

## EXPLANATORY MEMORANDUM

### *Casino (Burswood Island) Agreement Amendment Bill 2003*

#### **PURPOSE**

The purpose of the Casino (Burswood Island) Agreement Act Amendment Bill 2003 is to amend the Casino (Burswood Island) Agreement Act 1985:

- to ratify the amendments to the Eighth Supplementary Agreement and authorise its implementation;
- provide for the Eighth Supplementary Agreement to operate and take effect to the extent that it amends the entrenched provisions as defined in section 10 of the Casino (Burswood Island) Agreement Act, despite the operation of section 10; and
- to require shareholders of an approved company holding a relevant interest in more than 10 percent of the voting shares of an approved company, to hold a probity approval notice issued by the Gaming Commission of Western Australia.

The Bill provides for the:

- Commission to be notified within 30 days after the day on which a person becomes the holder of a relevant interest in more than 10 percent of the shares of an approved company;
- application to the Commission for a probity approval notice together with authority for probity approval notices to be cancelled by the Commission; and
- Minister to order the disposal of as many shares as necessary to reduce a shareholder's relevant interest in the shares to 10 percent, in the event that the Minister, on the advice of the Commission, is satisfied that -
  - a) a person holds a relevant interest of 10 percent or more of the voting shares of an approved company and does not hold a probity approval notice; or
  - b) the holder of a probity approval notice is no longer a suitable person to hold a relevant interest in more than 10 percent of the voting shares of an approved company.

The Eighth Supplementary Agreement amends the Agreement ("the State Agreement) scheduled and ratified to the Casino (Burswood Island) Agreement Act 1985.

The Supplementary Agreement provides for the replacement of the single casino tax rate of 15 percent by a three-tier taxation system, to apply retrospectively from 24 December 2002, for:

1. electronic gaming machines
2. table games, including KENO; and
3. international commission business generated by all international players on an incentive programs, including junkets, premium players and privileged players.

The Supplementary Agreement amends the State Agreement, including the mandatory articles of Burswood Limited, an approved company, to permit a person to hold a relevant interest in more than 10 percent of Burswood Limited's voting shares. The Supplementary Agreement also provides for Burswood Limited to promptly take action, to the fullest extent permitted by its constitution, to rectify any contravention of the mandatory articles. In this regard, the proposed amendments of the constitution of Burswood Limited, in the form set out in Schedule E to the Agreement, are subject to shareholder approval and not to take effect earlier than 30 September 2003.

## **CLAUSE NOTES**

### **Clause 1**

Names the Casino (Burswood Island) Agreement Amendment Act 2003 as the amending Act.

### **Clause 2**

Sets the commencement date of the Act as the day on which it receives Royal Assent.

### **Clause 3**

Names the Casino (Burswood Island) Agreement Act 1985 as the principal Act.

### **Clause 4**

Sub-clause (1) amends the definition of Agreement in section 3 of the Act to include the Eighth Supplementary Agreement.

Sub-clause (2) defines the Eighth Supplementary Agreement, a copy of which is set out in schedule 9.

### **Clause 5**

Sub-clause (1) inserts a new section 4D that ratifies the Eighth Supplementary Agreement and authorises its implementation.

Sub-clause (2) provides for the Eighth Supplementary Agreement to operate and take effect to the extent that it amends the entrenched provisions as defined in section 10 of the Casino (Burswood Island) Agreement Act, despite the operation of section 10;

Section 10 of the principal Act defines entrenched provisions to mean clause 17A of, and Schedule B to, the State Agreement scheduled to the principal Act. Sub-section (1) further provides that entrenched provisions are not to be amended or deleted. It is therefore necessary for the Bill to amend clause 17A of, and Schedule B to, the Agreement to approve Burswood Limited's (an approved company) mandatory articles as set out in proposed Schedule E to the State Agreement.

Clause 17A of the State Agreement is amended by deleting “articles of association” from each of clauses 17A(2)(b) and 17A(2)(c) and in each case, substituting “constitution”, to be consistent with the present terminology in the Commonwealth’s Corporations Act. Clause 17A(2)(b) of the State Agreement is also amended by inserting the words “at the time of approval” after the words “must” in that clause.

Schedule B to the State Agreement sets out the mandatory articles an approved company must comply with at the time of approval. For Burswood Limited, its mandatory articles will be as set out in Schedule E which will comply with Schedule B except to the extent that a shareholder in Burswood Limited who holds a probity approval notice issued by the Gaming Commission of Western Australia will be able to:

- i) hold a relevant interest of more than 10 percent of Burswood Limited’s voting shares; and
- ii) nominate more than one Director of Burswood Limited.

