THE LAW REFORM COMMISSION
OF WESTERN AUSTRALIA

Project No 58

Section 2 Of The Gaming Act

REPORT

JANUARY 1977

The Law Reform Commission of Western Australia was established by the *Law Reform Commission Act 1972*.

The Commissioners are -

Mr. D.K. Malcolm, Chairman
Mr. E.G. Freeman
Professor R.W. Harding.

The Executive Officer of the Commission is Mr. C.W. Ogilvie, and the Commission's offices are on the 11th floor, R. & I. Bank Building, 593 Hay Street, Perth, Western Australia, 6000 (Telephone 25 6022).

CONTENTS

TERMS OF REFERENCE

1.1 The Commission was asked to review s.2 of the *Gaming Act 1835*.

WORKING PAPER

2.1 The Commission issued a working paper on 23 February 1976. The names of those who commented on it are set out in Appendix I, and the paper itself is reproduced as Appendix II.

DISCUSSION AND RECOMMENDATIONS

General

3.1 The working paper contains a detailed discussion of the present law and practice (paragraphs 2 to 21), a summary of the law elsewhere (paragraphs 22 to 26) and a discussion of possible alternative reforms. The Commission has now completed its reconsideration of the questions at issue in the light of the comments received on the working paper.

Section 2 of the Gaming Act: recovery of gaming debt paid by security

3.2 The *Gaming Act 1835* is an English statute, which was adopted in Western Australia by an Ordinance passed in 1844 (7 Vict. No. 13). Under s.2 of the *Gaming Act 1835*, a person who has given a "note, bill or mortgage" (in this report called a "security") as security for, or in satisfaction of, a gaming debt and who actually pays to any "indorsee, holder, or assignee" of such security the money thereby secured, may recover that money from the person to whom he gave the security. A cheque is a "bill" within the meaning of the *Gaming Act*,[1] so that the section covers cheques drawn in payment of gaming debts. The reference to "indorsee, holder or assignee" in s.2 includes the person to whom the security was given.[2] Accordingly, if a cheque was given to a winner in satisfaction of a gaming debt, then whether the cheque is cashed by the winner or by a transferee of the winner, the loser can recover the value of the cheque from the winner.

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1 See *Sutters v Briggs* [1922] 1 AC 1.

2 Ibid.

3.3 The most practical example of the operation of s.2 of the *Gaming Act 1835* occurs when a bookmaker accepts a cheque from a losing punter in payment of a gaming debt. If the punter honours the cheque but later changes his mind, he can sue the bookmaker for recovery of the value of the cheque. So also can the punter's personal representative or his trustee in bankruptcy. An action to recover the value of the cheque can be brought at any time within six years.[3] By contrast, if the losing punter had paid the bookmaker in cash, neither he nor his personal representative nor his trustee in bankruptcy could have recovered the money.[4]

3.4 In Western Australia, most bookmakers' transactions are in cash. It is rare for a bet to be placed by cheque. However, in a significant number of cases bookmakers accept bets on credit (that is, "on the nod", without cash or cheque changing hands).

3.5 Settlement of credit bets usually takes place at Tattersall's Club in Perth. For the sake of convenience and security, some bookmakers, particularly where substantial sums are involved, often accept cheques in settlement of credit bets. The Commission understands that some prominent bookmakers may accept as much as twenty percent of their settlement receipts by cheque. Although bookmakers usually settle their losing bets in cash, some bookmakers sometimes pay by cheque those punters who are accustomed to settling their own bets by cheque.

3.6 Settlement of successful cash bets made on course may also take place at Tattersall's Club. Payment by the bookmaker, whilst usually in cash, may sometimes be by cheque. This is also true of settlements between bookmakers themselves, arising out of their "laying off" on course.

