

## EXPLANATORY MEMORANDUM

### *Betting and Racing Legislation Amendment Bill 2006*

#### OVERVIEW

The purpose of the *Betting and Racing Legislation Amendment Bill 2006* (the Bill), is to protect the integrity of the Western Australian racing industry.

Unlike licensed bookmakers who accept the liability to hold a bet, betting exchange operators provide a wagering service risk-free by matching punters who are taking opposing positions on an event. Betting exchange operators generate a revenue source from charging punters a commission on their net winnings where bookmakers generate revenue by accepting bets from punters on the prospect that selected runners will lose. Betting to lose is an activity that is only permitted by licensed bookmakers.

The operations of betting exchanges pose a significant threat to the integrity of the racing industry. The ability to lay bets to lose through the medium of a betting exchange and thereby profit from a horse/dog losing, can be a real temptation for owners, trainers, jockeys, stable staff and others close to the industry. In this regard, the outcome can significantly compromise the integrity of racing.

The ability of individuals who may be in a position to influence the performance of a particular runner to then take bets on that runner is a particularly invidious by-product of the betting exchange situation. The reality is that the ability to lay horses to lose offers a far easier opportunity than intending to arrange for a certain runner to win.

To protect the integrity of the Western Australian racing industry, the Bill proposes to prohibit the:

- (i) establishment/operation and use of a betting exchange; and
- (ii) publication of Western Australian race fields without the appropriate approval.

With respect to the prohibition on betting exchanges, the Bill:

- will make it an offence for:
  - the establishment or operation of a betting exchange in Western Australia; and
  - a person in Western Australia to bet through a betting exchange.
- confirm the wagering operations of Racing and Wagering Western Australia (RWVA) under the *Racing and Wagering Western Australia Act 2003*, and bookmakers licensed under the *Betting Control Act 1954*, do not constitute the establishment or operation of a betting exchange; and
- confirm a facility, electronic or otherwise, that enables persons to place bets only with a bookmaker or a totalisator (that is, licensed persons) is not considered a betting exchange.

In regard to the publication of Western Australian race fields, the Bill establishes a licensing framework that will:

- restrict the publication/use of Western Australian race fields to wagering services providers that have been approved by the Minister for Racing and Gaming (or delegate);
- require assessments of wagering service providers to be against a prescribed criteria.

In this regard, the Minister will also consider a public interest test in relation to the integrity of the applicant and the integrity of the applicant's wagering activity. This way, the questionable wagering practices of a betting exchange (that is, betting to lose) will be subject to a public interest assessment.

- not give automatic right to wagering service providers who have obtained an approval from the Minister to publish/use WA race field information; instead, require through a condition of an approval that WA race fields must be obtained from RWWA (the controlling authority) for a fee;
- permit RWWA to negotiate the provision of WA race field information on a commercial basis through a contract or an arrangement with wagering service providers approved by the Minister;
- require the reasons to given for any refusal by the Minister to approve a wagering service provider to publish/use Western Australian race fields; and
- provide for the review of decisions by the Minister by the State Administrative Tribunal.

The Bill includes strong deterrent penalties for any wagering service provider that publishes WA race field information without the proper authorisation and also for any person who provides race field information to an operator that is not authorised.

The Bill also extends the application of section 27A of the *Betting Control Act 1954*, relating to off-shore betting, to include any sporting event or contingency approved by the Gaming and Wagering Commission under the Act.

It is proposed to proclaim the Bill in two stages with the first stage consisting of the provisions relating to the prohibition on betting exchanges and other sundry matters. Once regulations have been prescribed regarding the criteria for approval to publish/use Western Australian race fields, those provisions will then be proclaimed.

## BETTING AND RACING AMENDMENT BILL 2006

### CLAUSE NOTES

#### Part 1 – Preliminary

<u>Clause 1:</u>	Cites the <i>Betting and Racing Legislation Amendment Bill 2006</i> as being the short title of this Act.
<u>Clause 2:</u>	In order to provide sufficient flexibility to establish in regulation a criteria for approving the use of Western Australian race fields, the commencement provision specifies that the <i>Amendment Bill</i> will come into operation on a day fixed by proclamation and that different days may be fixed for the commencement of different provisions.

