

Major Events (Aerial Advertising) Bill 2009

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Defined Terms

Western Australia

LEGISLATIVE ASSEMBLY

Major Events (Aerial Advertising) Bill 2009

A Bill for

An Act to provide for the control of aerial advertising at major events, and for related purposes.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Major Events (Aerial Advertising) Act 2009*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

In this Act —

advertising means bringing to the attention of the public or a section of the public —

- (a) the availability of goods or services; or
- (b) the name of a brand of goods or services or a person who provides goods or services;

aerial advertising includes —

- (a) advertising by skywriting or sign-writing by an aircraft; or
- (b) advertising on a banner or other sign towed by or attached to an aircraft; or
- (c) advertising on an aircraft, other than its normal markings or livery identifying the manufacturer of that aircraft; or
- (d) advertising on —
 - (i) a hang glider, parachute, paraglider or similar device, other than its normal markings; or

- 1 (ii) a banner or sign attached to a hang glider,
2 parachute, paraglider or similar device;
3 or
4 (e) advertising on a banner or sign attached to a person
5 suspended from a hang glider, parachute, paraglider or
6 similar device; or
7 (f) a laser or digital projection of an advertisement into the
8 sky;

9 **aircraft** includes an airship, a blimp, a hot-air balloon, a
10 helicopter or an ultra-light aircraft;

11 **CEO** means the chief executive officer of the department of the
12 Public Service principally assisting in the administration of this
13 Act;

14 **event order** means an order made under section 5 as amended
15 by any variation order;

16 **event organiser**, in relation to an event specified in an event
17 order, means the person or body specified in the order as the
18 organiser of the event;

19 **officer**, in relation to a body corporate, has the meaning given to
20 “officer” of a corporation in the *Corporations Act 2001*
21 (Commonwealth) section 9 but does not include an employee of
22 the body corporate unless the employee is concerned in the
23 management of the body corporate;

24 **specified event** means an event specified in an event order;

25 **specified time**, in relation to an event specified in an event
26 order, means the starting time and the finishing time in respect
27 of each day of the event;

28 **specified venue** means the place specified in an event order at
29 which an event is to be conducted;

30 **variation order** means an order made under section 8.

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Part 2 — Event order

4. Application for event order or variation of an event order

An application for an event order or to vary an event order is to be —

- (a) in writing; and
- (b) made in a manner and form approved in writing by the CEO; and
- (c) accompanied by the application fee, if any, prescribed.

5. Event orders

(1) On an application under section 4, the Minister may, by order published in the *Gazette*, declare an event specified in the order to be an event for the purposes of this Act.

(2) Before making an order, the Minister —

- (a) must be satisfied that —
 - (i) the event is a major event at the international or national level; and
 - (ii) the event has commercial arrangements that are likely to be adversely affected by unauthorised aerial advertising; and
 - (iii) the operations of the event are likely to be adversely affected by aerial advertising that is not authorised by the event organiser;

and

- (b) must have regard to —
 - (i) the number of people who might attend the event; and
 - (ii) the likely media coverage of the event; and
 - (iii) the projected economic benefit of the event to the State; and

- 1 (iv) the contribution to the State's national and
2 international profile as a host of major events.
- 3 (3) An event order must specify —
- 4 (a) the day or days on which the event is to be conducted;
5 and
- 6 (b) the place at which the event is to be conducted; and
- 7 (c) the starting time and the finishing time in respect of each
8 day of the event; and
- 9 (d) the organiser for the event; and
- 10 (e) the manner in which the event organiser must publicise
11 that the event is covered by the event order; and
- 12 (f) any conditions to which the order is subject.
- 13 (4) Failure to publicise that an event is covered by the event order
14 in accordance with subsection (3)(e) does not render the event
15 order void.

