

BETTING LEGISLATION AMENDMENT BILL 2001

EXPLANATORY MEMORANDUM

OVERVIEW OF THE BILL

The purpose of the *Betting Legislation Amendment Bill 2001*, is to amend the *Betting Control Act 1954*, and the *Totalisator Agency Board Betting Act 1960* as follows:

Betting Control Act 1954

1. To provide for a bookmaker's licence to be issued to a body corporate or partnership.
2. Subject to the approval of the Betting Control Board and permission from the relevant racecourse controlling authority, to allow bookmaking to occur on a racecourse at times other than during the conduct of a race meeting at the racecourse.

Totalisator Agency Board Betting Act 1960

1. To ensure that no claim may be made against the TAB or members of the Board or its officers, employees or agents in relation to a bet that has been accepted otherwise than in accordance with written law, other than a claim
 - (a) made before 6 February 1999; or
 - (b) made by the TAB against an agent of the TAB.
2. To allow the Board of the TAB to delegate duties and powers to the Manager, Secretary or other officer of the Board.

IMPACT OF THE CHANGES

Betting Control Act 1954

These amendments have resulted from recommendations of the National Competition Policy review of the Betting Control Act (the BC Act).

Corporate Licensing

The amendments will provide bookmakers with access to corporate licensing structures while, importantly, preserving barriers to unsuitable persons and strengthening personal accountability to ensure that inappropriate levels of credit betting and other undesirable practices are not undertaken under the protection of corporate limited liability. The main features of the corporate licensing provisions are as follows:

- In addition to a natural person, a bookmaker's licence may be granted to a partnership of natural persons and/or bodies corporate, or a body corporate.

- A natural person, a member of a partnership, or a body corporate may not hold or have an interest in more than one bookmaker's licence at any one time. For the purposes of this restriction a person is considered as having an interest in a body corporate if that person occupies a position of authority in the body corporate. A person occupies such a position if that a person -
 - is a director of the body corporate;
 - exercises or exerts, or is in a position to exercise or exert, control or influence over the body corporate in the conduct of its affairs;
 - in the case of a public company holds 50 per cent or more of the shares of the public company; or
 - in the case of a proprietary company, is a shareholder in the company.
- The existing requirement for persons applying for a bookmaker's licence to satisfy the Betting Control Board that they are fit and proper is applied to members of a partnership and persons who occupy a position of authority or have a controlling interest in a body corporate that holds or is applying for a bookmaker's licence. This requirement extends also to persons who are seeking to become a member of a partnership or a person who holds a position of authority in a body corporate that holds a bookmaker's licence.
- At least one person involved in a partnership or a body corporate that is seeking or holds a bookmaker's licence must demonstrate knowledge of the business of bookmaking and the obligations of a bookmaker under the BC Act. This is a new provision that will also be applied to natural persons seeking a bookmaker's licence.
- As with a bookmaker's licence held by a natural person, a bookmaker's licence held by a partnership or a body corporate is not transferable.
- The existing requirement for a bookmaker to provide a security bond is extended to a partnership and a body corporate that holds a bookmaker's licence. In addition, the proposed amendments will provide the Betting Control Board with the authority to require further security bonds from individual directors of a body corporate that holds a bookmaker's licence.
- A partnership or a body corporate that holds a bookmaker's licence must appoint a person who holds a bookmaker's manager licence to personally manage bookmaking operations conducted under the licence.
- In terms of liability for offences committed under the BC Act, the existing provision that makes bookmakers liable for offences committed by their employees has been extended as follows:
 - a partnership or a body corporate that holds a bookmaker's licence is liable for an offence committed by its licensed manager or employee;
 - a person who occupies a position of authority in a body corporate that holds a bookmaker's licence is liable for any offence committed by the

body corporate unless that person had no knowledge of, or exercised such due diligence to prevent the commission of, the offence; and

- a licensed manager is liable for an offence committed by an employee under his control.

