

TAB (DISPOSAL) BILL 2019

EXPLANATORY MEMORANDUM

Glossary of Abbreviations

RWA:	Racing Western Australia
RWWA:	Racing and Wagering Western Australia
RWWA Act:	<i>Racing and Wagering Western Australia Act 2003</i>

OVERVIEW

The Western Australian TAB business is conducted by Racing and Wagering Western Australia trading under the names 'TAB' and 'TAB Touch' pursuant to functions given to it by the RWWA Act.

The TAB (Disposal) Bill 2019 (the Bill) has been drafted to provide for the disposal of the whole or part of any business carried on by, or all or any of the assets or liabilities owned or managed by RWWA, to the extent that each is associated with the TAB, the establishment of a new wagering licence regime for a privately operated TAB, and related changes.

The key functions of the Bill are to:

- provide the necessary authority and framework to enable the disposal of the Western Australian TAB;
- provide for a racing infrastructure fund to be established out of partial disposal proceeds;
- establish a regime to provide for the grant of a wagering licence to conduct betting on races, events and simulated races (for a privately operated TAB);
- amend the existing wagering regulatory framework to incorporate the new wagering licence;
- ratify and authorise the implementation of the fifteenth supplementary agreement to amend the agreement ratified by the *Casino (Burswood Island) Agreement Act 1985* (as varied) to allow betting on simulated races to be offered under the wagering licence;
- repeal the wagering functions of RWWA and change its name to 'Racing Western Australia' (RWA);
- abolish the racing bets levy as administered by the Gaming and Wagering Commission and introduce a new race field publication and use approval regime to be administered by RWA;
- provide the required platform for long-term funding arrangements between the Wagering Licensee and RWA on behalf of the Western Australian racing industry; and
- provide for a post-sale review of the arrangements, including the structure and functions of RWA and the impact of simulated racing on problem gambling

The Bill is divided into 11 parts as outlined below:

Parts 1 to 5 – Disposal Sections

Parts 1 to 5 of the Bill provide the responsible Minister (the Minister) with the authority to order the disposal of any TAB asset or liability, as well as the framework for the means in which the disposal can be effected. The provisions in this section also provide the powers to relevant parties (such as RWWA and the State) necessary for any disposal. The Minister is given powers to issue a direction to RWWA in relation to a disposal, and the Bill provides that, in complying with the direction, neither RWWA nor any of its directors or officers is in contravention of the RWWA Act.

Part 3 of the Bill provides the Minister with the authority to issue transfer orders relating to any disposal order. This includes specifying which assets and liabilities are to be transferred, the timing of the transfer, and the proceedings in which a transfer is to occur. For the purposes of a disposal, legal protections are provided to the State, RWWA and others in respect of the disclosure of information.

This part of the Bill also stipulates that 35% of the net proceeds of a disposal (defined as gross proceeds minus transaction and implementation costs incurred by the State, as determined by the Treasurer) must be credited to a Racing Infrastructure Fund administered by RWA. The Bill provides that the Racing Infrastructure Fund may, with the approval of the Minister, be applied for providing and improving infrastructure for the State's racing industry.

These parts of the Bill are based on the *Perth Market (Disposal) Act 2015* and *Pilbara Port Assets (Disposal) Act 2016* with necessary modifications to reflect the particulars of the proposed sale of the TAB.

Part 6 – Betting Control Act 1954

Part 6 of the Bill makes amendments to the *Betting Control Act 1954*. The key amendments in this section of the Bill include the introduction of a new wagering licence regime. This part introduces the framework and process for the application and grant of the wagering licence and enforcement of the licensing scheme, and amends the existing wagering regulation regime to incorporate the new wagering licence.

Key features of the wagering licence regime are detailed in the table below:

Wagering licence regime key features

KEY FEATURE	DESCRIPTION
The Wagering Licence	Licence to conduct totalisator and fixed odds betting on races, events and simulated races. Only one licence to be in operation at any one time.
Grant of wagering licence	Minister may invite persons to apply for licence. List of factors that Minister must consider in determining applications is included.
Licence term	To be specified in licence with maximum 40 year term plus maximum two year extension.
Licence fee	The licence may include an upfront and/or ongoing fee.

Racing Industry Arrangement	<p>It is a condition of the wagering licence that the wagering licensee must have in place, and give effect to, arrangements with RWA, including for the provision of funding and other obligations relating to the racing industry. This requirement will provide the necessary structure for the racing industry to receive ongoing funding under a privately operated TAB.</p> <p>Any failure to have in place or give effect to the racing industry arrangements is a ground for possible disciplinary action.</p>
Simulated Race	<p>Permits the wagering licensee to offer betting on simulated races.</p> <p>Simulated races are limited to animated images of a thoroughbred race, harness race or greyhound race.</p> <p>Bets on simulated races may only be accepted when the bet is made at a betting agency.</p>
Unclaimed Moneys	<p>Unclaimed moneys relating to bets on sporting events to go to the sports wagering account, all other unclaimed moneys to RWA.</p>
Gaming and Wagering Commission Powers	<p>The Gaming and Wagering Commission has powers to:</p> <ul style="list-style-type: none"> • licence key employees; • approve associates; • approve a consumer protection policy; • disallow establishment or require closure of betting agencies; and • give directions to the wagering licensee in respect of systems of internal control and administrative and accounting procedures relating to the wagering business and consumer protection policies.
Disciplinary Action	<p>The Gaming and Wagering Commission has powers to:</p> <ul style="list-style-type: none"> • issue a letter of censure to the wagering licensee, which may include a direction to rectify a matter; • require the wagering licensee to pay a fine; or • recommend to the Minister that the Minister take action against the licensee. <p>The Minister is given powers to:</p> <ul style="list-style-type: none"> • amend, suspend or cancel the licence; or • refer the matter back to the Commission. <p>If the licence is suspended, cancelled or surrendered the Minister may appoint a temporary wagering licensee.</p>
Regulations	<p>Regulations may be made about various matters concerning the wagering licence regime.</p>

In some sections this part provides for consistent processes between the wagering licensee and oncourse bookmakers. For example, the Bill provides a single process for the approval of events on which betting may be conducted by bookmakers or the wagering licensee. It also establishes a single process by which the Commission may approve the rules of betting for both bookmakers and the wagering licensee.

In addition, the racing bets levy, as administered by the Gaming and Wagering Commission, is abolished and a new race field publication and use approval regime to be administered by RWA is introduced. This is possible once RWA is no longer a wagering operator and does not have a conflict of interest collecting wagering data from other wagering operators. This approach gives RWA more control over its race fields revenue.

Part 7 – Casino (Burswood Island) Agreement Act 1985

Part 7 of the Bill ratifies the 15th supplementary agreement to amend the agreement ratified by the *Casino (Burswood Island) Agreement Act 1985* (as varied) to enable the State to licence the wagering licensee to offer wagering on simulated races, subject to certain conditions.

Part 8 – Gaming and Wagering Commission Act 1987

Part 8 amends the *Gaming and Wagering Commission Act 1987* to remove its function to supervise the gambling operations of RWWA and ensure it has appropriate powers to regulate the wagering licensee. The Commission's administration of the Racing Bets Levy Account is also removed in Part 8.

Part 9 – Racing and Wagering Western Australia Act 2003

Part 9 of the Bill makes amendments to the RWWA Act, primarily to remove RWWA's wagering functions. As such, RWWA's name is changed to RWA. Part 9 also gives RWA the power to enter into a racing industry arrangement with the wagering licensee. RWA will also administer the race field publication and use approval regime under Part 6, as well as the Racing Infrastructure Fund credited from net sales proceeds of the TAB under Part 3 of the Bill.

The existing rules of wagering which are currently administered by RWWA, with the approval of the Commission, will be abolished. These will be replaced with the rules of betting in Part 6 of the Bill and apply to both the wagering licensee and bookmakers. The principles around how RWWA distributes funding to racing clubs remain unchanged.

Part 10 – Consequential amendments to other Acts

Part 10 of the Bill makes the necessary amendments to other legislation including replacing references to 'Racing and Wagering Western Australia' with 'Racing Western Australia', and replacing references to the *Racing and Wagering Western Australia Act 2003* with the *Betting Control Act 1954*, where applicable. The *Racing Bets Levy Act 2009* is repealed under this part.

Part 11 – Review of Act

The provisions in Part 11 of the Bill require the Minister to undertake and table in Parliament a review of the post-sale arrangements. The review must address the impact of the changes in this Bill on the Western Australian racing industry, the structure and functions of RWA, the administration of the Racing Infrastructure Fund and the impact of simulated racing on problem gambling. The review must be tabled in Parliament within one year following the third anniversary of the new arrangements.

