

ACTS AMENDMENT (GAMING) BILL 1998

EXPLANATORY MEMORANDUM

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General Outline

The Bill seeks to amend the Casino Control Act 1984 and the Gaming Commission Act 1987 to:

- * implement a number of changes identified in the June 1996 report of the Minister for Racing and Gaming on the Review of the Gaming Commission Act 1987; and
- * redraft a number of sections to strengthen and/or simplify/clarify them.

Part 1 - Preliminary

- Clause 1 Names the amending Act.
- Clause 2 Sets the commencement date.

Part 2 - Casino Control Act 1984

- Clause 3 Names the principal Act in this part as the Casino Control Act 1984.
- Clause 4 Amends section 3(1) of the Act:
- * deletes the term “casino inspector” to avoid confusion with inspectors employed by the Casino and inserts a definition of “government inspector”.
 - * inserts a new definition of “gaming operations”
 - * deletes reference to “the Committee”, which relates to the defunct Casino Control Committee.
- Amends section 3(2) of the Act by including a reference to “winnings”.
- Amends section 3(3) of the Act by substituting reference to “casino inspector” with a reference to “government inspector”.
- Clause 5 Repeals section 4 of the principal Act because it refers to the defunct Casino Control Committee.

- Clause 6 Substitutes reference to “casino inspector” with “government inspector” and ensures that officers appointed as casino inspectors continue to operate as government inspectors for the remainder of the period of their employment.
- Clause 7. Inserts section 10 to provide protection for Commission officers for any action taken in good faith. It also provides protection for the Crown for any action taken by a person in the course of their duty.
- Inserts section 11 to permit the Chief Casino Officer to delegate the functions and duties of the Chief Casino Officer.
- Clause 8 Deletes section 12 which refers to the defunct Casino Control Committee
- Clause 9 Amends section 13 of the Act to permit the Chief Casino Officer or the Commission to release information to another regulatory body where the information is required for the administration of gaming or for law enforcement purposes.
- Clause 10 Amends section 14 (1) by deleting reference to “Committee” and substituting “Casino Control Committee”. This amendment has been made because the term is no longer defined in section 3 of the Act.
- As a consequence to amendments to section 9(2) of the Gaming Commission Act 1987 (see clause 34 of the Bill) section 14(2) of the Casino Control Act is amended to require moneys received by the Commission to be deposited into an account at the Treasury or any other account approved by the Treasurer.
- Clause 11 Inserts section 15 to provide for winnings under the Casino Control Act to be collected within 12 months. It also provides for the Commission to direct the licensee to take specified steps to locate the winner and if after a further two months the winner cannot be located, the entitlement to those winnings is extinguished. The unclaimed winnings are to be deposited in the Gaming Community Trust Fund under the proposed section 109C of the Gaming Commission Act 1987 (see clause 68 of the Bill).
- Clause 12 Inserts section 18 to provide a definition of “close associate” of a public company with which the Minister has entered into, or is preparing to enter into, a casino complex agreement. Other definitions which refer to “relevant financial interest”, “relevant position” and “relevant power” have been inserted.
- Clause 13 Repeals section 19(2) of the Act and inserts new subsections (1a) and (2) to strengthen the Commissions powers to conduct investigations prior to the Minister entering into an agreement to develop a casino complex or the issue of a gaming licence.

Clause 14 Inserts sections 19A and 19B to empower the Minister to require a “close associate” to divest any financial interest in a public company which is the subject of a casino complex agreement or casino licence if the person is found to be of an unsuitable character. In requiring the disposal of any financial interests the Minister is required to ensure procedural fairness and the orderly disposal of the interest.

A determination by the Minister requiring a close associate to divest a financial interest shall be included in the annual report of the Gaming Commission.

Clause 15 Inserts new section 21(4c) to permit the Commission to approve the playing of any authorised game, for example, keno, within a specified area of the casino complex but outside the licensed casino floor

Clause 16 Amends section 21A(2) to permit “any officer of the Commission” to issue a notice in writing or orally, requiring a casino employee to provide information. The current Act is restrictive in that it permits only the Chief Casino officer or a casino inspector to issue a notice requiring information.

Currently section 21A(9) of the Casino Control Act provides for the person conducting an investigation to exercise the powers conferred on an inspector under the Companies (Western Australian) Code. Because the abovementioned Code has been repealed a new section 21A(9) is inserted to provide for a person conducting an investigation at the direction of the Minister, to exercise the powers of a Royal Commission.

