

Western Australia

**Casino (Burswood Island) Agreement
Amendment Act 2011**

As at 11 Jul 2011

No. 25 of 2011

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Casino (Burswood Island) Agreement Amendment Act 2011

CONTENTS

Part 1 — Preliminary		
1.	Short title	2
2.	Commencement	2
Part 2 — <i>Casino (Burswood Island) Agreement Act 1985</i> amended		
3.	Act amended	3
4.	Section 3 amended	3
5.	Section 4F inserted	4
	4F. Twelfth Supplementary Agreement ratified and implementation authorised	4
6.	Schedule 13 inserted	4
Schedule 13 — Twelfth Supplementary Agreement		
Part 3 — <i>Gaming and Wagering Commission Act 1987</i> amended		
7.	Act amended	14
8.	Section 46 amended	14
9.	Section 80 amended	14
10.	Section 81 amended	14
11.	Section 85 amended	14

Western Australia

Casino (Burswood Island) Agreement Amendment Act 2011

No. 25 of 2011

**An Act to amend the *Casino (Burswood Island) Agreement Act 1985*
and, consequentially, the *Gaming and Wagering Commission
Act 1987*.**

[Assented to 11 July 2011]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Casino (Burswood Island) Agreement Amendment Act 2011*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

**Part 2 — Casino (Burswood Island) Agreement
Act 1985 amended**

3. Act amended

This Part amends the *Casino (Burswood Island) Agreement Act 1985*.

4. Section 3 amended

- (1) In section 3 insert in alphabetical order:

the Twelfth Supplementary Agreement means the Twelfth Supplementary Agreement, a copy of which is set out in Schedule 13.

- (2) In section 3 in the definition of *the Agreement* after paragraph (b)(v) insert:

and

- (vi) the Twelfth Supplementary Agreement;

- (3) In section 3 in the definition of *the Supplementary Agreement* delete “Schedule 2.” and insert:

Schedule 2;

5. Section 4F inserted

After section 4E insert:

4F. Twelfth Supplementary Agreement ratified and implementation authorised

- (1) The Twelfth Supplementary Agreement is ratified and its implementation is authorised.
- (2) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Twelfth Supplementary Agreement is to operate and take effect despite any other Act or law.

6. Schedule 13 inserted

After Schedule 12 insert:

Schedule 13 — Twelfth Supplementary Agreement

[s. 3]

Casino (Burswood Island) Agreement

TWELFTH SUPPLEMENTARY AGREEMENT

THIS AGREEMENT made 12th day of May 2011

B E T W E E N:

THE HONOURABLE TERRENCE WALDRON MLA, the Minister of the Crown for the time being charged with the administration of the Control Act acting for and on behalf of the State of Western Australia and its instrumentalities from time to time (“**the State**”)

AND

BURSWOOD NOMINEES LIMITED (ACN 078 250 307) of Burswood Entertainment Complex, Great Eastern Highway, Burswood in the State of Western Australia as trustee of the Burswood Property Trust (“**the Trustee**”)

AND

BURSWOOD RESORT (MANAGEMENT) LIMITED (ACN 009 396 945) of Burswood Entertainment Complex, Great Eastern Highway, Burswood in the State of Western Australia as manager of the Burswood Property Trust (“**the Manager**”).

RECITALS:

- A. The State, the Trustee (by virtue of the *West Australian Trustees Limited (Merger) Act 1989*) and the Manager (by virtue of a deed of retirement and appointment of manager made on 13 August 1990 and a deed of assumption and covenant made on 13 November 1991) are parties to an agreement dated 20 February 1985 ratified by and scheduled to the *Casino (Burswood Island) Agreement Act 1985* as amended by:
- (a) the Supplementary Agreement made on 14 September 1987;
 - (b) the Second Supplementary Agreement made on 3 May 1990;
 - (c) the Third Supplementary Agreement made on 13 November 1991;
 - (d) the Fourth Supplementary Agreement made on 30 March 1992;
 - (e) the Fifth Supplementary Agreement made on 3 April 1995;
 - (f) the Sixth Supplementary Agreement made on 22 June 1996;
 - (g) the Seventh Supplementary Agreement made on 9 June 1997;
 - (h) the Eighth Supplementary Agreement made on 18 June 2003;
 - (i) the Ninth Supplementary Agreement made on 23 November 2005;
 - (j) the Tenth Supplementary Agreement made on 2 November 2006;
and
 - (k) the Eleventh Supplementary Agreement made on 28 March 2007,
- which agreement as so amended is referred to in this Agreement as “**the State Agreement**”.
- B. The parties have agreed to further amend the State Agreement for the purpose of more efficiently or satisfactorily implementing or facilitating its objectives.