CLAUSE NOTES

Outlined below is a brief description of each clause of the TAB (Disposal) Bill 2019.

PART 1 PRELIMINARY MATTERS

Clause 1: Short Title

When enacted, the Bill will be cited as the *TAB (Disposal) Act 2019*.

Clause 2: Commencement

Provides that Part 1 comes into operation on the day after the Act receives Royal Assent.

The sections listed below come into operation on a day fixed by proclamation (and different days may be fixed for different provisions):

- 40(2), (3), (5), (6), (8), (10) to (13), (15) and (16);
- 41;
- 43 to 45;
- 49 to 51;
- 53 to 76;
- 77(2);
- 78 and 79;
- 86 to 88;
- 89(1);
- 90 to 92;
- 94 to 104;
- Part 9 Divisions 3 and 4; and
- Part 10

The remainder of the Bill comes into operation on the day after Royal Assent.

Context: It is envisaged that the commencement dates be staged as outlined below.

- **Date one** – *this is the day after the day on which the Act receives Royal Assent. The sale is permitted to be progressed and a wagering licence granted (but commenced at a later date). RWWA's wagering functions, and the regulation of these functions, are retained.*
- **Date two** – *this is a day to be fixed by proclamation intended to coincide with the day the wagering licence commences. RWWA's wagering functions cease and RWWA becomes RWA. The Gaming and Wagering Commission's oversight of RWWA's wagering functions also ceases.*
- **Date three** – *this is a date to be fixed by proclamation that will be on or after date two. The racing bets levy is repealed, and the new race field publication and use approval scheme administered by RWWA commences.*

Clause 3: **Terms used**

Defines a range of terms used in the Bill including ***acquirer, asset, company, corporate vehicle, dispose of, disposer, liability, purposes, RWWA, RWWA Act, right, section 8 disposal, TAB, TAB asset, transferee, transferor, transfer order*** and ***transfer time***.

Clause 4: **Purposes of section 8 disposal**

This clause explains further the meaning of the term ‘purpose of a section 8 disposal’, which is used throughout the Bill. See, for example, clause 14(1), clause 16(2) and clause 30.

Sub-clauses (a) and (b) provide that the purposes of a section 8 disposal include effecting or facilitating the disposal and any purpose ancillary or incidental to, or consequential on, the section 8 disposal. The concept is intended to capture all acts done in accordance with a disposal under the Bill, without unduly limiting potential activities.

Clause 5: **Severance of things on land**

The purpose of this clause is to facilitate the disposal of things situated on land, such as buildings and other fixtures. The provision can be of assistance in a disposal in that, where at law a fixture to be disposed of would otherwise be considered to be part of the land on which it sits, this position can be altered by an order made by the Minister. The order then allows the fixture to be dealt with separately from the land.

Clause 5(2) allows the Minister to direct, by order in writing, that a specified fixture is not part of the land, regardless of whether it is in the nature of a fixture. Clauses 5(3) and 5(4) set out the technical legal effect of that order.

Clause 5(5) allows the Minister to vary or revoke an order.

Clause 6: **Act binds Crown**

Provides that when the Bill is passed, the Act binds the State and, so far as is possible, the Crown in all its other capacities.

PART 2 ENABLING DISPOSAL

Clause 7: **Disposal of TAB assets authorised**

Provides authorisation for RWWA, the State or a corporate vehicle to dispose of a TAB asset, if that disposal is authorised by an order made under section 8.

Clause 8: **Minister may order disposal of TAB assets**

This clause provides authority to the Minister, with the Treasurer's approval, to make an order directing the disposal of all or specified TAB assets. An order must be published in the *Gazette*.

An order is not required to contain specific details about how the disposal will be carried out or specific details of the assets it deals with. An order takes effect the day after the day on which the order of disposal is published in the *Gazette*, or a later day if specified in the order.

Any TAB asset not disposed of under an order remains the property of RWWA. Clause 8(5)(b) gives powers to RWWA with respect to such TAB assets.

Clause 9: **Effecting disposal**

This clause provides that, except as provided in section 10, there are no limitations on the nature of any transaction or arrangement that can be used to effect a section 8 disposal. One or more corporate vehicles or trusts (or any other legal entity) can be used to effect a disposal.

If a company is to be used for a disposal by the State then the Under Treasurer is to arrange for the creation of the company and any of the Minister, the Treasurer and RWWA can receive, hold or dispose of securities in that company

In addition, this clause gives the Minister power to enter into any agreement on behalf of the State for the purposes of a section 8 disposal.

Clause 10: **Disposal of freehold land**

Limits the authorisation for disposal of freehold land under the Act to land owned by RWWA, a corporate vehicle or the State.

Clause 11: **Functions and powers of Minister**

Provides that the Minister has all functions and powers that are necessary or convenient for the purposes of the Act, including the power to acquire land.

Clause 12: **Functions and powers of RWWA**

Provides that RWWA has all functions and powers that are necessary or convenient for the purposes of a disposal of a TAB asset under the Act.

Clause 13: **Functions and powers of corporate vehicles**

Provides that a corporate vehicle has all functions and powers that are necessary or convenient for the purposes of disposal of a TAB asset under the Act, including the power to acquire land.

If the corporate vehicle is a company established by arrangement of the Under Treasurer in accordance with section 9(4) of the Act and its shares are held on behalf of the State by the Minister, the Treasurer or RWWA (meaning that the company is effectively State-held), clause 13(b) gives to that corporate vehicle the power to create subsidiaries of the company.

Clause 14: **Directions by Minister**

For the purposes of a section 8 disposal, the Minister has power to give a written direction to RWWA or a corporate vehicle, and RWWA or the corporate vehicle must comply with this direction.

Clause 14 provides that RWWA or a corporate vehicle, and their respective directors and officers:

- (a) are not liable for; and
- (b) do not contravene the RWWA Act by reason of, doing, or not doing, anything in good faith in compliance with such a direction.

Clause 14(4) declares the section to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* (Commonwealth).

Clause 15: **Regulations about corporate vehicles and trusts**

Provides that regulations may be made in respect of the constitution, trust deed or other document establishing a corporate vehicle or trust which is to be used for a disposal.

The regulations may declare that particular matters with which they deal are excluded matters for the purposes of section 5F of the *Corporations Act 2001* (Commonwealth). A declaration made would have the effect of disapplying the Corporations legislation, in the way declared, to the particular matters it identified.

PART 3 **IMPLEMENTING DISPOSAL**

DIVISION 1 **TRANSFER ORDERS**

Clause 16: Minister may make transfer orders

This clause provides the Minister with authority to make transfer orders for the purposes of a section 8 disposal.

Under clause 16(1), the Minister may specify, by order published in the *Gazette* (transfer order), details about a transfer for the purposes of a section 8 disposal, including:

- the time the transfer is to occur (the transfer time);
- which assets or liabilities are to be transferred from RWWA, a corporate vehicle or the State to the transferee;
- the proceedings in which the transferee is to be substituted for RWWA, a corporate vehicle or the State; and
- any agreement or instrument relating to anything transferred in which the transferee is to be substituted for RWWA, a corporate vehicle or the State.

The remainder of the clause sets out procedures and administrative matters relevant to a transfer order. The following provisions in the clause are noteworthy.

Clause 16(4) provides that, if the transfer order refers to persons or things by reference to a schedule, the schedule does not need to be published in the *Gazette* but must be made available for public inspection for a period of 6 months after the date of publication of the transfer order in the *Gazette*.

Clause 16(9) provides that the Minister may, by order published in the *Gazette*, amend a transfer order or associated schedule, but only before the transfer time and with the consent of the transferee.

Clause 17: Consequences of transfer orders

This clause provides in detail for the consequences of a transfer order. In summary, the assets, liabilities, proceedings, agreements and instruments specified in the transfer order and the associated rights, benefits and remedies of the kind referred to in sub-clauses 17(2)(e) and 17(2)(f) are in effect transferred from the transferor to the transferee at the transfer time.

Clause 18: Completion of transactions for this division

To the extent that the transfer order cannot have the required effect, the Minister and the transferor are to take all practicable steps to achieve that effect as soon as possible after the transfer time.

Clause 19: **Effect of arrangements internal to transferors**

This clause allows the transferee to derive the benefits the transferor was receiving from, and be bound by the requirements of, internal commercial arrangements of the transferor, provided that these arrangements are specified in the transfer order.

Clause 19(1) states that an instrument providing for arrangements between different parts of the transferor's business may be specified in a transfer order as if it created contractual rights and liabilities.

Clause 19(2) cites that the provisions of an instrument providing for arrangements between different parts of the transferor's business be recognised as contractual provisions between different legal entities.