Clause 17 Amends section 21B(3) to permit the Minister to issue a letter of censure as an alternative to suspension or revocation of a casino licence. Additionally, the Minister, with the prior approval of the Governor, may issue a fine not exceeding \$100,000.

Inserts new subsections (5) and (6) for the fine, if not paid, to be recovered through court proceedings.

Clause 18 Repeals section 23(2)(i) and redrafts a new section 23(2)(i) to prohibit Commission members, the Chief Casino Officer, a government inspector or any other officer appointed, from gaming at the casino during the period of their appointment.

Inserts subsection (2b) to permit the courts to forfeit any winnings won by Commission members, the Chief Casino Officer, a government inspector or other officer appointed, as a result of committing an offence under this section.

Clause 19 Repeals section 24(1) and inserts new subsections (1), and (1a) to enable the Commission to issue directions with respect to the system of internal controls and administrative and accounting procedures which apply to gaming operations. Subsections (1b) and (1c) are inserted to provide as to when a direction has effect and directions may be in words or represented diagrammatically or both. This amendment is made to ensure that the Commission has the power to issue directions in relation to gaming operations at the Casino rather than relying on directions under section 24 of the Casino Control Act.

Amends section 24(2) to delete reference to "casino gaming" and to insert the generic reference "gaming".

Introduces subsection (5) to require the casino licensee to comply with any direction given by the Commission.

Clause 20 Amends section 25(1) to change the reference to "casino gaming" to the generic reference "gaming".

Clause 21 Inserts section 25A to enable the Commission to make regulations requiring junket operators and their representatives to be approved rather than the Commission relying on the issuing of directions under section 24 of the Casino Control Act to require the approval of junket operators and their representatives.

Clause 22 Amends section 26(2) to clarify that the reference to "his authority" is a reference to "the licensee's authority".

Repeals section 26(4)(a) and inserts a redrafted paragraph (a) to permit the Gaming Commission, in addition to the Licensee, to revoke a barring.

The penalties in subsections (6) and (7) have been increased in line with the penalties in the proposed Liquor Licensing Amendment Bill 1997.

Clause 23 Inserts section 26A to empower the Commission to review a direction issued by the Casino, barring a person from entering the casino.

Clause 24 Amends section 27(1) to clarify that the prohibition for persons under the age of 18 years of age relates only to the "licensed casino" and increases the penalty to \$5000.

Inserts a new subsection (1a) to make it an offence for casino management to permit a person under the age of 18 years to gamble and sets the penalty at \$5000..

Inserts subsections (3a) and (3b) to make it an offence for a person under the age of 18 years to participate in gaming and sets the penalty at \$1000, and to provide for the forfeiture of any winnings paid to a juvenile as a result of the commission of the offence.

- Clause 25 Inserts new section 27A to permit the casino operator, an officer of the Commission or a police officer to request a person who is suspected of being under the age of 18 years to provide evidence of his or her age. If a person is unable to, or refuses to produce evidence of age, the licensee may require the person to leave the casino premises. The section also creates an offence where false proof of age is provided and sets the penalty at \$1000
- Clause 26 Amends section 29(1) to change reference to “casino gaming” to the generic reference “gaming”.
- Clause 27 Inserts Part VA relating to Controlled Contracts, and Part VB relating to Infringement Notices.

Part VA - Controlled Contracts

Section 29A defines a “controlled contract” which is a contract between the licensed casino and a contractor for the supply of goods and services. It does not relate to a contract for the construction of a casino or alteration of the premises.

Section 29B provides for the Casino licensee to enter into a “controlled contract” for the supply of goods or services to the Burswood Casino or any other matter that is prescribed as a controlled matter, only if the Commission has not objected to the contract. Subsection (2) requires the Commission to investigate the contract within a 60 day period. Subsections (3) and (4) provide for the period of investigation to be expanded when there are special circumstances, but the Commission must complete its investigation within a period of six months.

Section 29C provides a mechanism for the termination of a controlled contract by the Commission.

Paragraphs (a) and (b) of section 29D, provide that the termination of a contract does not affect the rights acquired or a liabilities incurred by reason only of the termination of the contract. Paragraph (c) provides no liability against the Commission or the Crown where a contract is terminated.

Section 29E provides for a penalty of \$10,000 if a party to a controlled contract continues to give effect to the contract.

