister; and
  - section 77 to remove the requirement for RWWA to provide half-yearly reports.

## RACING AND WAGERING LEGISLATION AMENDMENT BILL 2009

### CLAUSE NOTES

#### Part 1 – Preliminary

<u>Clause 1:</u>	Cites the <i>Racing and Wagering Legislation Amendment Act 2009</i> as being the short title of this Act.
<u>Clause 2:</u>	Specifies that: <ul style="list-style-type: none"> <li>(i) Part 1 will come into operation on the day that the <i>Racing and Wagering Legislation Amendment Act 2009</i> receives Royal Assent; and</li> <li>(ii) the remaining parts of the Act will come into operation on a day fixed by proclamation and that different days may be fixed for different provisions.</li> </ul>

#### Part 2 – Betting Control Act 1954

<u>Clause 3:</u>	Specifies that amendments in this Part amend the <i>Betting Control Act 1954</i> (BC Act).
<u>Clause 4:</u>	Amends the long title to remove reference to the prohibition on betting through, establishing and operating a betting exchange.
<u>Clause 5:</u>	<p><u>Subclause (1)</u> inserts in section 4(1) of the BC Act the definitions of <i>approval</i>, <i>authorisation</i>, <i>domestic betting operator</i>, <i>offshore betting operator</i>, and <i>WA race field</i>.</p> <p><i>Approval</i> – means an offshore betting operator who has obtained an approval from the Gaming and Wagering Commission (GW Commission) under section 27D(2) of the BC Act to publish or otherwise make available Western Australian race fields.</p> <p><i>Authorisation</i> – means the authority given to a betting operator under section 27F(1) of the BC Act to publish or otherwise make available a WA race field provided they are licensed in an Australian jurisdiction to engage in or conduct betting on race events.</p> <p><i>Domestic Betting Operator</i> – means any person authorised/licensed in an Australian jurisdiction to engage in or bet on races such as bookmakers, totalisator and betting exchange operators.</p> <p><i>Offshore Betting Operator</i> – means any person authorised/licensed outside of Australia (that is, the country where their operations are based) to engage in or bet on races and sporting events.</p> <p><i>WA Race Field</i> – means any information that is capable of identifying a horse or greyhound that is intending to participate in a race conducted in Western Australia.</p> <p><u>Subclause (2)</u> makes a minor technical amendment to accommodate inserting the definition of <i>WA Race Field</i>.</p>

