

GAMING AND WAGERING LEGISLATION AMENDMENT BILL 2018

Consideration in Detail

Clauses 1 to 3 put and passed.

Clause 4: Section 4 amended —

Mr J.E. McGRATH: I refer to the insertion of the definition of “event” on page 3 of the bill. It states —

event means a race or other event, whether or not of a sporting nature;

Will this capture anything and everything that gets wagered on nowadays? Can the minister please explain “event” and what the bill is trying to capture?

Mr P. PAPALIA: Yes, as the member has identified, the intent is to enable the head of power to respond appropriately in advance of some threat being identified and to prevent activities that we deem undesirable.

Mr J.E. McGRATH: I refer to the insertion of the definition of “prohibited event or contingency”. I ask this question because this is probably the crux of what is trying to be achieved here. What is the process of prescribing a prohibited event or contingency? Who makes the decision and who gets consulted over this?

Mr P. PAPALIA: The Gaming and Wagering Commission will make a recommendation to me for a regulation that prevents a specified activity or event. That will then obviously be subject to my own decision, but also, being a regulation, it will be subject to Parliament’s disallowance.

Dr M.D. NAHAN: 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.

Mr P. PAPALIA: 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 Game 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. With respect to the nature of the activity that might be deemed worthy of prohibition, some of the examples of events or contingencies that would be covered include junior sporting competitions; local social sporting competitions, such as indoor cricket or soccer competitions for which there is not a controlling authority declaring results; and any sporting event in which the integrity of the conduct has been compromised—for example, in instances when match fixing has been proven. The intent is to enable the commission to identify those threats, thereby preventing —

Mr J.E. McGrath: Or satellite tennis tournaments and things like that —

Mr P. PAPALIA: Yes. We wanted to make it broad; it was intentional. The observation was made by the shadow minister at the outset of the debate that in many ways it is not specific. That was intended. The objective is to ensure that there is a power to respond to threats that we may not anticipate. It is a rapidly changing environment; plenty of contributions have reflected that. We hope to ensure that our commission has the ability to respond far more rapidly than it has in the past, perhaps, to this type of threat. We do not want a Lottoland or any other potential threat becoming embedded and much more difficult to deal with, and also having a negative impact on the hundreds of Lotterywest outlets across the state and the revenue stream to those many thousands of Western Australians who benefit from Lotterywest grants.

Dr M.D. NAHAN: The minister indicated that the commissioner has powers to prohibit, subject to the minister’s view, gambling activity. Which additional powers will this bill specifically give to the minister and the commissioner, and therefore why is it needed? Why does the minister not just use the existing powers within the current act?

Mr P. PAPALIA: This bill will give the power to respond through establishing regulations that prevent activities that we might deem threatening and undesirable. It does not currently exist. The commission does not currently have the capacity to respond with regulations in such a broad manner. For instance, when we asked about Lottoland, this was one of the responses that the commission provided as a means to counter that particular threat. But we also wanted to look beyond that threat to try to encompass as many further threats as possible.

Mr J.E. McGRATH: It is an interesting subject. The other day I was looking at a tennis betting site. There are thousands of events around the world on any given day that could be bet on, and they are in all sorts of remote places. There have been allegations of match fixing in some of those.

Mr P. Papalia: Exactly, yes.

Mr John McGrath; Mr Paul Papalia; Dr Mike Nahan; Mr Zak Kirkup; Mr Tony Krsticevic; Mrs Liza Harvey

Mr J.E. McGRATH: Are these the sorts of events that the minister is thinking of or targeting, like the Cunderdin open or some such event out in country Western Australia that would have average players but an agency might want to bet on that event?

Mr P. PAPALIA: Yes. I read out the list, and the tennis one is an obvious one that has drawn a lot of attention globally. Tennis has categories of competition that are far below the ones that get a lot of attention and oversight, or potentially have far less oversight with respect to integrity and the threat of gambling and match fixing. That is true of cricket on the amateur and semi-professional levels as well. A lot of the feeder program events to get on to the professional tennis circuit are televised and reported on; there is media monitoring of the outcomes. The potential for match fixing is fairly serious, because those people receive such low remuneration and are confronted with difficult challenges in their efforts to get up the rankings. The vulnerability is very high. Amateurs are vulnerable to the money associated with match fixing—or, potentially, gambling in a negative fashion that could be vulnerable to organised crime involvement and the like—because the money can be significant to them and have an impact on them and be enticing. For that reason, we do not want to be specific. We want to be able to respond in an aggressive and rapid manner whenever we need to.

Mr J.E. McGRATH: Is the minister saying that if the commissioner identified an event, he would have to take it to the minister to sign off on? Would the minister have to bring it to Parliament?

Mr P. PAPALIA: No, it is a regulation. The commission would draft a regulation and bring it to me, and I would authorise it. It would then be subject to parliamentary oversight in the same way as other regulations; it would be disallowable. Our colleagues in the other place could oversight that regulation, and were they to deem it inappropriate, they could disallow it.

Mr J.E. McGRATH: The main crux of this obviously, as mentioned in the government's press releases when this legislation was introduced, is the worry about Lottoland. I was interested in the minister's comment in the second reading debate about the federal government's legislation to ban online synthetic lotteries—in other words, lotteries like Lottoland. According to my notes, the minister said —

I am not convinced, neither is the agency, nor the industry, that this legislation is necessarily certain to prevent this happening.