Part VB - Infringement Notices

Section 29F defines an “authorised person” as a person appointed under section 29G

Section 29G provides for the Commission to appoint in writing persons authorised to issue infringement notices. However, police officers may

issue infringement notices without the Commissions authority. Persons authorised to issue infringement notices cannot be approved persons authorised to receive payment of modified penalties (section 29I), extend the period of payment (section 29J) or withdraw infringement notices (section 29K).

Section 29H provides for the infringement notice to be served in person or by registered post within 21 days of the alleged offence.

Section 29I provides for the infringement notice to be served in the prescribed form and that if the alleged offender does not wish the offence to be dealt with by a court the modified penalty is to be paid within 28 to a person authorised to receive payment.

Section 29J provides for an authorised person to grant an extension of time for the payment of the infringement notice even if the 28 day period has elapsed.

Section 29K provides for an authorised person other than a person authorised to serve an infringement notice, to withdraw an infringement notice and refund money even if the infringement notice has been paid.

Section 29L prohibits the institution of proceedings where the modified penalty specified in the infringement notice has been paid. The payment of the modified penalty shall not be regarded as an admission of guilt.

Section 29M provides for the payment of the modified penalty to the Commission and to be dealt with as Commission moneys (see clause 34 of the Bill).

- Clause 28 Amends section 32(1), by listing the following sections under which a patron may be detained.
- * Section 22(7) - playing of games in a casino other than in accordance with approved rules.
 - * Section 23(2) (ii) - playing a game in a casino while prohibited from entering the casino.
 - * Section 26(1d) - entering and remaining in a casino while prohibited from entering the casino.
 - * Section 26(6) - entering and remaining in a casino contrary to a direction issued prohibiting entry.
 - * Section 27(3a) - person under the age of 18 years participating in gaming in a licensed casino.
 - * Section 27A(4) - producing false evidence in respect of proof of age.
 - * Section 30(3) - use or possession of a token that is bogus or counterfeit or possession of any instrument that is marked or tampered with or any equipment which facilitates cheating or fraud.

* Section 31 - forges or counterfeits a token, voucher, book or document with intent to defraud.

Clause 29 Amends section 33 by increasing the penalties in relation to the contravention of a direction issued by the Commission. The penalties have been increased to \$2000 and \$5000 respectively to bring them into line with the penalties proposed in the Liquor Licensing Amendment Bill 1997.

Clause 30 Amends section 36 to provide the police with the power to institute proceedings without the prior approval of the Commission. The Commissioner of Police will be required to advise the Commission of the proceedings undertaken and the result of the proceedings.

Inserts paragraph (g) in subsection (4) to provide an averment that at a specified time a specified premises was operated as a licensed casino is proof of the fact until the contrary is proved.

Clause 31 Amends schedule 2 of the Act by:

- (i) changing the reference to "casino" inspector to "government" inspector; and
- (ii) including disciplinary provisions in relation to casino employees and casino key employees. Currently there is no power for the Commission to take any action in the event of an adverse finding which does not warrant suspension or revocation or for which a letter of censure is considered inadequate. The amendment provides for a fine of \$1000 as an alternative, in addition to a letter of censure or suspension or revocation.

Amends item (3) of Schedule 2 by substituting reference to the "Commission" for the defunct "Casino Control Committee".

Part 3 - Gaming Commission Act

Clause 32 Names the principal Act as the Gaming Commission Act 1987.

Clause 33 Amends section 3(1) to provide a new definitions for "authorised officer" and includes a definition for "two-up" which was not defined in either the Gaming Commission Act or the Casino Control Act.

Inserts section 3(3) to provide a clearer and fairer interpretation of "private gain".