3.7 In its discussion so far, the Commission has mainly contemplated a situation where a losing punter, having settled with his bookmaker by cheque, subsequently decides (or his trustee in bankruptcy or personal representative so decides) to sue the bookmaker for recovery of the value of the cheque. Theoretically, however, a bookmaker who has settled with a punter (or another bookmaker) by cheque could also take advantage of s.2 of the *Gaming Act*, and sue to recover the value of that cheque. Of course, it would be unlikely that any bookmaker would in fact do so, since loss of licence to operate as a bookmaker and loss of permit to

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3 *Limitation Act 1935*, s.38.

4 See paragraph 3.9 below.

conduct his business on the racecourse would normally result from his doing so.[5] The only sanction against a punter, however, is the process of "warning off" the racecourse.[6] Such a sanction would only be effective against a punter who in fact wished to continue betting at a racecourse, and in any case would have no relevance to the position of the Official Receiver of the estate of a bankrupt punter or the personal representative of a deceased punter.

3.8 Actions under s.2 of the *Gaming Act* are rare in Western Australia, but the Commission was informed that there had been at least one. There have been at least four other cases over the years where actions have been threatened and, presumably, some kind of settlement reached. The question is a real one and a source of anxiety to bookmakers. In that the section gives a person who pays a betting debt by cheque a subsequent opportunity to "welsh", it seems that the provision is capable of working injustice.

All those who commented on the working paper were of the view that s.2 of the *Gaming Act* should be repealed. The Commission agrees with this view.

3.9 When the *Gaming Act 1835* was enacted, the law in England was that, by virtue of s.2 of a Statute passed in the reign of Queen Anne (the *Gaming Act 1710*), payment to the winner **in cash**[7] of a gaming debt was recoverable. Accordingly, s.2 of the *Gaming Act 1835* was originally enacted to bring payment by cheque or other security broadly into line with payment by cash.[8] However, it is doubtful whether s.2 of the *Gaming Act 1710* was ever in force in Western Australia.[9] It seems to be generally assumed that it was not, and that cash payment of a gaming debt is and always has been in the same legal position as payment of any other wagering debt, that is, it is irrecoverable.[10] If this is so, then it seems that the adoption by this State in 1844 of s.2 of the *Gaming Act 1835* was due either to a mistaken view of the state of the law in Western Australia, or to an inadequate appreciation of the rationale for the enactment in England of s.2 of that Act.

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5 See working paper, paragraph 18.

6 Ibid.

7 If the payment was for £10 or more.

8 See the judgment of Viscount Birkenhead L.C. in *Sutters v Briggs* [1922] 1 AC 1 at 12.

9 See Windeyer, *Wagers. Gaming and Lotteries in Australia* at 131. See also paragraph 3.39 below where the Commission recommends that any doubt should be cleared up by enacting legislation declaring the *Gaming Act 1710* not to be in force in Western Australia.

10 Ibid., at 26-27.

3.10 Furthermore, s.2 of the *Gaming Act 1835* applies only to gaming, including a bet on a game. Wages on events other than games are not covered. For example, a bet as to the outcome of a game which has occurred at some time in the past is not a gaming bet, but merely a bet as to a state of fact, that is, a non-gaming bet. Thus the loser of a non-gaming bet, such as "I'll bet that Starglow won the Perth Cup in 1974", who pays his debt by cheque, cannot afterwards recover from the winner the value of the cheque. The commission cannot see any basis for differentiating gaming debts from other kinds of wagering debts.

3.11 Accordingly, the Commission recommends that s.2 of the *Gaming Act 1835* should be repealed.

Gaming Act and Betting Control Act: right of winner to enforce a cheque or other security given in satisfaction of a gaming debt.

3.12 Repeal of s.2 of the *Gaming Act 1835* would not have the consequence that the winner of a gaming bet could himself enforce a cheque or other security given by the loser in payment or satisfaction. The security would still remain unenforceable by the winner.[11] A losing punter, or example, could stop payment of a cheque (that is, issue instructions to his bank not to payout when the cheque was presented to it), and the bookmaker would not be able to compel the punter or the bank to pay.