Can the minister elaborate on why he is concerned that it may not be watertight?

Mr P. PAPALIA: We were deeply engaged with the Lotterywest outlets through the Australian Lottery and Newsagents Association for a long time—in fact, from being in opposition when they were not being spoken to by the then government and were being ignored and treated appallingly by the former executive of Lotterywest, with the full endorsement and support of the then government. They told us they wanted us to respond to this threat, and we are doing so with our Western Australian legislation. It is extraordinary. Noting the longstanding willingness of the Western Australian Liberal Party to claim that it stands up for Western Australia and its view on the centralisation of power in Canberra, it is incredible that the opposition is taking this particular line of questioning. Rest assured, I promise that Lotterywest agents right across the state support us doing this. We have their support. They will want to know whether the Liberal Party of Western Australia supports them. That is what their question will be; it will not be whether we are doing the right thing.

Mr J.E. McGRATH: That was not really the question I asked. The question I asked was about the minister expressing some concern that maybe the federal legislation might not be able to capture what it is trying to achieve. The other point was that there could be a High Court challenge by Lottoland. If that challenge was successful, could this legislation prevent Lottoland from coming in? It is only a hypothetical question.

Mr P. PAPALIA: The difference between our legislation and the federal legislation is that we are providing our agency—our commission—with the head of power necessary to respond to threats in Western Australia on behalf of Western Australians. That is the difference between our legislation and the federal government. Lottoland, an organisation based in Gibraltar, pays no tax in Western Australia and reaps the benefits of ripping out the revenue streams accruing to Western Australia—100 per cent of Lotterywest funds beyond the cost of operation. The member for Hillarys missed it last night. I was explaining the difference. I know that he is not originally a Western Australian, so therefore I could understand that.

Mr P.A. Katsambanis interjected.

Mr P. PAPALIA: I am glad the member heard. I found it extraordinary that a member of Parliament —

The ACTING SPEAKER (Ms M.M. Quirk): Minister, can you sit down please? You will get the response that you deserve if you stir up the troops over there, so can I suggest that you restrict yourself to answering the questions.

Mr P. PAPALIA: I found it extraordinary that any member of Western Australia's lower house would argue the case for Lottoland.

Mr P.A. Katsambanis interjected.

Mr P. PAPALIA: I have *Hansard* here.

Several members interjected.

The ACTING SPEAKER: Member for Dawesville! Member for Hillarys!

Mr P. PAPALIA: I am not going to continue provoking the member for Hillarys. In the end, we are giving a head of power to our commissioner, and that is what we view as being necessary. It enables flexibility to respond to threats that may be unforeseen.

Mr Z.R.F. KIRKUP: I am still on clause 4, and while we are at it I might, with the indulgence of the Chair, be the first member of this chamber to send our congratulations to the Duke and Duchess of Sussex on the announcement of their impending child, due in spring. I notice that when the announcement was made, Ladbrokes in the United Kingdom came out with some odds on what the name and the gender of the child might be. I note in this clause that we are talking about events. I want to clarify whether something like that would fall into the definition of an event, when we are looking at odds being put together for unusual instances like the birth of the seventh in line to the throne.

Mr P. PAPALIA: It could—things of that nature—but I do not imagine that the commission would view that as a threat, and therefore something that we would deem worthy of being prohibited. Nevertheless, because of the broad nature of this power, it could easily be subject to a regulation to prevent that sort of activity.

Mr Z.R.F. KIRKUP: Could there be a situation in which the commission could stop betting on elections, for example, or things of that nature? Is a threat profile established by the agency? How does the commission come to that conclusion about the social good that may be established, or not, when it makes a decision, through a recommendation to the minister?

Mr P. PAPALIA: It could; conceivably, anything could, in any sort of activity. I can place on the record that that is not my intended pathway. I am not the one who would be drafting or proposing the regulation. That would come from the commission anyway, but I do not anticipate that it would view that as a threat. We are trying to protect the interests of Western Australians. We can see where those interests may be threatened by players that diminish the revenue available for the activities of Lotterywest, or potentially have an undesirable impact on the activities of any other government agency or potential source of revenue, such as the TAB. I am reminded by my advisers that the other factor that might prompt the commission to view an activity as undesirable would be a threat to the consumer. It is a broad power, but it would be the commission's role to propose the regulation. I can say that it is not looking to outlaw or ban betting on elections at the moment.

Mr Z.R.F. KIRKUP: This will be the last question for me on this instance. I am hoping to get an understanding of why the word “event” was used. I note that there are a number of amendments throughout the bill, and that the word “event” is used 33 times. We are also stripping out “sporting” throughout the bill; I appreciate that. Is there any particular reason why “event” was chosen, because I can imagine situations that might arise in which people might bet on anything. Where there is a market, and where there is a will, people can bet on anything, I suppose. Why was “event” chosen? Is it just a sort of generic catch-all term that was established, or is there some sort of history of that? I am keen to understand, because if we are restricting it to an event, such as the crab races in Broome, for example, or something much more minor —

Mr D.R. Michael: The first member to be thrown out.

Mr Z.R.F. KIRKUP: Yes, or something much more ancillary, such as the first member to be thrown out, somebody could bet on that. Thank you for that, member for Balcatta. If that is not an event, does that mean that this bill is powerless, where there is no event per se?