16 **6. Notice of decision to be given**

- 17 If the Minister decides to refuse to declare an event to be an
18 event for the purposes of this Act, he or she is to —
- 19 (a) record the grounds on which the decision was based;
20 and
- 21 (b) record the reasons for the decision; and
- 22 (c) as soon as is practicable, but in any case not later than
23 30 days after making the decision, give written notice of
24 the decision, together with those grounds and reasons, to
25 the person who made the application for the declaration
26 under section 4.

27 **7. Review**

- 28 A person who is aggrieved by a decision referred to in section 6
29 may apply to the State Administrative Tribunal for a review of
30 the decision.

1 **8. Variation order**

2 (1) The Minister may, by order published in the *Gazette*, change
3 any of the following —

- 4 (a) the specified venue in relation to a specified event;
5 (b) the specified time in relation to a specified event;
6 (c) the event organiser in relation to a specified event.

7 (2) A variation order must specify whether the change specified in
8 the order is ongoing or, if the change is for a limited period, the
9 period during which the change applies.

10 (3) A variation order that changes a specified venue in relation to a
11 specified event must state the new venue in relation to the
12 specified event.

13 (4) A variation order that changes the specified time in relation to a
14 specified event must state the new specified time in relation to
15 each day of the specified event.

16 (5) A variation order that changes the event organiser in relation to
17 a specified event must state the new event organiser in relation
18 to the specified event.

19 **9. When order takes effect**

20 An event order or a variation order takes effect —

- 21 (a) on the day of its publication in the *Gazette*; or
22 (b) if a later day is specified in the order, on that day.

23 **10. Refund of fee for application for an event order**

24 (1) The Minister, after taking into account the economic benefit to
25 the State of an event in relation to which an event order has
26 been made, may waive the fee payable under section 4(c) or
27 direct that the whole or a specified part of a fee paid under
28 section 4(c) be refunded to the applicant for the order.

1 (2) Subsection (1) applies in relation to an application for an event
2 order made on or after 1 July 2011.

3 **11. Offence to display unauthorised aerial advertising**

4 (1) A person must not display aerial advertising, or cause aerial
5 advertising to be displayed, within sight of a specified venue
6 during the specified time in relation to a specified event being
7 conducted at the venue unless the display is in accordance
8 with —

9 (a) a written authorisation of the event organiser to display,
10 or cause, aerial advertising to be displayed at the event;
11 or

12 (b) a condition specified under section 5(3)(f); or

13 (c) an event order for another specified event at another
14 specified venue.

15 Penalty: a fine of \$250 000.

16 (2) Subsection (1) does not apply to a person who flies an aircraft
17 within sight of a specified venue during the specified time in
18 relation to a specified event being conducted at the venue —

19 (a) in an emergency; or

20 (b) if the aircraft is used for, or in, the provision of
21 emergency services.

22 (3) Proceedings for a contravention of subsection (1) are to be dealt
23 with by a court constituted by a magistrate.

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Part 3 — Civil remedies

12. Injunctions to restrain conduct

- (1) The Minister or an event organiser may apply to the Supreme Court for the grant of an injunction restraining a person from engaging in conduct that constitutes —
- (a) a contravention of section 11; or
 - (b) attempting or conspiring to contravene section 11; or
 - (c) aiding, abetting, counselling or procuring a person to contravene section 11; or
 - (d) inducing or attempting to induce a person, whether by threats, promises or otherwise, to contravene section 11; or
 - (e) being in any way directly or indirectly, knowingly concerned in, or party to, the contravention by a person of section 11.
- (2) On an application under subsection (1), the Court may grant an injunction restraining a person from engaging in conduct of the kind mentioned in subsection (1)(a) to (e) —
- (a) if the Court is satisfied that the person is engaging in, or has been engaging in, conduct of that kind, whether or not it appears to the Court that the person intends to engage in the conduct again or to continue to engage in the conduct; or
 - (b) if it appears to the Court that, in the event that the injunction is not granted, it is likely that the person will engage in conduct of that kind, whether or not that person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind; or