Clause 19(3) allows for the transfer of the contractual right or liability arising because of clause 19(2).

Clause 20: **Delivery and access to records**

This clause gives the Minister authority to direct the transferor under a transfer order to deliver to or share with the transferee specified relevant records in the possession or control of the transferor. The transferor must follow the direction of the Minister.

Clause 20(5) declares the section to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* (Commonwealth).

Clause 21: **Registration of documents**

This clause requires officials responsible for the registration of documents to take notice of a disposal and amend the relevant registers accordingly.

Clause 21(2) specifies that the Minister must provide a copy of a transfer order, any schedule to it and associated instruments (which include orders making corrections or amendments to the transfer order) to the Registrar of Titles, the Registrar of Deeds and Transfers, the Minister for Lands, and any other relevant official.

These relevant officials must record and register the relevant documents in the appropriate manner to show the effect of the transfer order and the provisions of Part 3, Division 2 of the Act.

Clause 22: **Correction of errors in transfer orders**

This clause provides the Minister with the authority to make corrections to errors in transfer orders by way of publication in the *Gazette*.

Clause 22(3) applies to the extent a correction order takes effect before its publication in the *Gazette*, in order to protect the rights of, and ensure certain liabilities are not imposed on, any person (other than the State, the transferor or transferee, or a Minister, officer or agency of the State) before the order is published.

DIVISION 2 DISCLOSURE OF INFORMATION

Clause 23: Authorised disclosure of information

This clause provides that disclosure of information by RWWA, the State or a corporate vehicle (or by a person acting with authority of any of them) is not to be regarded as a breach of contract or any other civil wrong, a breach of duty under specified Acts, or a breach of or offence under a provision of law that prohibits or restricts the disclosure of information, if it is made for the purposes of a section 8 disposal.

Clause 23(3) recognises that information may be disclosed prior to the Bill coming into operation. This clause clarifies that the disclosure of information for the purposes of a section 8 disposal includes a disclosure made for the purposes of a potential section 8 disposal, even if the disclosure is made before the Bill comes into operation.

Clause 24: Auditor General may disclose information

Clause 24 provides that the Auditor General is authorised to disclose information for the purposes of a section 8 disposal.

Clause 25: Offence of disclosing information

Clause 25 sets out circumstances where a person in receipt of information connected with a section 8 disposal commits an offence if that person discloses that information to others.

DIVISION 3 OTHER MATTERS

Clause 26: Application of proceeds of disposal

Clause 26 provides that gross proceeds of a section 8 disposal are to be credited to a Treasurer's special purpose account and that an amount equal to 35% of net proceeds (which are gross proceeds less implementation and transaction costs incurred by the State, as determined by the Treasurer) must be credited to the Racing Infrastructure Fund established under section 27.

All other moneys standing to the credit of the Treasurer's special purpose account may be applied as the Treasurer directs.

Clause 27: **Racing Infrastructure Fund**

Clause 27 provides that a Racing Infrastructure Fund must be administered and maintained by RWWA, and that any funds in it may be used for providing and improving infrastructure for the State's racing industry, subject to the Minister's approval.

Clause 28: **Provision by State of indemnities and guarantees**

Clause 28 empowers the Treasurer, on behalf of the State, to give an indemnity or guarantee in respect of a matter related to a section 8 disposal, or the action by which anything is disposed of in connection with a section 8 disposal.

In addition, this clause empowers the Treasurer, on behalf of the State, to give an indemnity against any liability determined by the Treasurer to present or past members, directors and officers of RWWA or a corporate vehicle.

The Treasurer must pay amounts due under any indemnities or guarantees granted on behalf of the State under the clause, and any payments for indemnities or guarantees made by the Treasurer are charged to the Consolidated Account.

Clause 29: **Takeover by State of certain obligations**

This clause gives the Treasurer the authority to, on behalf of the State, agree to take over any obligation of RWWA or a corporate vehicle in connection with a section 8 disposal.

The Treasurer may authorise the payment of money to discharge obligations that are taken over by the State, and that these payments are charged to the Consolidated Account.

PART 4 **PROVISIONS RELATING TO CORPORATE VEHICLES**

Clause 30: **Application of this Part**

Provides that the scope of this part is limited to scenarios where a corporate vehicle is used to facilitate the disposal of TAB assets, where the assets have been disposed of to that corporate vehicle (the **acquirer**) from RWWA or another corporate vehicle (the **disposer**).

Clause 31: **Acquirer's powers and duties**

To the extent prescribed by regulations, provides the acquirer with the same powers, duties, rights and obligations in respect of the TAB assets it acquires as were held by the disposer (e.g. RWWA). This provides a mechanism which can be used to ensure that the

corporate vehicle, being a non-private entity, has appropriate powers in any interim period prior to a disposal to a private entity.

Clause 32: **Application of written laws to acquirer**

Clause 32(1) defines the phrase ‘applicable written law’.

Clauses 32(2) and 32(3) authorise the making of regulations which apply ‘applicable written laws’ to an acquirer, with any changes which are prescribed by the regulations or which are otherwise necessary or convenient for the purposes of Part 4.

PART 5 **MISCELLANEOUS MATTERS**

Clause 33: **Exemption from State tax**

Clause 33 exempts from State tax anything occurring by operation of, or done under or to give effect to (or otherwise associated with in the way described in clause 33(2)(b)), Parts 2 (enabling disposal) and 3 (implementing disposal).

Clause 34: **Effect of this Act on existing rights and obligations**

Prevents the operation of the Act, including anything done, or omitted to be done, under or for the purposes of the Act from being regarded as:

- a breach of confidence or civil wrong;
- a breach of contract or instrument;
- requiring an act to be done under a contract or instrument;
- giving rise to a right or remedy of a party to a contract or instrument or causing or permitting termination or exercise of rights under a contract or instrument;
- an event of default under a contract or instrument, or as voiding or otherwise rendering a contract or instrument unenforceable; or
- subject to clauses 29(3) and (4) releasing or allowing release of a surety or other obligee from the whole or part of an obligation.

Clause 35: **No compensation payable**

Clause 35(1) absolves the State from the payment of compensation as a result of the enactment or operation of the provisions under this Bill, statements and conduct relating to the enactment or in connection with the disposal of a TAB asset under the Bill.

Clause 35(2) states that the exemption does not apply to amounts payable as a result of agreements entered into in order to carry out a disposal.

Clause 36: **Regulations for the purposes of, or consequential on, section 8 disposals**

Provides that regulations may be made under section 37 to provide for anything necessary or convenient for a section 8 disposal or to deal with as a consequence of anything contained in or done under Part 2, 3 or 4.

Clause 37: **Regulations**

The Governor may make regulations prescribing matters required or permitted to be prescribed by the Bill, or necessary and convenient to be prescribed for giving effect to the Bill.

PART 6 ***BETTING CONTROL ACT 1954***

Glossary of Abbreviations

BC Act:	<i>Betting Control Act 1954</i>
Commission:	Gaming and Wagering Commission
GWC Act:	<i>Gaming and Wagering Commission Act 1987</i>
RWWA Act:	<i>Racing and Wagering Western Australia Act 2003</i>
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RWA:	Racing Western Australia

Clause 38: **Act amended**

This clause provides that the amendments in this part are to the BC Act.

Clause 39: **Long title replaced**

Amends the long title of the BC Act.

Clause 40: **Section 4 amended**

This clause amends a number of terms used in the BC Act. The subclauses used in this clause reflect the different commencement dates of the amendments as referred to in clause 2.

40(1) deletes the definitions of ***employee, fixed odds bet, and race course***.

40(2) deletes the definitions of ***bookmaker, contingency, event, prohibited event or contingency, RWWA, RWWA Act, ticket, totalisator, totalisator ticket*** and ***totalisator agency***.

40(3) deletes the definitions of ***approval, authorisation*** and ***domestic betting operator***.

40(4) inserts the definitions for **arrangement, associate, consumer protection policy, employee, fixed odds bet, good repute, key employee, position of authority, prescribed, public interest, racecourse, racing industry arrangement, wagering business, wagering licence, wagering licence agreement, and wagering licensee.**

A new definition of **simulated race** is also included which limits simulated races to animated images of a thoroughbred race, harness race or greyhound race.

betting agency (established by the wagering licensee) is also defined in 40(4) and replaces the previous concept of **totalisator agency** (established by RWWA).

40(5) inserts the definitions for **bookmaker, prohibited, rules of betting, RWA, RWA Act, sporting event, ticket, totalisator ticket** and **writing**.

An updated definition of **event** is also inserted which specifically excludes races and simulated races. This update is required to allow for clarity in the Act with respect to which provisions apply to betting on events, races and simulated races.

