

## GAMING AND WAGERING LEGISLATION AMENDMENT BILL 2018

### *Second Reading*

Resumed from an earlier stage of the sitting.

**HON TJORN SIBMA (North Metropolitan)** [5.08 pm]: Before question time, I provided a preliminary overview of some general concerns and questions I have on the Gaming and Wagering Legislation Amendment Bill 2018. We will probably spend a little bit of time—it will not be unduly lengthy—on the interrogation of what is actually envisioned for the creation of heads of power, what those regulations will constitute, with whom and how will they be drafted, and when they will be implemented.

I will do that for a number of reasons. The first is because it behoves this house to have a view on what power it will provide the commissioner to self-generate, and we also have a serious issue with the interaction of this bill to be passed by the Western Australian Parliament and similar legislation that deals with the prohibition of synthetic lotteries by the Australian Parliament. I note that Hon Aaron Stonehouse will move an amendment to that effect that deals with the operation of this prohibition scheme, and no doubt that member will speak to that matter in the course of this debate.

I wish to reiterate that notwithstanding this interrogation, the Liberal Party supports this bill. There are some very sensible measures in it, and although they have been canvassed by other speakers, this is an opportunity to reinforce what we find desirable in this bill. We commend the government for how it deals with the treatment of betbacks and the redefinition of “turnover” to effectively ensure consistency in the way that wagering and gaming operate in Western Australia and with similar practices in other Australian jurisdictions. The betback provision effectively allows bookmakers to better manage contingent liabilities to effectively spread the risk of encountering their obligation to pay out big payouts. That is a sensible, practical measure that we fully support.

We also support updating the definition of “turnover” to relate to the collection of the racing bets levy on the net winnings of racing bets placed, rather than on the gross turnover of clients’ bets, which I understand to have been the previous practice. We also find it desirable that the amendment to this bill will seek to prohibit remote gambling facilities that are specifically built and made available in public places that connect to licensed operators in another jurisdiction. This deals with the potential for kiosks provided by betting operators at carnivals, fetes, shopping centres and the like. I find that a desirable provision and we will fully support that. We obviously support in principle, but will seek further clarification on the practicalities of, the intention to prohibit live betting odds from being broadcast during sporting events at prescribed sporting arenas, with the caveat, obviously, that an exemption will apply to live odds being broadcast at racecourses during a horse or dog race meeting. But my questions around the practicalities and how the ban will apply at, say, the cricket, the rugby or the footy relate to where Hon Colin Holt was taking this. What specifically will be banned? Is it a more prescriptive broadcast of a particular odd or set of odds attached to specific contingencies that relate to the game being played, or is it also envisaged that the ban would preclude, say, Ladbrokes, bet365 or Sportsbet from effectively placing ads that lead the punter onto their website? If the focus is on harm minimisation, the government would perhaps have to go to the full extent and completely ban the capacity for gaming and wagering operators to advertise; otherwise, what is the point?

I also note that the more sophisticated and internationalised sporting associations have recognised the scourge of exotic in-game betting for what it is, and are making attempts to render the practice impracticable. They have introduced a range of sanctions against professional athletes betting on games in which they are involved. These associations are looking at the ways in which they manage their rights deals, and the prescriptions they might put on the capacity of gaming and wagering operators to broadcast in any event. I would be interested to know where the risk is in the current sporting context, and what the government is seeking to do in relation to that.

The bill contains a range of minor amendments that make some sensible adjustments, such as lifting the ban on raffles conducted in other states and territories being offered in Western Australia. I always thought this to be a curious relic of a bygone era, focused on a very fixed-pie economic view of the world. This is an overdue adjustment that should benefit Western Australian raffles, if they can operate in eastern states jurisdictions.

The more contentious and complicated aspects of the amendments proposed in this bill are the capacity for the commission to prescribe prohibited events and contingencies on which one cannot either offer odds or place a bet. In addition to this prohibition schema, which is at some stage of being drafted, we are establishing a new small fines regime connected to those prescribed events. This will introduce penalties of \$2 500 for a person placing a bet, and \$5 000 and up to a year in prison for a person offering such a product. I would be very curious to learn about how those financial penalties were arrived at and who was consulted in their generation. I could, for example, anticipate a scenario in which a person who describes themselves, for want of a better expression, as a professional gambler would factor in a \$2 500 potential fine to their betting outlay. It is a very easy thing to overcome, if they think that the incomings will compensate for the risk of being fined. I would be curious to know how this regimen

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is proposed to be enforced, and whether there will be any resourcing implications for the commission for the policing. Otherwise, what is the point in introducing the fines, if they cannot be enforced and surveilled?

I want to dwell on, but not contemplate too deeply, the manner in which this bill has been debated both within the Parliament and in the public domain. It goes to the very purpose of this chamber. I am reminded of events last week around comments made in the other place that quite unfairly misrepresented the perspectives of not only the opposition but also the crossbench on the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018. There seems to be a dispiriting pattern of bullying behaviour from ministers on any bill they want to pass through the Parliament. I want to reflect on the comments made by the Minister for Racing and Gaming, Hon Paul Papalia, on 16 October in the course of debate. I was more than happy to proceed to debate this bill in a constructive way—indeed, that is still my disposition—but I cannot let go unchallenged the following contribution, because I think it reflects very poorly on the good faith that we attempt to show one another in Parliament. This is a direct quote. He said —

... I can tell members that if this bill gets into the upper house and is delayed by any sort of ridiculous politicking, I will follow the lead of the Minister for Transport. I will get the list of addresses from the Premier and write to every single one of the Lotterywest newsagents and the 26 bookmakers and tell them that this bill is being held up by the opposition in Western Australia —

It included the following quote.

Several members interjected.

**The ACTING PRESIDENT:** Order, members! Hon Tjorn Sibma has the call, and although you might want to have a conversation outside of that, I am trying to listen to Hon Tjorn Sibma.

**Hon TJORN SIBMA:** Thank you, Mr Acting President. I am not doing this to be gratuitous or invite discourse into this chamber—I think enough exists in its own right to not warrant my prompting—but it is worthwhile that when we give serious contemplation to our responsibilities to interrogate bills, we also reflect upon the way our responsibilities are held by others, in particular ministers of the Crown. The minister goes on. This is his quote—I presume it is a form of words that is drafted somewhere. It states —

...“The Liberal Party in Western Australia has proven itself incapable of a coherent response to anything and they do not like you; they didn’t help you in government, and they’re not helping now.” That is what the letter will say. I will say, “Contact them and tell them that you’re not voting for them but also that you’d like them to pass the bill in the upper house.”

This is a disturbing pattern of behaviour. It came unwarranted; it was not merited. I have been dealing with bullies my entire life. As a short bespectacled kid with an odd-sounding name, I have dealt with bullies my entire life. I have not capitulated at any stage in those 41 years and I am not going to start now. That kind of hectoring, bullying and misrepresentation is an absolute disgrace, but it has become a pattern of behaviour from the McGowan government, and in particular this minister. When this minister is put under pressure and interrogated about the implications of his legislation, he invokes the inner bully, who must not lurk too far from the surface. It does not take too much to evoke this kind of response out of him. It must be called out as the disgrace that it actually is. All I can do is thank very much the minister’s staff, because I think they are professional and helpful, and have done so much for their minister to keep his legislation and his legislative program on something of an even keel. I think they deserve some congratulations.

**Hon Alannah MacTiernan:** Do you support the legislation?

**Hon TJORN SIBMA:** Do you want to delay the consideration of this bill? If you don’t, just shut up!

**The ACTING PRESIDENT:** Order, members!

**Hon Alannah MacTiernan** interjected.

*Withdrawal of Remark*

**The ACTING PRESIDENT (Hon Dr Steve Thomas):** Hon Tjorn Sibma, I ask you to withdraw that remark.

**Hon TJORN SIBMA:** I withdraw.

*Debate Resumed*

**The ACTING PRESIDENT:** I think we need to take a little bit of heat out of this particular debate.

**Hon TJORN SIBMA:** It does reflect on the way in which debate is actually welcomed by the government. It reflects very poorly on it. It would be remiss of me not to advise the house of the minister’s remarks. I can say to every single newsagent in Western Australia that retails a Lotterywest product that the Liberal Party supports their business. We do not hate them. That was a foolish, juvenile accusation. I will not accept it and I rebut it in the strongest possible terms. As for the 26 bookmakers, I wish them well, and I wish this legislation swift

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passage through this house this evening so they can get in and out and operate effectively during a busy summer racing carnival.

Ultimatums should not be rewarded. The substance of the bills should be interrogated. I must say that there is a slight difference in emphasis between what is proposed by way of the second reading speech, the bill itself and the explanatory memorandum that is considered along with those two other documents. I want to reference a joint media statement of 19 September this year from the Premier and the Minister for Racing and Gaming. It provides some dot points about what this legislation we are debating is all about. The dot points at the start state —

- McGowan Government moves to prevent betting on the outcome of lotteries
- As a result, organisations such as Lottoland will be banned in WA
- New laws will protect Lotterywest and ensure it can continue to support the WA community through its grants program
- Live betting odds will no longer be permitted to be broadcast at prescribed sporting arenas
- Amendments aim to minimise harm to at-risk and problem gamblers

We have dealt with that before. What I found interesting about this media statement is that to some degree this house needs to read not only the bill as it is presented, the explanatory memorandum and the second reading speech, but, in addition, whatever media statement is tacked on the end to get a comprehensive picture of the purpose of government legislation. I mention that not to be gratuitous, because if we deal with the substance of the documents tabled in this Parliament, there is very little, if any, mention of synthetic lotteries and their risk, of Lottoland in particular as an agent of that risk, or indeed of the challenges faced by Lotterywest and whatever threats may exist to Lotterywest's capacity to administer a much loved and respected grants administration program.

I will cite a quote attributed to Premier McGowan. It states, in part —

“The new laws will protect Lotterywest and enable it to continue to provide its outstanding contribution to the community through its grants program.

We can all agree that we love Lotterywest. I do not want there to be the misrepresentation that the Liberal Party looks upon it with anything other than fondness, but it behoves a house of review to actually get a very clear-sighted sense of what threats Lotterywest faces and how those threats, in particular, are manifest in the operations of so-called synthetic lottery operations. To the best of my knowledge, those kinds of risks, as they apply to a drop in market share and a destabilising of or disruption to sales channels, have never been described or quantified. It is important that we respond to risks appropriately, but to do that, quite frankly, I think we need a quantified and uncontested view of what that risk really is. Despite many opportunities—I will return to this topic—I do not think the evidence is in.

I would like to pick up on an interesting quote attributed to the Minister for Racing and Gaming, Paul Papalia, because I think it is an important point, but it does not seem to be necessarily reflected in the explanatory memorandum or any of the debate. The quote concerns one of the justifications for seeking to prohibit synthetic operators, such as Lottoland, and reflects on the marketing of companies such as Lottoland. I have a bit to say about them. Effectively, the quote attributed to the Minister for Racing and Gaming is that the marketing has —

caused community concern where customers believe they are buying tickets in a lottery draw, when they are instead betting on the outcome of that lottery.

I think that is right. That is a large part of Lottoland's operation.