Fielding Time Restrictions

Currently, bookmaking activities may generally only be carried on at a racecourse during the holding of a race meeting at the racecourse.

The National Competition Policy review of this restriction concluded that, while limiting the locations at which bookmakers can operate provides substantial benefits, restricting the times at which bookmakers may conduct betting activities (ie, only during a race meeting) reduces customer choice and imposes substantial costs on bookmakers from reduced business opportunities.

Leaving the decisions regarding the timing of the bookmaking activities to racing clubs could further reduce the costs to bookmakers. Such relaxation of timing constraints has occurred in other states of Australia. Advantages include-

- allowing for racing clubs, particularly those in country areas, to conduct betting on a day when inclement weather has forced the cancellation of a race meeting; and
- allowing establishment of a betting auditorium at a major racecourse.

Betting auditoriums are common in other states. However, a major issue has been the potential for the transfer of patronage and betting turnover from one racecourse to another. To counter this concern, the Bill specifies that the permission of both the racecourse controlling authority and the Betting Control Board is required for the conduct of betting by bookmakers at racecourses on days when there is no race meeting being conducted. This will allow a full assessment of the relevant issues to be undertaken.

Totalisator Agency Board Betting Act 1960

Immunity from Claims

The TAB is not authorised to accept a bet if-

- the method of lodging the bet is not in accordance with the Act, for example, a bet lodged with an agency by telephone and that particular agency is not authorised to accept bets by telephone;
- payment for the bet is not in accordance with the Act, for example direct payment by credit card or the provision of credit by the agent;
- the person making the bet is not permitted to make the bet, for example an intoxicated person or a person who has been barred from betting under the Betting Control Act.

The *Acts Amendment (Fixed Odds Betting) Act 1999* came into operation on 15 January 2000. Amongst other things, this Act amended section 22 of the *Totalisator Agency Board Betting Act 1960* (the TABB Act) to validate a dividend declared by the TAB where a bet that should not have been accepted is included in a betting pool or where the outcome of a race or sporting event, once declared, is later disputed.

This amendment had the principal effect of validating a dividend declared by the TAB where uncertainty has later arisen in relation to whether or not the bet should have been properly accepted by the TAB and included in the betting pool.

While this amendment established certainty in relation to the dividend declared by the TAB, a recent "risk" review of this provision by the TAB has revealed that there is no such certainty for the dividend pool itself. The effect of this is that a claim may be made against the TAB to recover money paid in respect of a bet, in circumstances where the bet should not have been accepted by the TAB, or when that money has been paid out as winnings or otherwise disbursed by the TAB in accordance with its obligations under the TABB Act.

This leaves the TAB potentially liable to repay moneys it no longer has in its possession. Furthermore, the claimant would have enjoyed the privileges and obligations of the bet, as if it were a lawful bet, that is, collected the dividend if it is a winning bet or forfeited the bet if it is not. In this regard, there are some circumstances where a bet should be refunded, such as in the case of a race or event being cancelled or a participant being scratched. These circumstances are currently prescribed in regulation.

It is considered appropriate that, where a bet that should not have been accepted by the TAB has been disbursed in accordance with the statutory requirements of the TABB Act, and the owner of that bet has received all the entitlements of the bet as if it was a lawful bet, it should not be possible to make a claim against the TAB in respect of that bet.

The proposed amendment will ensure that future dividend pools can be distributed in accordance with the Act without any risk that a claim can be made to recover a bet included in the pool. However, without retrospective effect, the TAB is at risk of claims for recovery of bets included in past dividend pools where dividends have been paid to punters and profits distributed to the racing industry.

This risk poses a significant threat to the racing industry's principal revenue base. TAB distributions to the racing industry amount to more than \$57 million annually, forming the basis for stake money payments, which in turn, provide the wages for the thousands of Western Australians employed in the racing industry. Any substantial claims against the TAB for refund of bets, if successful, will only serve to impact on those whose livelihood is dependent on the racing industry.