Mr P. PAPALIA: No, because the definition is an event or contingency, and “contingency” is a very broad category of definition that encompasses such things as the one referred to by the member for Balcatta. Obviously, plenty of sporting events attract the potential for undesirable activity, and that is a key focus, but “contingency” covers other opportunities.

Mr Z.R.F. KIRKUP: I apologise—this was meant to be my last question on this matter. I appreciate the minister's suggestion that “contingency” might capture it, but it says specifically that a contingency relates to an event. If there is no such event in place, how can a contingency relate to that? I appreciate that we are trying to make it as specific as possible here with the term “event”, but “contingency” cannot be used as that catch-all, because it has to relate to an event as it is.

Mr P. PAPALIA: I am not sure that I can contemplate a thing upon which we might bet that could not be encompassed by the definition of an event. Crab racing could be an event. We could just define it as an event.

Mr P.A. Katsambanis: The gender of a royal baby is not an event.

Mr P. PAPALIA: Actually, the birth is an event. Currently, the event or contingency being the outcome of the activity is a fairly broad opportunity. We can define it with respect to the regulation.

Mr P.A. Katsambanis interjected.

The ACTING SPEAKER: Member for Hillarys, you are not contributing.

Mr P. PAPALIA: I know that the member is a little touchy about the fact that he has been called out for standing up for Lottoland in the Parliament of Western Australia.

The ACTING SPEAKER: Minister, just restrict yourself to the question.

Mr P. PAPALIA: I recognise the sensitivity, but the member speculated on why we should not just tax them. The obvious answer to that would be that any tax would be a diminution of the available funds for Lotterywest.

Mr P.A. Katsambanis: You'll still get a return.

Mr P. PAPALIA: You will get a return at the end of it all, too.

Mr P.A. Katsambanis interjected.

The ACTING SPEAKER: Member for Hillarys, you are not the one answering the question.

Mr P. PAPALIA: Does the member realise he is breaking all manner of protocols?

The ACTING SPEAKER (Ms M.M. Quirk): Members, I will start to name people, so please restrict or get up and ask a question yourself.

Mr P. PAPALIA: I am comfortable that an event or contingency covers the categories that we need to cover for the purposes of the power that we are trying to imbue upon the commission.

Mr A. KRSTICEVIC: The minister mentioned his extensive consultation with agents while he was in opposition and how this bill is designed to protect them and their small businesses. Is this bill going to protect them? How will the minister protect them given his and the department's push to move to online lotto and given the significant increase over the last 12 months in that area? Is the minister going to continue to push the line of online lotto betting? Will agents get a percentage cut of this, the same as the TAB? The minister talked about them getting a 15 per cent cut of online gaming—a tax. Is the minister protecting the agents? Has he spoken to them and told them that?

The ACTING SPEAKER: Member, we are on clause 4. Can you point to what you are asking about?

Mr A. KRSTICEVIC: The minister mentioned this in his reply to the previous question.

The ACTING SPEAKER: No.

Mr P. Papalia: I am not going to answer it.

The ACTING SPEAKER: You need to refer to the section in the clause that is of concern.

Mr A. KRSTICEVIC: Under "prohibited event", is the push to online betting a prohibited event?

Dr A.D. Buti: You don't know. Sit down. You're making a goose of yourself.

Mr A. KRSTICEVIC: That is okay. If the minister does not want to answer and he does not want to protect small businesses online, he can just say it is not appropriate to answer that question. That is fine. They can just keep going online and stripping away their businesses.

The ACTING SPEAKER: Right, members, the question is that clause 4 stand as printed.

Mr P. PAPALIA: Can I —

Mr A. Krsticevic: If you want to rip them off, that is okay.

The ACTING SPEAKER: Minister, I have not given you the call.

Mr P. PAPALIA: I do want to respond to the question. What the member has asked is irrelevant to this clause; nevertheless, the member was not here last night when I gave my second reading reply, in which I made the observation that the instigation of increasing online Lotterywest activity happened under the member's government. Between 2013–14 and 2014–15 there was a doubling in the amount of online Lotterywest activity. We dealt with that and the Premier dealt with that, and the opposition attacked the Premier for dealing with it. It was the former management of Lotterywest that imposed an incredible negative suite of demands on Lotterywest outlets, which the member claims to represent. The member was invisible when that happened. The Premier responded.

The ACTING SPEAKER: Members, the question is that clause 4 stand as printed.

Mr P. PAPALIA: The former Premier attended —

The ACTING SPEAKER: Minister, you are not being responsive to the question. I have already called the question out of order.

Mr A. Krsticevic: So online is going to be reducing, is it, into the future?

Mr John McGrath; Mr Paul Papalia; Dr Mike Nahan; Mr Zak Kirkup; Mr Tony Krsticevic; Mrs Liza Harvey

Mr P. PAPALIA: I am just correcting the record.

Mr A. Krsticevic: Are you just stopping that from happening?

Mr P. PAPALIA: You allowed that to happen; we have fixed it.

The ACTING SPEAKER: The question is that clause 4 stand as printed.

Mr J.E. McGRATH: We are still on clause 4. I want to go back to “prohibited event” or “contingency”. I get that the birth of a royal baby is an event. If the Queen is going to Royal Ascot and some bookie wants to bet on what colour dress she is going to wear, it is still an event; she is going to an event. Why the need for the word “contingency”? Where would “contingency” come in if something is deemed, maybe, not an event, or it could not come under that category?