THE PARTIES AGREE AS FOLLOWS:

1. Definitions and Interpretation

Words and expressions defined in the State Agreement when used in this Agreement have, unless the context otherwise requires, the same meanings as in the State Agreement and the provisions of clause 2 of the State Agreement as to interpretation apply to this Agreement.

2. Variation and Operation

- (a) The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act.
- (b) The provisions of this Agreement other than this clause and clause 1 shall not come into operation until the Bill referred to in subclause (a) has been passed by the Parliament of Western Australia and comes into operation as an Act.
- (c) On the said Bill commencing to operate as an Act, this Agreement shall operate and take effect according to its terms notwithstanding the provisions of any Act or law of Western Australia.

3. Clause 2 amended

Clause 2 of the State Agreement is amended:-

- (a) by amending the definition of "Casino Tax" by inserting after the words "Table Game Tax" the words: ", the Fully Automated Table Game Tax";
- (b) by amending the definition of "Casino Tax Activity" by inserting after the words "Table Game" the words ", Fully Automated Table Game";
- (c) by inserting after the definition of "Crown" the following definition:-

"Cruise Ship" means any vessel that:

- (a) has a minimum capacity of 100 passengers;
- (b) is conducting a scheduled deep water cruise; and

- (c) is transiting through Western Australian ports from and to locations overseas or interstate;"
- (d) by amending the definition of "Electronic Gaming Machine" by inserting the words "or Fully Automated Table Game", after the words "not a Table Game;"
- (e) by deleting the definition of "Electronic Gaming Machine Levy" and substituting the following:-

"*Electronic Gaming Machine Levy*" means, for the purpose of subparagraph 23(1)(c)(ii)(D), the percentage of Casino Taxable Revenue for Electronic Gaming Machines set out in column 2 of the table in item 1 of schedule F;"
- (f) by inserting after the definition of "Founders" the following definition:-

"*Fully Automated Table Game*" means any new game which is authorised under section 22 of the Control Act and which the Gaming and Wagering Commission, by notice to the Trustee, specifies to be a Fully Automated Table Game;"
- (g) by inserting after the definition of "Fully Automated Table Game" the following definition:-

"*Fully Automated Table Game Tax*" means the tax set out in the Fully Automated Table Game Tax table in Schedule C."
- (h) by inserting after the definition of "Genting WA" the following definition:

"*Heirisson Island Sculpture Park Project*" means the State Government of Western Australia's proposal to enhance Heirisson Island environmentally and artistically through environmental protection and conservation and through the display of sculptural artworks as set out in the Heirisson Island Sculpture Park Master Plan Report dated 9 June 2008."

4. Clause 22 amended

Clause 22 of the State Agreement is amended by:-

- (a) deleting the word "or" from subclause 4(a);
- (b) inserting "; or" after the word "Resort Complex" in subclause 4(b);

s. 6

- (c) inserting after subclause (4)(b) the following new clause :-
 - "(c) in a Cruise Ship in respect of which the conduct of gaming outside a distance of 12 nautical miles from the Western Australian baseline is permitted:
 - (i) under regulation 8A of the *Gaming and Wagering Commission Regulations 1988*; or
 - (ii) by a permit issued by the Commission under the *Gaming and Wagering Commission Act 1987* and with the consent of the Trustee,";
- (d) amending subclause (5)(a) by deleting the number "200" and replacing it with "100".
- (e) deleting subclause (5)(c) and substituting the following clause:-
 - "(c) prevent the State permitting the playing of the game known as "two-up" on Anzac Day as defined in section 3 of the *Anzac Day Act 1960*:
 - (i) in premises in any part of the State of The Returned and Services League of Australia, W.A. Branch, Incorporated or of any of its affiliated sub branches and normally used for social functions or activities of members of any such organisation; or
 - (ii) at events or in premises that the Minister is satisfied are sufficiently connected to the celebration of Anzac Day;"
- (f) inserting after subclause 5(c) the following new clause:-
 - "(d) prevent the State permitting under section 48 of the *Gaming and Wagering Commission Act 1987* the playing of the game known as "two-up" in any racing club as defined in section 3 of the *Racing and Wagering Western Australia Act 2003* that is:
 - (i) registered with "Racing and Wagering Western Australia" under the *Racing and Wagering Western Australia Act 2003*; and

(ii) within a radius in any direction of 100 kilometres of the Burswood Casino,

provided that the Trustee consents to the playing of "two up" in the racing club."