**Hon Alannah MacTiernan:** That's right. I bought tickets thinking that.

**Hon TJORN SIBMA:** The minister would not be alone. So it is very clear, I will tangentially refer to the disdain I personally hold for outfits such as Lottoland. It has made a number of marketing missteps, one of which was to act with a wink and a nod about the product that is being sold. It also imperilled itself almost from its first television advertisement, in which it had a mock-up of a newsagency and showed a range of people coming through a bricks-and-mortar-like store and asking how to buy a Lottoland ticket. That kind of marketing stupidity gets its just rewards, and I think it got its just rewards by virtue of the amended act in the commonwealth Parliament earlier this year. But that said, I would be interested to know whether the misrepresentation of the product is the primary concern, or one of the primary concerns, that has motivated the McGowan government to create an expanded heads-of-power arrangement for the Gaming and Wagering Commission of Western Australia to effectively prohibit such things. Why do we not just utilise the appropriate sections of the Fair Trading Act 2010 that deal with misleading and deceptive conduct? To quote briefly from section 18 —

A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

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I am not disputing this as a justification; I am just curious to know why the provisions that exist under the Fair Trading Act could not have been brought to bear against —

**Hon Alannah MacTiernan:** Because the problem is not simply that they were misleading people; it is actually that they are drawing from a scheme, so they are benefiting without contributing.

**Hon TJORN SIBMA:** I understand that argument—it has been put before—but it is a different argument. It is not the same.

**Hon Alannah MacTiernan** interjected.

**Hon TJORN SIBMA:** The specific question, minister, with respect—I think this is a constructive interjection —

**Hon Alannah MacTiernan:** I know. I understand the point you're making. We could deal with one aspect of the problem by making that legislative change, but it would not deal with the other aspect of the problem.

**Hon TJORN SIBMA:** That is an interesting contribution, but I suppose it depends on whether we think the threats exist and what the most significant threats are. If we have a legitimate and well-founded concern that an operator, almost by virtue of the very product it tries to sell, will mislead or deceive, why do we not go after it by utilising the Fair Trading Act 2010? Has that been considered? It may not have been. If it has been, I am interested to know, and I think it is worth knowing.

The purpose and the consequences of this bill also require a bit of justification. A number of arguments are proposed to justify why the McGowan government is determined to proceed with this legislation and to enact it swiftly, despite commonwealth legislation already being in place. The government appears to be responding to the views of the Australian Lottery and Newsagents Association and its membership, and that is fine. It is important to be responsive to the views of those stakeholders who will be directly affected by the legislation. But I want to understand why the government concurs with the newsagents association's view, cited by the minister on 16 October, that it "is not at all comfortable that the threat has been dealt with."

Again, why is this legislation needed? Why is it needed now? What gap exists in the relationship between the commonwealth legislation and what is proposed here? One of the arguments provided by the minister is that the newsagents association is still worried. That worry may rest on a solid foundation, but the level of justification needs to be a bit higher than "because the association is worried". Why is the government worried? That is what I want to understand here.

In the debate on this bill both in this place and in public, a lot has been made of the position that Lotterywest is in and the proposed protections that this bill will provide to Lotterywest. The place to start is how Lotterywest is going at the moment. The source document for that is Lotterywest's most recent annual report. The "Lotterywest 2017–18 Annual Report" is an interesting document for a number of reasons. I am quoting from page 2, which provides an infographic with the highlights. The year 2017–18 was particularly good for Lotterywest, with \$855 million in lottery sales, \$463 million worth of prizes paid out to Western Australians and \$260 million worth of contributions made to needy groups in the Western Australian community, presumably through the grants program. The sales figure of \$850-odd million is nearly 3.5 per cent higher than the previous year, which, of course, is encouraging; nevertheless, both the chief executive officer and the chair of the organisation remain somewhat concerned about the challenges that Lotterywest has faced and might continue to face. We should do what we can to preserve the very effective Lotterywest model, because it receives great community support, but I would make the observation that over the last few years—the time of the previous government and the transition to the current government—some internal decisions made at either the executive or the board level of Lotterywest have quite obviously contributed to the successes and failures of that organisation. This is not to make a political point at all; this is just an observation about how any entity is managed over time and how it deals with the circumstances that it generates or has to respond to. Do not worry; my contribution will only go until the dinner adjournment, Leader of the House.

**Hon Sue Ellery:** I'm sorry; the sigh was not at you. I am reading my correspondence.

**Hon TJORN SIBMA:** I despair at that news. I hope the Leader of the House is not too disheartened —

**Hon Sue Ellery:** I was despairing at what I was reading.

**Hon Simon O'Brien** interjected.

**Hon TJORN SIBMA:** That is interesting —

**The PRESIDENT:** Member, you should not allow yourself to be distracted by those around you.

**Hon TJORN SIBMA:** I like to learn from others' valuable contributions, Madam President. I make it my job to learn; nevertheless, I will proceed.

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I was very curious about what was mentioned in Lotterywest's annual report, and, more to the point, what was not mentioned. Lotterywest is the kind of organisation that attracts attention from time to time due to changes at the top. I wanted to interrogate what is going on. With some indulgence, I put a series of questions to the organisation through the online question lodgement system. I wanted a sense of what Lotterywest saw as its challenges and threats. At the moment, Lotterywest sees —

Major challenges faced by Lotterywest include: adverse economic conditions reducing discretionary spend; increased competition from online competitors; changing consumer behaviour; increased operating expenses for retailers.

Mention is made in that answer of the threat, or the challenge, posed by online competitors, but the synthetic lotteries were not referred to—it does get to it. Obviously, the management of Lotterywest have to deal with a range of contingencies and not all of those contingencies avail themselves of government intervention through the design and implementation of legislation that purports to protect the organisation.

**Hon Colin Holt:** Synthetic lotteries aren't the only competition online.

**Hon TJORN SIBMA:** That is a very good interjection. I hate to be painful, but I wanted to understand the specifics, so I asked —

What is the precise nature of the threat posed to Lotterywest by 'synthetic' lotteries and how is this different to other digital gaming or wagering applications;

The answer was —

Synthetic lotteries, such as Lottoland, offer no benefit to the WA community by way of returns in community grants and returns to Government. As a majority of Lotterywest customers play lottery games as their only form of gambling, market share absorbed by synthetic lotteries such as Lottoland is likely to have a greater impact on Lotterywest's return to community than other digital or wagering applications.

Again, this is still a claim that is largely unsubstantiated by facts. There is no solid quantification of the argument put, which is that we need to protect Lotterywest from the competition of synthetic operators because they are chewing significantly into the market share of Lotterywest, and if we do that, an obvious set of consequences will follow.

**Hon Colin Holt:** I think if we could find out the download data and track it over time to see how many people download the Lotterywest app versus synthetics versus Tatts or whatever the others are, we might get some indication of how it gets affected.

**Hon Alannah MacTiernan:** What's the end purpose here?

**Hon TJORN SIBMA:** I do not know to which member I am responding. This is a substantive series of questions because, effectively, if the government is purporting to respond to a threat to protect Lotterywest from the encroachment of other operators into its revenue, how do we measure —

**Hon Alannah MacTiernan:** The problem is that a lot of it is not capable of precise measurement, but as the member knows —

**Hon TJORN SIBMA:** This is the point!

**The PRESIDENT:** Order, members. You will have an opportunity to respond to the matters that are being raised when the member has finished.

**Hon TJORN SIBMA:** That is exactly the answer that I was anticipating. It is difficult to measure. I will not say it will be impossible to measure, but it may be too resource intensive to measure. However, it has not been measured. What, however, can we measure? Have newsagents who operate bricks-and-mortar retail of lottery products been imperilled by the encroachment of synthetic lotteries? To some degree I think that perhaps that is the case. Has Lotterywest also contributed to their difficulties in the way that it utilises channels of sale? I think this is an important point and worth reflecting on. If we want to preserve the business model of retailers, we might also give contemplation to how Lotterywest prefers its products to be distributed.

I will refer to a table from questions submitted before the annual reports hearings that shows the proportion of Lotterywest products sold through bricks-and-mortar retailers and through online sales. I think this is where some of the story is—in fact, a large part of the story. In 2013–14, only 4.05 per cent of Lotterywest products were offered online. In fact, it may have been the first year it had a web presence or an app that could be downloaded. If we fast-forward to 2017–18, the most recent financial year, nearly 9.5 per cent of all Lotterywest products were retailed online. I asked what the future projections might be. The answer I received was that over the next five years, Lotterywest expects the online channel to grow from approximately 10 per cent to 15 per cent of total

**Extract from Hansard**

[COUNCIL — Tuesday, 4 December 2018]

p9088c-9109a

Hon Tjorn Sibma; Acting President; Hon Robin Chapple; Hon Aaron Stonehouse; Hon Colin Tincknell; Hon Alannah MacTiernan; Hon Colin Holt; Hon Rick Mazza; Hon Co Lin Holt; Hon Dr Steve Thomas

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sales, with a commensurate adjustment in retail. That is manageable if revenue derived from the sale of those goods grows over time, but it is very obvious that it is the Lotterywest preference to direct a significant and growing portion of its sales online, which can only reduce foot traffic through newsagents, which are its traditional retail partner of choice. I make the observation that that should potentially motivate Lotterywest to think about revising its revenue-share model with its retailers. Of the enormous volumes I mentioned earlier that it is in the annual report that Lotterywest distributed only \$607 232 worth of incentives to its retailers. If this bill attempts to do all things to all people simultaneously—preserving the privileged market position of Lotterywest and protecting the businesses that rely on the product, being the retailers—perhaps Lotterywest might give some consideration to how it treats those retailers. It has done some good things in this space in recent times, particularly by paying for the internal fit-outs of its own marketing, which has been a cause of some despair among newsagents over the last few years, so I commend the government and Lotterywest for moving in that space. I just encourage Lotterywest to be a little more expansive in how it treats its partners moving forward.

I should also mention a curiosity with Lotterywest. I found this curious. On page 8 of its annual report, Lotterywest advises that it campaigned with the Tatts Group and the Australian Lottery and Newsagents Association against synthetic lotteries. I would like to know whether there has been any equivalent action undertaken by a statutory authority in the Western Australian jurisdiction to effectively campaign in a political sense for legislative change in another jurisdiction, including at the commonwealth level. I found that to be more than just a curiosity; I actually found it to be inappropriate. Nevertheless, Lotterywest was satisfied with the outcome of that. I asked whether Lotterywest had engaged in lobbying either directly or indirectly as a consequence of its participation in the national campaign. Lotterywest said no, but lobbying was undertaken by a Tatts–lotteries block and ALNA. That means it has indirectly participated in a lobbying effort. The answer to that question should have read yes. Lotterywest has been effective in this advocacy for its own corporate interests. It has been largely satisfied by the result, which I think is a fair result, it secured at the commonwealth level, with amendments to the Interactive Gambling Act that prevent operators such as Lottoland from disrupting its operations.

Again, why do we have this bill then? If we accept this bill is necessary—yes, I am on the record as saying we support it—what are the implications of our assent? I received some very useful and constructive advice from the minister’s office but my question is: what problem is trying to be solved by way of this new prohibition scheme? I am not going to score any points on Trackside and what makes that desirable and what makes something like Lottoland undesirable. If we are to give certainty to industry, which is what I will impute to the minister’s rather harsh observations of the Liberal Party’s position—if I am to be as charitable as I possibly can to the minister and his contribution—I would say that the minister wants to provide everyone involved in this industry with a measure of certainty, and I think they absolutely deserve that certainty. If this house is going to agree that the Gaming and Wagering Commission should be granted a head of power to create a set of regulations that determine what is a desirable and an undesirable gaming and wagering product, we have to have a much clearer idea of what the government thinks a desirable gaming and wagering product is and what an undesirable gaming or wagering product is. This is the best, clearest view of the government’s thinking. It was provided to me by email from the minister’s office, and I appreciate that, but I think it begs more questions than answers. I have been told —

... no, there is no list of events or contingencies that would be considered for prohibition at this stage (acknowledging that the Federal Government has indeed moved to outlaw Lottoland) ...