A new definition of **totalisator** is also inserted as the definition in the RWWA Act is deleted under Part 9. This definition encompasses both a scheme of pari-mutuel betting and any machine through or by which the scheme is operated.

40(6) inserts the definitions for **publication and use approval** and **wagering service provider** (which are used in the race field related sections).

40(7) to 40(14) amends the definitions for **betting exchange, betting material, consideration, designated sporting event, offshore betting operator, steward, to bet, and WA race field**.

40(15) to 40(17) make consequential amendments to sections 4(1a), 4(2) and 4(3) reflecting the amended definitions above.

Clause 41: Sections 4AB and 4AC inserted

This clause inserts 2 new provisions in the BC Act:

- section 4AB defines the term bookmaker to exclude the wagering licensee, or officer, employee or agent a wagering licensee (the existing definition of bookmaker is deleted from section 4 by clause 40(2)); and

- section 4AC provides when betting on races, events and contingencies is prohibited (the existing defined term 'prohibited event or contingency' is deleted from section 4 by clause 40(2)).

Clause 42: Section 4A amended

This clause amends section 4A(1) of the BC Act to ensure that this section remains relevant to the conduct of betting by the holder of a bookmaker's licence.

Clause 43: Section 4B replaced

This clause replaces section 4B of the BC Act with 2 new provisions:

- The new section 4B provides that the Commission may approve the events on which betting may be conducted by the wagering licensee and bookmakers and requires that betting on events must be conducted in accordance with the rules of betting, or the rules or arrangements referred in subsection 10S(2) of the BC Act (for the wagering licensee); and
- Section 4C enables the Commission to approve rules for the conduct of betting on races, events and simulated races and requires that the rules specify contingencies relating to races, events or simulated races which may be bet on. These rules will replace the Rules of Betting under the *Betting Control Regulations 1978* and the rules of wagering made under the RWWA Act.

Clause 44: Section 5 amended

This clause amends section 5(1) and (2) of the BC Act by:

- Replacing subclause (1) to describe when a person may lawfully bet on a race, event or simulated race in a way that is not limited to betting on a racecourse; and
- Amending subclause (2) to specify that it applies only in the case of bets made with a bookmaker.

Clause 45: Section 5A replaced

This clause replaces section 5A of the BC Act with 2 new provisions:

- The new section 5A applies in relation to the communication of information to a betting agency and broadcasting of information as to the amount of dividends payable in relation to a totalisator, in relation to bets made with the wagering licensee (the deleted section 5A made similar provision in relation to bets made through or with RWWA); and
- Section 5B provides that bookmaking is only authorised if it is conducted at a race course and in accordance with a permit granted by the authority controlling the race course (this new section is necessary to replace the deleted subsection 4B(4)).

Clause 46: Section 5C inserted

Section 5C provides that this Act only authorises betting on simulated races by the wagering licensee, and in accordance with the wagering license.

Context: It is envisaged that the wagering licence will contain further details as to how betting on simulated races may be conducted. For example, in respect of the hours of operation, minimum length of each race and minimum interval between races.

Clause 47: Part 1A inserted

This clause inserts new Part 1A in the BC Act to provide for the grant and administration of a wagering licence. Part 1A includes 5 divisions:

Division 1 - General

This division provides for general terms relating to the wagering licence and wagering licensee:

- **Section 6 – Wagering licence and wagering licensee**

A wagering licence may be granted to a wagering licensee to conduct totalisator betting and fixed odds betting on races, events and simulated races.

Only one wagering licence may be in operation at any time. A new licence may be granted while another licence is in effect to allow preparatory action as long as the new licence takes effect after the ending licence has ceased to have effect.

- **Section 7 – Associates**

Defines an 'associate' of a wagering licensee or wagering licensee applicant for the purposes of Part 1A (section 10X provides an approval process for associates).

- **Section 8 – Key employees**

Subsection (1) defines a 'key employee' of a wagering licensee for the purposes of Part 1A and subsection (2) provides for the making of regulations for the licensing of key employees by the Commission (including conditions and fees) and for disciplinary action that the Commission may take in relation to a key employee.

- **Section 9 – Determinations of good repute and public interest**

Requires regard to be had to certain matters in determining whether someone is of 'good repute' and whether something relating to the wagering licence is in the 'public interest'.

The terms *good repute* and *public interest* are used multiple times in Part 1A.

Division 2 – Applications for and grant of wagering licences

This division provides for applications for, and grant of, a wagering licence.

- **Section 10 – Application for wagering licence**

The Minister may invite applications for the grant of a wagering licence.

- **Section 10A – Grant of wagering licence**

The Minister may grant a wagering licence on an application if the Minister determines that the grant is in the public interest, in particular considering a number of specified matters including:

- a) whether the applicant and each associate is of good repute;
- b) the financial capacity of the applicant to conduct a wagering business and the operational capability of the applicant to conduct the activities authorised by the wagering licence;
- c) whether the applicant has entered into racing industry arrangement with RWA;
- d) the consumer protection policy proposed by the applicant; and
- e) any other matters the Minister considers relevant.

The Minister may request the advice of the Commission in determining the application.

- **Section 10B – Fee for wagering licence**

A wagering licensee must pay a fee for the wagering licence in accordance with the terms of the licence. The fee may be specified as one or more amounts payable at times specified in the licence and may include penalties for late payment.

- **Section 10C – Duration of wagering licence**

Provides that a wagering licence:

- takes effect at the time it is granted or a later time specified in the licence; and

- is valid for up to 40 years, or a lesser period stated in the licence.

The wagering licence may be extended a number of times for a cumulative maximum period not exceeding two years from the day in which the licence would otherwise expire.

- **Section 10D – Wagering licence may authorise preparatory action**

If a wagering licence takes effect at a time later than the time of grant of the licence, the wagering licence may authorise the licensee to take preparatory action for up to 18 months prior to the licence taking effect.

Preparatory action means anything necessary or convenient to be done for the purposes of conducting any activities authorised by the licence but does not include the acceptance of a bet or payment of a dividend.

- **Section 10E – Transfer of wagering licence**

A wagering licensee that is a body corporate may, with the approval of the Minister, transfer the wagering licence to a related body corporate as defined in the *Corporations Act 2001* (Commonwealth).

The Minister may approve the transfer if the Minister, after consulting with the Commission, determines that the transfer is in the public interest. There is no ability for the wagering licensee to transfer the wagering licence to another party that is not a related body corporate.

Context: This section is intended to provide for corporate restructures affecting the wagering licensee only.

- **Section 10F – No proprietary right in wagering licence**

A wagering licence does not confer a right of property and is incapable of being assigned or mortgaged, charged or otherwise encumbered.

A wagering licence is declared not to be personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth).

Division 3 – Conditions of wagering licence

This division outlines statutory conditions and requirements of a wagering licence.

- **Section 10G – Financial assurance**

This section provides that it is a condition of a wagering licence that the licensee must provide financial assurance of a kind, and within the time, specified in the licence.

Context: For example, financial assurance may include a performance bond.

- **Section 10H – Racing industry arrangement**

This section provides that it is a condition of the wagering licence that it must have in place, and give effect to, a racing industry arrangement with RWA making provision for:

- the wagering licensee to provide funding to RWA;
- the wagering licensee to perform other obligations in relation to the racing industry in the State; and
- any other related matters.

Context: As the wagering licence is conditional on the wagering licensee having in place, and giving effect to, a racing industry arrangement with RWA, a failure of the wagering licensee to do so will be a contravention of a condition of the licence and therefore a ground for potential disciplinary action under section 10K.

A new function is inserted in subsection 35(1)(bb) of the RWWA Act for RWWA/RWA to enter into a racing industry arrangement.

RWA is required to allocate funding in accordance with section 106 of the RWA Act (as amended by this Bill), including to racing clubs.

- **Section 10I – Consumer protection policy**

It is a condition of the wagering licence that the wagering licensee must have in place, and give effect to, a consumer protection policy approved by the Commission.

Context: A failure of the wagering licensee to do so will be a contravention of a condition of the licence and therefore a ground for potential disciplinary action under section 10K.

- **Section 10J – General provisions relating to bets with wagering licensee**

This section provides that bets must not be accepted by the wagering licensee unless a bet is made at a betting agency or

directly to the wagering licensee by telephone or electronic communication. Bets on simulated races may only be accepted if made at a betting agency. The section also provides that the wagering licensee cannot accept a bet involving the provision of credit by the wagering licensee.

