

EXPLANATORY MEMORANDUM
Gaming and Wagering Legislation Amendment Bill 2018

OVERVIEW

The purpose of the *Gaming and Wagering Legislation Amendment Bill 2018* (the Bill) is to amend the *Betting Control Act 1954* (BC Act) and the *Gaming and Wagering Commission Act 1987* (GWC Act) to align gambling practices with other Australian jurisdictions and to support responsible gambling.

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 – Amendments to the Betting Control Act 1954

The Bill makes provision for the Gaming and Wagering Commission to prescribe undesirable wagering products as prohibited events/contingencies and makes it an offence for a person to offer or bet on prohibited events/contingencies.

Additionally, to ensure that the BC Act does not contravene the Constitution, the Bill amends section 27A recognising an event/contingency permitted under another state/territory law to be permitted to be offered in Western Australia by a wagering operator licensed in another jurisdiction, unless it is a prohibited event/contingency.

To provide consistency with other jurisdictions in relation to the racing bets levy scheme, the Bill amends the BC Act to provide a definition for:

- “bet backs” and makes a subsequent amendment to the definition of “turnover” to allow the value of “bet backs” placed by a betting operator with another betting operator to be deducted from the total amount of racing bets received by the betting operator; and
- “turnover” to specifically provide that in relation to a betting exchange that turnover is the net winnings of racing bets placed with the betting exchange.

To reflect contemporary drafting techniques, the Bill makes minor technical amendments relating to the imposition of penalties throughout the BC Act. The amendments do not alter the value of the penalties to be imposed for a breach of the BC Act.

Part 3 - Amendments to the Gaming and Wagering Commission Act 1987

The Bill amends the GWC Act to remove the prohibition on raffles conducted wholly or partly outside of the State and will enable national charitable and sporting organisations who obtain raffle permits/licenses in other jurisdictions to conduct raffles in Western Australia, provided that the raffle is not for private gain or commercial undertaking.

Section 52(3) of the *Racing and Wagering Western Australia Act 2003*, enables the Gaming and Wagering Commission to prohibit Racing and Wagering Western Australia from establishing or operating an agency that the Commission considers is “detrimental to the public interest”. No equivalent legislative authority, however, enables the Commission to prohibit a gambling provider licensed in another Australian jurisdiction from establishing a remote gambling facility that provides a direct link to their wagering operations in that jurisdiction. To establish consistency and prevent wagering operators not licensed in Western Australia from establishing dedicated wagering terminals in public places, such as shopping centres, that are remotely linked to their operations in their home jurisdiction, the Bill provides offences for:

- a person to place a remote gambling device on public premises or to use a remote gambling device on public premises; and
- an owner/occupier of public premises permitting a remote gambling device to be placed or used on the premises.

The Bill expands the Gaming and Wagering Commission existing powers to formulate and impose prohibitions or conditions in relation to gambling to also include the advertising of live odds during events. The proposed amendment will enable regulations to be promulgated prohibiting live betting odds being broadcast during sporting events at prescribed sporting arenas and stadiums. However, the prohibition will not apply to the advertising of live betting odds by bookmakers and wagering operators at licensed race courses in relation to horse and dog racing.

The Bill also makes the following minor technical amendments:

- removes the spent provision relating to the playing of the game of two-up in accordance with the *Police (Kalgoorlie Two-up Gaming) Regulations 1983*; and
- replaces reference to “Burswood Nominees Pty Ltd” with “the Trustee as defined in the *Casino (Burswood Island) Agreement Act 1985* relating to membership of the Gaming Community Trust. This removes the requirement for future amendments should the name of the casino licensee change, as it did in 2003, when it changed from Burswood Nominees Pty Ltd to Burswood Nominees Limited consequently changing from a propriety company to a public company.

Additionally, to reflect contemporary drafting techniques, the Bill makes minor technical amendments relating to the imposition of penalties throughout the GWC Act. The amendments do not alter the value of the penalties to be imposed for a breach of the GWC Act.