I might just pause at the end of this sentence because I think this gets to the intent of Hon Aaron Stonehouse’s amendment on the supplementary notice paper about when these powers may come into effect. I think he is concerned with the uncertainty that is created with dualling regimes across jurisdictions when companies that are targeted by a federal bill make adjustments to their business model so they can comply with the commonwealth legislation. This email is only a few weeks old. If there has been an update, I would welcome that advice, but presently there is no list of events or contingencies that would be considered for prohibition at this stage. Perhaps that is because the one that we are most concerned about—Lottoland—has already been dealt with, so it begs the question: why are we here talking about this?

The email continues —

In regard to criteria that will be considered in the event that the Commission recommends an event or contingency should be prohibited, the following factors will be considered:

There are five dot points and I will read them out because it is important in the way we frame this debate. They are —

- Is the event of a sufficient national or international standing?
- Are the results of the event or contingency declared by a controlling body?
- The integrity and controls associated with the event or contingency

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I suppose that implies that the commission will evaluate whether the integrity that governs provisions within that event or contingency are adequate. Again that begs the question: how do they base their judgement? It becomes very circular. The fourth and fifth dot points are as follows —

- The public interest or appropriateness of wagering on an event or contingency
- Harm minimisation principles such as responsible gambling practices, consumer protection measures, the appeal to juveniles.

I was curious also about how such a scheme or prohibition might be drafted noting there is presently no list to guide that, and whether that would include consultation with the broader public, especially when I have a reference to, “We might choose to ban or not ban an event depending on our evaluation of the public interest.” I thought then that the government would probably seek public input. However, the answer is —

Prohibition of a particular event or contingency will not be open to public comment through an open process—however, public input is likely to form part of the consideration, based on the consumer comments received ...

I think we either have an open process or we do not. If we are responding to episodic complaints about a product such as Lottoland or we do not like the fact that a certain event is on and that people are enjoying themselves by betting on it, the government will factor that into its consideration but the government will not open this up for consultation in a broader sense. I am aware and practical enough to know that we would want to manage that process. I do not think a government necessarily knows best and that “no correspondence will be entered into” is necessarily the best process to embark upon.

I am curious to know whether something is anticipated. Is there something the government wishes to ban? That is not Lottoland, a synthetic lottery or something quite like it. From the response I have received, there is no immediate view on other events or contingencies that might be considered for prohibition. I think that is important when we give consideration to the urgency of this bill and how debate here displaces consideration of other bills.

That is one side of the generation of this scheme, which I think is absolutely broad, and we will be conferring powers on a commission that does not necessarily invite open scrutiny. I think it would be worthwhile, if the minister can, to confirm the process and operation of these heads of power. Has there been any deviation in contemplation or is anything planned that adds to the advice I have already received?

*Sitting suspended from 6.00 to 7.30 pm*

**Hon TJORN SIBMA:** Before the dinner suspension, I had moved on to canvass issues concerning the process and operation of this legislation if it is passed, and in particular the process and application of the regulations that would emerge from the creation of a new head of power to determine and demarcate offensive and inoffensive, or desirable and undesirable, products upon which one might wager or game. But before I get to the process—all I wish to do is confirm that my understanding of the process is as it was put to me by the very professional staff in the minister’s office—I will once again focus on how significant this head of power is and whether it represents the creation of a new power or the extension of an existing one. I raise this as an issue only because during the course of debate in the other place on 17 October, the minister provided quite a confusing observation of the intent and consequence of his own bill in reply to questions put by the member for Riverton, the Leader of the Opposition. I want to capture this exchange, not to necessarily reflect on the debate in the other place, just to give an observation about the at times confused and confusing justifications for this bill and the assessment of what it would do. I quote from the Legislative Assembly *Hansard* of Wednesday, 17 October, during consideration in detail. Hon Dr Mike Nahan asked the minister —

Could the minister give his view on the criteria he and his advisers will use to prohibit events? What specifically is the minister trying to target the prohibition on? Is it the expansion of the lotto or something else? Because even though the regulations go to the upper house, it is important for us and the interpretation of the court to have the minister’s clarity on the principles.

I think that is a very fair question. The debate in the other place had obviously reached a certain point, yet this elemental question was still an issue of debate and conjecture. To me, that reinforces the very muddled and opaque justification for the operation of this bill. The response from the minister to the member for Riverton was very revealing. I am quoting the minister directly —

Member, the power already exists under current legislation for the commission to make such regulations. Parliament conferred the power to formulate and impose prohibitions or conditions in relation to types of wagering that may or may not be conducted on the Gaming and Wagering Commission of Western Australia under section 8 of the Gaming and Wagering Commission Act 1987. So it is not a significant change with respect to the power, and the member’s concerns about us imbuing some new power on the commission are unfounded, really.

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When I read that exchange, I had moment to pause and ask myself: What, then, does the government intend to do? Is this actually the creation of a new power—because that is certainly how it is presented—or is it merely the extension of existing regulatory powers and instruments; and, in that case, why does the minister not just apply it? I put that question to the minister’s office, and it was put to me very clearly that, no, this legislation represents the creation of a new head of power. I am satisfied that that is the truth. However, it is instructive for members in this chamber to note that on something so fundamental as the nature of the bill, in an answer provided during consideration in detail, the minister in charge of that bill—who is not a representative minister but the actual minister—seemed to have a momentary lapse in comprehending his own product. If that is not sufficient encouragement for us to scrutinise this bill, in a manner consistent with our responsibilities and duties in this house, I do not know what is. I am not suggesting that the minister got it wrong. However, he seemed to add somewhat to the confusion and murkiness about this bill. Therefore, it is useful that we have the opportunity to aerate these kinds of issues and get clear, strong and declarative answers in reply so that we can move forward with a measure of confidence about what we are passing. This is not to play politics or play games, and nor is it to frustrate the government’s agenda. It is nothing of the sort. However, it seems that just inquiry and necessary scrutiny of government legislation is not welcomed by this government.

In my earlier contribution, I read an extract from *Hansard* to demonstrate how the minister had taken a needless threatening, bullying and belligerent attitude.

**Hon Peter Collier:** Which minister?

**Hon TJORN SIBMA:** The Minister for Racing and Gaming. However, that was not the minister’s only contribution along those lines. It is also important for members of this chamber to be aware of a subsequent contribution that although not at the same level of emotional volatility as indicated by the previous example, was certainly a variation on the theme. I will quote from *Hansard* of 16 October. To provide some context, obviously a comparison had been made about the kinds of events and contingencies that would be rendered undesirable under this undisclosed and almost unknowable schema of prohibited events, as anticipated by this bill. Something that seems to be an undesirable or unnecessary gaming product to many members of all parties of both houses is Trackside, which has been anticipated by the government. How do these things compare? How do we judge what is desirable and undesirable in clearly consistent and non-arbitrary ways? That is what opposition members in the other place were asking. I just needed to provide that context. The response of the Minister for Racing and Gaming was —

The Leader of the Opposition was ridiculous the other day when he was talking about a completely different bill.

This was obviously about the government’s announcement to sell the TAB. Yes, that is a different issue, but it is certainly a related one and worthy of comparison. But this is where the minister’s quote gets interesting —

Will we go through the debate in this chamber, only to have the Leader of the Opposition roll over and suggest that he supports Lotterywest outlets, and will we then hear that the upper house is going to play games and the member for Hillarys is going to get some of his oppos in the upper house to come and give us trouble?

**Hon Simon O’Brien:** What’s an oppo?

**Hon TJORN SIBMA:** I presume it is a condensed pejorative description of the opposition. We are the oppos! I do not know whether it is a parliamentary term.

**Hon Alannah MacTiernan:** It might be “operational”.

**Hon TJORN SIBMA:** The operationals. The operatives?

**Hon Alannah MacTiernan:** It might be just reflecting his military background.

**Hon TJORN SIBMA:** That may well be the case. I assumed that it was referring to the opposition. There was a suggestion that the member for Hillarys was going to get some of his oppos in the upper house to come and give the government trouble.

**Hon Alannah MacTiernan:** Are you in his same group?

**Hon TJORN SIBMA:** To continue, and I am quoting, minister —

That would be outrageous and wrong.

The Minister for Racing and Gaming then said —

If that were to happen, that letter will go out to every Lotterywest agent.

The minister was referring to the letter we were talking about before. Somewhat unsurprisingly, several members interjected. The minister then continued —



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I will be happy to put my name on it. I will say, “I’m writing as the small business minister to you as a Lotterywest outlet to let you know about the assault by the Liberal Party of Western Australia on your business.” I will let them know who has forsaken them.

**Hon Donna Faragher:** Is that from a minister of the Crown?

**Hon TJORN SIBMA:** This is a minister of the Crown. When we come in here to debate bills —  
Several members interjected.

**The ACTING PRESIDENT:** Order, members! There are far too many conversations happening across the chamber. Only one person has the call.

**Hon TJORN SIBMA:** I will briefly return to the bill; I am not going to drag this out. This was an absolutely unbecoming and unnecessarily belligerent debate, not in response to anything that might jeopardise the passage of the bill, but as the first response to scrutiny. Within the first 18 months of this government, this is how ministers of the Crown react to questions being put to them. Ministers in this house do not demonstrate that standard, but their colleagues in the other place seem to indulge in that kind of behaviour with a concerning degree of licence. It would be useful if senior members—senior ministers—in this house take the opportunity to provide some professional counsel to their colleagues. Frankly, this stuff is ridiculous. The minister —

**Hon Alannah MacTiernan** interjected.

**Hon TJORN SIBMA:** I think the minister may have got lost in the thread of the discussion —

**Hon Alannah MacTiernan:** No—you were criticising them for saying —

**Hon TJORN SIBMA:** Any minister in this Parliament can threaten to write a letter. Go for it!

**Hon Sue Ellery:** Is that a threat? Is it?

**Hon TJORN SIBMA:** They should write as many letters as they wish.

**Hon Sue Ellery:** “I am going to write a letter and tell them what position you took.” What’s wrong with that?

**Hon TJORN SIBMA:** Any minister of the Crown can write a letter—go for it! It is an invitation, not a threat. Perhaps the problem is that members opposite do not understand what a threat is.

Several members interjected.

**The ACTING PRESIDENT (Hon Martin Aldridge):** Order, members!

Several members interjected.

**The ACTING PRESIDENT:** Order! I am struggling to hear Hon Tjorn Sibma over the interjections that are not even directed at Hon Tjorn Sibma. If we could please try to contain ourselves.

**Hon TJORN SIBMA:** Yes; thank you. I will take your guidance. Far be it from me to encourage that kind of unruly interjection between members in the chamber.

My serious point is that if members opposite want to conduct their affairs in a sensible, adult and business-like fashion, they should not go about it this way. I do not think it reflects particularly well on individual ministers or the government. It does not. It is not helpful or productive.

During the reply by the minister representing the Minister for Racing and Gaming, I wish to seek information on whether comprehension around the process by which these new regulations might be effected is as was provided to me. I will provide this quote. It is a bit lengthy—my apologies—but it is important to understand that this is the way it was intended that these regulations would operate. I quote —

The avenue by which an event or contingency might come to light —

That is, an undesirable one —

would be through a complaints-driven process—complaints may arise through consumers, the Commission itself, RWWA, other industry bodies or companies, Lotterywest, Crown etc. The commission would then have the responsibility to investigate and to assess the event or contingency against the criteria (as described in 2a.) —

That is a response I have already read in with its five bullet points —

and make recommendations to the Minister. The recommendation may be to prescribe regulations prohibiting the event or contingency.