To prevent any "opportunistic" claims against the TAB, it is considered appropriate that the proposed amendments have retrospective effect. However, it is not proposed that the retrospectivity provision will extend so far as to affect any current litigation against the TAB. In this regard there is one such claim currently before the courts which was commenced on 5 February 1999.

Accordingly, the Bill incorporates an amendment to the *Totalisator Agency Board Betting Act* to prevent any future claims of this nature.

The amendment has been drafted, however, so as to not impinge on the TAB's right to take action against one of its agents in circumstances where, for example, the agent has breached the terms of the agency agreement with the TAB.

Delegation of Powers and Functions

Section 13 of the TABB Act provides that the Board of the TAB may delegate any or all of its functions under the Act to a member or sub-committee of members of the Board.

Up until 1996, the Manager (Chief Executive Officer) was an ex-officio member of the Board and, therefore, entitled to exercise powers and functions under delegation. In 1996 the Act was amended to reconstitute the Board. One of the changes was to remove the Manager as ex-officio member. However, there was no consequential amendment to the delegation provisions in section 13 to enable the Manager to continue to exercise the functions of the Board under delegation. This was a technical oversight at the time and not an intended consequence.

An amendment is needed to section 13 of the TABB Act to allow the Board to delegate to the Manager or any other officer of the Board and accordingly, clause 27 of the Bill incorporates this amendment. Clause 29 of the Bill provides validation provisions in respect of any actions of the Manager undertaken in the belief that a power of delegation was still current.

CLAUSE NOTES

Clause 1 Cites the *Betting Legislation Amendment Act 2001* (the Amendment Act) as being the short title of this Act.

Clause 2 Sets out the commencement provisions and specifies that the Act will come into operation on a day fixed by proclamation.

Clause 3 Establishes that the amendments contained in Part 2 of the Amendment Act are to the *Betting Control Act 1954* (the BC Act)

Clause 4 Amends section 4 of the BC Act which relates to definitions.

Subclause (1) amends the definition of "bookmaker" to include a reference to a licensed manager acting for a bookmaker; and inserts definitions of an "authorised deposit-taking institution" ("ADI"), "controlling interest", and "licensed manager".

The "ADI" definition is a housekeeping amendment designed to establish consistency with current bank regulation terminology.

The other two new definitions (controlling interest and licensed manager) are needed to supplement the insertion of corporate licensing provisions.

Subclause 2 inserts a new section 4(2)(aa) to stipulate that a reference in the BC Act to a bookmaker includes a reference to a licensed manager appointed by a bookmaker that is a partnership or body corporate and carrying on the business of that bookmaker in accordance with proposed section 11D(5).

Subclause 3 inserts a new section 4(3) which establishes the relevant criteria for a person to be considered "a person occupying a position of authority in a body corporate". This section sets out that a person holds a position of authority in a body corporate if that person-

- is a director of the body corporate;
- exercises or exerts or is in a position to exercise or exert, control or substantial influence over the body corporate in the conduct of its affairs;
- in the case of a public company holds 50 per cent or more of the shares of the public company; or
- in the case of a proprietary company, is a shareholder in the company.

Clause 5 Amends section 4A(2)(a) to establish consistency in the requirement that all applications required under the BC Act are to be made in a form approved by the Betting Control Board.

Clause 6 Amends section 7 of the BC Act to widen the probity investigation authority to encompass partnerships, corporations and licensed managers.

Clause 7 Repeals existing section 11 and inserts replacement provisions as follows.

Proposed section 11 sets out the application process for obtaining a licence. This section extends the existing licensing provisions to allow for applications to be made by a partnership, a body corporate, a person seeking to occupy a position of authority in a body corporate and a bookmaker's manager. Provisions have also been inserted in relation to the periodic returns that are to be provided by a body corporate or a partnership that holds a bookmaker's licence to ensure that all appropriate persons have undergone probity assessments.