**Clause 6**

This clause identifies the State Agreement as amended by the Eighth Supplementary Agreement for the purposes of section 10 of the principal Act.

**Clause 7**

This clause inserts proposed sections 11 to 17, to provide the legislative authority for:

- i) a person to obtain a probity approval notice from the Commission to hold a relevant interest of more than 10 percent of the voting shares of an approved company; and
- ii) the Minister, on the advice of the Commission, to serve on a person a written notice, requiring the person to dispose of as many of the voting shares in an approved company as necessary to reduce the person’s relevant interest in the shares to 10 percent or less.

Proposed section 11 defines the terms “approved company”, “Commission”, “probity approval notice” and “relevant interest” for the proposed sections 12 to 17.

Proposed section 12 provides that when a person becomes the holder of a relevant interest in more than 10 percent of the voting shares of an approved company, the approved company must notify the Commission in writing, within 30 days after the day on which the person becomes a holder of the relevant interest in more than 10 percent of the shares. Creates a penalty of \$10,000 for non-compliance.

Proposed section 13 provides that a person must not have a relevant interest in more than 10 percent of the voting shares of an approved company unless the person holds a probity approval notice.

A person may obtain a probity approval notice prior to acquiring a relevant interest in more than 10 percent of the voting shares of an approved company and may hold those shares if it becomes the holder of the relevant interest in excess of 10 percent of the shares within 90 days of the probity approval notice having been issued. Alternatively, the probity approval notice must be issued within 90 days (or such extended period as the Commission may allow) after the day on which the person became the holder of a relevant interest in more than 10 percent of the shares.

Proposed section 14 provides for an application to be made to the Commission for a probity approval notice and for the Commission to issue a probity approval notice if the Commission is satisfied that the applicant is a suitable person to hold a relevant interest in more than 10 percent of the voting shares in an approved company. A copy of a probity approval notice must be provided to the approved company.

The applicant will be required to provide the Commission with any information the Commission reasonably requires and the Commission may make investigations it considers necessary for the purposes of dealing with the application. The Commission may investigate any matter it considers necessary or desirable to inform itself of the reputation and financial status of the applicant.

The Commission may require an applicant to pay the reasonable costs of the Commission's investigations in connection with dealing with the application and may refuse to issue a probity approval notice if the applicant does not pay the Commission's costs or if the applicant does not provide the information required by the Commission.

Proposed section 15 provides for the Commission to cancel a probity approval notice if, after the issue of a probity approval notice to a person and before the person becomes a holder of a relevant interest in more than 10 percent of the voting shares of an approved company, the Commission is not satisfied the person is a suitable person to hold a relevant interest in more than 10 percent of the voting shares. The approved company must be notified of any cancellation.

Proposed section 16 requires the Minister to serve a person with written notice advising of his intention to order the disposal of shares pursuant to section 17(1); and provides that person with the ability to serve the Minister with a written response, within 14 days, detailing the reasons why the power conferred under section 17(1) should not be exercised.

Proposed section 17 provides for the Minister, on the advice of the Commission, and after having issued written notice in accordance with section 16(1), to serve the person with written notice requiring the disposal of as many shares as is necessary to reduce the person's relevant interest in shares to 10 percent where:

- a) a person who does not hold a probity approval notice, has a relevant interest in more than 10 percent of the voting shares of an approved company; or
- b) the holder of a probity approval notice is no longer a suitable person to hold a relevant interest in more than 10 percent of the voting shares of an approved company.

The notice served under section 17(1) is required to be served on the person within 28 days after the day on which the person was served with the notice issued under section 16(1).

Provides for a penalty of \$30,000 for failure to comply with a notice issued under section 17(1).

A notice issued under Section 17(1) must be included in the Annual Report of the Gaming Commission of Western Australia.

**Clause 8**

Inserts schedule 9, containing a copy of the Eighth Supplementary Agreement.

## SCHEDULE 9

### **Eighth Supplementary Agreement**

The State Agreement is between the Minister for Racing and Gaming, Burswood Nominees Ltd, as Trustee of the Burswood Property Trust and Burswood Resort (Management) Limited, as Manager of the Burswood Property Trust.

#### **Recitals**

Cites the original Agreement (dated 20 February 1985) and all the amendments to date (up to the Seventh Supplementary Agreement made on 9 June 1997) and indicates that the parties have agreed to further amend the State Agreement.

#### **Clause 1**

Outlines the intent of the definition and interpretations.

#### **Clause 2**

Acknowledges the State's commitment to securing the passage of the Casino (Burswood Island) Agreement Amendment Bill 2003 through the Parliament as an Act.