Add on to that, “or they may not be”. The email continues —

The Minister would need to consider his or her views on the event or contingency, as well as the background, consultation and investigation of the Commission and decide whether to progress with

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regulation. If the Minister decides to do so, this would then be subject to usual process for regulation (including a Regulatory Impact Assessment and Executive Council sign off) and then presented to the Joint Standing Committee on Delegated Legislation, at which time the regulations would be subject to disallowance.

In respect of my concern mentioned previously, and I think the concern expressed through the proposed amendment of Hon Aaron Stonehouse, I want the government to confirm that that process will be followed, because if indeed it is—I have taken from previous answers provided to the minister’s office that no emerging undesirable event or contingency has attracted any of that kind of process—I am comfortable that the passage of the Gaming and Wagering Legislation Amendment Bill 2018 will not contribute to jurisdictional complications between the operation of laws in the state of Western Australia and commonwealth laws as they apply to the prohibition of synthetic lotteries such as Lottoland. I am led to believe that significant progress has been made in the regularisation of those kinds of business arrangements. All I seek is clarification on the process. I am grateful now to sit down, but once again I reconfirm that the Liberal Party supports this bill, Lotterywest and Lotterywest retailers, and there is absolutely no occasion for the minister to get excited and write any letters to anyone.

**HON ROBIN CHAPPLE (Mining and Pastoral)** [7.51 pm]: I was going to give a lengthy presentation on the Gaming and Wagering Legislation Amendment Bill 2018, but I think the honourable member opposite has achieved my aim, so I will not bother with that. I would like to start by thanking the briefers—Emma Roebuck, Donna Kennedy and Crispin Rovere—for their advice and information on this legislation. Simply put, this bill amends our gaming and wagering laws in several ways. None of the changes it makes is controversial.

One change the bill makes is to create a head of power to enable certain events or contingencies, or classes of them, to be prescribed as prohibited, making it an offence to offer or make a bet on them. The usual disallowance process will apply. This reform allows Western Australia to go further than the recently passed federal laws that prohibit betting on lottery outcomes. The sorts of events and contingencies intended to be included are junior sporting competitions; local social sporting competitions that do not have a controlling authority declaring results; any sporting event in which integrity is compromised—for example, when there has been match fixing—and any betting activity, such as synthetic lotteries, likely to threaten either our not-for-profit Lotterywest and its small business retailers or our revenue-paying TAB.

Another change made by the bill is to reform how the racing bets levy is calculated. This is intended to match other Australian jurisdictions. The bill stops bookmakers who do betbacks from having to pay tax twice—that is, on both bets. They will now pay tax on the original bet only. This affects 26 bookmakers. The Western Australian Bookmakers Association has been seeking this for many years—we have correspondence to that effect—and supports the bill. Betting exchanges such as Betfair will pay the levy on net winnings, not turnover. This solves the current problem of the levy outweighing their profit

Another change made by the bill is to empower the Gaming and Wagering Commission to impose prohibitions or conditions on advertising live odds during events. This will be by regulation and the usual disallowance process of this chamber will apply. It arises out of a meeting of state and territory ministers. The second reading speech says that this will apply only to prescribed sporting arenas and stadiums that are not horse or dog racing venues, where odds change all the time; nor will it apply to advertising that provides sponsorship support to local community sporting grounds.

Another change made by the bill is prohibiting remote gambling facilities on public premises. This addresses a lacuna in our current laws. “Public premises” excludes TABs, Lotterywest kiosks and prescribed premises or classes of premises. This provision will not capture gambling via devices not specifically made for gambling—therefore, gambling via personal devices or internet cafe services will remain lawful.

The bill also changes the definition of “foreign” lottery. Conducting a foreign lottery is unlawful in WA. Currently, “foreign” means outside WA. This will be changed to mean outside Australia. The intention is to avoid capturing national raffles for benevolent purposes, such as the national Surf Life Saving raffles. This change reflects a Council of Australian Governments’ agreement in 2010 that was entered into as part of the development of a nationally consistent approach to fundraising regulation. It removes red tape from the organisers of those raffles, which currently requires that they get a separate Western Australian permit.

The bill also makes some housekeeping changes, including the removal of a spent provision relating to two-up, updating penalty provisions to reflect modern drafting techniques, and anticipating a name change of the licensee of Burswood casino. This bill is not controversial. It introduces some harm minimisation measures, which the Greens welcome. The bill’s other reforms are very benign and we recommend support for the bill.

**HON AARON STONEHOUSE (South Metropolitan)** [7.56 pm]: I stand to speak on the Gaming and Wagering Legislation Amendment Bill 2018. The bill, amongst other things, makes provision for the Gaming and Wagering Commission to prescribe undesirable wagering products as prohibited events or contingencies, and makes it an

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offence for a person to offer or bet on prohibited events and contingencies. The second reading speech by the minister states —

To complement the approach of the commonwealth and enable an immediate response to future undesirable betting products entering the public domain, the bill will amend the Betting Control Act 1954 by making provision for the Gaming and Wagering Commission to prescribe prohibited events and contingencies that can be bet on.

The minister is talking about the recent amendments to the federal government's Interactive Gambling Act 2001 through the Interactive Gambling Amendment (Lottery Betting) Bill 2018, which effectively banned synthetic lotteries nationwide—that is, betting on the outcome of lotteries in other countries or jurisdictions. This has been given as somewhat the impetus for this bill—the motivation behind the provision to prescribe undesirable betting activities. The ban on synthetic lotteries is on Lottoland in particular, which is the only one currently providing synthetic lotteries in Australia—at least, the only one that is well known.

The ban on Lottoland has already gone through by way of an amendment to the commonwealth Interactive Gambling Act. That will come into place on 9 January, so Lottoland is effectively out of the picture. It will be banned as of 9 January 2019, yet we are still passing broad powers potentially to allow the commission to ban synthetic lotteries in this jurisdiction as well. If the government wants to ban a particular betting practice, it should do so through primary legislation rather than through prescribed subsidiary legislation—through regulations instead. In that way, primary legislation can at least be properly scrutinised by both houses of Parliament and get the review that it requires.

I see no great social ill in synthetic lotteries. The government has not pointed to any other specific practice it is seeking to ban through these powers, either. It has not provided any concrete examples or any idea about what its intentions are for these powers. It was put forward that because Lottoland competes with Lotterywest, it impacts on the revenue of Lotterywest and, therefore, the community grants that Lotterywest administers. However, it has been revealed that Lottoland controls, at least on the best estimate, about one per cent of the total market of lotteries in this state. In fact, Lotterywest officials, who even went on the record during estimates hearings, have said that they are not too sure about any measurable impact Lottoland has had on Lotterywest sales.

It was raised that there is potential for consumer confusion over what they are actually buying when they engage with Lottoland and that consumers are not aware they are betting on the outcome of a lottery as opposed to entering the lottery itself. This was raised during Hon Tjorn Sibma's contribution. If that is the case, it seems a more appropriate response would be to perhaps use the Fair Trading Act or some other consumer protection method as opposed to banning this practice entirely. If consumers are unsure of the product they are betting on or that they are buying from Lottoland, there are certainly other mechanisms that are a little less heavy-handed than granting the Gaming and Wagering Commission of Western Australia the power to ban any betting practice that it dislikes.

It really calls into question the motivation behind this. If Lottoland is already banned by an act of the commonwealth Parliament and we have mechanisms to protect consumers from unscrupulous companies advertising products that consumers misidentify as lotteries, why are we pushing ahead with this legislation? It seems to me one possible motivation might be to shore up the value of the TAB for its upcoming sale. The federal ban on Lottoland was certainly pursued by Tabcorp, which potentially sees Lottoland's virtual product, its synthetic lotteries, as a competitor to Tabcorp's own virtual product—Trackside. In fact, the government has gone so far as to roll back restrictions on virtual racing to sweeten any potential deal in the upcoming TAB sale.

I will read from an article in *The Australian Financial Review* titled “WA Labor uses TAB sale to soften virtual gaming ban”. Quoting from that article by Brad Thompson, it states —

Unions warned on Wednesday the move was likely to lead to a rise in problem gambling and was a short-sighted ploy to boost the profits of a new private owner.

The blanket ban on virtual gaming and poker machines outside of the Crown Resorts casino complex in WA has long had bipartisan political support.

However, Premier Mark McGowan's government confirmed it would seek to ease those restrictions as part of the long-awaited TAB sale.

The roll-back will take in TAB venues and apply to virtual racing, which includes products such as Tabcorp's Trackside, which is available to punters in other states.

I would certainly welcome a rollback of restrictions on virtual gaming products and poker machines outside of Crown Resorts' casino complex. But this goes to show at least the government's willingness to abandon its view that gambling is a potential problem activity and a scourge on society and, instead, move to shore up and protect the value of the TAB and its attractiveness to prospective buyers. It seems that what we have here is a government

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pursuing bans on synthetic lotteries but moving to legalise synthetic racing. It is a ban on one virtual gaming practice and a removal of restrictions on another virtual gaming practice. It seems some synthetic products are good and some are bad. We do not really have any sort of clear process to determine which ones are good and which ones are bad except for, it seems, the good ones are the ones that will increase the value of the TAB to prospective buyers and the bad ones are the ones that might compromise the value of the TAB to prospective buyers. Some members may like that idea of protecting the value of the TAB for prospective buyers, but I think that is a very dangerous way to write policy; that is, for a government to write policy and ban particular business practices to protect its own interests in its own state-run monopolies, and to abandon supposed attitudes of harm reduction on gambling when it is a financial benefit to the state to do so.

Minister MacTiernan interjected during Hon Tjorn Sibma's comments when he was talking about virtual racing products. I think she suspected he was speaking in defence of virtual racing products. I wrote down the minister's interjection because I thought it was quite interesting. She asked, "What do you think happens in pokies compared with virtual racing?" The member was criticising the idea of a computer generating a random outcome for a virtual horserace. That interjection is very interesting. The minister thinks that there is no distinction between poker machines and virtual racing products, or that virtual racing products are as bad as poker machines, or that poker machines are fine and perhaps we can roll back some of the restrictions on those. I would certainly be in favour of that. Again, that shows the hypocrisy of the government in that it is looking at some gambling products that, according to Minister MacTiernan, are indistinguishable from poker machines and saying, "Those are okay. We will remove restrictions on those because it's going to help shore up the value of the TAB for a prospective sale to perhaps Tabcorp". It also raises the question of what further actions the government might take to protect the value of Tabcorp going forward. If we grant the government powers to declare certain gaming and betting activities as undesirable and ban them, what else is on the chopping board? The government has been very vague about what it will ban with these powers. We really do not know going forward what plans this minister or ministers in the future might have.

Another interesting interjection I took note of was again from Minister MacTiernan. When speaking about the need to ban Lottoland and synthetic lotteries, she said, "They're drawing from a scheme, so they are benefiting without contributing". I think she was talking about them supposedly chewing into Lotterywest's revenue and sales, and therefore decreasing the amount of Lotterywest funds for community grants, without contributing to state coffers through a betting consumption tax. Perhaps they are not contributing, but they certainly wanted to. Luke Brill, the chief executive officer of Lottoland in Australia, was in the media stating just that—that he wanted to pay a point-of-consumption tax to government and contribute to community grants rather than being banned outright. In fact, if I am not mistaken, Lottoland even had plans to bring retail lottery agencies into the fold and start a revenue-sharing scheme with them.

