

Section 2 of the Gaming Act

Terms of Reference

In 1975 the Commission was asked to consider whether s 2 of the *Gaming Act 1835* (Imp) should be amended or repealed.

Background of Reference

The law of securities for gaming debts was regulated by legislation dating back to 1664. Since that time, many statutes had been passed which resulted in great complexity and uncertainty, particularly in respect of the civil liability arising from a gaming debt contract.

The *Gaming Act 1835* (Imp) ("the Act") was an English imperial statute that was adopted in Western Australia by an Ordinance passed in 1844.¹ Under s 2 of the Act, a person who has given a 'note, bill or mortgage' 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 secured, may recover that money from the person to whom he gave the security. The full effect of s 2 was not generally appreciated until the House of Lords' decision in *Sutters v Briggs*,² where it was determined that a cheque is a "bill" within the meaning of the Act. Accordingly, if a cheque was given to a winner in satisfaction of a gaming debt, then whether the cheque was cashed by the winner or by a transferee of the winner, the loser could recover the value of the cheque from the winner.

Although actions under s 2 were rare in Western Australia, on at least four occasions action had been threatened. This was a source of anxiety for bookmakers as it gave people paying a betting debt by cheque an opportunity to recover the value of the cheque.

The Commission issued a working paper in February 1976 drawing attention to defects and anomalies in the existing legislation. The Commission suggested various solutions that included repealing s 2, repealing the whole Act, and repealing section 84I of the *Police Act 1892* (WA).

Nature and Extent of Consultation

Copies of the working paper were sent to over 20 government and non-government agencies that had a special interest in the subject matter. A notice was also placed in *The West Australian* newspaper inviting interested persons to obtain a copy of the working paper and submit comments.

There were eight responses to the working paper including responses from racing and bookmakers' organisations, the Law Society of Western Australia, the Police Department and the Liberal Party (WA Division). The Commission released its final report in January 1977.³

Recommendations

The Commission recommended that:

- (a) Section 2 of the Act should be repealed;
- (b) Section 1 of the Act 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 unauthorized by the *Betting Control Act 1954*;

¹ 7 Vic. No. 13 (Imperial Acts Adopting Act).

² [1922] 1 AC 1. Shortly after this decision s 2 was repealed in England by the *Gaming Act 1922* (UK).

³ Law Reform Commission of Western Australia, *Section 2 of the Gaming Act*, Project No 58 (1977).

◀ Section 2 of the Gaming Act

- (c) The *Betting Control Act 1954* should be amended so as to provide for the enforceability of bets authorized by that Act;
- (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;
- (e) The *Betting Control Act 1954* 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;
- (f) Section 1 of the Act 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); and
- (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.

Legislative or Other Action Undertaken

The Commission's recommendations were fully implemented by a sequence of legislative action, which ultimately repealed the whole the Act. The first stage of the Commission's recommended regime was implemented in 1978 by amendments to s 5 of the *Betting Control Act 1954* (WA).⁴ In 1985, amendments were made to the *Police Act* so that it no longer applied to securities given in payment for, or satisfaction of, bets unauthorised by the *Betting Control Act*.⁵ Further amendments to the *Police Act* provided for the enforcement of contracts relating to prescribed gaming or betting.⁶ In the same year, the Act was repealed in full⁷ and a declaration made that the Acts of 16 Car.11 C.7 and 9 Anne C.14 did not have effect in Western Australia.⁸

⁴ *Betting Control Act Amendment Act 1978* (WA) s 3. This amendment implemented the Commission's recommendation (e).

⁵ *Gaming and Betting (Contracts and Securities) Act 1985* (WA) ss 3–4. This amendment implemented the Commission's recommendation (b).

⁶ *Gaming and Betting (Contracts and Securities) Act 1985* (WA) ss 5–6. This amendment implemented the Commission's recommendation (d). It also essentially implemented recommendation (c) although s 11(12) of the *Betting Control Act*, inserted by the *Acts Amendment and Repeal (Betting) Act 1992* (WA), extended this power of enforcement.

⁷ *Acts Amendment (Gaming and Related Provisions) Act 1985* (WA) s 4. Section 84I of the *Police Act 1892* was repealed by *Acts Amendment (Gaming and Related Provisions) Act 1985* (WA) s 5. These provisions implemented the Commission's recommendations (a), (b) and (f).

⁸ *Acts Amendment (Gaming and Related Provisions) Act 1985* (WA) s 3. This declaration implemented the Commission's recommendation (g).