Mr P. PAPALIA: In responding to the member’s specific example, perhaps the sex of a baby might be bet upon as a contingency of the event, being the birth.

Mr J.E. McGRATH: Let us get back to clause 4. Once a wagering product or service is prohibited, will it be prohibited forever or is there a possibility that the prohibition could be lifted? Will there be any procedure to maybe appeal against an event being prescribed as prohibited?

Mr P. PAPALIA: There is no prescribed process by which people may appeal. Nevertheless, clearly, in the event that it is a former prohibition, as circumstances change, cultural expectations shift, the impact on the categories by which that prohibition was imposed will have shifted and clearly there will be an opportunity for the person aggrieved or a proponent of an activity that is prohibited to make advances to the government or the agency, the commission, to seek repeal of the regulation.

Mr J.E. McGRATH: Further to clause 4, are there examples or case studies in other jurisdictions in Australia or internationally on the types of wagering and betting that the Gaming and Wagering Commission may prohibit under this bill? I guess that was covered when we were talking about tennis events and things like that. But I will go on: how can the minister be certain that the prescribed prohibitions cannot be legally challenged by those affected by the ban? The minister has said that they would probably have to challenge that through the court system. If a prohibition order is placed on an event or on wagering on an event, would either a business or consumer have to legally challenge that through the court process?

Mr P. PAPALIA: With respect to the member’s first question, Victoria introduced legislation earlier this year and South Australia has a mechanism that allows it to control products that can be wagered on. Yes, if an aggrieved party’s activities were deemed to be prohibited, they would have the avenue of the courts to seek redress.

Mr J.E. McGRATH: I have one final question on this clause. Other members might have other questions. Has the minister considered the possibility of any unintended consequences from this legislation or is he very comfortable with what the Parliament is introducing in this regard?

Mr P. PAPALIA: I am pretty comfortable, member. As we said at the outset, any regulation will be subject to disallowance. The Parliament has oversight. Any regulations of this nature will be in the public domain; they will be subject to public debate. The government and I will be vulnerable to criticism if it is deemed to be inappropriate, but I am comfortable that the environment and the legislation is adequate.

Mr Z.R.F. KIRKUP: I refer to clause 4, which seeks to delete the definition of “machine” in the Betting Control Act and then refers to “machine” as it is defined in the Gaming and Wagering Commission Act. The definition of “machine” in the Betting Control Act states —

machine includes any computer or apparatus or device, or any electrical, electronic, mechanical or other equipment or contrivance constructed or adapted for use in or in relation to betting;

Whereas, “machine” in the Gaming and Wagering Commission Act is just defined as “any apparatus or device”. It is probably something minor, but I am keen to understand why the government chose to go ahead with the definition of “machine” in the Gaming and Wagering Commission Act rather than in the Betting Control Act?

Mr P. PAPALIA: It is just to achieve consistency between the two acts.

Mr A. KRSTICEVIC: Reflecting on the minister’s answer to my last question, he said that his government had taken action to sort out the increase in playing lotto online to help agents.

The ACTING SPEAKER: Member, can you explain where in the clause that is related?

Mr A. KRSTICEVIC: It is under “contingency”, which states —

contingency means a contingency relating to an event;

I ask whether this is a contingency and in terms of playing lotto online, equivalent to Lottoland. The minister mentioned Lottoland as a threat to agents and Lotterywest in terms of reducing their revenue and income, for both agents and the government as a whole. This relates to that particular area and the contingency of the increase in

Mr John McGrath; Mr Paul Papalia; Dr Mike Nahan; Mr Zak Kirkup; Mr Tony Krsticevic; Mrs Liza Harvey

online gaming. The minister mentioned that his government had fixed it so that the online play of lotto would either be reduced or stopped. I do not know what he did, but I want to know what he did to stop an increase in online play of lotto, which obviously affects the revenue of agents. The minister made much comment about it, so I just wondered what he has done. How much of an impact has he had on online lotto play by Western Australians?

Mr P. PAPALIA: It is not my intention to continue to answer inappropriate questions that are unrelated to this part of the bill. I will respond to the member at the third reading stage if he wants. I did that last night in my response to the second reading debate and I gave a comprehensive response to the member's contributions, which were completely inaccurate.

Mr A. Krsticevic interjected.

Mr P. PAPALIA: Read *Hansard*.

The ACTING SPEAKER (Ms M.M. Quirk): Member for Carine!

Mr J.E. McGRATH: Getting back to the minister's second reading —

Mr A. Krsticevic interjected.

The ACTING SPEAKER: Member for Carine!

Mr J.E. McGRATH: Getting back to the minister's second reading reply, I was interested in what he said. I need some clarification on this because —

Mr P. Papalia: Is that a corrected *Hansard*?

Mr J.E. McGRATH: No. I have an agent who was very concerned about what Lotterywest was doing, asking him to make a lot of changes in his shop, but I did not think that was encouraged by the government; I think that was just —

Mr P. Papalia: Which clause?