<p><u>Clause 6:</u></p>	<p>Inserts new sections 14A and 14B into the BC Act for the purposes of</p> <ul style="list-style-type: none"> <li>(i) requiring domestic and offshore betting operators to pay the racing bets levy and lodge returns for the publication/use of WA race fields; and</li> <li>(ii) establishing transitional provisions to allow Western Australian bookmakers to be credited any amounts paid under the <i>Bookmakers Betting Levy Act 1954</i> for the period 1 September 2008 to the day this Act comes into operation (the retrospective period) against any amount that the bookmaker is liable to pay under the <i>Racing Bets Levy Act</i>.</li> </ul> <p><b>Proposed Section 14A</b></p> <p><u>Proposed subsection (1)</u> inserts the definitions of <i>betting operator</i>, <i>gross revenue</i>, <i>racing bet</i> and <i>turnover</i> for the purposes of proposed section 14A.</p> <p><i>Betting Operator</i> means a domestic or offshore betting operator and an operator of a betting exchange.</p> <p><i>Gross Revenue</i> is the income derived by a betting operator from or in respect of betting on races to which the race fields relates (whether as bets placed with or through the betting operator, commission or fees charged in relation to those bets, commission or fees charged in relation to winnings therefrom or otherwise) deducting the amounts payable by the betting operator in respect of winning bets but not deducting any other costs incurred by the betting operator. In addition, unclaimed dividends will form part of a betting operator's gross revenue.</p> <p><i>Racing Bet</i> means any bet placed with a betting operator on a horse or greyhound race conducted in Western Australia.</p> <p><i>Turnover</i> means the total amount of bets received by a betting operator on races conducted in Western Australia (excluding cancelled/refunded bets) and includes any bet backs received by a bookmaker from another bookmaker. In regard to betting exchange operations, turnover includes any racing bets made on the backers' side of a wagering transaction.</p> <p><u>Proposed subsection (2)</u> requires betting operators to lodge a return and pay a racing bets levy in accordance with the <i>Racing Bets Levy Act</i> on bets accepted on races conducted in Western Australia on and after 1 September 2008. The proposed subsection also establishes a penalty of \$10,000 and a continuing penalty of \$1,000 for each separate and further offence where betting operators do not comply with this requirement.</p> <p><u>Proposed subsection (3)</u> is a consequential amendment stipulating that the provisions of 18B(2) to 18B(6) of the BC Act relating to assessment and payment of levy will apply to:</p> <ul style="list-style-type: none"> <li>(i) the racing bets levy where reference is made to bookmakers betting levy; and</li> <li>(ii) betting operators where reference is made to bookmakers.</li> </ul>
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	<p><u>Proposed subsection (4)</u> provides the authority for the GW Commission to recover outstanding racing bets levy from betting operators from a court of competent jurisdiction.</p> <p><b>Proposed Section 14B</b></p> <p>Specifies that if a bookmaker has paid betting levy (in relation to bets placed on races conducted in Western Australia) under the <i>Bookmakers Betting Levy Act 1954</i> over the retrospective period, that the amount paid is to be credited against any amount the bookmaker is liable under the <i>Racing Bets Levy Act</i>.</p>
<u>Clause 7:</u>	Repeals subparagraph (iii) in section 15(5)(a) of the BC Act as a consequence of the bookmakers betting levy being abolished for betting conducted on race events.
<u>Clause 8:</u>	Repeals subparagraph (iii) in section 16(3a)(a) of the BC Act as a consequence of the bookmakers betting levy being abolished for betting conducted on race events.
<u>Clause 9:</u>	Amends sub-sections 23(1)(a) and (b) of the BC Act to clarify, when read in conjunction with section 27A regarding offshore betting, that bets are placed in Western Australia.
<u>Clause 10:</u>	<p><u>Subclause (1)</u> amends sub-sections 24(1) of the BC Act to clarify, when read in conjunction with section 27A regarding offshore betting, that bets are placed in Western Australia.</p> <p><u>Subclauses (2)</u> repeals section 24(1aa) of the BC Act, the offence provision for a person betting through a betting exchange.</p> <p><u>Subclause (3)</u> makes a minor technical amendment to subsection 24(1a) as a consequence of the repeal of subsection 24(1aa).</p> <p><u>Subclause (4)</u> replaces the definition of <i>interstate offence</i> as a consequence of the repeal of subsection 24(1aa).</p>
<u>Clause 11:</u>	Repeals the definition of <i>offshore betting operator</i> in the subclause 27A(1) of the BC Act as a consequence of including the definition in subsection 4(1).
<u>Clause 12:</u>	<p>Repeals sections:</p> <ul style="list-style-type: none"> <li>- 27B relating to prohibition on the establishment and operation of a betting exchange; and</li> <li>- 27C relating to the interpretation and application of the race fields mechanism that is effectively replaced by clause 13,</li> </ul> <p>of the BC Act.</p>
<u>Clause 13:</u>	<u>Subclause (1)</u> repeals subsection 27D(1) of the BC Act and inserts new subsections 27D(1) and (2A) to restrict the publication and use of WA race fields.

	<p><u>Proposed subsection (1)</u> stipulates that proposed section 27D applies to the following persons who are in Western Australia or elsewhere who:</p> <ul style="list-style-type: none"> <li>▪ carries on the business or vocation, or acts as, a bookmaker;</li> <li>▪ conducts betting by the operations of a totalisator;</li> <li>▪ operates a betting exchange (however described);</li> <li>▪ gains or endeavours to gain a livelihood wholly or partly by making bets; or</li> <li>▪ is an employee or agent of the above persons.</li> </ul> <p><u>Proposed subsection (2A)</u> makes it an offence for a person (unless authorised to do so under section 27D(2) or 27F(1)) to publish or make otherwise available WA race fields without the prerequisite approval. The penalty for such an offence will be \$5,000.</p> <p><u>Subclause (2)</u> amends subsection 27D(2) of the BC Act to reflect that only offshore betting operators need to seek approval to publish or otherwise make available WA race fields rather than <u>any person</u>. It also replaces the Minister with the GW Commission as the decision maker.</p> <p>To preserve the integrity and reputation of racing in the State, <u>Subclause (3)</u> inserts new subsection (4A) into the BC Act stipulating that an approval granted under subsection 27D(2) to an offshore betting operator is subject to:</p> <ul style="list-style-type: none"> <li>• providing the GW Commission, or an officer or Racing and Wagering Western Australia (RWVA) approved by the GW Commission, prescribed information and access in a prescribed manner; and</li> <li>• complying with prescribed conditions for co-operating with the GW Commission and Chief Steward of RWVA.</li> </ul> <p><u>Subclause (4)</u> makes minor consequential amendments to subsections 27D(4), (5), (6) and (7) by replacing reference to “Minister” with “Commission”.</p>
<p><u>Clause 14:</u></p>	<p>Repeals sections 27E and 27F of the BC Act as a consequence of the restriction on the publication and use of WA race fields created by clauses 12 and 13 and inserts new sections 27E and 27F.</p> <p><b>Proposed Section 27E</b></p> <p><u>Proposed subsection (1)</u> stipulates that the following people are subject to the provisions of proposed section 27E (confidentiality provisions):</p> <ul style="list-style-type: none"> <li>• a member of the GW Commission;</li> <li>• an officer or employee who provides or has provided services to the GW Commission;</li> <li>• a consultant who is or has been engaged by the GW Commission; and</li> <li>• an officer or former officer of RWVA who is or has been approved by the GW Commission under sections 27D(4A)(a) or 27F(2)(a).</li> </ul>