3.13 However, a third party to whom the winner had transferred the cheque could succeed in an action against the loser, though only if he were able to show that he had given value for it and had no notice of the original transaction (that is, that the cheque had been given to pay a gaming debt).[12] To this extent the position in regard to gaming debts is stricter than in regard to other sorts of wagering debts. In the latter case a third party can enforce the cheque provided at some stage value had been given for it, and irrespective of whether the third party knew that it had originally been given in payment of a bet.[13] The foregoing also represents the law with regard to the transfer of other negotiable instruments.

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11 Both s.1 of the *Gaming Act 1835*, which deems the security to have been given for an illegal consideration (see paragraph 4 of the working paper) and s.84I of the *Police Act 1892* (which makes the betting transaction void: see paragraph 3.17 below), would prevent the winner enforcing the security.

12 This is because s.1 of the *Gaming Act* deems the cheque to have been given for an illegal consideration: see paragraph 4 of the working paper.

13 This is because the transaction falls only within s.84I of the *Police Act*, which makes the transaction void but does not deem it to be illegal: see paragraph 12 of the working paper.

3.14 The Commission considers that the law with regard to the right to enforce a security given in payment or satisfaction of a gaming debt should be amended to provide that the winner, or a subsequent holder or transferee, should be able to enforce the security in the same way as securities given in normal commercial transactions can be enforced, **provided** that the betting transaction was lawful in the sense of being in accordance with the *Betting Control Act 1954*. Section 5(1) of that Act provides as follows:

> "Notwithstanding any law to the contrary, persons may, in accordance with this Act, lawfully bet by way of wagering or gaming on races -
>
> (a) on a race course during the holding at the race course of a race meeting; or
>
> (b) at or in registered premises,
>
> and their so doing does not of itself constitute a contravention of the law, and is not a ground for the race course or any part of it or the registered premises being deemed or declared to be, or to be used as, a common betting house or a common gaming house, or to be a common nuisance and contrary to the law."

The term "race" includes races of horses ridden or driven and greyhound races.[14]

3.15 This subsection is qualified by s.5(2) of that Act, which provides:

> "No bet or transaction arising out of or in connection with a bet shall be enforceable at law."

The effect of this subsection was considered by F.T.P. Burt Q.C. (as he then was) in "Bets Under the Betting Control Act" 3 *UWALR* 334. He discussed whether the phrase "transaction arising out of or in connection with a bet" covered cheques or other securities given in connection with a bet. If it did, in his view such a security would be unenforceable not only as between the parties to the original bet but also in the hands of a third party, irrespective of whether he took in good faith and for value or not. He concluded, however, that as the policy of the *Betting Control Act* was to liberalise the law in relation to this type of betting, it was unlikely that the legislature intended such a consequence. In his view, s.5(2) should be read down so as to exclude cheques and other securities. However, even if the subsection effected no change in the law, the position would still be that a security given in respect of a bet under the *Betting Control Act*, being a security caught by s.1 of the *Gaming Act 1835*, could not be

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[14] See s.4 of the *Betting Control Act 1954*, as amended by s.5 of the *Betting Control Act Amendment Act 1976*.

enforced by the winner at all, and not even by a third party, unless, in the case of negotiable instruments, he could prove he took in good faith and for value without knowledge of the original transaction.[15]

3.16 It seems to the Commission that, if a betting transaction falls within s.5(1) of the *Betting Control Act*, there would be nothing contrary to currently accepted legislative policy in permitting a bookmaker or third party to enforce a security which a losing punter has given in payment or satisfaction of the debt. The Commission accordingly recommends that appropriate legislation be enacted to achieve this result. It would be necessary to provide that s.1 of the *Gaming Act 1835* be amended so as not to apply to securities given in payment or satisfaction of bets under the *Betting Control Act 1954*.[16] Section 84I of the *Police Act 1892* would have to be similarly amended.[17] This is necessary because that section, by declaring contracts by way of gaming or wagering to be void, would prevent a winner from enforcing a security given to him in satisfaction of a bet.[18]

Credit Betting

3.17 Betting transactions can be lawful or unlawful. A bet is unlawful if it is in connection with a game the playing of which is illegal in itself under s.66(6) of the *Police Act 1892*[19] or ss.210(2)[20] or 212[21] of the *Criminal Code*, or if it is in connection with a game which, although not illegal in itself (for example, two-up), takes place in a common gaming house.[22] Otherwise, a bet is lawful. Lawful bets are of two kinds. First, there is a category of bets positively authorised by statute, such as bets under the *Betting Control Act*.[23] Second, there is

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15 See paragraph 3.13 above.