Mr J.E. McGRATH: It is in this clause. We are generally talking about Lottoland and the like. A general commentary was made that Lotterywest was undermining businesses, but that could have happened without the government's encouragement. I do not think that the government would ever encourage that. I think Lotterywest is able to run its own agency and deal with its operators without having to be encouraged by the government. However, the minister also mentioned that the online sales of lotto went up with the encouragement of the previous government. I doubt that that happened. I think that was just a fact of life. We all knew online sales were going to go up. I do not think there is any evidence—if the minister has any, I would be interested to know—that the former Premier encouraged online lotto sales. I think most of us were disappointed for the agents because we knew it would be difficult for them, but in an ever-changing world, it was probably an inevitability.

Mr P. PAPALIA: I will respond in the third reading stage because the member is going into a debate about the nature of the operations of Lotterywest, and that is not necessarily related to this bill.

Clause put and passed.

Clause 5: Section 4B amended —

Mr Z.R.F. KIRKUP: Minister, I note that clause 5 amends section 4B of the Betting Control Act 1954, specifically deleting all reference to the words “a sporting” so that we keep the word “event” in section 4B. All references to “a sporting” are stripped out. If we are stripping out the words “a sporting”, why has the government not also sought to amend the title of section 4B, which presently reads “Application of this Act to sporting events”? If the rest of that section does not apply to sporting events, why is it keeping the title of that section?

Mr P. PAPALIA: I am advised that the change was initiated by parliamentary counsel as a drafting amendment. It is not driven by us. It is a recommended change to terminology.

Mr Z.R.F. KIRKUP: Just to be clear, the rest of that section will no longer refer to “a sporting” event but to all events, so I think it would be relatively prudent to ensure that the title reflects what that section says. The title refers only to sporting events. I think that is obviously inconsistent and I wanted to place that on the record. I do not expect a response.

The ACTING SPEAKER: The question is that clause 5 stand as printed. Minister, the member indicated that he was not interested in a response.

Mr P. PAPALIA: I was going to reassure him and advise that the change has been made to the title. It is a drafting change.

Clause put and passed.

Clauses 6 to 8 put and passed.

Clause 9: Section 14A amended —

Mr P. PAPALIA: I move —

Page 6, line 4 — To delete “payouts” and substitute —
dividends

Mr J.E. McGRATH: Can the minister explain the amendment there? He has changed “payouts” to “dividends”. Is that for tote payouts?

Mr P. PAPALIA: I am advised that “payouts” may have encompassed things such as free bets. By changing it to “dividends”, we restrict it to cash returns. It is harm minimisation.

Mr J.E. McGRATH: That is because a lot of betting agencies now give free bets. If someone gets a free \$20 bet, they get only the result; they do not get the \$20.

Mr P. PAPALIA: There are potential harms associated with hooking people with further betting opportunities rather than giving them the return in the form of cash.

Mr J.E. McGRATH: Clause 9 refers to bet backs. This is an interesting matter and we discussed it yesterday. I think the minister mentioned it in his second reading reply. The member for Balcatta was quite an expert on this area.

Mr P. Papalia: He is. That guy has spent his entire life there.

Mr J.E. McGRATH: I understand that bookmakers reduce their liability by laying off some of the bet that they have just taken. Who comes under this category? Is it just bookmakers? Does the TAB have a bet back if it has a big commitment with fixed odds? It would apply only to fixed-odds operators, would it not? It would not apply to corporates at the moment because they do not pay tax here. Who is this going to capture in the bet back market?

Mr P. PAPALIA: I am advised that it applies to the racing bets levy. Corporates do pay that and, therefore, they will get the benefit of this change should they be engaging in bet backs. Yes, constitutional obligations require it to be applied right across the country so everyone will get the benefit. The member for South Perth knows that the WA Bookmakers Association has sought this for probably a decade. I said last night that three ministers in the former government were approached about this reform. We are delivering it. Bookmakers are our key constituency that we are aiming to service. Nevertheless, it is supplied to others who do bet backs.

Mr J.E. McGRATH: Under the racing bets levy, if, say, Sportsbet held a bet on a race at Bunbury, it would have to pay that racing bets levy because it is on a Western Australian event. Then it may want to lay off some of that bet. At present it pays the tax on both bets, but with the passage of this legislation, it will have to pay on only the first bet that it held.

Mr P. PAPALIA: Yes, that is correct. That is true; some of those bigger guys will get the benefit too, but our motivation was to help our bookmakers. Nevertheless, in fairness, it will be applied to all bookmakers in that position.

Mr J.E. McGRATH: Clause 9 will change the definitions of “gross revenue” and “turnover”, which would apply to Betfair. Is that right? Would this apply to Betfair?

Mr P. Papalia: At the moment.

Mr J.E. McGRATH: Can the minister explain for *Hansard* how the Betfair operation works? It is not really a bookmaker, but it facilitates a bet between two punters and it takes a commission on that, so how does it pay its tax at the moment?

Mr P. PAPALIA: Currently, its levy is payable on the turnover on the backer side. We are providing a fairer response in that it will be its net return rather than the turnover on the backer side of the equation.

Mr J.E. McGrath: So it will be on each individual transaction?

Mr P. PAPALIA: No, net customer winnings. The member knows more about this than I do.

Mr J.E. McGRATH: Would that be net customer winnings on Western Australian events?

Mr P. PAPALIA: Yes; it is net winnings effectively, regardless of the number of transactions.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 10 put and passed.