- 1 (c) if the Court considers it to be appropriate, by consent of
2 all the parties to the proceeding, whether or not the
3 person has engaged in, or is likely to engage in, conduct
4 of that kind.
- 5 (3) Pending the determination of an application under this section,
6 the Court may grant an interim injunction if, in the opinion of
7 the Court, it is desirable to do so —
- 8 (a) whether or not it appears to the Court that the person
9 intends to engage in or continue to engage in conduct of
10 the kind mentioned in subsection (1)(a) to (e); or
- 11 (b) whether or not the person has previously engaged in
12 conduct of that kind and whether or not there is an
13 imminent danger of substantial damage to any person if
14 the first-mentioned person engages in conduct of that
15 kind.

16 **13. Power to rescind or vary injunctions**

17 The Supreme Court may rescind or vary an injunction granted
18 under section 12(2).

19 **14. Action for damages**

- 20 (1) If any person suffers any loss, injury or damage because of a
21 contravention of section 11, the person may recover the amount
22 of the loss, injury or damage, or damages in respect of the loss,
23 injury or damage, by proceeding against one or more of the
24 following —
- 25 (a) a person who has aided, abetted, counselled or procured
26 the contravention;
- 27 (b) a person who has induced, whether by threats or
28 promises or otherwise, the contravention;
- 29 (c) a person who has been in any way, directly or indirectly,
30 knowingly concerned in, or a party to, the contravention;
- 31 (d) a person who has conspired with others to effect the
32 contravention.

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- 1 (2) Without limiting the powers of the court under subsection (1),
2 an order made by the court under this section may include the
3 recovery of future losses as a result of the potential loss of
4 sponsorship of an event.
- 5 (3) A proceeding under this section may be brought in any court of
6 competent jurisdiction.
- 7 (4) A proceeding under subsection (1) must not be commenced
8 more than 3 years after the date on which the cause of action
9 accrued.
- 10 (5) A court may make an order under this section whether or not an
11 injunction is granted under section 12(2).

1 **Part 4 — Miscellaneous**

2 **15. Bringing proceedings**

3 (1) Proceedings for an offence under this Act may be brought by —

4 (a) the CEO; or

5 (b) a person authorised in writing by the CEO for the
6 purposes of this section.

7 (2) In proceedings for an offence under this Act it must be
8 presumed, in the absence of evidence to the contrary, that the
9 person bringing the proceedings was authorised to bring the
10 proceedings.

11 **16. Liability of certain officers of body corporate: offences**

12 (1) If a body corporate is charged with an offence under this Act,
13 every person who was an officer of the body corporate at the
14 time of the alleged offence may also be charged with the
15 offence.

16 (2) If a body corporate and an officer are charged as permitted by
17 subsection (1) and the body corporate is convicted of the
18 offence, the officer is to be taken to have also committed the
19 offence, subject to subsection (5).

20 (3) If a body corporate commits an offence under this Act, then,
21 although the body corporate is not charged with the offence,
22 every person who was an officer of the body corporate at the
23 time the offence was committed may be charged with the
24 offence.

25 (4) If an officer is charged as permitted by subsection (3) and it is
26 proved that the body corporate committed the offence, the
27 officer is to be taken to have also committed the offence, subject
28 to subsection (5).

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- 1 (5) If under this section an officer is charged with an offence it is a
2 defence to prove —
- 3 (a) that the offence was committed without the officer's
4 consent or connivance; and
- 5 (b) that the officer took all the measures to prevent the
6 commission of the offence that he or she could
7 reasonably be expected to have taken having regard to
8 the officer's functions and to all the circumstances.

9 **17. Regulations**

10 The Governor may make regulations prescribing all matters that
11 are required or permitted by this Act to be prescribed, or are
12 necessary or convenient to be prescribed for giving effect to the
13 purposes of this Act.

14

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
advertising.....	3
aerial advertising.....	3
aircraft.....	3
CEO.....	3
event order.....	3
event organiser.....	3
officer.....	3
specified event.....	3
specified time.....	3
specified venue.....	3
variation order.....	3