16 The Commission considers that s.1 of the Gaming Act (as amended) should be re-enacted in an up-to-date form in the proposed *Gaming and Wagering Act*: see paragraph 3.39 below.

17 The Commission considers that it is inappropriate that a provision dealing with the consequences under the civil law of a betting transaction should be contained in the *Police Act*, and that the section (as amended) should be re-enacted in the proposed Gaming and Wagering Act: see paragraph 3.39 below.

18 The Commission appreciates that its later recommendation (see paragraph 3.23 below) that bets authorised by the *Betting Control Act* should be fully enforceable would itself imply that cheques or other securities in relation to such bets should be enforceable. However, the Commission wishes to avoid any possible anomaly whereby the debt itself would be enforceable in legal proceedings whilst the cheque or other security might not be.

19 This section makes it an offence to play or bet "at thimble-rig, or at or with any table or instrument of gaming, other than a totalisator lawfully permitted to be used, or at any unlawful game, or at any game or pretended game of chance in any public place, to which the public (whether upon or without payment for admittance) have or are permitted to have access."

20 Which concerns games where the chances of winning are unequal: see *Windeyer* at 125.

21 Which concerns unlawful lotteries.

22 *Code*, s.211; *Police Act*, ss.84 and 84A.

23 See paragraph 3.14 above.

a category of bets which, whilst not positively authorised by statute, do not contravene any statutory prohibition - for example, bets on a private game of bridge. At present, a winner cannot recover from the loser a debt arising out of a bet, whether the bet is lawful or unlawful, and whether the bet is or is not statutorily authorised. This is because of s.84I of the *Police Act 1892*, which provides:

> "All contracts or agreements, whether by parol or in writing, by way of gaming or wagering, shall be null and void, and no action or suit shall be brought or maintained in any court of law or equity for recovering any sum of money or valuable thing alleged to be won upon any wager….. "

Section 5(2) of the *Betting Control Act*, which provides that "No bet or transaction arising out of or in connection with a bet shall be enforceable at law", is to the same effect in relation to the bets to which it applies.[24]

3.18 The Commission is of the view that there should be no change in the law relating to the recovery of money owing in respect of unlawful bets, or in respect of lawful bets which are not authorised be statute. However, it considers that recovery should be possible if the bet was an authorised one within the *Betting Control Act*. The consequence of this would be that the winner would be able to sue the loser for money owing to him pursuant to such a bet. Implementation of this recommendation would not involve any extension of the range of lawful betting transactions.

3.19 The Commission recognises that this recommendation may appear to be inconsistent with a recommendation of the Western Australian Royal Commission into Gambling. In rejecting a proposal of the Western Australian Bookmakers' Association that the law of Western Australia be amended to provide that bets made by or with licensed bookmakers be exempt from the general rule that betting debts are not recoverable, the Royal Commission stated:

> "Apart from the difficulty of proof of a bet made by a nod, we do not think that it is in the public interest to encourage credit betting." [25]

3.20 The Commission has pointed out[26] that there already takes place, in this statutorily authorised sphere, a not insignificant amount of credit betting. The scope and amount of such

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24 Ibid.

25 See Report (1974), paragraph 31.

betting would mainly be governed by business expectations and understandings between the parties concerned. The Commission doubts whether amendment of the law would lead to any significant increase in credit betting. Bookmakers would be no more likely than at present to accept a bet "on the nod" from a punter unless he was well known to them and his credit established. At the same time, it seems anomalous that persons who are authorised by law to carry on business as bookmakers are not able to recover debts which arise in the ordinary course of their business.