Proposed section 11A sets out the requirements for, and obligations and powers of a natural person that holds, or is seeking to obtain, a bookmaker's licence. This section extends the existing requirements for bookmakers to include provisions-

- requiring a natural person to demonstrate knowledge of the business of bookmaking and the obligations of a bookmaker under the BC Act; and
- stipulating that a natural person who holds a bookmaker's licence is not entitled to be a member of a partnership that holds a bookmaker's licence or a person who occupies a position of authority in a body corporate that holds a bookmaker's licence.

Proposed section 11B sets out the requirements for, and obligations and powers of a partnership that holds, or is seeking to obtain, a bookmaker's licence. This section extends the existing requirements for bookmakers to include provisions-

- permitting a partnership to comprise of natural persons, bodies corporate, or both;
- requiring that at least one person in the partnership's structure is able to demonstrate knowledge of the business of bookmaking and the obligations of a bookmaker under the BC Act;
- requiring that all persons involved in the partnership's structure satisfy the Betting Control Board that they are fit and proper persons.
- stipulating that members of the partnership are not entitled to hold another bookmaker's licence, be a member of a partnership that holds another bookmaker's licence or be a person who occupies a position of authority in a body corporate that holds another bookmaker's licence; and
- requiring that a partnership that holds a bookmaker's licence appoints a licensed manager to manage the conduct of betting under the licence.

Proposed section 11C sets out the requirements for, and obligations and powers of a body corporate that holds, or is seeking to obtain, a bookmaker's licence. This section extends the existing requirements for bookmakers to include provisions-

- requiring that at least one person who occupies a position of authority in the body corporate is able to demonstrate knowledge of the business of bookmaking and the obligations of a bookmaker under the BC Act;
- requiring that all persons who occupy a position of authority in the body corporate structure satisfy the Betting Control Board that they are fit and proper persons.
- stipulating that neither the body corporate or any person who holds a position of authority in the body corporate is entitled to hold another bookmaker's licence, be a member of a partnership that holds another bookmaker's licence or be a person who occupies a position of authority in a body corporate that holds another bookmaker's licence; and
- requiring that a body corporate that holds a bookmaker's licence appoints a licensed manager to manage the conduct of betting under the licence.

Proposed section 11D sets out the requirements for, and obligations and powers of natural persons who are seeking to obtain, or who hold a bookmaker's manager licence or a bookmaker's employee licence. This section extends the existing requirements for bookmakers' employees to include provisions-

- requiring that natural persons seeking to obtain a bookmaker's manager licence satisfy the Betting Control Board that they are fit and proper, and can demonstrate knowledge of the business of bookmaking and the obligations of a bookmaker under the BC Act; and
- stipulating that a licensed manager may only be appointed by one bookmaker (being a partnership or body corporate) at any one time.

Proposed section 11E sets out the requirements for the provision of security bonds by bookmakers. This section extends the existing requirement for bookmakers to provide security bonds to include requirements for partnerships and bodies corporate that hold a bookmaker's licence to provide security bonds. In addition, provisions are established to authorise the Betting Control Board to require further security bonds from individual directors of a body corporate that holds a bookmaker's licence.

Proposed section 11F details the requirement for the Betting Control Board to be notified of the appointment, or any change in the appointment, of a licensed manager.

Proposed section 11G re-establishes the existing offence provisions contained in the existing section 11.

Proposed sections 11H and 11I detail the liability for offences. These sections extend the existing offence liability provisions relating to bookmakers and their employees to include provisions stipulating that-

- a partnership or a body corporate that holds a bookmaker's licence is liable for an offence committed by its licensed manager or employee;
- a person who occupies a position of authority in a body corporate that holds a bookmaker's licence is liable for any offence committed by the body corporate against the BC Act unless that person had no knowledge of, or exercised such due diligence to prevent the commission of, the offence; and
- a licensed manager is liable for any offence committed by an employee under his control.

Clause 8 Amends section 12.