- Clause 34 Repeals section 9(2) and inserts a redrafted section 9(2) to provide for moneys received by the Commission to be deposited into an account at the Treasury or into an account with a bank approved by the Treasurer.
- Amends section 9(4) to provide for moneys to be credited to the Gaming Commission Account.
- As a consequence of the amendment to section 9(2) the Casino Control Account is to be closed and as a transitional provision moneys standing to the credit of the Casino Control Account will be paid into the Gaming Commission Account.
- Clause 35 Amends section 12 to change the composition of the Gaming Commission to provide for a five member Board, with the Executive Director of the Office of Racing, Gaming and Liquor as the ex officio Chairman, plus four other members appointed by the Minister. The Chairman of the Lotteries Commission shall, no longer be an ex officio member of the Commission.
- The reference to the "*Companies (Western Australia) Code*" in section 12(11)(b) has been substituted with "*Corporations Law*".
- Clause 36 Amends section 13(1) by deleting reference to the *Public Service Board* and inserting the reference to *Minister for Public Sector Management*.
- Amends section 13(4) by deleting reference to the *Public Service Act 1978* and inserting the reference to *Public Sector Management Act 1994*.
- Clause 37 Amends section 16(1)(b) by deleting reference to "casino inspector" and inserting the reference to "government inspector".
- Inserts section 16(4) to provide that the reference to "government inspector" and "Chief Casino Officer" has the same meaning as contained in the Casino Control Act 1984.
- Clause 38 Amends section 18 (1) and (2) by substituting reference to "Permanent Head" and "Racing and Gaming" with "chief executive officer" and "Racing, Gaming and Liquor" respectively.
- Clause 39 Amends section 22(2) to provide for an officer (for example a member of the police force) to gain admittance by providing another form of identification to enter and inspect premises.
- Clause 40 Inserts a new subsection (1a) in section 26 to provide for a person giving information or evidence to verify the information provided.

- Clause 41 Amends section 27(2) by substituting reference to *Companies (Western Australian) Code* with reference to *Corporations Law*.
- Clause 42 Amends section 32(2) to provide for the mandatory forfeiture of items seized as evidence in relation to a gaming offence pursuant to the Gaming Commission Act.
- Clause 43 Amends section 33 to enable members of the police force to institute proceedings for an offence under the Act, without seeking the permission of the Commission to do so.. The Commissioner of Police will be required to advise the Commission of the proceedings instituted and the result of the proceedings.
- Clause 44 Amends section 37(1) by substituting reference to *Companies (Western Australia) Code* with reference to *Corporations Law*.
- Clause 45 Amends section 38 by deleting reference to *Companies (Western Australia) Code* and *Associations Incorporation Act 1895* and inserting the reference to *Corporations Law* and *Associations Incorporation Act 1987* respectively.
- Clause 46 Amends section 39(1)(d) by inserting a new paragraph (iiia) which provides for an averment that a specified game is a game played in casinos (in Australia or elsewhere) or a variation or derivative of that game and shall be evidence of that fact in the absence of evidence to the contrary.
- Amends section 39(2)(e) to provide the Commission with the power to prescribe the premises where pinball type amusement machines may be played. This amendment has been made because suppliers have been using this section of the Act to place machines similar to video draw poker machines in hotels and clubs.
- Clause 47 Amends section 41(5) to provide for the mandatory forfeiture of items seized as evidence, under an Embargo Notice under the Police Act, in relation to a gaming offence, where the charge is proved.
- Clause 48 Amends section 44(1) to include "attempting" to cheat as an offence.
- Clause 49 Amends section 45 to include a "lottery" or "permitted lottery" in the provisions which relate to offences under the Act.
- Clause 50 Repeals section 46(2)(a) and inserts a redrafted section 46(2)(a) to strengthen the amendments made to section 85 (see clause 58) to prohibit authorised games played at the casino from being played outside the casino.

- Clause 51 Amends section 51(2)(b)(ii) by extending the prohibition on gaming and betting conducted for the purpose of any “commercial undertaking”.
- Clause 52 Amends section 60 to extend the Commission’s power to revoke or amend operators’ and suppliers’ certificates. Currently, the Commission can only revoke or amend permits.
- Clause 53 Amends section 64 to provide that a subscription or part subscription for membership of a club shall not to be taken to be a charge in respect of social gaming.
- Clause 54 Amends section 80 to:
- (i) authorise the Commission to issue a permit for the conduct of two-up after trotting meetings to be played into the next day provided the playing or betting at that game begins during the race day; and
 - (ii) to prohibit a two-up permit being issued for country race meetings for “private gain” or “commercial undertaking”.
- Clause 55 Amends section 81 to prohibit two-up being conducted for “private gain” or “commercial undertaking”.
- Clause 56 Repeals section 82(c) which refers to financial returns, because the provision of reports is covered in section 57 of the Act.
- Clause 57 Strengthens the definition of “prescribed gaming equipment” in section 84(1) by inserting reference to “other thing” that may be caught under the definition.
- Clause 58 Repeals section 85(1)(a) and inserts a redrafted section 85(1)(a) to strengthen the prohibition on the possession and use of gaming machines at venues other than the Burswood Casino.
- Amends subsection (4) to allow for the possession of gaming machines or any other gaming equipment authorised under subsection (5).
- Inserts a new subsection (5) to permit a person to possess gaming machines for the purpose of manufacture, testing, repairing and maintaining or for any other purpose (for example, display purposes) prescribed by the Commission.
- New subsection (6) defines “authorised officer” as a person authorised by the Commission.
- Clause 59 Amends section 95(1) to prohibit the issue of a bingo permit for “private gain” or “commercial undertaking”.