GAMING AND WAGERING LEGISLATION AMENDMENT BILL 2018

CLAUSE NOTES

Glossary of Abbreviations

BC Act	Betting Control Act 1954
GWC Act	Gaming and Wagering Commission Act 1987
Commission	Gaming and Wagering Commission

Part 1 - Preliminary

Clause 1:	Cites the <i>Gaming and Wagering Legislation Amendment Act 2018</i> as the short title of the Act.
Clause 2:	<p>Specifies that:</p> <p>(i) Part 1 will come into operation on the day that the <i>Gaming and Wagering Legislation Amendment Act 2018</i> receives Royal Assent; and</p> <p>(ii) the remaining sections of the Act will come into operation on a day fixed by proclamation and that different days may be fixed for different provisions.</p>

Part 2 – Betting Control Act 1954

Clause 3:	Specifies that amendments in this Part amend the <i>Betting Control Act 1954</i> .
Clause 4:	<p>This clause amends section 4(1) of the BC Act by making a number of amendments to existing definitions and inserting new definitions.</p> <p><u>Sub-clause (1)</u> deletes the definition of machine - (refer to sub-clauses 2 and 17(2) for the replaced definition).</p> <p><u>Sub-clause (2)</u> inserts the definitions of <i>contingency</i>, <i>event</i>, <i>machine</i>, <i>prohibited event or contingency</i>.</p> <p>Contingency – means a contingency relating to an event.</p> <p>Event – means a race or other event, whether or not of a sporting nature.</p> <p>Machine – has the meaning given in section 3(1) of the GWC Act as amended by sub-clause 17(2).</p> <p>Prohibited event or contingency – means any event or contingency that has been prescribed, for the purposes of wagering, as a prohibited event or contingency.</p> <p><u>Sub-clause (3)</u> replaces the reference to “<i>sporting</i>” with “<i>other</i>” within the definition of betting material.</p> <p><u>Sub-clause (4)</u> deletes reference to “<i>race or sports</i>” within the definition of offshore betting operator.</p> <p><u>Sub-clause (5)</u> deletes reference to “<i>race or any sporting</i>” within the definition of to bet.</p> <p><u>Sub-clause (6)</u> replaces the reference to “<i>a race or sporting</i>” with “<i>an</i>” within the definition of totalisator agency.</p>
Clause 5:	<u>Sub-clause (1)</u> amends sub-section 4B(1) by replaces the reference to “ <i>a sporting</i> ” with “ <i>an</i> ”.

	<p><u>Sub-clause (2)</u> redrafts sub-section 4B(2) to remove reference to “<i>sporting</i>” and make provision that the Commission may approve bookmaking on an event provided it is not a prescribed prohibited event or contingency.</p> <p><u>Sub-clause (3)</u> amends sub-section 4B(5) by replacing reference to “<i>sporting events</i>” with “<i>events other than races</i>”.</p>
Clause 6:	Amends sub-section 5(1)(b) by replaces the reference to “ <i>a sporting</i> ” with “ <i>an</i> ”.
Clause 7:	Amends section 5A by: <ul style="list-style-type: none"> (i) replacing reference to “<i>event, including a sporting event,</i>” with “<i>event</i>” in paragraph (a); and (ii) deleting reference to “<i>race or sporting</i>” in paragraph (b).
Clause 8:	<u>Subclauses (1) and (2)</u> makes technical drafting amendments to the penalties for a breach of sub-sections 11F(1) and (2) consistent with clause 15(1). There is no change in the penalty.
Clause 9:	<p><u>Sub-clause (1)</u> deletes in sub-section 14A(1) the definitions of gross revenue and turnover. New definitions for both terms are contained in sub-clause (2).</p> <p><u>Sub-clause (2)</u> inserts in sub-section 14A(1) definition for <i>bet back</i> and re-defined definitions for <i>gross revenue</i> and <i>turnover</i> for the purposes of the racing bets levy scheme.</p> <p>Bet Back – means a bet placed by a domestic betting with another domestic betting operator or betting exchange operator for the purposes of reducing the liability of the domestic betting operator for bets accepted on an event or contingency.</p> <p>Gross Revenue – is defined in order to distinguish between the different business models for a domestic or offshore betting operator and betting exchange operator.</p> <p>In relation to a:</p> <ul style="list-style-type: none"> (i) domestic or offshore betting operator, is the turnover of the operator less any payouts to customers; and (ii) betting exchange operator, is the charges, commission, consideration, earnings, fees, reward or any other remuneration payable to or received by the operator. <p>Turnover - is defined in order to distinguish between the different business models for a domestic or offshore betting operator and betting exchange operator.</p> <p>In relation to a:</p> <ul style="list-style-type: none"> (i) domestic or offshore betting operator, is the total amount of turnover placed with operator less any bet backs placed; and (ii) betting exchange operator, is the net winnings of bets placed with the betting exchange. <p><u>Sub-clause (3)</u> - makes technical drafting amendments to sub-section 14A(2) to reflect contemporary drafting techniques by deleting the term “<i>Penalty:</i>” and replacing it with “<i>Penalty for this subsection:</i>”. There is no change in the penalty.</p>
Clause 10:	Amends sub-section 24(2) by deleting reference to “ <i>race or sporting</i> ” in the definition of bets .