Subclause (1) includes a reference to a licensed manager in the provision that deals with the requirement for bookmakers and bookmaker's employees to gain a permit from the relevant racecourse controlling authority in order to operate at that racecourse.

Subclause (2) makes an amendment to section 12(2) that is consequential to the insertion of new sections 11A to 11D (clause 7).

Subclause (3) deletes existing section 12(3)(a) and inserts replacement provisions to provide that bookmakers may conduct betting at a racecourse-

- (i) during any day on which a race meeting is being conducted at the racecourse; and
- (ii) on days when there is no race meeting being conducted at the racecourse, at times approved by both the committee or other authority controlling the racecourse and the Board.

Subclause (4) inserts a new section 12(3a) to establish that a bookmaker is not permitted to conduct betting on a racecourse unless a steward or other person appointed by the committee or other authority controlling the racecourse is present at the racecourse to supervise that betting.

Subclause (5) makes amendment to section 12(4)(a) to -

- clarify that the current provisions which allow a bookmaker to appoint an agent to operate another betting stand on behalf of the bookmaker, or a substitute to act in the bookmaker's absence, apply only to a bookmaker who is a natural person; and
- to include a person that holds a bookmaker's manager licence as a person that may be appointed as an agent or substitute of a bookmaker who is a natural person.

Subclause (6) inserts a new section 12(4a) to establish provisions for the appointment of an acting licensed manager in the absence of the appointed manager; and for the appointment of an agent by a bookmaker that is a partnership or a body corporate, to operate a another betting stand on behalf of the bookmaker.

Subclause (7) makes an amendment to section 12(5) -

- in subsection (c) to establish consistency in the requirement that all applications or returns required under the BC Act are to be made in a form approved by the Betting Control Board;
- in subsection (d) that is consequential to the establishment of licensed manager provisions (clause 7); and

- to insert a new subsection (e) to require the committee or other controlling authority of a racecourse to appoint a steward or other person to supervise betting carried on at the racecourse.

Clause 9

Amends section 12A which provides for the appointment of temporary bookmaker's employees at short notice on occasions when bookmakers are unable to gain the services of a licensed employee.

Subclause (1) amends section 12A(1) to establish consistency in the requirement that all applications required under the BC Act are to be made in a form approved by the Betting Control Board.

Subclause (2) inserts a new section 12A(1)(1a) to extend the temporary bookmaker's employee licensing provisions to betting conducted at a racecourse on days other during which a race meeting is being conducted at the racecourse.

Subclause (3) amends section 12A(2) to-

- recognise that applications for a temporary bookmaker's employee licence may be determined by a person appointed by the Committee or other controlling authority controlling the racecourse to supervise betting, in addition to a steward [see new section 12(5)(e) proposed by clause 8(7)];
- include a reference to new subsection (1a)
- apply gender neutral wording;
- recognise that a bookmaker may conduct betting on a racecourse at a time other than during the conduct of a race meeting at that racecourse; and
- establish consistency in the requirement that all applications required under the BC Act are to be made in a form approved by the Betting Control Board.

Subclauses (4) and (5) amend sections 12A(3) and (4) to recognise that applications for a temporary bookmaker's employee licence may be determined by a person appointed by the Committee or other controlling authority controlling the racecourse to supervise betting, in addition to a steward (see new section 12(5)(e) proposed by clause 8(7)).

Subclause (6) amends section 12A(5)(a) to include a reference to subsection (1).

Subclause (7) inserts a new subsection (5a) establishing an offence for a Steward or other person who, having granted a temporary employee licence, fails to communicate the fact to the Board as required.

Clause 10

Amends section 14 in various places to apply gender neutral wording.

Clause 11

Amends section 15 in relation to the requirements to record bets, lodge betting turnover returns and pay betting levy, so as to cater for a licensed manager acting on behalf of a bookmaker (clause 7) and a

bookmaker conducting betting at a racecourse other than during a day on which a race meeting is being conducted at the racecourse [clause 8(3)].