Clause 11: Section 26C amended —

Mr Z.R.F. KIRKUP: I assume that this is just a minor technical change. Is that the case? When I read it side by side, I could not see much difference, but I assume that that is all this is. I just want it clarified.

Mr P. PAPALIA: I confirm it is a technical change.

Clause put and passed.

Clause 12: Section 27A amended —

Mr J.E. McGRATH: Clause 12 inserts the definition of “interstate or offshore bet”. Can the minister clarify that definition for us and what it relates to? It refers to a bet made on an event or contingency outside the state or by telephone or electronically. What are we trying to capture here?

Mr P. PAPALIA: This just replicates the earlier treatment of the definition of “event” to encompass offshore events in the same manner. It just mirrors the treatment of the earlier definition.

Clause put and passed.

Clauses 13 to 16 put and passed.

Clause 17: Section 3 amended —

Mr J.E. McGRATH: I think the member for Dawesville might also speak on this clause. Clause 17 inserts the definition of “telecommunication device”. It does not seem contentious or problematic, but can the minister outline what he is trying to capture here?

Mr P. PAPALIA: I am told that this is to support the remote gambling provision in clause 21 of the bill.

Mr Z.R.F. KIRKUP: In relation to the definition of “telecommunication device”, I have looked at a number of different pieces of legislation, including the Criminal Code, the Road Traffic Act and the Bail Regulations, that specifically define that a mobile phone was used. I realise that the minister stated that a telecommunication device is a computer, a TV or a telephone. In other legislation, telephone has been referred to, as has mobile phone. I am trying to understand why mobile phone has not been included. It is a simple one, but I do not understand why it would not have been included.

Mr P. PAPALIA: There is no specific motivation beyond the drafting. I do not know; it may have been the individual drafter. Under paragraph (d), it includes any other electronic device or thing for communicating at a distance. It is pretty broad, so I am sure it will encompass mobile phones.

Mr Z.R.F. KIRKUP: I appreciate the minister’s explanation. I note that paragraph (a) of the definition of “telecommunication device” refers to “a computer adapted for communicating by way of the internet or another communications network”. I could be wrong, but to me “adapt” means that something has been modified or has a new purpose. I think the bill is unnecessarily complicated in some parts and is not particularly defined in other parts when we did not include a mobile phone. I note that when telecommunications interception is referred to in the Corruption, Crime and Misconduct Act, the word “data” is used as a catch-all for devices that communicate or exchange data. I am trying to understand it. Do the words “a computer adapted” mean any computer or could it be an old computer that has been repurposed? I do not understand why the drafter has included the word “adapted”, because either a computer communicates or it does not. Why was the word “adapted” used? There seems to be some inconsistency from my perspective, having looked at other pieces of legislation, regulations and the Criminal Code that specifically define a mobile phone and an internet-enabled device. In this case, it just does not seem to be the case.

Mr P. PAPALIA: I am informed that the agency requested that the drafters create a definition that encompasses a device specifically adapted for the purposes of gambling, and this is what they have responded with. As I indicated earlier, mobile phones that have apps and the like are encompassed in other clauses, so all those potential types of equipment are well and truly covered.

Mr Z.R.F. KIRKUP: I appreciate the minister’s explanation. For example, an iPad does not make phone calls. It is a computer that is entirely designed for the internet, so it is not adapted as per paragraph (a). I would be curious about the definition of a computer. An iPad is also not something that communicates at a distance in terms of a telephone.

Mr J.E. McGrath interjected.

Mr Z.R.F. KIRKUP: They do not have cellular-enabled SIM cards in them. When the minister talks about an iPad, where does that fall into the definition? They have apps on them but they are not capable of communicating in a traditional telecommunication sense because they do not have cellular-enabled cellphone SIM cards in them; and, if they are not a computer that has been adapted, I do not understand for example where they might fit in.

Mr P. PAPALIA: It does not say that it is communicating in a traditional sense using a voice or a phone; it says “communicating at a distance”. I think it is undeniable that an iPad can do that. That clause, as requested by the agency of the drafters, encompasses a wide range of devices and meets the obligations to cover any contingency the member might think of. He might add a few extra words, but that is unnecessary. If the member reads the

Mr John McGrath; Mr Paul Papalia; Dr Mike Nahan; Mr Zak Kirkup; Mr Tony Krsticevic; Mrs Liza Harvey

definition as “any other device or thing for communicating at a distance”, that pretty much covers any sort of device that the member might come up with, I suspect.

Mr Z.R.F. KIRKUP: Again, I appreciate the minister’s response. It is not in fact my definition. The Criminal Code specifically talks about mobile phones and devices. The Bail Regulations specifically talk about mobile phones. The Education and Care Services National Regulations 2012 specifically talk about fixed line telephones and mobile phones. Again, it is not me, but if we have used that definition in other pieces of legislation and other regulations, why has it not been included here? Similarly, why has the definition not encompassed data? I am curious in case this is ever challenged and the use of a telecommunication device is used to levy a fine against somebody. I am curious whether that could be challenged in a court, because the definition has not been particularly well explained or well detailed; it does not reflect what is contained in other pieces of legislation. If a telecommunication device is used, against the law, to place a bet, can this be challenged because someone used an iPad, for example? I am curious why it has not been used in this case when it has been used in other pieces of legislation and other regulations, and other Criminal Codes, for example.