#### Part 2 – Betting Control Act 1954

<u>Clause 3:</u>	Establishes that the <i>Betting Control Act 1954</i> , (the BC Act) is to be read as if were amended as set out in this Act.
<u>Clause 4:</u>	Amends the long title of the BC Act to take into account the prohibition on the establishment, operation and betting through a betting exchange.
<u>Clause 5:</u>	Amends section 4 of the BC Act by inserting in the appropriate alphabetical position, the definition of “betting exchange” and specifying that it has the same meaning given under proposed section 4AA.
<u>Clause 6:</u>	<p>Inserts new section 4AA to provide a definition of “betting exchange” to support the prohibition on establishing, operating and betting through a betting exchange.</p> <p>The definition provides that a betting exchange does not include a facility, electronic or otherwise, that enables a person to place bets only with a bookmaker or a totalisator.</p>
<u>Clause 7</u>	<p><u>Subclause (1)</u> amends section 24(1) of the BC Act by inserting new subsection (1aa) to make it an offence for a person to bet through a betting exchange. The penalty for such an offence will be \$10,000, or 24 months imprisonment, or both.</p> <p><u>Subclauses (2) &amp; (3)</u> make consequential amendments to sections 24(1a) and (2) of the BC Act in relation to “interstate offences” as a result of inserting new subsection 24(1aa).</p>
<u>Clause 8</u>	<p><u>Subclause (1)</u> amends section 27A(1) of the BC Act by:</p> <ul style="list-style-type: none"><li>▪ inserting a definition of an “approved sporting event”; and</li><li>▪ making consequential amendments to the definitions of “authorised person” and “off-shore bet” to include reference to sporting events.</li></ul> <p><u>Subclause (2)</u> corrects a grammatical error contained in section 27A(2) of the BC Act.</p>

	<p><u>Subclauses (3) &amp; (4)</u> makes consequential amendments to section 27A(5) of the BC Act to include reference to sporting events.</p>
<p><u>Clause 9 (1)</u></p>	<p>Inserts proposed sections 27B, 27C, 27D, 27E and 27F into the BC Act.</p> <p><b>Proposed Section 27B</b></p> <p><u>Subsection (1)</u> makes it an offence for a person to establish or operate a betting exchange. The penalty for such an offence will be \$10,000, or 24 months imprisonment, or both.</p> <p><u>Subsection (2)</u> specifies that anything done:</p> <ul style="list-style-type: none"> <li>▪ by a bookmaker licensed under the BC Act;</li> <li>▪ by Racing and Wagering Western Australia (RWVA) in accordance with the <i>Racing and Wagering Western Australia Act 2003</i> (RWVA Act), or any other written law; or</li> <li>▪ as prescribed by regulations,</li> </ul> <p>does not constitute the establishment or operation of a betting exchange.</p> <p><b>Proposed Section 27C</b></p> <p><u>Subsection (1)</u> provides definitions for “approval” and “WA race field” regarding the application of proposed section 27D in relation to the restriction on the publication of Western Australian race fields.</p> <p><u>Subsection (2)</u> stipulates that proposed section 27D applies to the following persons who are in Western Australia or elsewhere who:</p> <ul style="list-style-type: none"> <li>▪ carries on the business or vocation, or acts as, a bookmaker;</li> <li>▪ conducts betting by the operations of a totalisator;</li> <li>▪ operates a betting exchange (however described);</li> <li>▪ gains or endeavours to gain a livelihood wholly or partly by making bets; or</li> <li>▪ is an employee or agent of the above persons.</li> </ul> <p><u>Subsection (3)</u> stipulates that proposed section 27D does not apply to the RWVA in respect of the performance of its functions under the RWVA Act or any other written law.</p> <p><u>Subsection (4)</u> provides a transitional provision to enable bookmakers licensed under the BC Act to continue to display Western Australian race fields (despite the provisions of proposed section 27D):</p> <ul style="list-style-type: none"> <li>▪ for a period of up to 12 months after the commencement of section 9 of the <i>Betting and Racing Legislation Amendment Act 2006</i>; or</li> <li>▪ on a day notified by the Minister by notice published in the Government Gazette,</li> </ul> <p>whichever occurs first.</p> <p><u>Subsection (5)</u> provides for the Minister to specify, by notice published in the Government Gazette, the date for proposed section 27D to apply to bookmakers licensed under the principal Act.</p>