The opportunity has also been taken to standardise the time within which a bookmaker is required to lodge a betting turnover return with the relevant race club to seven days in all instances, rather than the current requirement of three days for race meetings on which the TAB conducts betting and seven days for race meeting on which it does not conduct betting.

Clause 12 Makes amendments to section 16 that are consequential to the establishment of licensed manager provisions (clause 7).

Clause 13 Makes amendments to section 16A that are consequential to the establishment of licensed manager provisions (clause 7).

Clause 14 Makes an amendment to section 17 that is consequential to the establishment of licensed manager provisions (clause 7).

Clause 15 Makes amendments to sections 17B(5) and 17B(7) to include a reference to the chief executive officer of a race club in addition to the secretary of a race club.

Clause 16 Makes an amendment to section 18 that is consequential to the establishment of licensed manager provisions (clause 7).

Clause 17 Makes an amendment to section 18A that is consequential to the provisions inserted by clause 8(3) [new section 12(3)(a)] which provide for a bookmaker to conduct betting at a racecourse other than during a day on which a race meeting is being conducted at the racecourse.

Clause 18 Makes a minor wording adjustment to section 18B(5).

Clause 19 Makes amendments to section 20 -

- that are consequential to the establishment of licensed manager provisions (clause 7);
- that replace a reference to the secretary of the Western Australian Greyhound Racing Authority with a reference to the chief executive officer of that authority; and
- to apply gender neutral wording.

Clause 20 Makes an amendment to section 21(1) that is consequential to the establishment of licensed manager provisions (clause 7).

Clause 21 Makes an amendment to section 22(1)(b) that is consequential to the establishment of licensed manager provisions (clause 7).

Clause 22 Adds a new section 27(b)(iii) that is consequential to the amendment to section 12(3) [clause 8(3)] which allows bookmakers to conduct

betting at a racecourse at a time other than when a race meeting is being conducted at the racecourse.

- Clause 23 Makes a technical wording change to section 28A(1)
- Clause 24 Makes amendments to section 31 that are consequential to the establishment of licensed manager provisions (clause 7).
- Clause 25 Makes amendments to section 31A that are consequential to the establishment of licensed manager provisions (clause 7) and to apply gender neutral wording.
- Clause 26 Amends section 32A.
- Subclause (1) amends section 32A(1) to clarify that the Betting Control Board, in situations where it proposes to exercise its disciplinary powers, is required to provide the holder of a licence or authorisation issued under the BC Act an opportunity to show cause why the disciplinary powers should not be exercised. (This amendment establishes in legislation what is the current practice of the Betting Control Board)
- Subclause (2) - amends section 32A(2) to take account of the proposed licensing provisions governing licensed managers, partnerships and corporations.
- Subclause (3) - amends section 32A(6)(b) to include a reference to the amended security provisions incorporated in proposed section 11E (clause 7) take account of the new
- Clause 27 Makes amendments to section 33(1) that are consequential to the establishment of licensed manager provisions (clause 7).
- Clause 28 Amends the heading reference to the second schedule.
- Clause 29 Inserts a new schedule (Schedule 3) that establishes minimum administrative requirements of a body corporate that is applying for or holds a bookmaker's licence.
- Clause 30 Establishes that the amendments contained in part 3 of the Amendment Act are to the *Totalisator Agency Board Betting Act 1960* (the TABB Act).
- Clause 31 Amends section 13(1) of the TABB Act to establish the authority for the Board of the TAB to delegate its powers and functions to the manager, secretary or other employee of the TAB.

- Clause 32 Inserts a new section 56B that stipulates that no claim, other than
- (a) a claim made before 6 February 1999; or
 - (b) a claim made in accordance with this Act,
- may be made against the TAB or members of the Board of the TAB or its officers, employees or agents in relation to a bet that has been accepted otherwise than in accordance with written law.
- Clause 33 is a validation provision that validates any actions undertaken by the manager of the TAB purportedly under a delegation of a function by the Board of the TAB.