Mr P. PAPALIA: It is because this is not those pieces of legislation. This is a broad-ranging head of power to enable us to capture any threat that we view as undesirable activity in Western Australia using whatever means we view as being undesirable. We do not want to restrain ourselves through complying with other pieces of legislation. We do not need to. This is to enable the commission to propose regulations banning specific activities using any type of device. It will always be, as I said at the outset, subject to disallowance in the other place. It will have parliamentary oversight.

Mr Z.R.F. KIRKUP: I appreciate the minister’s explanation. At the very start of this, when we talked about definitions under section 4, we talked about a device being any electronic device or apparatus. That is a catch-all right there. When it is broken down into a “telecommunication device” it seems unusual that there are some blackspots, as it were—that is, specific devices that are well defined in other pieces of legislation and other regulations are not well captured. The minister’s second reading speech talked about this being a tidy-up of existing legislation, making minor technical amendments, so I find it unusual that the drafters and the agency would not have got this right at that point. It seems to me that the minister has brought something to this place that could possibly be challenged if someone does not use a traditional mobile phone and they use something like an iPad. If the minister is seeking to make sure this piece of legislation is modern and responds to modern threats, I would have expected him to use a more general definition that has already been used in section 4, which we amended, to the Betting Control Act.

Mr P. PAPALIA: I am sure that parliamentary counsel appreciates the member’s advice and his learned opinion. Nevertheless, I disagree. I feel that this legislation has been well drafted. It has met the request of the commission or the agency to provide a set of criteria that meets our intent. I am comfortable that in the event that there is a challenge, we will deal with that at the time.

Clause put and passed.

Clauses 18 to 20 put and passed.

Clause 21: Part V Division 5A inserted —

Mr P. PAPALIA: I move —

Page 13, lines 9 and 10 — To delete “enable gambling” and substitute —
transmit a bet

Amendment put and passed.

Mr J.E. McGRATH: The member for Dawesville has raised a couple of issues that are would-bes, could-bes or might-bes. Does the minister have any case studies relevant to this division?

Mr P. PAPALIA: Which part—the whole of clause 21?

Mr J.E. McGrath: Yes, 21—about what the minister is trying to get a handle on and prevent.

Mr P. PAPALIA: I know the member is exploring the nature of some of these proposals, but he is aware this is intended to provide the opportunity or the power to respond to potentially unforeseen threats. It is not inconceivable that a remote gambling device product may be promoted or may be proposed for public spaces where it threatens our other interests in the form of Lotterywest, the TAB or other activities of that nature, or represents an undesirable activity for other reasons; therefore, we have taken advice from the agency that we incorporate this into the legislation.

Mr Z.R.F. KIRKUP: In relation to the definition of “remote gambling device” under proposed section 93A, I wonder if the minister could provide us with some tangible examples of what that might look like.

Mr P. PAPALIA: The response to the member for South Perth was that we do not want to constrain ourselves. We want to provide a flexible opportunity for the commission or the agency to respond to preventing any remote

Mr John McGrath; Mr Paul Papalia; Dr Mike Nahan; Mr Zak Kirkup; Mr Tony Krsticevic; Mrs Liza Harvey

gambling facility. It is the commission, sorry. I am trying to make sure I know which one I am referring to. It is to enable the commission to respond to a threat of an undesirable remote gambling device of any nature. We do not want to constrain ourselves. We do not want to give people the opportunity to find loopholes. This will be as broad and as far-reaching as we possibly can make it.

Mr Z.R.F. KIRKUP: The definition as it stands specifically says —

remote gambling device means a telecommunications device that is primarily or exclusively built to ...

We have changed it to “‘transmit a bet’ on an event or contingency”. There must be some ideas about what that currently looks like. Does the minister have something in mind at the moment in order to define it? That is what I am trying to understand. Does the minister have an example right now? I am not trying to exploit a loophole that may exist. Right now, does an example of such a device exist, that the agency might be aware of? What does that look like? Is that a mobile phone with an app on it, for example? I do not know. That is what I am trying to understand.

Mr P. PAPALIA: No. I do not want to constrain it, member. I understand the member is an advocate for people who like to break the law by employing modern technology in ways that had not been foreseen.

Mr Z.R.F. Kirkup: I do not think that is the case at all.

Mr P. PAPALIA: That is fine.

We are ensuring that the commission has the capacity to prohibit undesirable activity.

Withdrawal of Remark

Mrs L.M. HARVEY: The minister clearly impugned the character of the member for Dawesville by saying that he is colluding with people who choose to break the law. I would say that is unparliamentary. I ask the Acting Speaker to ask him to withdraw it.

The ACTING SPEAKER (Mr S.J. Price): There is no point of order. The minister did not actually say that.

Mr P. Papalia: I did not say that.

Debate Resumed

The ACTING SPEAKER: Minister, you were on your feet.

Mr P. PAPALIA: I do not want to constrain it in any way. We have said that we are not responding to a specific threat right now. We are trying to enable the commission to have as broad and as far-reaching powers as necessary to respond to unforeseen threats; therefore, were I to put on the record an example—there is not something right now—it may enable any proponent of something that would be seen as a threat in the future to be empowered in some way to find a way around the prohibition.

Mr Z.R.F. KIRKUP: I will address the point first of all that I am not trying to assist anybody in breaking the law and I find it offensive that the minister has suggested as such.

Mr P. Papalia: I’m not suggesting that.