3.21 In addition, the Commission would point out that, in a normal betting transaction under the *Betting Control Act*, the bookmaker himself in effect bets on credit. The punter typically places his bet in cash with the bookmaker before the race, receiving in exchange a betting ticket. The transaction is not one in which the stake money is put up in cash by both parties to the bet and held by a third party. The punter relies on the credit of the bookmaker. If the bookmaker loses and were to decide not to pay, the punter could not sue him for recovery of the money won. It is true that there are powerful sanctions against default by the bookmaker,[27] but it would seem desirable also to give the punter a direct right of action against him. It would be unfair to provide the punter with a remedy whilst not at the same time providing the bookmaker with one.

3.22 As to the question of difficulty of proof referred to by the Royal Commission,[28] this Commission acknowledges that there may be occasions when the absence of written evidence of the betting transaction will cause difficulties in the administration of the law. The same difficulties arise in a wide variety of ordinary business transactions, however - for example, bids at auctions and the placing of orders to purchase shares on the stock-market. Occasional difficulty of proof does not, in the Commission's view, provide in itself an answer to the question of whether the law should permit the recovery of money won on a statutorily authorised bet.

3.23 Accordingly, the Commission recommends that the law be amended to permit recovery by either party on such bets. The Western Australian legal position would then correspond with that in Victoria, Queensland, New South Wales and Tasmania.[29]

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26 See paragraph 3.4 above.

27 See paragraph 3.7 above.

28 See paragraph 3.19 above.

29 See s.16 of the *Lotteries Gaming and Betting Act 1966* (Vic); s.16 of the *Gaming and Betting Act 1912* (NSW); s.139(3) of the *Gaming Act 1850* (Qld), and s.114 of the *Racing and Gaming Act 1952* (Tas).

3.24 Implementation of the Commission's recommendation in this respect would involve not only the repeal of s.5(2) of the *Betting Control Act* but also the amendment of s.84I of the *Police Act*[30] so as to provide that it would no longer apply to bets made under the *Betting Control Act*.

Money lent for betting

3.25 The law relating to the recovery of money lent for betting is anomalous and uncertain.

3.26 It appears that under the general law money [31] lent in order that the borrower may make a **non**-gaming bet, or in order that the borrower may pay debts **already incurred** in respect of both gaming and non-gaming bets is recoverable by the lender, provided the bet is not an unlawful one.[32]

3.27 The position in regard to money lent in order that the borrower may make a gaming bet is, however, obscure. It was held by the Divisional Court of the King's Bench in *Carlton Hall Club v Laurence*[33] that money so lent was irrecoverable. The reason the Court gave for this decision was that, since securities given for reimbursing or repaying money knowingly lent or advanced for gaming were void as between the parties,[34] the legislation must be taken to have impliedly provided that the loans themselves were irrecoverable.

3.28 The decision in *Carlton Hall Club v Laurence* was doubted in a subsequent decision of the English Court of Appeal.[35] The actual decision in that case was based on the fact that the gaming transaction in question was void under the English *Gaming Act 1892*.[36] However, Davies L.J., who delivered the judgment of the Court, went on to make the following statement obiter:

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30 As re-enacted in the proposed Gaming and Wagering Act: see paragraph 3.39 below.

31 That is, leaving aside the possible effect of s.5(2) of the *Betting Control Act 1954*: see paragraph 3.29 below.

32 See generally Windeyer, *Wagers, Gaming and Lotteries in Australia* at 61-64 and 67, and the cases referred to therein. See also W.E.D. Davies, "Recovery of Money lent for Gambling in Western Australia" 6 *UWALR* at 160.

33 [1929] 2 KB 153; [1929] All ER Rep 605.

34 Under s.l of the *Gaming Act 1710* and s.l of the *Gaming Act 1835*.

35 *C.H.T. Ltd. v Ward* [1963] 3 All ER 835.

36 The effect of this legislation is to prevent a third party who discharges the gambling debts of another from recovering in respect of such payment. There is no similar legislation in force in Western Australia.