Proposed subsection (2) establishes an offence for a person (identified above) to directly or indirectly record or disclose any information provided to the GW Commission unless it is:

- in the course of their duty under the BC Act or any other written law; or
- in the case of preserving the integrity and reputation of the States racing industry; or
- with the written consent of the person which the information relates' or
- in any other prescribed circumstance.

A breach of this provision attracts a penalty of \$10,000 or 12 months imprisonment.

Proposed subsection (3) provides an exemption to subsection 27E(2) where the information disclosed is in a format that is summary or statistical and would not identify particulars of any person.

### **Proposed Section 27F**

Proposed subsection (1) authorises a domestic betting operator, subject to compliance with the conditions set out in subsection (2) or any prescribed conditions, to publish or otherwise make available a WA race field without having to seek approval from the GW Commission.

To preserve the integrity and reputation of racing in the State, proposed subsection (2) stipulates that an authorisation granted by virtue of subsection (1) to a domestic betting operator is subject to:

- providing the GW Commission, or an officer or Racing and Wagering Western Australia (RWVA) approved by the GW Commission, prescribed information and access in a prescribed manner; and
- complying with prescribed conditions for co-operating with the GW Commission and Chief Steward of RWVA.

Proposed subsection (3) enables the GW Commission to cancel or suspend an authorisation of a domestic betting operator.

Proposed subsection (4) requires the GW Commission to have regard to prescribed criteria before determining to cancel or suspend an authorisation of a domestic betting operator.

Proposed subsection (5) stipulates that the GW Commission must provide a domestic betting operator an opportunity to show cause why the authorisation should not be suspended or cancelled.

Proposed subsection (6) stipulates that in circumstances where the GW Commission suspends or cancels an authorisation, the GW Commission is required to give the domestic betting operator notice in writing of the decision and the reasons for the decision.

Proposed subsections (7) & (8) allows for a domestic betting operator who has had an authorisation cancelled to apply, after a specified period, to the GW Commission for restoration of the authorisation. An application for restoration of the authorisation is to be accompanied by the prescribed fee.



<u>Clause 15:</u>	Makes a consequential amendment to section 28A(3) of the BC Act to remove reference to section 27B (Clause 12 refers).
<u>Clause 16</u>	Makes a consequential amendment to section 28B of the BC Act to remove reference to section 27B (Clause 12 refers).
<u>Clause 17:</u>	<p>Inserts new subsection (2) into section 28G of the BC Act clarifying that it is not an offence for any manager, secretary officer, employee or agent of RWWA to accept a bet after the start of a sporting event (betting in running) provided the sporting event is:</p> <p>(i) approved in writing by the GW Commission for the purposes of “betting in running”; or</p> <p>(ii) conducted on events as part of RWWA’s participation in a combined totalisator pool scheme or fixed odds wagering system authorised under the <i>Racing and Wagering Western Australia Act 2003</i>.</p>