Mr Z.R.F. KIRKUP: He did; he suggested specifically that I am somehow exploring this clause because I am trying to enable some loophole to be exploited by criminal friends of mine, but in any case, I appreciate that that is what happens. The minister makes personal attacks when he does not know what he is talking about and that is clearly what is happening in this case. I am still trying to understand this, minister. A remote gambling device means a telecommunications device that is primarily or exclusively built to transmit a bet on an event or contingency. That must be a physical object of some nature; all I am trying to establish is what that is. Either the minister knows what it looks like —

Mr J.E. McGrath: It could be a carrier pigeon.

Mr Z.R.F. KIRKUP: The member for South Perth quite rightly points out that it could be a carrier pigeon, although the definition is not that broad. It specifically talks about electronic devices. Either the minister knows something that exists and he can provide an example, or he is presenting a piece of legislation that he does not know anything about and it is so wide that we are doing it so that, at some point in time, it might be able to be permitted. I do not think that is particularly thorough drafting or a particularly thorough presentation on the minister’s behalf. The minister has an example of what the device looks like. I am surprised that he does not apprise the house of what it looks like.

Mr P. PAPALIA: I did not realise that the member was going to be so sensitive. A kiosk or something, anything—what was the term the member used? A specific device, or something. It is anything; we are trying to make it broad. It is conceivable that someone could establish a box of some description and place it in a shopping centre to enable an activity that we view as being undesirable. We want to be able to prevent such activities.

Mr John McGrath; Mr Paul Papalia; Dr Mike Nahan; Mr Zak Kirkup; Mr Tony Krsticevic; Mrs Liza Harvey

Mr Z.R.F. KIRKUP: I appreciate that; thank you, minister. That is exactly what I am trying to understand. If it is, for example, a device of some sort that is installed in a shopping centre to enable people to transmit a bet, as per the amended definition —

Mr P. Papalia: It's not a definition. As I said, we're making this as broad as possible.

Mr Z.R.F. KIRKUP: Sure, but it has been defined here. Nonetheless, I am trying to understand why the definition specifically states that the device is “primarily or exclusively built” to transmit a bet. What happens if it is not being primarily or exclusively used for that? Can the commission still stop it? Is it still restricted? For example, what if we are talking about a magical computer or box that for every instance of someone placing a bet, it does something that is secondary to betting and thus betting is not its primary use? It might be a secondary process. How, then, can the commission stop this device from existing?

Mr P. PAPALIA: We have taken the advice of the agency, which did not view that provision to be necessary. What it viewed as being required is the definition before the member. We have taken the advice of the agency. I trust that the knowledge that resides within that agency is well-informed and, in this case, we are trying to provide a head of power with a view to unforeseen threats. It is not responding to a specific threat right now, but encompassing potential threats and therefore providing the opportunity for the commission to respond.

Mr Z.R.F. KIRKUP: I appreciate that the minister is creating a broad head of power, although previously defined as a telecommunications device and now, in this case, a magical device that is “primarily or exclusively built to transmit a bet on an event or contingency.” I find it unusual that part of this broad, sweeping head of power that the minister is trying to create is restricted to something that is “primarily or exclusively used”. I can imagine a situation in which, yet again, the operator—if it is a multibillion-dollar enterprise—could quite easily get around the agency's definition by creating a device that is not primarily or exclusively being used for the application of the transmission of a bet on an event or contingency. By creating a secondary process in which for every individual bet transmitted, the device conducts a second, third or fourth order process, it renders irrelevant the primary or exclusive use of transmitting a bet. Thus, this legislation will have no application to the device. I find it unusual that the minister is relying on the agency's definition and has not queried it. The minister is clearly interested in this area. I am surprised that we have a weak definition. If the government is trying to combat these large, multibillion-dollar enterprises and it is trying to create a broad head of power, why is the definition restricted to something like this? As someone who has been acquainted with this bill for only a very short time, I can already think of examples in which that could be worked around. I have no interest in these types of commercial transactions, but, clearly, if the minister is trying to stop large operators, they might. To be frank, the definition seems to be loose and quite weak.

Mr P. PAPALIA: I do not agree, member. As I said, it is not responding to a specific threat right now. It is providing a power that was not extant under the member's government. For eight and a half years, the former government did not respond to the threat represented by some of the intrusive forms of technology and activities of foreign-owned corporate bookmakers. We are providing a power that was beyond the conception and capacity of the member's former government and therefore I think it is adequate. In the event that there is a concern with a device that comes into the state that we cannot prohibit because of the nature of this definition, I am sure we would be able to respond rapidly.

Clause, as amended, put and passed.

Clauses 22 and 23 put and passed.

Clause 24: Section 109D amended —

Mr J.E. McGRATH: This clause will change “Burswood Nominees Pty Ltd” to the “casino licensee as defined in the *Casino Control Act 1984*.” Just out of interest, does the agreement between the state government, Burswood Nominees Ltd and Burswood Resort Management Ltd, which I believe was last updated in October 2016, have an end date?

Mr P. PAPALIA: I am informed, no.

Mr J.E. McGRATH: I gather, then, that it is an ongoing agreement that just gets updated or amended from time to time. I am just asking how it works.

Mr P. Papalia: By way of interjection, yes.

Clause put and passed.

Clause 25 put and passed.

Title put and passed.