**Hon Colin Holt:** Will you take a short interjection?

**Hon AARON STONEHOUSE:** Sure; go for it.

**Hon Colin Holt:** Because they're registered bookmakers, they would actually have to pay the point-of-consumption tax.

**Hon AARON STONEHOUSE:** I was just getting to that. That is an excellent point. We have just passed a bill through this place that implements a point-of-consumption tax. That would have been fantastic opportunity to raise revenue through Lottoland, which was willing to pay a point-of-consumption tax as opposed to being banned, but we have passed up that opportunity. We are granting powers to the Gaming and Wagering Commission of Western Australia and the Minister for Racing and Gaming to ban practices in the future that again may compromise state revenue through various gambling practices that will be captured by a point-of-consumption tax. In the case of Lottoland, it wanted to contribute. It was willing to work with the government to contribute, but it seems that, in this case, McGowan and his government had already decided that a ban was the way they were going to go and they were willing to forgo that revenue and contribution to community grants and retail lottery agencies and instead pursue a ban that, as far as I can see, does not benefit anyone. It does not benefit lottery agencies. Their sales are not diminished because Lottoland has a one per cent share of the market. It is hard to imagine that the retail agencies that sell physical tickets are losing sales to an exclusively online service that is done through a smart phone. As we have heard in previous budget hearings, that is certainly not the case for Lotterywest's overall sales; it does not attribute its reduction in sales to the introduction of Lottoland in the market.

We are still left with the question: what is the impetus or point of this brand-new power when Lottoland has already been banned and does not pose a threat to Lotterywest or to lottery agencies and when we are forgoing a potential new revenue stream? Why are we passing these new powers?

**Hon Alannah MacTiernan:** How are we forgoing a revenue stream if it's already been banned by the commonwealth?

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**Hon AARON STONEHOUSE:** Sure, there is a missed opportunity, perhaps—not an action of this government but a missed opportunity nonetheless. When we get to the mechanism by which the government potentially wants to ban undesirable betting activities in the future, this bill does it through regulation; it grants a new head of power. I am very uncomfortable with, and very wary of, this mechanism. In my view, the delegation of legislative power from the legislature, Parliament, to the executive, the minister and the state government, somewhat undermines the separation of powers and should be done only when absolutely necessary and on a limited basis with adequate checks and balances. Some of those checks and balances are in place because regulations pass through this house and are disallowable and we have a Joint Standing Committee on Delegated Legislation, but regulations should be done only when necessary. The government has not sufficiently demonstrated that these regulations are necessary. It cannot point to any product that urgently needs to be banned.

Let me make this clear for anyone who is unsure. Regulation is legislation. Albeit it is subsidiary legislation, it is still legislation in a way. When we grant the executive the power to write regulations, we are delegating a legislative power to the executive. The legislature, Parliament, should not be too hasty to abdicate its responsibility to legislate and check the powers and ambitions of the executive. As I have mentioned, the regulations can be disallowed, but the Legislative Council's ability to disallow a regulation does not provide adequate scrutiny of subsidiary legislation. The practicality of disallowance motions is that they are debated over, perhaps, if we are lucky, 20 minutes at the end of a day or a sitting week or a sitting block. That has been the practice in this Parliament and that does not provide sufficient time to scrutinise regulations. A disallowance motion also does not provide an opportunity to amend regulations. An entire regulation or a section of it can be merely disallowed and nothing can be added, unlike primary legislation whereby a bill is presented and passes through the Committee of the Whole stage, when each clause can be scrutinised in detail and speaking times are a lot longer. The standing orders allow for a significant amount of debate.

Passing legislation in the primary form of a bill as opposed to a regulation certainly takes longer. I understand that is why the government wants to avoid that route and prefers the flexibility that regulations allow. I think that that longer process is a good thing. It would certainly curb the government's more paternalistic desires to ban gaming practices that it thinks are wicked or bad. It would provide more opportunity for community consultation and would provide members of Parliament with more opportunity to research and come to informed positions on bans, as opposed to regulations; in many cases, we are lucky if any members are aware that regulations have been tabled in the first place. Very few members in this place take the time to look at the *Government Gazette*.

Under the new powers in this bill, the minister will have the power to ban gambling practices that he or she does not like. My concern is that he or she will have the power to do that somewhat on a whim. A process was outlined to us that Hon Tjorn Sibma detailed in his contribution and that sounds all well and good, but I have a question for the minister. Perhaps she can answer it in her second reading reply or perhaps we can go through it in Committee of the Whole. If the commission initiates a review of a practice based on complaints about that practice and then makes recommendations to the minister, can the minister direct the commission to undertake those investigations and make recommendations? If it can be initiated by the minister alone, without any sort of real measurable community complaints, I am afraid that it can be done on the whim of a minister. I worry about that.

I have respect for Minister Papalia. I think that, for the most part, he is a reasonable minister, but we do not know who the minister will be in a couple of years when there is a new government. We do not know who they will be or how reasonable they will be and what pressures may be put upon them to ban certain practices because they are undesirable to certain rent-seekers, as opposed to undesirable to the community as a whole. Just in this Parliament there are plenty of examples of bans and restrictions being placed for nothing more than what seems like virtue signalling to certain stakeholders with no tangible improvement to community outcomes. I would like to know whether the minister will have the power under this legislation to direct the Gaming and Wagering Commission to recommend banning certain practices. I would also be interested in hearing an outline of the process and a confirmation of whether it will be what Hon Tjorn Sibma detailed for us—that is, a recommendation from the commission to the minister, and then to Executive Council, before being printed in the *Government Gazette*. Executive powers like this are easily given, but they are rarely taken back.

I am also very interested in what criteria will be used to determine what an undesirable wagering product is. I hope that will be addressed by the minister too. This has been touched on in a previous contribution, but will some kind of metric be used to determine what is undesirable? Of course, what is undesirable to some people may be desirable to others. Ultimately, I think that consumers have a pretty good idea of what products they like. They will vote with their feet and with their wallets. If they do not like a synthetic product, they will not buy it. If we are to take away consumers' freedom to make their own choices about which gaming and betting products they buy, what criteria will the government use and how certain can it be that it is making the right choice to take those actions on behalf of consumers?

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I have a certain degree of respect for Minister Papalia. I run into him from time to time in Port Kennedy in my electorate when we go to Remembrance Day or Anzac Day services. It is always a pleasure to see him there. I also came across him at the WA Liquor Store Association awards night a couple of months ago. However, Hon Tjorn Sibma raised Minister Papalia's comments in the lower house. Quoting from the *Hansard* of 16 October, during the debate in the other place he stated —

But I can tell members that if this bill gets into the upper house and is delayed by any sort of ridiculous politicking, I will follow the lead of the Minister for Transport. I will get the list of addresses from the Premier and write to every single one of the Lotterywest newsagents and the 26 bookmakers and tell them that this bill is being held up by the opposition in Western Australia—"The Liberal Party in Western Australia has proven itself incapable of a coherent response to anything and they do not like you; they didn't help you in government, and they're not helping now." That is what the letter will say. I will say, "Contact them and tell them that you're not voting for them but also that you'd like them to pass the bill in the upper house."

That is a really disappointing statement for a couple of reasons. It completely ignores the role that the crossbench plays in passing legislation through the upper house, which seems to be a constantly repeated theme of ministers in the other place.

**Hon Sue Ellery:** He refers to ridiculous politicking. If you are not doing ridiculous politicking, how is it a threat?

**Hon AARON STONEHOUSE:** Sure.

**Hon Sue Ellery:** I don't think you are.

**Hon AARON STONEHOUSE:** I am certainly not going to rise to the defence of the Liberal Party. I will smack it around in just a moment.

**Hon Alannah MacTiernan:** I make the point, too, that if the Liberal Party supports a piece of legislation, that legislation will pass regardless of the crossbench.

**Hon AARON STONEHOUSE:** It does, minister. As Minister Papalia was saying that, John McGrath was interjecting saying, "We support it! We support it!" This seems to be little more than grandstanding by Minister Papalia—for what purpose I do not know. Perhaps it was to win political points against the Liberal Party or to use this legislation as a club to smack it around.

**Hon Colin Holt:** How does not passing this bill affect newsagents?

**Hon AARON STONEHOUSE:** It does not—exactly!

**Hon Colin Holt:** So why would he be writing that?

**Hon AARON STONEHOUSE:** Exactly! That is a very good point. As was said previously, he can write to anybody he likes. Of course, if this bill is passed, these threats are empty, but he has threatened to write to people and provide them with very misleading information.

**Hon Sue Ellery:** If you engage in ridiculous politicking!

**Hon AARON STONEHOUSE:** Who is engaging in ridiculous politicking?

**Hon Sue Ellery:** That's the question, isn't it? You wouldn't describe what you're doing as that, would you?

**Hon AARON STONEHOUSE:** Is ridiculous politicking us, as members of the Legislative Council, carrying out our lawful role as a house of review to scrutinise and analyse legislation that passes through this place? That is not ridiculous politicking! That is carrying out our function and why we are here in the first place—to act as a house of review. The idea that to scrutinise or ask questions about this bill is somehow counter to the interests of Lotterywest, newsagents and bookmakers in this state is ridiculous. This really does a disservice to the minister, because his staff have worked very, very hard to ensure that this bill has a smooth passage through this house. They have been engaging with members of the crossbench and the opposition for weeks now, addressing concerns and ensuring we have what we need for this bill to pass smoothly, without delay. Then the minister says things like this, that are very much at odds with the efforts of his own staff. His staff do him credit and I think he really does himself a disservice when he makes statements like this. These are the kinds of statements I have come to expect from the Attorney General and recently from Bill Johnston, but to hear them from Minister Papalia—again, a man I hold in relatively high esteem—is really disappointing.

What we hear from Minister Papalia, Minister Johnston and the Attorney General are criticisms about the passage of bills through the upper house levelled at the Liberal Party—at the opposition. There is never recognition or acknowledgement of the role that the crossbench plays. There may be times in the Parliament when an opposition or

**Extract from Hansard**

[COUNCIL — Tuesday, 4 December 2018]

p9088c-9109a

Hon Tjorn Sibma; Acting President; Hon Robin Chapple; Hon Aaron Stonehouse; Hon Colin Tincknell; Hon Alannah MacTiernan; Hon Colin Holt; Hon Rick Mazza; Hon Co Lin Holt; Hon Dr Steve Thomas

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a crossbench frustrates a government's legislative agenda, but there are also times—I would say, the vast majority of times—when an opposition and a crossbench have legitimate concerns about the legislation that passes through here.

That was certainly the case with the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018. I think the amendments we made to that bill certainly enhanced it and will improve the outcomes for victims of child sex abuse. I think the amendments proposed for the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018 will improve the outcomes for not only lessors, but also lessees. The concerns that have been raised during this debate by the opposition and by me and other members of the crossbench—the Greens are included in that, of course—will clarify the legislative intent of the bill we are dealing with, provide clarity for operators in this space and provide clarity for the judiciary if it has to adjudicate cases and challenges against this legislation in the future. It is a legitimate function of the upper house to scrutinise this legislation and to take our time and not be rushed because a minister in the other place wants to tick something off before the end of year; he wants to use it as a baton to smack around the Labor Party's eternal enemy, the Liberal Party.