### **Part 3 – Gaming and Wagering Commission Act 1987**

<u>Clause 18:</u>	Specifies that amendments in this Part amend the <i>Gaming and Wagering Commission Act 1987</i> (GWC Act).
<u>Clause 19:</u>	<p><u>Subclause (1)</u> inserts paragraph (da) into section 43A(3) of the GWC Act to extend authorisation to betting operators, licensed in other Australian jurisdictions who are approved to engage in or bet on race and sporting events, to advertise in Western Australia.</p> <p><u>Subclause (2)</u> is a technical amendment to subsection (3) of section 43A of the GWC Act.</p>
<u>Clause 20:</u>	<p>Inserts new section 110B into the GWC Act to accommodate the collection (and disbursement of) racing bet levies paid to the GW Commission by domestic and offshore betting operators for the publication/use of Western Australian race fields.</p> <p><u>Proposed subsection (1)</u> provides the mechanism in which the GW Commission can establish the Racing Bets Levy Account.</p> <p><u>Proposed subsection (2)</u> stipulates that the GW Commission will administer the Racing Bets Levy Account.</p> <p><u>Proposed subsection (3)</u> specifies that the Racing Bets Levy Account can be used for the purposes of the GW Commission, with the approval of the Minister, withdrawing an amount for the administration of the Racing Bets Levy Account.</p> <p><u>Proposed subsection (4)</u> specifies that after withdrawing an amount for the purposes of administering the Racing Bets Levy Account that the balance of funds held in the Account is to be paid or credited in accordance with proposed section 110B of the GWC Act.</p> <p><u>Proposed subsection (5)</u> provides the GW Commission the flexibility to pay or credit the balance of funds from the Racing Bets Levy Account to either RWWA or, in such amounts as it determines, to racing clubs registered with RWWA.</p>

<u>Clause 21:</u>	<p>Amends section 117 of the GWC Act to insert proposed paragraph (e) to provide a regulation making power for the purposes of section 43A of the GWC Act in relation to advertising content.</p> <p>This will enable advertising guidelines relating to consumer protection measures (including prohibiting advertisements/inducements not in the public interest) to be prescribed.</p>
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**Part 4 – Racing and Wagering Western Australia Act 2003**

<u>Clause 22:</u>	Specifies that amendments in this Part amend the <i>Racing and Wagering Western Australia Act 2003</i> (RWWA Act).
<u>Clause 23:</u>	Repeals section 30(2)(ba) of the RWWA Act as a consequence of the GW Commission being responsible for the authorisation of the publication/use of WA race fields; there is no need for RWWA to have the authority to provide, on a commercial basis, WA race field information to approved/authorised betting operators.
<u>Clause 24:</u>	Makes a technical amendment to section 59(3) of the RWWA Act to clarify that only the contractual arrangement with the host for a combined totalisator pool scheme needs approval.
<u>Clause 25:</u>	Makes a technical amendment to section 61(3) of the RWWA Act to clarify that only the contractual arrangement with the host for a fixed odds wagering arrangement needs approval.
<u>Clause 26:</u>	Amends section 68(2) of the RWWA Act to specify that RWWA must include in its Strategic Development Plan the proportions in which the funds received from the GW Commission out of the Racing Bets Levy Account, will be distributed to racing clubs registered with RWWA.
<u>Clause 27:</u>	<p><u>Subclause (1)</u> amends section 77(2) of the RWWA Act:</p> <ul style="list-style-type: none"> <li>(i) to specify that RWWA must include in its Statement of Corporate Intent the proportions in which the funds received from the GW Commission out of the Racing Bets Levy Account will be distributed to racing clubs registered with RWWA; and</li> <li>(ii) by deleting the requirement for RWWA under subsection 77(2)(g) of the RWWA Act to provide half yearly reports.</li> </ul> <p><u>Subclause (2)</u> makes minor technical amendments to section 77(2) of the RWWA Act.</p>
<u>Clause 28:</u>	<p>Inserts new section 107A into the RWWA Act to accommodate the receipt of monies from the GW Commission out of the Racing Bets Levy Account administered by the Commission under proposed section 110B of the GWC Act.</p> <p><u>Proposed subsection (1)</u> specifies that if RWWA receives monies from the GW Commission out of the Racing Bets Levy Account, that it must credit those monies to the Racing Bets Levy Account to be maintained for the sole purpose of distributing these monies to racing clubs registered with RWWA.</p> <p><u>Proposed subsection (2)</u> specifies RWWA can pay or credit amounts, as it determines, from the Racing Bets Levy Account to thoroughbred, harness and greyhound racing clubs registered with RWWA.</p>