Division 4 – Disciplinary and other actions concerning wagering licences

- **Section 10K – Commission may take or recommend disciplinary action**

This section provides:

- the process which the Commission may undertake if it considers disciplinary action should be taken on grounds including a contravention of the BC Act or *Gaming and Wagering Commission Act 1987* (the GWC Act) or associated regulations, rules of betting, conditions of the wagering licence, a direction, or rules or arrangements made under subsection 10S(2);
- the disciplinary action the Commission may take:
 - o letter of censure to the licensee which may include a direction to the wagering licensee to rectify any matter giving rise to the letter of censure; and/or
 - o monetary penalty of up to \$1 million; or
 - o recommend to the Minister to take disciplinary action under section 10L.

- **Section 10L – Minister’s power to amend, suspend or cancel wagering licence**

If the Commission makes a report to the Minister under section 10K recommending that the Minister take disciplinary action against the wagering licensee, the Minister may, taking into account whether the action is in the public interest:

- amend, suspend or cancel the license; or
- where the Minister does not consider the disciplinary actions above are warranted, then remit the matter to the Commission with a request that it consider whether disciplinary action should be taken to give a letter of censure and/or require a monetary penalty.

- **Section 10M – Suspension of wagering licence**

Provides that the Minister may suspend (or partially suspend) a licence under section 10L.

- **Section 10N – Surrender of wagering licence**

Provides that a wagering licensee may surrender a wagering

licence, subject to the consent of the Minister.

- **Section 10O – Appointment of temporary licensee if wagering licence suspended, cancelled, surrendered**

Provides for the appointment of a temporary licensee for a period of up to two years if a wagering licence is suspended, cancelled or surrendered.

Provides that the Act, other than those sections relating to the:

- application for a wagering licence;
- granting of a wagering licence;
- duration of a wagering licence; and
- Ministerial disciplinary action,

will apply to the temporary licensee.

Context: As section 10H will apply to a temporary licensee, any temporary licensee must have in place and give effect to a racing industry arrangement with RWA.

- **Section 10P – Directions necessary for transitioning to new wagering licence**

Provides that the Minister may issue to a wagering licensee directions necessary to enable the Minister to grant a wagering licence to another person or appoint a temporary licensee and provide for the transition of activities conducted under the licence.

The directions may be given anytime within two years before or after the cancellation, surrender or expiry of the former wagering licence.

Division 5 - Miscellaneous

- **Section 10Q – Wagering licence agreements**

Provides that the Minister may enter into a wagering licence agreement with an applicant for a wagering licence, or the wagering licensee, in respect of matters related to the licence. The wagering licence may provide that a contravention of a term of a wagering licence agreement is taken to be a contravention of a condition of the licence.

- **Section 10R – Minister may amend wagering licence on request**

Provides that a wagering licensee may request an amendment to the wagering licence. The Minister may approve or refuse such a request after consulting the Commission.

- **Section 10S – Combined totalisator and fixed odds schemes**

Provides that a wagering licensee may operate and participate in a combined totalisator pool scheme or combined fixed odds scheme with other parties, subject to the approval of the Commission.

Unless directed by the Commission otherwise, and despite provisions of the regulations or rules of betting, when participating in such a scheme the wagering licensee may adopt and operate under any rules relating to the operation or administration of the scheme. With the approval of the Commission, the wagering licensee may also make other arrangements for the administration of the scheme.

Context: This provision is based on the deleted sections 59 and 61 of the RWWA Act applicable to RWWA's participation in such schemes.

- **Section 10T – Engaging contractors and appointing agents to assist wagering licensee**

Provides that a wagering licence may authorise the wagering licensee to engage a person on contract, or to appoint an agent, to assist in the conduct of the wagering business under a licence and that this does not affect any function or obligation of the wagering licensee.

- **Sections 10U and 10V – Betting agencies and Directions relating to betting agencies**

Section 10U provides that a wagering licensee may establish betting agencies, including in licenced premises in accordance with relevant approvals. The wagering licensee must not establish a betting agency on a racecourse without the prior approval of the relevant controlling authority of the racecourse.

The wagering licensee must give written notice to the Commission before establishing an agency. This does not apply to agencies that were in operation (by the TAB under RWWA ownership) immediately before the commencement of the first licence.

If the Commission determines that the conduct of betting at an existing or proposed betting agency is, or will be, detrimental to the public interest, it may direct the wagering licensee to close or not establish the betting agency.

Context: These provisions are based on the deleted sections 51 and 52 of the RWWA Act applicable in relation to RWWA's

totalisator agencies.

- **Section 10W – Wagering licensee to give notice to Commission about certain matters**

Provides that the wagering licensee must give notice to the Commission regarding certain convictions and disciplinary action taken against the wagering licensee, or associate, or key employee, and any other matters prescribed.

- **Section 10X – Approval of associates of wagering licensee**

Provides that approval by the Commission is required for a person to be an associate of the wagering licensee. Approval is generally required before a person becomes an associate, with the exception that subsection (3) provides for situations where the wagering licensee does not contravene the requirement to ensure an associate has approval if a wagering licensee was unaware, and could not reasonably have known, that a person would become an associate, and an application for approval is made as soon as practicable.

The section provides for the application and in determining an application the Commission must consider whether the person is of good financial standing and good repute.

- **Section 10Y – Commission may give directions to wagering licensee in relation to wagering business**

Provides that the Commission may give directions to the wagering licensee with respect to a consumer protection policy or the systems of internal control and administrative and accounting procedures for its wagering business.

- **Section 10Z – Disclosure of certain information authorised**

This provision enables the Commission to communicate certain information in certain circumstances, including information concerning the wagering licensee and others (for example, associates, key employees and applicants for a wagering licence) to other betting regulators, without contravening subsection 20(3) of the GWC Act.

This provision is consistent with section 13 of the *Casino Control Act 1984*.

- **Sections 10ZA – Amount deducted as commission by wagering licensee**

Provides that a wagering licensee may deduct an amount by way of commission from a totalisator bet. In relation to a bet with a totalisator, the amount must not exceed the amount prescribed or must be an amount determined in accordance with the rules or arrangements referred to in subsection 10S(2).

- **Sections 10ZB – Unclaimed moneys**

This section requires the wagering licensee to deal with unclaimed moneys as follows:

- relating to bets made on sporting events, are to be paid into the Sports Wagering Account established under section 110A of the GWC Act; and
- relating to all other bets, are to be paid to RWA.

- **Sections 10ZC – Authorisation for *Competition and Consumer Act 2010* and Competition Code**

This section provides an exemption from the operation of Part IV of the *Competition and Consumer Act 2010* (Commonwealth) (CCA) for a number of things related to a wagering licence and racing industry arrangement.

Context: Section 51(1) of the CCA provides that anything specified in, and specifically authorised by, an Act of the Commonwealth or a State or Territory is to be disregarded in deciding whether a person has contravened Part IV of the CCA.

A similar provision is included in the wagering licence legislation of other States.

- **Sections 10ZD – Confidential police information**

Provides that if the Minister relies on confidential police information as defined in section 20A of the GWC Act in deciding to refuse to grant or extend a wagering licence or in deciding to amend, suspend or cancel a wagering licence, the Minister is not required to give any reasons for the decision other than that the decision is made in the public interest (similar provision exists in the GWC Act in relation to the Commission's decisions in relation to bookmakers licenses).

Clause 48: Part 2 heading amended

This clause amends the heading of Part 2 of the BC Act by replacing 'Licences' with 'Other licences'.

Clause 49: Section 11G amended

This clause amends subsection 11G(4) to make it an offence to carry on the business of bookmaking, or any aspect of the business, otherwise than in accordance with the rules of betting.

Clause 50: Section 12 amended

Section 12 of the BC Act provides in relation to bookmaking on racecourses. To reflect the replacement of the rules of wagering under the RWWA Act with the rules of betting under section 4C of the BC Act and the removal of wagering related provisions from the RWWA Act, this clause:

- amends subsections 12(3a) and (3b) to require that stewards appointed under the RWA Act are present at the racecourse to monitor (rather than supervise) the conduct of betting; and
- replaces subsection 12(7) to remove the requirement for RWA to report to the Commission the result of any hearing or appeal conducted under the RWA Act relating to breaches of the BC Act or the rules of wagering by a bookmaker, licensed manager or licensed employee (the requirement to report the result of any hearing or appeal conducted under the RWA Act relating to improper conduct remains).

Clause 51: Part 3 heading amended

This clause replaces the word 'Levies' with 'Bookmaking' in the heading of Part 3 of the BC Act.

Clause 52: Section 14 inserted

This clause inserts new section 14 in the BC Act to provide for the wagering licensee to include bets transmitted from an on-course totalisator operated by a race club on a race in a totalisator pool, if the wagering licensee is conducting totalisator betting on that race.