> "If the true nature of the transaction in the present case were that the plaintiffs had advanced money to the defendant for the purpose of lawful gaming, the plaintiffs would have been entitled to succeed". [37]

3.29 A further ground for uncertainty in relation to money lent for certain kinds of gaming bets lies in the wording of s.5(2) of the *Betting Control Act 1954*.[38] According to W.E.D. Davies,[39] the general rule that a lender may recover money lent to pay a debt already incurred[40] in respect of a gaming bet does not apply to bets under the *Betting Control Act*, that is, bets on horse-races and greyhound races.[41] He argued that such a loan of money was a "transaction arising out of or in connection with a bet", and so not "enforceable at law".[42]

3.30 It is open to question whether Davies' views on the *Betting Control Act* would ultimately prevail if put to the test in court proceedings. The present law in regard to money lent in connection with gaming bets is both obscure and anomalous. In the Commission's view, there is no ground for maintaining the distinction between loans relating to gaming bets and loans relating to other kinds of betting. The Commission considers that the law applicable to money lent in regard to all kinds of betting should be the same, namely that it should be recoverable if the bet was a lawful one,[43] and it recommends that appropriate legislation be enacted.[44] This would accord with the views of all those who commented on the discussion of this matter in the working paper. If the betting transaction was a lawful one, a lender should be given a right to recover money lent either to enable the borrower to bet with cash (and so to avoid betting on credit in relation to the other party to the bet) or to enable the loser to pay the winner.

3.31 Money knowingly lent to enable a person to make an illegal bet, or to enable a person to pay a debt arising out of an illegal bet, should remain subject to the existing general law. This would mean that the money would be irrecoverable, unless the parties were not in *pari delicto*. If, for example, the lender had been the victim of fraud or duress he would be able to recover on the same principles as apply to illegal contracts generally.[45]

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37 Ibid., at 842-843.
38 See paragraph 3.15 above.
39 In "Recovery of Money Lent for Gambling in Western Australia" 6 *UWALR* 160.
40 See paragraph 3.26 above.
41 See paragraph 3.14 above.
42 See paragraph 3.15 above.
43 See paragraph 3.26 above.
44 Such legislation could appropriately be included in the proposed Gaming and Wagering Act: see paragraph 3.39 below.
45 See Cheshire and Fifoot, *The Law of Contract* (3rd Aus. ed. 1974) at 405.

3.32 By the same token, if the borrower gives a cheque or other security to the lender in settlement of a loan for gaming or for payment of a gaming debt, the Commission considers that the cheque or security should be enforceable if the gaming was lawful. This should be provided for expressly in the proposed Gaming and Wagering Act recommended by the Commission.[46]

Settling horse-racing and dog-racing bets

3.33 The Commission pointed out in paragraph 16 of the working paper that, while the matter was not beyond doubt, it appeared that the practice of settling racing bets at Tattersall's Club was in contravention of s.11(4) of the *Betting Control Act 1954* and s.45 of the *Totalisator Agency Board Betting Act 1960*. This is because it is an offence under the latter Act for a person to carryon business as a bookmaker unless he is licensed under the *Betting Control Act 1954* to carryon the business of a bookmaker in person upon a racecourse and carries on that business and bets (which includes settling bets) in accordance with that Act: s.45. The *Betting Control Act* enables a licensee to carry on the business of a bookmaker in person on a racecourse or at registered premises: s.11(4).

3.34 The premises in Perth occupied by Tattersall's Club have not been registered under the *Betting Control Act* as premises in which a bookmaking business may be carried on.

3.35 All those who commented on this matter suggested that Tattersall's Club should be registered as a place at which settling may lawfully take place. Subject to any relevant Government policy, the Commission agrees with this view. The practice of settling bets there is convenient and has existed for many years. It is desirable, therefore, that it be regularised. If it is not, then apart from any other consideration the reforms recommended in this report may not apply to the transactions which take place there, since they may be held to be illegal transactions and thus ones which the courts will not enforce. An amendment to the *Betting Control Act* would be required, since the present effect of registration of premises under the Act is to enable **all** aspects of bookmaking to take place there, whereas the Commission's recommendation relates only to the settling of bets.