I should take a moment to remind the government that we do not live under a presidential system. There is such a thing as the separation of powers. We have a Parliament for a reason—not just to make laws, but to scrutinise, evaluate and debate laws. When the government pushes through important changes, such as bans on entire forms of commercial activity, it skirts that process and deprives the people of this state with a much-needed form of representation and accountability in their Parliament. What is more important, there is a fundamental danger to our democracy when the executive vests too much power with itself. I suppose that might sound hyperbolic, but every time we delegate legislative power to the executive, we diminish the power of the legislature and we very, very rarely get those powers back, so we should tread with care. We should be absolutely certain that there is a need for this legislation in the first place before we delegate those powers, and in my view the government has not demonstrated that need. It is unfortunate to hear that the Liberal Party will support this legislation. I certainly intend to oppose it. I will not support it. The government has not established a need for it and it will only allow for its worst paternalistic instincts to be carried out through bans on gambling practices that it dislikes.

**Hon Colin Holt:** What about the bookmakers who pay double? Do you not support that?

**Hon AARON STONEHOUSE:** I do support those aspects; it is the new head of power I oppose. I thank the member for clarifying that. I do not really have a problem with the other provisions of this bill. They are minor. There are some good things. I am not a fan of some of the bans on advertising, but they are really minor in their impact. I absolutely oppose the new head of power. It is disappointing to hear that the Liberal Party will support the new head of power. In my view, this is very reminiscent of the debate about the liquor control amendments in which the Liberal Party supported a new head of power to arbitrarily restrict the floor space of big-box liquor stores.

It is the same thing. There is a new head of power to grant sweeping powers to the executive and to write regulations to ban certain types of businesses or certain business activities to solve a problem that does not exist. Lottoland and synthetic lotteries are not a problem; they are not chewing into Lotterywest sales and they are not affecting Lotterywest retail agencies. When it comes to liquor sales, again, there was very little evidence that big-box liquor was having an impact on the variety of liquor stores or the prevalence of smaller liquor stores and competition in that space. There was certainly no evidence that it would have any impact on alcohol-related harm. These are very comparable debates in my view. The Liberal Party sided with the government on both these instances. As much as Minister Papalia and other ministers smack the Liberal Party around for potentially opposing bills, more often than not the Liberal Party is complacent and does support government legislation. It does very little to frustrate the government's legislative agenda, much to my disappointment. This is just another in a long list of examples of the government banning things it does not like as opposed to a live-and-let-live attitude of, "If some people like products we disapprove of, whose business is that?" Government would rather ban those practices to protect vested interests, to shore up its own monopolies, to ring-fence perhaps, a tab for prospective buyers. Again, as the government has not demonstrated, in my view, a genuine and pressing need for these new powers, and in the absence of being able to point to any particular betting practice that should be banned urgently, I am inclined to oppose this legislation.

Just before I resume my seat, I will foreshadow my amendment that is on the supplementary notice paper that deals with the commencement of this Gaming and Wagering Legislation Amendment Bill and its measures. It, essentially, seeks to ensure that the government cannot ban synthetic lotteries—Mark McGowan or Minister Papalia are certainly no fan of them, if we take their comments—before the date that the commonwealth ban comes into effect. The commonwealth ban will come into effect on 9 January, and my amendment would ensure that the proclamation of this head of power cannot come into effect until 10 January or after. That will ensure there are no jurisdictional complications between a state-based ban through this bill and the commonwealth ban through the legislation passed through the commonwealth Parliament earlier this year. That would provide some certainty to those in the industry—those who operate synthetic lotteries, which, to my mind again, is only really Lottoland—

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that they have until 9 January to exit the market with their synthetic lottery products. It does not seem to be a big ask. The government has said that it will not be banning before 9 January. If that is the case, this amendment should not be of much concern to the government at all. However, if the government can put on the record today that it has no intention of introducing regulations to ban synthetic lotteries in this state before 9 January, and can commit to that, I might be willing to remove that amendment; it may no longer be required and I may not pursue that amendment in the Committee of the Whole House. With that, I look forward to the minister's response.

**HON COLIN TINCKNELL (South West)** [8.28 pm]: Some pretty solid contributions have been made by members this evening. Hon Colin Holt, Hon Dr Steve Thomas, Hon Tjorn Sibma and Hon Aaron Stonehouse covered many aspects of this Gaming and Wagering Legislation Amendment Bill, which I will try not to repeat. I suppose this bill is a little like maybe going to our mum and dad's place or whatever it is on Christmas morning or going to a big Christmas party where there are some presents for us, but after Christmas day we want to take some of those presents back to the retailer and swap them for something else. This bill has some good things and it has some bad things. There are some issues and I would like to talk about some of them.

I can see that the government has tried to close some of the loopholes and anomalies in the current act. Hopefully, that will prevent interstate and overseas gaming entities from making huge profits through those loopholes. We have heard the comments of other members. Other members may take a different view. There are some good reasons why this bill should go through this place. I agree with the comment of Hon Aaron Stonehouse that the Gaming and Wagering Commission wants to have the power to decide what is and what is not a good gambling product. I take issue with that power being taken out of the hands of the Parliament. However, one of the good changes that is being made in this bill is that it will make it fairer for Western Australian betting agents and bookmakers.

However, I find some parts of this bill slightly contradictory and inconsistent. It is important to protect young kids and children and vulnerable people in our population from the adverse impact of advertising. However, we are also preventing adults from having access to live odds. It is a bit contradictory to support one group of people because we are concerned about the influence of betting advertising and promotion, but on the other hand deny adults their right to get the latest information.

**Hon Alannah MacTiernan:** How are we doing that?

**Hon COLIN TINCKNELL:** I have just explained that.

**Hon Alannah MacTiernan:** They can go online and get it. We are not preventing that.

**Hon COLIN TINCKNELL:** The second reading speech refers to the need to ensure that vulnerable populations—for example, kids—have limited exposure to the normalisation of gambling, such as by providing live betting odds at football games. However, in limiting kids' exposure, we are preventing adults from being able to access live odds. This is an unintended consequence of the bill. It impinges on the freedom of adults to access gambling information.

As I mentioned during the debate on the Betting Tax Bill, this bill will enable the government to put a considerable amount of money into consolidated revenue. At this stage, I have no idea how that money will be spent. We have found out through inquiries that it will cost \$150 million to update the racing infrastructure in this state. I fear that the smaller country meets will be either downgraded or closed in the future. Those meets are very important to the cultural life of regional communities. It is not clear to me how this bill will deal with that issue. I do not think the 30 per cent of revenue raised from the point-of-consumption tax will be enough to support the racing industry. We need to do more than that.

As Hon Aaron Stonehouse has mentioned, in some ways this bill is premature. There is a chance that a Supreme Court challenge from Lottoland would be successful. Therefore, that is another problem that could come up in the future.

With that, One Nation will be supporting Hon Aaron Stonehouse's amendment. We think this bill will definitely go through. We have seen how the major parties will be voting. However, we would like to see the bill improved.

**HON ALANNAH MacTIERNAN (North Metropolitan — Minister for Regional Development)** [8.34 pm] — in reply: I thank all members for their contributions on the Gaming and Wagering Legislation Amendment Bill 2018—those in support and those not in support. Like any piece of legislation, there is complexity to it and not all issues are going to be straightforward. There will always be areas on which questions are raised. I thank all members for so kindly recognising the very dedicated team who serve Minister Papalia in this regard. I agree that they do fantastic work.

I did note some obvious discomfort with some of the robustness of Minister Papalia's comments and of other ministers' comments from time to time. I will give members some benefit of my experience of having been



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a member of both upper and lower houses. There is a quite considerable cultural difference between the houses. I must admit that when I came back in here, it was a bit of a cultural shock. We have to accept that lower house members are in a situation with a lot more hurly-burly; they go out and win individual seats and politics is played harder. I urge members to understand that and to not take the degree of personal offence at these things that they appear to take. I just make that observation. There are two very different cultures. Whilst we all recognise the role and importance of a house of review, there is a need for timeliness for those people who are trying to make the system work. Sometimes there is a degree of discomfort with, or perhaps members do not quite understand, the length of time things sometimes take to get through processes in that place. I make that observation just by way of providing a bit of an explanation or a different frame through which we can see these things.

Members raised many interesting issues. One of the primary concerns was obviously the idea that there will be a power to prescribe certain betting and gaming practices. I understand that Hon Aaron Stonehouse is a libertarian and that, from his point of view, every increase in regulation is something that, quite understandably, he feels the need to call out. There are other areas in which I would agree with him, but I do think we are probably overcooking this goose a little. The minister is very clear that we have explained and made various undertakings about what this involves and the processes that will be gone through.

Members have pointed out that, at one level, this was justified as a response to Lottoland, but that we have federal government legislation in relation to Lottoland. As I understand it, our commitments to do something about Lottoland had their genesis while we were in opposition. We made various commitments to deal with this, for the reasons we articulated. From our discussions with Hon Colin Holt and Hon Tjorn Sibma, we felt that it had potential. We cannot absolutely quantify it, but I know from my and other people's experience that when we have been into a shop to buy a Lottoland ticket we thought we were buying an actual legitimate lottery ticket. So although it is true that we cannot exactly quantify the detriment to real lotteries, the people who developed this derivative product have quite clearly not been paying the same return into the general system that goes to community benefit. It is widely supported across this state that the money raised from this form of gambling goes to community benefit. I do not expect Hon Aaron Stonehouse will agree with this, but generally speaking people in Western Australia believe that has been a positive.

It is true that since we were elected and started working on this legislation there has been federal government action on Lottoland. Nevertheless, we wanted to persist with our amendments; we are not the only state that has. Victoria and South Australia have also proceeded with their amendments because for a variety of reasons there might be other forms of gambling that we might want to prescribe by way of regulation. A number of members have asked for an assurance around Hon Aaron Stonehouse's amendment on the notice paper. We do not want to support that amendment, member, because we want this legislation to go through. But the minister has asked me —

**Hon Martin Aldridge:** Why wouldn't it go through?

**Hon ALANNAH MacTIERNAN:** Sorry; we want it to go through and become legislation. Hon Martin Aldridge might not have observed, but the Legislative Assembly is not sitting and we are very keen —

**Hon Martin Aldridge:** Is that your only defence?

**Hon ALANNAH MacTIERNAN:** Hold on—no, it is not! I am explaining why it is not necessary and why we will not agree to the amendment. It might be that we would be moving on two axes. Is it necessary? No, it is not. If it is not necessary, maybe we could pass it anyway. But we do not want to support it because we want the legislation to come into effect so that we can start dealing with the other parts of the legislation that I understand members support. This is a complex set of legislative provisions, some of which most members on the other side agree with. But the minister has absolutely given an undertaking that until 10 January next year he has no intention of introducing regulations in relation to Lottoland that would in any way infringe on its ability to operate. He does not have a general intention to introduce regulation on Lottoland because we are quite confident that there will not be a challenge to the federal government legislation. The minister gives an absolutely categorical undertaking to this house that no regulations will be introduced in relation to Lottoland before 10 January. We believe, Hon Aaron Stonehouse, that he has addressed this.