This provision is based on the existing section 58 of the RWWA Act (to be deleted) in relation to the transmission of bets to RWWA.

Clause 53: Section 14A deleted

This clause deletes section 14A relating to the racing bets levy scheme as the scheme is abolished and replaced with a race field publication and use regime administered by RWA (see clause 144).

Clause 54: Section 17 amended

Deletes the term 'sporting'.

Clause 55: Section 17B amended

This clause:

- Inserts new subsection 17B(1A) to provide that a totalisator operated by a race club is not operated in accordance with the authorisation conferred by subsection (1) unless it is operated in accordance with the BC Act and Regulations and the rules of betting approved under section 4C of the BC Act.
- Amends subsection 17B(9) to replace reference to rules of wagering defined in the RWWA Act with reference to the rules of betting approved under section 4C BC Act.

Clause 56: Sections 17E and 17EA deleted

This clause deletes section 17E (Percentage of off-course bets to belong to RWWA) and section 17EA (Management of fixed odds prescribed margins) as RWWA will no longer conduct wagering operations.

Clause 57: Section 20 amended

This clause amends subsections 20(2) and 20(3), relating to the powers of Commission representatives, police officers and authorised officers to carry out inspections on racecourses and other premises, by:

- removing references to the RWWA Act in relation to gambling;
- removing the provision to enter sporting event venues;
- removing the references to a 'levy'; and
- replacing the provision to enter totalisator agencies and other premises of RWWA with a provision to enter betting agencies or other premises of the wagering licensee.

Clause 58: Section 20A amended

This clause amends subsection 20A(7) to remove references to the RWWA Act and the term 'levy'.

Clause 59: Section 20B amended

This clause:

- amends subsection 20B(1) to remove reference to the RWWA Act in the definition of **authorised person** (as this is already captured in the definition of 'steward'); and
- Amends subsection 20B(2) so that the existing section (Requirement to provide information) applies to the wagering licensee in addition to bookmakers and others.

Clause 60: Section 20C amended

This clause amends subsection 20C(2) to delete reference to the RWWA Act.

Clause 61: Section 21 amended

This clause:

- amends subsections 21(2) and (3) to:
 - a) replace reference to RWWA with the wagering licensee; and
 - b) include reference to betting agency; and
- replaces subsection 21(4)(a) to provide that the wagering licensee, an officer, employee, contractor or agent of the wagering licensee, or employee of an agent of the wagering licensee (instead of officers, employees, etc of RWWA), are persons to whom subsection 21(3) applies (to prohibit accepting bets from or permitting entry to a betting agency by minors or intoxicated persons, etc).

Clause 62: Section 22 amended

This clause amends subsection 22(2) to:

- a) replace reference to RWWA with the wagering licensee; and
- b) include reference to betting agency.

Clause 63: Section 22A amended

This clause amends section 22A to replace reference to RWWA with the wagering licensee.

Clause 64: Section 23 amended

This clause amends subsection 23(1) by:

- a) replacing reference to RWWA with, as relevant, RWA or the wagering licensee; and
- b) inserting new paragraph (f) to provide that an interstate or offshore bet made with an authorised person on a permitted contingency is not an offence against section 23 of the BC Act.

Clause 65: Section 24 amended

This clause replaces paragraphs 24(1)(a) and (b) and amends paragraph (c) to provide an offence where a person:

- a) who does not hold a licence issued under the BC Act, offers a fixed odds bet that is not:
 - i. an interstate or offshore bet as defined by section 27A(1) of the BC Act; or
 - ii. permitted gaming or social gambling as defined in section 3(1) of the GWC Act; or

- b) makes such a bet with a person who is not the holder of a licence issued under the BC Act authorising the person to offer that bet; or
- c) bets with a wagering licensee otherwise than in accordance with the BC Act.

The intent of the replacement and amended paragraphs is to ensure that betting by and with the wagering licensee (in addition to betting by and with licensed bookmakers) in accordance with the BC Act is not an offence, similar to the existing position for licensed bookmakers under the deleted and amended paragraphs.

This clause also amends the definition of 'bets' in subsection 24(2) as consequence of the amendment to the definition of 'event' in section 4(1) and to include reference to simulated races.

Clause 66: Section 25 amended

This clause amends section 25(3) to replace references to RWWA with the wagering licensee.

Clause 67: Section 25A to 25E inserted

This clause inserts 5 new sections in the BC Act:

- new section 25A provides an offence for a wagering service provider in Western Australia or elsewhere to publish, cause to be published, use or otherwise make available Western Australian race field information in the course of business without obtaining approval from RWA and complying with any conditions attached to the approval. The penalty for the offence is a fine of \$5,000.
- new section 25B provides for the application to RWA for a publication and use approval.
- new section 25C provides that a publication and use approval may be granted by RWA subject to conditions, including the payment of a fee or fees, may be varied or revoked, and requires RWA to determine a publication and use application by either granting or refusing the application and notifying the applicant in writing of its decision.
- new section 25D provides for a wagering service provider to apply to the State Administrative Tribunal for a review of a decision of RWA to:
 - a) refuse an application for a publication and use approval; or
 - b) impose a condition on a publication and use approval granted (other than a condition relating to the payment of a fee or series of fees); or
 - c) vary or revoke a publication and use approval other than by varying a condition relating to the payment of a fee or fees.
- new section 25E authorises certain conduct and arrangements between RWA and any corresponding body in another State or

Territory in relation to the appointment of an agent to collect fees that are payable in relation to the publication or use of a WA race field for the purposes of the *Competition and Consumer Act 2010* (Commonwealth) and Competition Code.

Clause 68: Section 27 amended

This clause replaces references to 'RWWA' with 'RWA' and repeals paragraph 27(d) (refers to betting done in accordance with the RWWA Act).

Clause 69: Section 27A amended

This clause:

- replaces subsection 27A(1) to remove specific reference to a bookmaker and to provide that an 'interstate or offshore bet' does not include a bet made with a person licensed under the BC Act (such persons are licensed under the BC Act to conduct betting and other offence and disciplinary provisions apply where betting is not conducted in accordance with the BC Act or the relevant licence);
- replaces the definition of permitted event or contingency with permitted contingency and amends the definition as a consequence of the amendment to the definition of event in section 4(1);
- amends subsection 27A(2) to refer to the defined term 'interstate or offshore bet'; and
- amends subsections 27A(2A), (2B), and (2C) as consequence of the amendment to the definition of event in section 4(1).

**Clauses 70 to 72: Section 27D deleted
Section 27E deleted
Section 27F deleted**

These clauses repeal sections 27D, 27E and 27F in relation to the racing bets levy scheme.

Clause 73: Section 28C amended

This clause amends section 28C to replace reference to:

- a) totalisator agency with betting agency; and
- b) RWWA with the wagering licensee.

Clause 74: Section 28E to 29 replaced

This clause deletes sections 28E to 29 of the BC Act and inserts three new sections:

- new section 28E (Penalty for totalisator officers accepting instructions as to investments on totalisators) is based on the

existing section 28E (which refers to officers and agents of RWWA) and applies to an officer, employee, contractor or agent of a wagering licensee or an employee of an agent of the wagering licensee (in addition to others employed in connection with a totalisator).

- new section 28F (Non-application of s. 28D and 28E) is based on existing section 28F with provision in relation to RWWA replaced with provision in relation to the wagering licensee.
- new section 29 provides an offence for the wagering licensee, an officer, employee, contractor, or agent of the wagering licensee or employee of an agent of the wagering licensee to accept a bet with the wagering licensee involving the provision of credit by the wagering licensee and is based on the existing section 29 in relation to RWWA. The penalty for the offence is a fine of \$5,000.

Clause 75: Section 30 amended

This clause makes minor drafting amendments to subsections 30(1) and (2) relating to the rules of betting.

Clause 76: Section 31 amended

This clause replaces paragraph 31(1)(h) as a consequence of other amendments to 'event' and 'contingency' and section 4B of the BC Act and amends the reference to the rules of betting in subsection 31(2).

Clause 77: Section 32A amended

This clause:

- Inserts new subsection 32A(1A) to provide that the section (Disciplinary powers) does not apply to a wagering licence or the wagering licensee. Disciplinary provisions relating to the wagering licence and wagering licensee are contained in new section 10K.
- Makes a minor drafting amendment to paragraph 32A(2)(b)(i) relating to the reference to the rules of betting.

Clause 78: Section 33 replaced

This clause replaces section 33 of the BC Act to provide for the making of regulations. The new section 33 is based on the existing section 33 with the addition of provision for the making of regulations in relation to the following:

- a) provision for the functions of stewards and other officers of RWA in exercising the function under section 35(1aa) of the RWA Act; and
- b) provision for the establishment of betting agencies.