Clause 11:	Makes technical drafting amendments to the penalties for the breaches identified in sub-section 26C(1) consistent with clause 15(1). There are no change in the penalties.
Clause 12:	<p><u>Note</u>: the heading to section 27A (<i>Offshore Betting</i>) will be amended to read <i>Interstate and Offshore Betting</i>.</p> <p><u>Sub-clause (1)</u> deletes in sub-section 27A(1) the definitions of approved sporting event and offshore bet. New definitions (including the retitling) for both terms are contained in sub-clause (2).</p> <p><u>Sub-clause (2)</u> inserts in sub-section 27A(1) definitions for <i>interstate or offshore bet</i> and <i>permitted event or contingency</i> to complement the amendments proposed in Clause 5(2).</p> <p>Interstate or offshore bet – builds on the previous definition of <i>offshore bet</i> by replacing the term in paragraph (a) “<i>on a race, or on an approved sporting event, conducted in Australia;</i>” with “<i>on an event or contingency outside the State; and</i>”. The remainder of the previous definition for an <i>offshore bet</i>, that is, paragraphs (b) and (c) are retained unchanged.</p> <p>Permitted event or contingency – means an event or contingency approved by the Commission under section 4B(2) of the BC Act or any event or contingency, except a prohibited event or contingency, where betting is permitted under the laws of another State or Territory.</p> <p><u>Sub-clause (3)</u> amends the definition of <i>authorised person</i> in paragraph (b) of sub-section 27A(1) by deleting the reference to “<i>racess or sporting</i>”.</p> <p><u>Sub-clause (4)</u> inserts new sub-sections 27A(2A), (2B) and (2C) to establish offences and penalties for making or offering betting on events or contingencies that are not permitted events or contingencies.</p> <p>Proposed sub-section 27A(2A) makes it an offence for a person to make an interstate or offshore bet that is not a permitted event or contingency. Penalty for breaching this sub-section is a fine of \$2,500.</p> <p>Proposed sub-section 27A(2B) makes it an offence for a person other than an authorised person (who is a licensed bookmaker or other person permitted to accept bets) to offer an interstate or offshore bet. Penalty for breaching this sub-section is a fine of \$5,000 and imprisonment for 1 year.</p> <p>Proposed sub-section 27A(2C) makes it an offence for a person (whether an authorised person or not) to offer an interstate or offshore bet that is not a permitted event or contingency. Penalty for breaching this sub-section is a fine of \$5,000 and imprisonment for 1 year.</p> <p><u>Sub-clause (5)</u> amends sub-section 27A(3) by replacing reference to “<i>offshore</i>” with “<i>interstate or offshore</i>” in each occurrence.</p> <p><u>Sub-clause (6)</u> amends sub-section 27A(5) by deleting reference to “<i>racess and sporting</i>” in each occurrence.</p>
Clause 13:	Redrafts sub-section 31(1)(h)(ii) to specify that a bookmaker can (in addition to the outcome of a race as referred to in paragraph (i)) only bet on other events or contingencies approved under section 4B(2).