Hon Colin Holt and Hon Tjorn Sibma asked about the criteria for the processes that will be undertaken—the notes keep coming thick and fast; the advisers have been working hard. I am sure, given the passages members have read out, that members have been provided with this information, but I think there is a desire for this to go on the record. These are the factors that will be considered in deciding whether to prescribe a betting practice: Does the event have a sufficient national or international standard? Are the results of the event or contingency declared by a controlling body? What integrity and levels of control are associated with the event? What is the public interest or the appropriateness of wagering on the event or contingency? For example, we would not necessarily want there to be betting about whether certain public figures would die within a certain time, because that might be an incentive for people to knock them off. We can imagine that there would be some things that

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we just would not want, as a matter of policy, to be the subject of betting. Harm minimisation principles such as responsible gambling practices, consumer protection measures and the appeal to juveniles are another consideration. Responsible Wagering Australia has expressed concern over existing events or contingencies being prescribed as prohibited events or contingencies. The government understands the validity of this concern for current wagering operators offering these products. Although the Minister for Racing and Gaming has said that he cannot give an undertaking that existing events or contingencies will not be examined, he is prepared to say that that is not the intent of this bill.

The minister has set out the sorts of processes that the government would follow before seeking to regulate any product. The Gaming and Wagering Commission would be notified, either through intelligence or via day-to-day business, of a contingency or event that may be of concern to consumers, a threat to Western Australian industry, or operating contrary to the law. The commission would perform due diligence and investigate, against the criteria articulated, whether the contingency or event is contrary to the spirit of the gambling policy in Western Australia. If the commission deems the contingency or event to be contrary to the criteria, it may recommend to the Minister for Racing and Gaming that a prohibition be made via regulation. If the minister agrees, regulations would require the approval of the bettor regulation unit and the Executive Council prior to gazettal. The regulation would then be subject to disallowance. We hope that that deals with some concerns. It is important to understand that this provision would not be used lightly by any means. No existing practice is being targeted, but we believe that, just as Lottoland emerged, other provisions may emerge as the industry becomes more competitive. We know that it is changing daily, and people are constantly exploring ways in which they can get more people gambling, and the government believes that it is important that we respond.

A number of members suggested that I was comparing Trackside with pokies. I was doing so only to the extent that in each case the algorithm provides a return for the operator. This bill does not deal with Trackside, but given that people have raised this, I suggest that there are some very great differences. As anyone who has played the pokies knows, it is quite an addictive practice. People put in their money, they pull the handle and they get a result. It is very quick. An important factor in gambling is the rapidity of the response—the bet to the response. There is not that immediacy with Trackside. People have to put on their bet and they have to wait for the race to be held, whether it is a real or virtual race. It is not interactive in any way and the odds are known in advance. Of course, it is going to be available only during times that actual real-life races are going on. We think that there are very important and significant differences between Trackside and the pokies.

Another issue members raised was the prohibition, or limitation, on the advertising of live odds betting during certain events. Members will be aware that many sporting codes agreed to this on a voluntary basis, and the AFL, most notably, after some of the darkest-day events, entered into voluntary agreements to have this constraint. We want a legislative framework so that if for some reason or other those voluntary undertakings fail or are not properly enforced, we have the capability to deal with them. Hon Colin Tincknell was concerned that it would stop adults betting. It does not stop adults betting. They may have access to live odds betting on their smartphones while at the footy and it will not stop people from accessing and playing live odds, but it will prevent people advertising the effect of live odds. When people go to the football, they see various betting companies—personally, I think we could go a bit further—and corporations advertising their websites. They can advertise their websites but they cannot advertise live odds. It is what we are trying to reduce that is the point. Many parents support us. Many parents who take their children to the football do not like their children being absolutely swamped with live odds advertising—the practice that many would argue is suborning the whole interest in the sporting contest and making it secondary to the gambling. This will stop live odds being advertised and thrust in the face of young people at various sporting events. The sporting arenas that are likely to be prescribed for the purposes of prohibiting the advertising of live odds are Optus Stadium, HBF Arena Joondalup, HBF Stadium, Perth Motorplex, HBF Park and the WACA. Of course, the usual regulatory processes will be undertaken to develop and implement regulations. Part of this will be in consultation with the operators and the management of sporting arenas. I understand this is part of a Council of Australian Governments' arrangement. There has been an agreement across Australia that these various voluntary codes will now become part of a proper regulatory regime. We have very strong support in the community for that.

I think it was Hon Tjorn Sibma who raised issues about raffles and how we determine whether it is a national raffle. He wanted to know how that will play out. This legislation will apply to raffles of organisations that are nationally recognised charities. A national body regulates charities. If a body that is nationally recognised as a charity goes to any one state and receives authorisation from that state to run a raffle, that raffle can be run in any state. I hope that explains that.

I will go through some of these notes to make sure I have answered all the main queries. Lots of these issues were repeated. Hon Colin Holt asked what contingency arrangements will be made. I was asked what happens if I go to Sydney and put a bet on an event that was prohibited in Western Australia; can I be charged if I come back with

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a betting ticket in my pocket? I can assure members it is only for actions that take place in Western Australia. If a person who is outside the jurisdiction engages in an activity that is legal in that jurisdiction, when they return to Western Australia they will not be prosecuted. I think that concern has been dealt with.

Questions were raised by Hon Colin Holt and Hon Tjorn Sibma about remote gambling facilities. It is understood that we have a prohibition. The TAB is prohibited from going into certain sensitive locations to prevent there being a retail presence. For example, members can imagine that it would not be a good thing to have that in some remote communities. We are now just seeking to ensure that no other operator has greater capacity to do that thing that we can prevent TAB agencies from doing. The amendment does not prevent Western Australian communities from accessing products from wagering operators licensed in other jurisdictions; it just does not give them greater power than the TAB. I think we all agree that there are certain sensitive communities and places where we would not want a retail betting outlet, and this ensures that we can do that. We have not been able to find for members an example of where this has happened, but clearly it could happen if we fail to take that action.

A query was raised by Hon Dr Steve Thomas about lay-offs and betbacks. Lay-offs were used in the Betting Tax Bill 2018. That was determined appropriate by the drafters of that bill and is likely to be consistent with other states and territories implementing a point-of-consumption tax. “Bet back” is used in this bill as it has been used historically in the WA context of the act and is understood across the WA market. Effectively, these terms are interchangeable and operate in a similar fashion.

Hon Colin Holt raised the question of foreign lotteries. In Western Australia, charitable organisations are registered under the consumer protection framework. Given that with the passage of this bill Western Australia will be encompassed within national lotteries, we expect that the charities would be registered with the Australian Charities and Not-for-profits Commission, which holds the federal register of charities.

I recognise Hon Robin Chapple’s contribution. Hon Colin Tincknell raised concern about infrastructure in this state. I know that we give out money because from time to time when I go to country race meetings, we announce various infrastructure improvements, but the benefit really comes from the point-of-consumption tax in the previous legislation and, of course, 30 per cent of the revenues raised will go directly to Racing and Wagering Western Australia, and it will determine where in the industry that money is invested. That will be of benefit to the industry.

I thank all members for their contributions tonight. They have been useful and raised important issues of discussion. I commend the bill to the house.

Question put and passed.

Bill read a second time.

*Committee*

The Deputy Chair of Committees (Hon Dr Steve Thomas) in the chair; Hon Alannah MacTiernan (Minister for Regional Development) in charge of the bill.

**Clause 1: Short title —**

**Hon TJORN SIBMA:** I do not intend to detain consideration on this clause for very long, but I note that in her second reading reply, the minister made an unambiguous commitment not to proceed with any regulations that would ban synthetic lotteries, such as Lottoland, and that would take effect before 10 January. Has any drafting of these regulations commenced; and, if not, when is drafting likely to commence?

**Hon ALANNAH MacTIERNAN:** No, drafting has not commenced. Obviously, once this legislation is passed—if it is passed; I do not want to offend anyone by presuming that it will pass tonight—the drafting of the regulations will commence.

**Hon TJORN SIBMA:** No offence will be taken, but I want to clarify the answer. What is the anticipated time line from the commencement of drafting these regulations to the point at which the government effectively has an exposure draft ready that it might or might not choose to canvass with stakeholders?

**Hon ALANNAH MacTIERNAN:** At this point, it is not our intention to draft any regulations on this part of the legislation, because we do not bring to this debate a particular gaming practice, beyond Lottoland, that we intend to prescribe. But we understand that these things will emerge and we want the power. Although I presume that we will look at other regulations, we do not have a particular gambling practice, beyond Lottoland, that at this point we want to prescribe. As we have said, we accept that the federal legislation covers the field and we understand that Lottoland will not challenge the federal legislation. That is its indication. There would be absolutely no reason. But we can absolutely give the member a cast-iron guarantee that no regulations on Lottoland will be gazetted before 10 January 2019.

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**Hon TJORN SIBMA:** I accept that for the very strong declaration that it was. That may have a consequence on how swiftly this bill proceeds after clause 1, but I dare not prejudge the disposition of the house. Putting the Lottoland situation to one side, is there an anticipated time line for the drafting of regulations that will deal with the prescription of certain desirable and undesirable betting activities; and, if so, what is that time line?

**Hon ALANNAH MacTIERNAN:** There seems to be some confusion. I read out the policy guidelines. What I read out earlier was the way in which we will go about considering whether there is another product beyond Lottoland that we want to prescribe. Those guidelines will not be the subject of regulation. If we identify another product, we will have to develop a regulation that describes that product—just as we see that the commonwealth legislation has prescribed a particular product by way of a definition and description of how that particular product functions. We are not going to go about drafting a regulation because at this time, other than Lottoland, we believe no other gaming products should be banned.

**Hon COLIN HOLT:** I think that is a sensible approach. This is quite an unusual provision and quite an unusual head of power. If that situation arose, rather than just rely on the prescription of regulations in the *Government Gazette*, will there be some sort of statement by ministers or representative ministers that an undesirable wagering product has been prescribed?

**Hon ALANNAH MacTIERNAN:** The policy will operate in the following way: the Gaming and Wagering Commission will issue the proprietor of the target gambling product with a show-cause notice, a process of consultation will follow, and a decision will be made, which will be gazetted. It will not be done by stealth or without proper investigation or, indeed, the issue of a show-cause notice to the proprietor of the product asking them to explain why the practice should not be barred.

**Hon AARON STONEHOUSE:** Picking up on Hon Tjorn Sibma's question, the minister has said that the government has no intention to introduce regulations to ban Lottoland before 9 January and that at this time the government has identified no other practices it intends to draft regulations to ban. Am I interpreting this correctly; that is, the government plans to draft regulations to ban Lottoland, but will not do so until after the commonwealth ban comes into place on 9 January?

**Hon ALANNAH MacTIERNAN:** No, that is not correct. We believe that the commonwealth legislation will be effective and that that legislation will stand. If, for some reason or other, action is taken by Lottoland in the High Court to challenge the constitutionality and the capability of the federal government to make laws about that, obviously, we would have a residual ability to do it. We do not believe that to be the case and, in any event, we guarantee that we will not introduce any legislation regarding Lottoland before 10 January. However, it is not our intention to do it because we do not believe the validity of the federal legislation will be challenged.

**Hon AARON STONEHOUSE:** I thank the minister for clearing that up for me. The amendment I have on the supplementary notice paper deals with clause 2, but it might be more appropriate to clear this up first. Part 1 of the bill will come into effect on the day on which the act receives royal assent. The rest of the act will come into operation on a date fixed by proclamation. Could the minister tell us why the rest of the act will be done by proclamation rather than by royal assent? Does the government intend to proclaim the rest of this act at a later date, what might that date be and what is the reasoning behind the proclamation as opposed to assent?

**Hon ALANNAH MacTIERNAN:** It is a standard practice designed to give the minister flexibility, as I understand it, once the regulations are in play. In areas in which regulations might be needed, the determination can be made. We can wait until all the regulations are in place and gazetted before we have the proclamation, but we want to get the fact of the bill the subject of royal assent.