The new section 33 does not provide for the regulations to provide for the rules of betting. The rules of betting will instead be approved by the Commission under section 4C.

As a consequence of section 120 of the RWWA Act being repealed (relating to the rules of wagering), subsection 33(2) has not been replaced.

Clause 79: Section 34 inserted

This clause inserts a savings and transitional provision related to the abolition of the racing bets levy.

Clause 80: Various references to 'race course' amended

Various references in the BC Act to 'race course' are replaced with 'racecourse'.

PART 7 CASINO (BURSWOOD ISLAND) AGREEMENT ACT 1985

Clause 81: Act amended

This clause provides that amendments in Part 7 are to the *Casino (Burswood Island) Agreement Act 1985*.

**Clause 82 and 83: Section 3 amended
Section 4G inserted**

These clauses:

- amend section 3 to insert a definition of *Fifteenth Supplementary Agreement*; and
- insert section 4G to ratify and authorise implementation of the *Fifteenth Supplementary Agreement*.

Clause 84: Schedule 16 inserted

Inserts the *Fifteenth Supplementary Agreement* as Schedule 16 of the *Casino (Burswood Island) Agreement Act 1985*.

The *Fifteenth Supplementary Agreement* amends clauses 2 and 22 of the agreement ratified by the *Casino (Burswood Island) Agreement Act 1985* (as varied) to:

- insert definitions for:
 - ***betting agency*** as consistent with the BC Act;
 - ***simulated race***; and
 - ***wagering licence***.

- amend clause 22 to remove the impediment to the State authorising the playing of and the conduct of betting and wagering on Simulated Races outside of the Casino on the condition that:
 - the State does not authorise more than one wagering licence for Simulated Races;
 - betting on Simulated Races is only offered within the physical premises of betting agencies;
 - hours of operation for Simulated Races do not exceed those specified; and
 - each race must last for a minimum period of time and be separated by a minimum period of time, each of which cannot be less than the equivalent minimum periods for Simulated Races that may apply at the Casino.

PART 8 *GAMING AND WAGERING COMMISSION ACT 1987*

Glossary of Abbreviations

BC Act: *Betting Control Act 1954*
Commission: Gaming and Wagering Commission
GWC Act: *Gaming and Wagering Commission Act 1987*
RWWA Act: *Racing and Wagering Western Australia Act 2003*

Clause 85: Act Amended

Amendments in this part amend the GWC Act.

Clause 86: Section 3 amended

This clause amends section 3(1) of the GWC Act by:

- a) deleting the definition of **event** as not all uses of the term in the GWC Act are intended to have the meaning given in the BC Act;
- b) deleting the definitions of **RWWA** and **RWWA Act** as these terms are no longer used in the GWC Act; and
- c) inserting definitions of:
 - i. **prescribed** to mean prescribed in the regulations; and
 - ii. **wagering licensee** to have the same meaning as in the BC Act.

Clause 87: Section 6 amended

This clause deletes reference to the RWWA Act.

Clause 88: Section 7 amended

This clause deletes reference to the RWWA Act and replaces with reference to the BC Act where appropriate.

Clause 89: Section 8 amended

This clause amends paragraph 8(2)(c)(iiia) to include specific reference to an 'event' as defined in section 4(1) of the BC Act and as a consequence of the deletion of the definition of **event** in this Act.

This clause amends subsection 8(2)(d) to:

- a) insert power for the Commission to grant or issue and amend or revoke approvals of associates of wagering licensees under the BC Act and licence key employees of the wagering licensee under regulations under the BC Act; and
- b) delete the Commission's power to licence directors and key employees of RWWA as RWWA will no longer provide wagering services.

**Clause 90, Section 18 amended
91 and 92: Section 20 amended.
 Section 20A amended**

These clauses delete references to the RWWA Act in the amended sections.

Clause 93: Section 24 amended

This clause replaces paragraph 24(b) to include reference to the proper and lawful exercise of the wagering licence (in addition to other permits and licences granted by the Commission).

Clause 94: Section 40A amended

This clause deletes reference to the RWWA Act.

Clause 95: Section 43A amended

This clause deletes subsection 43A(4) as a consequence of repealing section 27D of the BC Act, and amends subsection 43A(3), including to remove references to 'RWWA' and 'events'.

Clause 96: Section 64 amended

This clause amends section 64(3) to exclude betting with the wagering licensee and persons employed by or acting on behalf of the wagering licensee in determining what constitutes social gambling.

Clause 97: Section 80 amended

This clause replaces the references to RWWA and the RWWA Act.

Clause 98: Section 93A amended

This clause amends a number of definitions in section 93A:

- a) ***public premises*** to replace reference to totalisator agencies under the RWWA Act with reference to betting agencies under the BC Act; and
- b) ***remote gambling device*** to remove reference to 'event or contingency'.

Clause 99: Part VA deleted

This clause deletes Part VA of the GWC Act, which includes sections 109E, 109F, 109G, 109H, 109I, 109J, 109K relating to the supervision of the gambling operations of RWWA by the Commission. Regulation by the Commission of a new wagering licensee is provided for in the BC Act.

Clause 100: Section 109E inserted

This clause inserts new section 109E at the beginning of Part VI. The new section 109E provides for the Commission's functions relating to complaints about the wagering licensee.

Proposed subsection 109E(1) defines the ***wagering licensee*** specifically for section 109E to include an officer, employee, contractor or agent of the wagering licensee or an employee of an agent of the wagering licensee.

Proposed subsections 109E(2) and (3) specify that the Commission or an authorised officer has powers to investigate and deal with complaints from members of the public in relation to the gambling operations of the wagering licensee.

Proposed subsection 109E(4) provides that powers conferred under section 109E apply to a member of the Police Force or any other person aiding an authorised officer at the request of that officer.

Proposed subsection 109E(5) provides that section 109E does not limit the operation of sections 20 to 20C of the BC Act (those sections relate to powers of Commission representatives, police officers and authorised officers undertaking inspections on racecourses and other premises and requiring the provision of information).

Clause 101: Section 110 amended

This clause amends subsection 110(1)(a) to delete reference to wagering conducted in accordance with the RWWA Act.

Clause 102: Section 110A amended

This clause amends subsection 110A(1) to replace the reference to RWWA under the RWWA Act with reference to the wagering licensee under the BC Act (in relation to the payments of unclaimed money's on sporting events to the Sports Wagering Account).

Clause 103: Section 110B deleted

This clause deletes section 110B as the racing bets levy scheme is abolished.

Clause 104: Section 113 inserted

This clause inserts new section 113 providing savings and transitional provisions regarding the abolition of the racing bets levy.

PART 9 *RACING AND WAGERING WESTERN AUSTRALIA ACT 2003*

Glossary of Abbreviations

BC Act:	<i>Betting Control Act 1954</i>
Commission:	Gaming and Wagering Commission
GWC Act:	<i>Gaming and Wagering Commission Act 1987</i>
RWWA Act:	<i>Racing and Wagering Western Australia Act 2003</i>
RWWA:	Racing and Wagering Western Australia
RWA Act:	<i>Racing Western Australia Act 2003</i>
RWA:	Racing Western Australia

Clause 105: Act amended

This clause provides the amendments in this part are to the RWWA Act.

Division 2 – Provision commencing on day after assent day

Clause 106: Section 3 amended

This clause amends section 3(1) of the RWWA Act:

- Deletes the following definitions from this section: **WAGRA**, **WATA** and **WATC**.
- Inserts definitions of **Racing Infrastructure Fund** and **wagering licensee**.
- Replaces reference to 'Australian Harness Racing Council' with 'Harness Racing Australia' in the definition of **harness racing**.

Clause 107: Section 10 amended

This clause amends section 10(1) by:

- replacing the term 'if the person is' with 'if the person is any of the following';
- inserting a new paragraph (ca) providing that a wagering licensee, or any of its officers, agents or employees, or any person employed in a betting agency, are not eligible to be a director of the RWA board, or a member of the selection panel for the RWA board; and
- replacing the reference to the *Corporations Act 2001* of the Commonwealth.

Clause 108: Section 19 amended

This clause replaces 'Penalty' with 'Penalty for this subsection: a fine of'.

Clause 109: Section 35 amended

This clause amends section 35(1) providing the functions of RWA to:

- insert new paragraph (bb) to provide a function for RWWA to enter into a racing industry arrangement with a wagering licensee as per the BC Act;
- insert new paragraph (fa) to provide a function for RWWA to coordinate an annual programme of race meetings; and
- insert new paragraph (fb) to provide RWWA a function to administer the Racing Infrastructure Fund.

Clause 110: Section 36 amended

This clause replaces 'WATC' with 'The body known as The Western Australian Turf Club'.