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46 See paragraph 3.39 below.

3.36 The W.A. Bookmakers' Association suggested to the Commission that premises outside Perth, for example at Kalgoorlie, should also be registered as places where settlement could take place. The Commission recommends that this should be done. Acceptance of this suggestion would give to punters and bookmakers in those country centres which have regular race-meetings the same facilities for settling bets as they would have in Perth.

3.37 The Commission does not accept the view of the former Totalisator Agency Board, apparently endorsed by the Royal Commission into Gambling,[47] that such a provision as is recommended in paragraphs 3.35 and 3.36 above would create a danger of an increase in off-course betting. As stated above, the Commission's recommendation is that the only aspect of "betting" which could lawfully be carried on at such registered premises would be that of settling.

3.38 The Commission considers that the registration function should be carried out by the Betting Control Board[48] and not, as one commentator suggested, by the Minister for Police. It would be necessary that the Betting Control Board be given adequate powers to supervise settlement activities at any such registered premises to ensure that no abuse takes place.

Proposed Gaming and Wagering Act

3.39 The Commission regards it as inappropriate that a provision laying down rules as to the consequences under the civil law of gaming or wagering transactions should be contained in the *Police Act*. It would be preferable if s.84I of that Act, and s.1 of the *Gaming Act 1835* (both amended in accordance with the recommendations in this report) were re-enacted in a separate piece of legislation, which could be entitled "The Gaming and Wagering Act", and the Commission recommends accordingly. The proposed provision dealing with the recovery of money lent for betting[49] should also be included in such legislation.

3.40 As part of the review of the law covering the matters discussed in this report, the Commission recommends that the Acts of 16 Car. II C.7 and 9 Anne C.14 (the *Gaming Act*

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47 Report (1974), paragraph 31.

48 This Board replaces the Totalisator Agency Board: see the *Betting Control Act Amendment Act 1976*. The function of registering premises for settling bets would be an extension of the function that the Board already has of registering premises at which betting may take place.

49 See paragraph 3.30 above.

1710) should be declared not to be in force in Western Australia.[50] It is doubtful whether they are in force in this State but it seems desirable to clarify the matter.

50 See paragraph 14 of the working paper.

SUMMARY OF RECOMMENDATIONS

4.1 The Commission recommends that -

(a) section 2 of the *Gaming Act 1835* should be repealed;

(paragraph 3.11)

(b) section 1 of the *Gaming Act 1835* and s.84I of the *Police Act 1892* should be amended so as no longer to apply to securities given in payment or satisfaction of bets authorised by the *Betting Control Act*;

(paragraph 3.16)

(c) the *Betting Control Act 1954* should be amended so as to provide for the enforceability of bets authorised by that Act;

(paragraph 3.23)

(d) a provision should be enacted to provide for the recovery of money lent in regard to lawful betting and for the enforceability of securities given in connection with the repayment of money so lent;

(paragraphs 3.30 and 3.32)

(e) the *Betting Control Act* should be amended (subject to any relevant Government policy), to provide for Tattersall's Club in Perth and other appropriate premises to be registered as places where **settling** of bets authorised by that Act may take place;

(paragraphs 3.35 and 3.36)

(f) Section 1 of the *Gaming Act 1835* and s.84I of the *Police Act 1892* (as amended in accordance with this report) should be re-enacted in new legislation, which should include the proposed provision regarding recovery of money lent (see (d) above);

(paragraph 3.39)

(g) the Acts of 16 Car. II C.7 and 9 Anne C.14 should be declared not to be in force in Western Australia.

(paragraph 3.40)

(Signed) DAVID K. MALCOLM
Chairman

ERIC FREEMAN
Member

R.W. HARDING
Member

18 January 1977

APPENDIX I

List of those who commented on the working paper

Greyhound Racing Control Board (W.A.)

Liberal Party of Australia (W.A. Division)

Law Society of Western Australia

Police Department

W.A. Bookmakers' Association (Inc)

Western Australian Trotting Association

Western Australian Turf Club

Burton R.H. (S.M.)