**Hon TJORN SIBMA:** I want to pick the minister up on an explanation of procedure that would apply. If I understand correctly, in essence, it would involve the commission issuing a show-cause notice to a company or vendor that in the commission's opinion is offering an undesirable wagering product. I have two questions about this. Firstly, is it anticipated that the commission would first raise its decision with the minister or minister's office before issuing such a show-cause notice or is the minister informed about it after the fact? Probably more importantly, what recourse would a vendor have if they received such a show-cause notice? Is there a broadly understood scheme they can point to that would justify the activity they are engaged in or the product they are offering? How do they understand the rules of the game? Related to that, how would they go about defending themselves if there was an absence of an understanding about what is in and what is out?

**Hon ALANNAH MacTIERNAN:** At this point policy guidelines will be developed by the commission and they will be publicly available. The issues that will be taken into account will roughly fall around those we described today, but probably fleshed out a little more. A whole procedural policy will be set out. It will be published and it will guide the way in which this proceeds. Ultimately, as with any regulation, it will not proceed without ministerial consent. At precisely what point in time the minister is alerted by the commission to their activity will probably

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not be set down in this policy, but we would imagine that the commission in its regular briefings to the minister would raise an issue such as this that it would have some concern about. At the end of the day, any regulatory regime would need to be approved by the minister before it takes effect.

**Hon TJORN SIBMA:** This will hopefully be my last question. I thank the minister for that contribution. Can I please get a sense of what stage of drafting this policy note or guideline is at now, when the process might be completed and when, on current planning, such a guideline or set of guidelines would take effect?

**Hon ALANNAH MacTIERNAN:** It is important to understand that in some respects this is an expanding capability. At the moment, bookmakers can bet on a very limited range of things. We are more generally allowing things to be the subject of wagering but clawing back those things that offend. At the moment, to get approval, people have to demonstrate in reverse, I guess. They have to apply for approval. In a way, this is a broadening power in that it will allow these things unless and until those things are prescribed. The sorts of issues that will be taken into account are those that were taken into account in deciding whether approval would be given. It will in fact reduce the regulatory burden.

**Hon RICK MAZZA:** Part of this question might have been covered earlier, minister. Besides Lottoland, which will be banned by the federal legislation, have any complaints been made to the Gaming and Wagering Commission or has anything been brought to the commission's attention that it may be concerned about that would be banned under the regulations?

**Hon ALANNAH MacTIERNAN:** No specific practices are a concern in WA, so we do not have a particular provision but, as I said, it is important to understand that, in a sense, we are turning the legislation around to be more flexible. At the moment, a person has to apply for each product they might want to bet on. I draw the member's attention to clause 5(2) in which we are proposing that rather than saying people have to apply, we are saying they can do it unless it is prescribed. I think that is probably a more flexible arrangement that will suit everyone. Although I know members opposite have been focusing on this legislation prescribing things, in a way, given the totality of the legislation, it is expanding what can be done because it can be done as of right, except when we have drawn an exception.

**Hon RICK MAZZA:** That is not quite the answer to my question. I understand the prescription. The question I asked was: has the commission had any complaints or has any product or operator been brought to the attention of the commission that may be prescribed under these regulations?

**Hon ALANNAH MacTIERNAN:** Obviously, Lottoland has been the source of numerous complaints—there is no record of complaints in relation to any other product. However, I go back to that same point, and it is the same question, with respect, member. We are now saying that instead of someone having to get approval for every new product, they can bring in that new product unless we have prescribed it.

**Hon TJORN SIBMA:** Minister, that is a sensible provision in principle, because it reverses the means by which products or wagering events might be prescribed. Nevertheless, I would like to clarify, for the sake of practicality, what rules will apply in the interregnum between the deletion of the section to which the minister referred in her previous contribution and the drafting and publication of the policy guidelines that would effectively provide the rules of engagement around whether an event may be described as desirable or undesirable. I understand that this might take some time and involve further consultation. I am trying to get a sense of when the commission or the minister might publicise the new policy guidelines. That is important to provide clarity for all the operators in the industry.

**Hon ALANNAH MacTIERNAN:** The member needs to bear in mind that until such time as we have developed those policies et cetera, we will not be banning people. As soon as this particular provision is proclaimed, people will be able to put in place the products that they want. We hope that by the time we get the other regulations ready for the general proclamation of these provisions, the guidelines will also be ready. However, we need to remember that they will be guidelines; they will not be a set of regulations. The regulations will come at a later point. In the meantime, people will be able to be put in place and trial these products. It is a liberating, not a contracting, arrangement.

**Hon TJORN SIBMA:** I thank the minister for that contribution. On the surface, that is very sensible. However, it would be desirable to get a broad sense of the timescale we are dealing with. Would the government be in a position by the first quarter of next year to have these regulations drafted?

**Hon Alannah MacTiernan:** It is not regulations.

**Hon TJORN SIBMA:** The other regulations to which the minister referred. Effectively, the minister has said that the government will deal with these policy guidelines more or less simultaneously with the other regulations that are dealt with in this bill. I want to get a sense of the time frame to which the government is operating and when things will begin to take effect.

Hon Tjorn Sibma; Acting President; Hon Robin Chapple; Hon Aaron Stonehouse; Hon Colin Tincknell; Hon Alannah MacTiernan; Hon Colin Holt; Hon Rick Mazza; Hon Co Lin Holt; Hon Dr Steve Thomas

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**Hon ALANNAH MacTIERNAN:** I cannot give a cast-iron guarantee but, as a rough guide, we are looking at by the end of the first quarter of next year.

**Hon TJORN SIBMA:** This will likely be my final, final question.

**Hon Alannah MacTiernan:** You said that at dinner time!

**Hon TJORN SIBMA:** Then dinner got in the way, and then other members wished to speak—I cannot control everyone else in this chamber. Will the minister undertake to table either a draft or a copy of the policy guidelines once they are completed?

**Hon ALANNAH MacTIERNAN:** I am sure that Minister Papalia, being a most reasonable man, will agree that once the policies have been determined, we will table a copy.

**Hon AARON STONEHOUSE:** This will be my last line of questioning, minister. We have heard the process by which undesirable practices may be prescribed and banned—that is, complaints are raised by the commission, a recommendation is made to the minister, the minister takes that to Executive Council and it is gazetted and so on. I raised this in my contribution to the second reading debate but I do not think I got a response. Can the minister direct the commission to conduct a review of a gambling practice and provide him with a recommendation? Further to that, can the minister bypass the commission entirely and take his own recommendation to Executive Council to ban a practice, without a recommendation from the commission?

**Hon ALANNAH MacTIERNAN:** I am advised that the legislation requires the recommendations to come via the commission.

**Clause put and passed.**

**Clauses 2 to 11 put and passed.**

**Clause 12: Section 27A amended —**

**Hon COLIN HOLT:** I was going to ask about clause 5, but the minister gave a quite adequate description of what that clause is about. It seems almost like a circular argument, but when it is reversed, it is quite sensible.

Clause 12 involves the fines that can be imposed when people do the wrong thing. Proposed section 27A(2A) says —

A person in this State who makes an interstate or offshore bet on an event or contingency that is not a permitted event or contingency commits an offence.

Penalty ... \$2 500.

That is quite a hefty fine. I want to explore this a little. If there is a banned event offshore or interstate and someone opens up a webpage in Western Australia and makes a bet on that contingency or event, would they be liable to be prosecuted under this division?

**Hon ALANNAH MacTIERNAN:** The person needs to be in Western Australia—they need to be physically within the jurisdiction—when they do this act.

**Hon COLIN HOLT:** If they were sitting at home in West Perth and betting on cage fighting in Queensland with a Queensland bookmaker or operator, and we have banned cage fighting in Western Australia—we have nothing else to talk about at the moment, because Lottoland is being taken care of—would that be an offence?

**Hon ALANNAH MacTIERNAN:** That would be correct.

**Hon COLIN HOLT:** What if that person was holidaying in Queensland when they decided to have a bet on cage fighting in Queensland on their laptop? If, when they came home, it was discovered that they had made a bet on their laptop, could it be a defence that they were away from the state at the time of making the bet?

**Hon ALANNAH MacTIERNAN:** I talked about this in the second reading reply. It is very clear that a person has to be in this state—in our jurisdiction—at the time of making the bet. If someone flies over to Queensland, makes a bet and comes back with a betting ticket in their pants, as I think was the member's concern earlier, they would not be able to be prosecuted. It is only whilst a person is in the state. We recognise the limits of our jurisdiction.

**Hon CO LIN HOLT:** I am just seeking clarification for others out there who might be caught up in the same system and suddenly think: "I can't go home because I made this bet on my laptop; I'd better leave it there", or whatever it might be. I thank the minister for that; I just wanted some clarification.

**Clause put and passed.**

**Clauses 13 to 17 put and passed.**

**Clause 18: Section 8 amended —**

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**Hon COLIN HOLT:** This clause deals with the advertising of live odds, and I really want some clarification on the form of those regulations. The minister gave some examples of where it would be banned—HBF Arena, Optus Stadium, the Western Australian Cricket Association ground et cetera—but what form will the regulations on the ban of live odds take? Will it just be a ban on advertising like “Bet on the West Coast Eagles for \$2.50”? Can the minister give me an indication of what the regulations on live betting might look like?

**Hon ALANNAH MacTIERNAN:** It will not be a ban on the overall advertising of betting—I am sure some members in this chamber think we should have gone that far—but the odds on any contingency will not be able to be advertised. Advertising like three to one Russell Robertson will kick the next goal will not be allowed. Odds on any contingency at an event will not be able to be advertised, whether it be fixed advertising or—what is more likely, if we are talking about live odds—the very big screens that show a whole range of activities and advertisements et cetera. Available odds for any contingency will not be able to be advertised.

**Hon COLIN HOLT:** Could, say, Ladbrokes take out advertising space on the big screen and, during the game, could it put up “Visit Ladbrokes for the next best odds on the next goal kicker”?

**Hon ALANNAH MacTIERNAN:** That would be permissible.

**Hon COLIN HOLT:** So, as long as it did not say “Go to Ladbrokes to get three to one on Austin Robertson kicking the next goal” it would be okay?

**Hon ALANNAH MacTIERNAN:** I regret to say that the member is correct. That is how it would operate. Would I prefer it to go further? Probably. But that is what is proposed at this point.

**Hon COLIN HOLT:** Now we have clarification, it just seems that the purpose of this provision was to help with problem gambling or to put some restriction on gambling, but it may not deliver. As long as the minister has defined it, I guess they will work their way around it.

**Clause put and passed.**

**Clauses 19 to 25 put and passed.**

**Title put and passed.**

*Report*

Bill reported, without amendment, and the report adopted.

*Third Reading*

**HON ALANNAH MacTIERNAN (North Metropolitan — Minister for Regional Development)** [9.41 pm]:  
I move —

That the bill be now read a third time.

**HON DR STEVE THOMAS (South West)** [9.41 pm]: In assisting the house in its progress by being in the Chair, I did not have the opportunity to be part of the consideration of the Gaming and Wagering Legislation Amendment Bill 2018 by the Committee of the Whole House. I just want to make a brief comment about my second reading contribution. In relation to the odds that we discussed, it is my opinion, having discussed the odds behind the Chair, that in terms of a cabinet reshuffle, we have now moved the members for Armadale and Swan Hills back to three to one. Unfortunately, Hon Darren West has moved out further than that, and is unlikely to get the same odds.

Question put and passed.

Bill read a third time and passed.