Clause 111: Section 37 amended

This clause replaces 'WATA' with 'The Western Australian Trotting Association constituted under the *Western Australian Trotting Association Act 1946*'.

Clause 112: Section 38 amended

This clause replaces 'WAGRA' with 'The Western Australian Greyhound Racing Association established under the *Western Australian Greyhound Racing Association Act 1981*'.

Clause 113: Section 46 amended

This clause replaces 'Penalty' with 'Penalty for this subsection: a fine of'.

Clause 114: Section 68 amended

This clause amends section 68(2) to include new paragraph (aa) providing that the matters to be considered in the preparation of a strategic development plan include investment strategies and planned allocations from the Racing Infrastructure Fund.

Clause 115: Section 77 amended

This clause amends section 77(2) to insert new paragraph (ba) to provide that the statement of corporate intent for RWA and any subsidiary must set out planned fund allocations from the Racing Infrastructure Fund.

**Clauses 116 to 118: Section 113 amended
Section 115 amended
Schedule 2 amended**

These clauses amend sections 113 and 115 and Schedule 2 to replace reference to 'Penalty' with 'Penalty: a fine of'.

Division 3 – Provisions relating to the commencement of wagering licence

Clause 119: Long title replaced

This clause replaces the long title of the Act.

Clause 120: Short title amended

This clause deletes 'and Wagering' from the short title of the Act.

Clause 121: Section 3 amended

This clause amends the definitions in section 3 of the RWA Act by:

- deleting the definitions for ***combined totalisator pool scheme, fixed odds wager, gambling, gambling operations, gaming, rules of wagering, RWWA, sporting event, Sports Wagering***

Account, totalisator, totalisator agency, totalisator ticket and wagering; and

- inserting a definition of ***RWA***.

Clause 122: Section 10 amended

This clause amends section 10(1) to make consequential amendments arising from RWA no longer undertaking wagering activity.

Clause 123 Section 14 deleted

This clause deletes section 14 (Licensing of directors) from the Act as the Commission will no longer licence directors of RWA once it ceases its wagering functions.

Clause 124: Section 24 deleted

Similar to clause 123, this clause removes section 24 (Licensing of key employees) from the Act for the same reasons as section 14 is removed.

Clause 125: Section 29 amended

This clause replaces section 29(1) to provide that RWA must act in accordance with prudent commercial principles in performing its functions as under the existing section, but the existing requirement for RWWA to endeavour to make a profit is deleted, as this principle related to generating a profit from its wagering operations which it will no longer undertake.

Clause 126: Section 31 amended

This clause deletes section 31(2) providing for RWA to carry on its gambling operations under the trading name 'TAB'.

Clause 127: Section 35 amended

This clause makes a number of amendments to subsection 35(1) to reflect revised functions of RWA:

- The reference to 'Part 5' is deleted given the deletion of Part 5 (see clause 129);
- New paragraph (aa) inserted to provide that it is a function of RWA to monitor on-course wagering activities in accordance with the BC Act and rules of betting. This is similar to RWWA's existing role in relation to on-course wagering as per the deleted subsection 50(1)(a).
- paragraph (f) deleted to remove RWWA's function to determine race meetings it will provide wagering on;

- new paragraph (fc) inserted to provide RWA a function to develop a scheme to distribute funding to racing clubs; and
- new paragraph (fd) inserted to provide RWA a function to enter into funding arrangements with racing clubs.

Clause 128: Section 45 amended

This clause replaces references to 'wagers' with 'bets' in 45(6)(e).

Clause 129: Part 5 deleted

This clause deletes Part 5 headed 'Specialised functions in relation to gambling' and comprising sections 50 to 65. Part 5 relates to RWWA's wagering functions which it will no longer undertake from disposal of TAB assets and once the first wagering licence commences.

Clause 130: Section 68 amended

This clause amends section 68(2)(a) to remove from the matters that must be considered in the preparation of a strategic development plan competitive strategies, pricing of products, productivity levels, financial requirements, capital expenditure and personnel requirements, as these matters relate to the wagering operations of RWWA.

The matters deleted from 68(2)(a) are replaced with revenue strategies, productivity levels, financial requirements, capital expenditure and personnel requirements.

Clause 131: Section 86 deleted

The clause deletes section 86 requiring RWWA to hold, and give access to the Commission to, records regarding the accounts and management of RWWA.

This section is deleted as it is related to RWWA's wagering operations.

Clause 132: Section 99 deleted

This clause deletes Section 99 providing RWWA powers to enter into hedging transactions, as it will no longer be necessary once RWWA no longer has a wagering function.

Clause 133: Part 7 Division 5 heading amended

This clause removes 'in relation to wagering' from the heading of Division 5.

Clause 134: Sections 103 and 104 deleted

This clause deletes Sections 103 and 104 from the RWWA Act as they relate specifically to RWWA's wagering functions.

Clause 135: Section 106 replaced

This clause deletes and replaces section 106 for the allocation of RWA's funds, to remove wagering related references.

Context: funds received under the racing industry arrangements with the wagering licensee will comprise funds to be allocated in accordance with this section.

Clause 136: Part 8 Division 1 heading amended

'RWWA' is replaced with 'RWA' in the heading of Division 1.

Clause 137: Section 113 amended

This clause deletes section 113(3)(c) and (d) as RWWA will no longer have a function in regulating wagering.

Clause 138: Section 116 deleted

This clause deletes section 116 as it relates to RWWA's wagering operations.

Clause 139: Section 120 deleted

This clause deletes section 120 relating to the rules of wagering as RWWA will no longer have a wagering function.

See inserted section 4C of the BC Act regarding the rules of betting which replace the rules of wagering.

Clause 140: Section 121 amended

This clause amends section 121 by deleting provisions for the making of regulations related to RWWA's wagering functions.

Clause 141: Section 122 replaced

This clause deletes section 122 (for review of the Act that has now passed) and inserts a new section 122 to provide the transitional and savings provisions for this Bill.

Subsection (2) – provides that RWA is a continuation, and the same legal person as RWWA.

Subsection (3) – provides that section 86 (relating to the maintenance of RWWA records) continues for seven years after clause 129 of this Bill comes into operation.

Subsection (4) – provides that despite the deletion of former section 106 (allocation of funds), the section continues in operation in relation to the racing year up to and including the racing year in which clause 129 of this Bill comes into operation.

Subsection (5) – provides that despite the deletion of former section 116 (relating to immunity from certain claims), it continues in operation in relation to wagers accepted before the day on which clause 129 of the Bill comes into operation.

Clause 142: Schedule 1 amended

This clause amends Schedule 1 by deleting Clause 2(1)(e) as it relates the licencing of RWWA's directors for the purpose of its wagering functions and removing the reference to section 14 (which is deleted) from clause 4(3).

Clause 143: Various references to 'Racing and Wagering Western Australia'

This clause replaces various references to 'RWWA' with 'RWA' and references to 'Racing and Wagering Western Australia' with 'Racing Western Australia'.

Division 4 – Provisions relating to new race field regime

Clause 144: Section 35 amended

This clause amends section 35(1) to insert new paragraph (fe) to provide a function for RWA to exercise functions under the BC Act in relation to the new race fields publication and use approval regime.

Clause 145: Section 107A replaced

This clause deletes and replaces section 107A due to the abolition of the racing bets levy and introduction the new race field publication and use approval regime. Consistent with the deleted section, RWA is required to distribute funding from the new race field regime to racing clubs.

However, before making distributions to racing clubs, RWA may first deduct funds to cover outgoings and expenses in administering the account. This is consistent with the deleted section 110B of the GWC Act, where the Commission may deduct its approved outgoings and expenses in administering the account before paying the remainder to RWWA or racing clubs.

PART 10 REPEAL AND CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

Clauses 146 to 161: Clauses 146 to 161 make consequential amendments to other Acts. This includes replacing references to 'RWWA' with 'RWA', and *Racing and Wagering Western Australia Act 2003* with *Betting Control Act 1954*.

Clause 153 provides for the repeal of the *Racing Bets Levy Act 2009*.

PART 11 REVIEW OF ACT

Clause 162: Review of Act

This clause provides that the Minister must table in Parliament a report based on a review of the operation and effectiveness of the Act. The report must be prepared and tabled not later than 12 months after the third anniversary of the *TAB (Disposal) Act 2019* section 129 (the cessation of RWWA's wagering functions) coming into operation.

In addition, the clause requires that the review must address:

- the impact of this Act on the State's racing industry and its funding;
- the structure and functions of RWA;
- the efficacy of the administration of the Racing Infrastructure Fund by RWA; and
- the impact of simulated racing on problem gambling.