- Clause 60 Inserts a new subsection 100(na) to prescribe who may be given free bingo cards (for example volunteer workers).
- Clause 61 Amends section 102 to remove reference to a trade promotion lottery as a permitted lottery which then empowers the Commission to make regulations to control and regulate trade promotion lotteries under a permit system.
- Subclause (2) provides for transitional provisions in relation to a trade promotion lottery which was commenced prior to the Acts Amendment (Gaming) Bill 1998 coming into operation.
- Clause 62 Repeals section 104(1) and inserts a redrafted section 104(1) and new subclauses (1a), (1b) and (1c) to;
- (i) prohibit the conduct of a lottery (standard or continuing lottery) for “private gain or commercial undertaking”, and
 - (ii) authorise the issue of a “Calcutta” permit.
- Inserts a new subclause 3(ea) to require the permit holder to ensure that all tickets are included in a lottery draw.
- Inserts a new subclause 3(eb) to ensure that the permit holder draws the lottery within the prescribed period.
- Amends subsection 3(k) to enable a permit holder, with the permission of the Commission, to return money collected in connection with a lottery.
- Inserts new subsections (4) and (5) setting penalties of \$1,000 for offences against subsections 3(ea), 3(eb) and 3(k).
- Clause 63 Inserts new section 104A so that the Commission is not liable for a lottery prize which is not paid.
- Clause 64 Repeals section 105(2) and inserts a redrafted section 105(2) to permit cash prizes to be paid on winning tickets dispensed from vending machines. Currently, the Act prohibits cash prizes for winning tickets dispensed from a vending machine.
- Clause 65 Amends section 106(1)(a) to change the offence from “intent to defraud” which is difficult to prove, to “fraudulently takes or converts”.
- Inserts a new subsection (1a) that applies section 371 of the Criminal Code (other than subsection (1) of that section) that relates to stealing, to an offence under section 106(1) of the Gaming Commission Act.

Clause 66 Amends section 108 to prohibit the conduct of minor fund raising activities for “private gain” or “commercial undertaking”.

Clause 67 Amends section 109(g) to extend the making of regulations for the delivery of lottery prizes.

Clause 68 Inserts new Division 8 relating to Unclaimed Winnings

Section 109A defines “the trust”, “the trust fund” and “unclaimed winnings”.

Section 109B provides that:

- (i) the Commission is to be advised of any winnings resulting from permitted gaming which have not been claimed within 12 months. The Commission is also to be advised of the name and last known address of the person entitled to those winnings and details of steps taken to find the winner;
- (ii) the Commission may give directions to the permit holder to take additional steps to contact the winner;
- (iii) if after the expiry of 2 months following the Commission’s direction the unclaimed winnings have not been claimed, the right of the winner to be paid those winnings is extinguished;
- (iv) the Commission may direct the permit holder to deposit any unclaimed winnings into the Gaming Community Trust Fund; and
- (v) the permit holder shall comply with any direction given relating to the disposal of unclaimed winnings.

Section 109C provides for the establishment of the Gaming Community Trust Fund into which all unclaimed winnings pursuant to the Gaming Commission Act and the Casino Control Act, are to be paid. The Trust Fund shall be under the control of the Commission and is to be regarded as part of the operations of the Commission.

Section 109D establishes the Gaming Community Trust which shall consist of 5 members. The Chairman of the Gaming Commission shall be the ex officio Chairman of the Trust, one member shall be nominated by Burswood Nominees Pty Ltd and three members shall be nominated by the Minister. The intention of the Trust is to advise and make recommendations to the Minister on the application of unclaimed winnings for the benefit of the community.

Clause 69 Amends section 110 by deleting reference to the Liquor Act 1970 and inserting reference to the Liquor Licensing Act 1988.

Clause 70 Repeals the transitional provisions set out in section 112 (3),(4) and (5) relating to the membership of the defunct Casino Control Committee.

Clause 71 Repeals the transitional provisions set out in section 114 relating to the repealed Lotteries (Control) Act 1954.

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