	<p><b>Proposed Section 27D</b></p> <p><u>Subsection (1)</u> makes it an offence for a person (identified under proposed section 27C(2)) to publish or make otherwise available Western Australian race fields without the prerequisite approval. The penalty for such an offence will be \$5,000.</p> <p><u>Subsections (2) &amp; (3)</u> provides for a person identified under proposed section 27C(2) to apply and pay a prescribed fee to the Minister for approval to publish or otherwise make available Western Australian race fields.</p> <p>The Minister may, by notice in writing, give an approval which can be unconditional or subject to one or more conditions specified in the notice.</p> <p><u>Subsections (4) - (7)</u> provide for the Minister, by notice in writing after having regard to the prescribed criteria, to give or refuse; impose one or more conditions; amend, suspend, or revoke an approval.</p> <p>The Minister may also refuse an approval if satisfied that the approval would not be in the public interest.</p> <p>In circumstances where the Minister refuses an approval; imposes one or more conditions on an approval; or amends, suspends or revokes an approval, the Minister will be required to give the person applying or holding an approval, notice in writing of the decision and the reasons of the decision.</p> <p><b>Proposed Section 27E</b></p> <p><u>Subsections (1) &amp; (2)</u> provides for the Minister to delegate, in writing, the Minister's powers and duties under proposed section 27D (other than the power of delegation) to:</p> <ul style="list-style-type: none"> <li>▪ the Gaming and Wagering Commission of Western Australia; or</li> <li>▪ a prescribed person.</li> </ul> <p>RWWA is not to be prescribed for the purposes of being a delegate of the Minister.</p> <p><b>Proposed Section 27F</b></p> <p><u>Subsection (1)</u> specifies that "approval" under proposed section 27F means an approval under proposed section 27D(2).</p> <p><u>Subsection (2)</u> provides for a person (specified in proposed section 27C(2)) aggrieved by the decision of the Minister to refuse; impose one or more conditions; or amend, suspend or revoke an approval to publish Western Australian race fields may apply to the State Administrative Tribunal for a review of the decision.</p>
<p><u>Clause 9 (2)</u></p>	<p>Makes a consequential amendment to section 43A(3) the <i>Gaming and Wagering Commission Act 1987</i> (GWC Act), by specifying that an "approval" under proposed section 27D(2) of the BC Act is not an approval for the purposes of section 43A(3) of the GWC Act.</p>

<u>Clause 10</u>	Transfers sections 11H and 11I of the BC Act from Part 2 - Licences, Approvals and Permits to Part 4 - Enforcement and Offences to provide wider application relating to the liability of persons occupying positions of authority in a body corporate and that of natural persons, partners, bodies corporate and officers .
<u>Clause 11</u>	Makes a consequential amendment to section 28A(3) of the BC Act relating to “search warrants” by inserting a reference to proposed section 27B.
<u>Clause 12</u>	Makes a consequential amendment to section 28B of the BC Act relating to “prima facie evidence of offence” by inserting a reference to proposed section 27B.

### **Part 3 – Racing and Wagering Western Australia Act 2003**

<u>Clause 13</u>	Establishes that the <i>Racing and Wagering Western Australia Act 2003</i> , (the RWWA Act) is to be read as if were amended as set out in this Act.
<u>Clause 14</u>	Amends section 30(2) of the RWWA Act to: <ul style="list-style-type: none"> <li>(i) provide RWWA the power to provide on a commercial basis, under a contract or an arrangement entered into with person approved under proposed section 27D(2) of the BC Act, WA race field information; and</li> <li>(ii) make consequential amendments by inserting the word “and”.</li> </ul>
<u>Clause 15</u>	Amends section 35(1) of the RWWA Act to: <ul style="list-style-type: none"> <li>(i) establish a function of RWWA is to enter into contracts or arrangements for the commercial exploitation of information held by RWWA relating to the racing industry of Western Australia; and</li> <li>(ii) make consequential amendments by inserting the word “and”.</li> </ul>