Clause 14:	Amends sub-section 33(1)(a) by deleting reference to “ <i>sporting</i> ”.
Clause 15:	<p><u>Sub-clause (1)</u> sets out in the table all the sub-sections of the BC Act that have been amended to reflect contemporary drafting techniques by deleting the term “<i>Penalty:</i>” and replacing it with “<i>Penalty for this subsection: a fine of</i>”. There are no changes in the penalties.</p> <p><u>Sub-clause (2)</u> sets out in the table all the sections of the BC Act that have been amended to reflect contemporary drafting techniques by deleting the term “<i>Penalty:</i>” and replacing it with “<i>Penalty: a fine of</i>”. There are no changes in the penalties.</p>

Part 3 – Gaming and Wagering Commission Act 1987

Clause 16:	Specifies that amendments in this Part amend the <i>Gaming and Wagering Commission Act 1987</i> .
Clause 17:	<p><u>Sub-clause(1)</u> inserts in sub-section 3(1) the definitions of <i>event</i> and <i>telecommunications device</i> to support the amendments detailed in clause 21 relating to remote gambling devices.</p> <p>Event – has the same meaning given in section 4(1) of the BC Act. Refer to the definition provided in clause 4(2).</p> <p>Telecommunications Device – means a computer, television, telephone or any other device adapted for the purposes of communication across/through dedicated communications networks.</p> <p><u>Sub-clause(2)</u> replaces in sub-section 3(1) reference to “<i>any</i>” with “<i>a telecommunications device and any other</i>” in the definition of machine.</p>
Clause 18:	Amends sub-section 8(2)(c) by inserting a new provision to enable the Commission to formulate policy and impose prohibitions or conditions in relation to the advertising of live odds during events.
Clause 19:	Amends sub-section 43A(3)(da) by replacing reference to “ <i>races or sporting events; or</i> ” with “ <i>events; or</i> ”.
Clause 20:	Deletes sub-section 81(3) as the provision is no longer in operation.
Clause 21:	<p>This clause inserts a new proposed Part 5A for the purposes of establishing offences relating to the establishment of dedicated remote gambling devices.</p> <p>Proposed section 93A provides the following definitions:</p> <p>Public premises – means a public place except for premises:</p> <ul style="list-style-type: none"> (i) comprising of a totalisator agency as defined in the <i>Racing and Wagering Western Australia Act 2003</i>; or (ii) established by the <i>Lotteries Commission Act 1990</i>; or (iii) that have been prescribed or a prescribed class or premises. <p>Remote gambling device – means a telecommunications device that is primarily or exclusively built to enable gambling on an event or contingency.</p> <p>Proposed section 93B specifies the offences and penalties for a person placing, using or permitting a remote gambling facility in a public place. The penalty for each offence is a fine of \$20,000.</p>

Clause 22:	Amends sub-section 101(1) by replacing reference to “ <i>the State</i> ” with “ <i>Australia</i> ,” within the definition of <i>foreign lottery</i> .
Clause 23:	Amends sub-section 107(1) by deleting reference to “ <i>sporting</i> ”.
Clause 24:	Amends sub-section 109D(3)(b) relating to members of the Gaming Community Trust by replacing reference to “ <i>Burswood Nominees Pty Ltd</i> ” with “ <i>the casino licensee as defined in the Casino Control Act 1984 section 3(1); and</i> ”.
Clause 25:	<p><u>Sub-clause (1)</u> sets out in the table all the sub-sections of the GWC Act that have been amended to reflect contemporary drafting techniques by deleting the term “<i>Penalty</i>.” and replacing it with “<i>Penalty for this subsection: a fine of</i>”. There are no changes in the penalties.</p> <p><u>Sub-clause (2)</u> sets out in the table all the sections of the GWC Act that have been amended to reflect contemporary drafting techniques by deleting the term “<i>Penalty</i>.” and replacing it with “<i>Penalty: a fine of</i>”. There are no changes in the penalties.</p>