#### **Clause 3**

Deletes the definition of "Casino Gross Revenue" and inserts new definitions to support the replacement of the single casino tax rate, with a three-tier taxation system for:

- electronic gaming machines;
- table games, including KENO; and
- international commission business generated by all international players on an incentive programmes, including junkets, premium players and privileged players.

Also amends the definition of Mandatory Articles:

- by replacing the reference to "articles of association with "constitution", to be consistent with the present terminology of the Commonwealth's Corporations Act; and
- includes amendments agreed under an agreement which has been ratified by an Act.

**Clause 4**

The reference to memorandum and articles of association in clauses 17(1)(e) and 17(1)(ea) of the State Agreement is amended to refer to the “constitution” to be consistent with the present terminology in the Commonwealth’s Corporations Act.

**Clause 5**

Inserts new paragraphs (ec) and (ed) of clause 17(1) to require an approved company, when it becomes aware that a person has acquired a relevant interest in more than 10 percent of the voting shares of the approved company, to notify the Commission within 30 days, identifying the acquirer and the extent of the relevant interests acquired. An approved company will be required to take prompt action to the fullest extent permitted by its constitution, to rectify any contravention of its constitution.

New sub-clause (3) approves the proposed amendments to the constitution of Burswood Limited, an approved company, in the form set out in Schedule E, provided that the amendments take effect not earlier than 30 September 2003.

Amendments to the constitution of Burswood Limited must be approved by the Minister in accordance with clause 17(1)(ea) of the State Agreement.

New sub-clause (4) provides that Article 3 of Burswood Limited’s constitution, as set out in Schedule E, shall be Burswood Limited’s mandatory articles. In this regard, Article 3 as set out in Schedule E complies with Schedule B of the State Agreement, except to the extent that a shareholder in Burswood Limited who holds a probity approval notice from the Commission, will be able to:

- i. hold a relevant interest of more than 10 percent of Burswood Limited’s voting shares; and
- ii. nominate more than one Director of Burswood Limited.

**Clause 6**

Amends clause 17A of the State Agreement by deleting “articles of association” from each of the clauses 17A(2)(b) and 17A(2)(c) and in each case, substituting, “constitution”, to be consistent with the present terminology in the Commonwealth’s Corporations Act.

**Clause 7**

Makes a technical amendment to clause 17A(2)(b) of the State Agreement so that at the time of approval of an approved company, the constitution must comply with requirements set out Schedule B.

**Clause 8**

This clause provides for the replacement of the single casino tax rate with a three-tier taxation system for:

- electronic gaming machines;
- table games, including KENO; and
- international commission business generated by all international players on an incentive programme, including junkets, premium players and privileged players.

With effect from the specified anniversary dates of the granting of the Casino Gaming Licence, the casino taxation rates set out in Item 1 of Schedule C will apply to Burswood International Resort Casino.

Casino taxes will continue to be paid monthly, within 8 days after the end of the month, as stated in (1) of Item 2 of Schedule C.

The three-tier taxation system is to apply retrospectively from 24 December 2002, with the adjustment to be made in accordance with (2) of Item 2 of Schedule C.

The Minister will, subject to existing arbitration provisions, continue to have discretion to increase the 18 percent and 11 percent tax rates on table games (including KENO) and international commission business respectively, on and from 24 December 2009, by no more than 1 percent per year to 20 percent.

The State Agreement presently provides for the casino tax rate, with the consent of Burswood, to increase beyond 20 percent. This opportunity will continue, and in relation to the electronic gaming machine tax rate, with the consent of Burswood, this can be increased at any time after 24 December 2004.

**Clause 9**

Updates the delivery addresses of the parties to the State Agreement.



**Clause 10**

This clause amends the State Agreement by inserting the following schedules in the form attached to the Supplementary Agreement.

**Schedule C**

- Item 1 states the rates of casino tax from the specified anniversary dates of the granting of the Casino Gaming Licence applicable to electronic gaming machines, table games (including KENO) and international commission business respectively.
- Item 2 (1) requires casino taxes to be paid monthly, within 8 days after the end of each month; and  
(2) stipulates that the three-tier taxation system is to apply retrospectively from 24 December 2002, and sets out the manner in which the adjustment for the retrospectivity is to be made.

**Schedule D**

Lists the table games presently authorised by the Commission under section 22 of the Casino Control Act.

**Schedule E**

Sets out the form of the proposed Article 3 of the constitution of Burswood Limited, an approved company, which complies with Schedule B of the State Agreement, except to the extent that a shareholder in Burswood Limited who holds a probity approval notice from the Commission, will be able to:

- i. hold a relevant interest of more than 10 percent of Burswood Limited's voting shares; and
- ii. nominate more than one Director of Burswood Limited.