5. Clause 23 amended

Clause 23 of the State Agreement is amended by:-

(a) deleting subclause (1)(c) and substituting the following:-

“(c) subject to subclause 23(2), to the Board in respect of each and every month an amount equal to the greater of:

(i) \$83,334; or

(ii) the aggregate of:

(A) one per centum (1%) of Casino Taxable Revenue for Table Games for the month;

(B) one per centum (1%) of Casino Taxable Revenue for Fully Automated Table Games for the month; and

(C) one per centum (1%) of Casino Taxable Revenue for International Commission Business for the month; and

(D) for each month during the period set out in column 1 of the table in item 1 of Schedule F, the Electronic Gaming Machine Levy,

subject to item 2 of Schedule F, payment to be made to the Board by monthly payments on, and commencing on, the same dates as payments are made to the Treasurer of the State pursuant to paragraph (a).”

s. 6

(b) by inserting immediately after subclause (1A) the following subclause:-

“(1B) (a) The Board shall from money received under clause 23(1)(c) pay the sum of \$5,000,000 to the Treasurer of the State for use in the development of the Heirisson Island Sculpture Park Project in such amounts (to a maximum of \$5,000,000) and in such times as determined by the Minister.

(b) Payments made under subclause (1B)(a) shall only be made within a period of five years from, and including, the date of the Twelfth Supplementary Agreement.

6. Schedule C amended

Schedule C of the State Agreement is amended by:-

(a) inserting the following table in Schedule C Item 1, after the "Table Game Tax" table:

Fully Automated Table Game Tax

Period	Fully Automated Table Game Tax
On and from 1 July 2011	22% of Casino Taxable Revenue for Fully Automated Table Games

(b) in the "Electronic Gaming Machine Tax" table in Schedule C Item 1, below the row containing the words "20% of Casino Taxable Revenue for Electronic Gaming Machines", inserting the following rows:-

On and from 1 July 2011 to 30 June 2012	20.125% of Casino Taxable Revenue for Electronic Gaming Machines
On and from 1 July 2012 to 30 June 2013	20.25% of Casino Taxable Revenue for Electronic Gaming Machines
On and from 1 July 2013 to 30 June 2014	20.375% of Casino Taxable Revenue for Electronic Gaming Machines

On and from 1 July 2014 to 30 June 2015	20.5% of Casino Taxable Revenue for Electronic Gaming Machines
On and from 1 July 2015	20.625% of Casino Taxable Revenue for Electronic Gaming Machines

- (c) by deleting Item 2 (2) in Schedule C and substituting the following:-

"2 To give effect to the parties' agreement that the Casino Tax Rates specified in this Schedule C take effect from 1 July 2011:

- (a) the Commission will determine the amount equal to all of the Casino Taxes which would have been payable for the period commencing 1 July 2011 and concluding on the last day of the month within which this Agreement takes effect, if this Agreement had taken effect on 1 July 2011;
- (b) if the amount calculated under paragraph 2(a) of this Item 2 is more than the actual amount paid by the Trustee under clause 23(1)(a) of the State Agreement for the period referred to in paragraph 2(a), then the Trustee must pay the difference between the two amounts to the Treasurer at the same time and in the same manner as the next monthly payment is due under clause 23(1)(a); and
- (c) if the amount calculated under paragraph 2(a) of this Item 2 is less than the actual amount paid by the Trustee under clause 23(1)(a) of the State Agreement for the period referred to in paragraph 2(a), then the difference between the two amounts shall be set off against monthly payments due under clause 23(1)(a) until it has been set off in full."

s. 6

AS WITNESS the execution of this Agreement by or on behalf of the parties the day and year first hereinbefore written.

SIGNED by **THE**)
HONOURABLE TERRENCE)
WALDRON MLA for and on)
behalf of the State of Western)
Australia in the presence of:)

J Nichols
.....
Signature of witness

JON MARTIN NICHOLS
.....
Name of Witness

T Waldron
.....
Signature of THE
HONOURABLE
TERRENCE WALDRON

THE COMMON SEAL of)
BURSWOOD NOMINEES)
LIMITED (ACN 078 250 307))
was hereunto affixed by)
authority of the Board of)
Directors in the presence of:)

D.S.

B J Felstead
.....
Signature of authorised person

Director
.....
Office held

BARRY JOHN FELSTEAD
.....
Name of authorised person

A F McGregor
.....
Signature of authorised person

Secretary
.....
Office held

ALAN FRANK MCGREGOR
.....
Name of authorised person

THE COMMON SEAL of)
BURSWOOD RESORT)
(MANAGEMENT) LIMITED)
(ACN 009 396 945) was hereunto)
affixed by authority of the Board) C.S.
of Directors in the presence of:)

B J Felstead
.....
Signature of authorised person

Director
.....
Office held

BARRY JOHN FELSTEAD
.....
Name of authorised person

A F McGregor
.....
Signature of authorised person

Secretary
.....
Office held

ALAN FRANK MCGREGOR
.....
Name of authorised person

Part 3 — *Gaming and Wagering Commission Act 1987* amended

7. Act amended

This Part amends the *Gaming and Wagering Commission Act 1987*.

8. Section 46 amended

After section 46(1) insert:

- (2A) Gaming that is prescribed for the purposes of this subsection may be lawfully conducted and lawfully participated in.

9. Section 80 amended

In section 80(2) delete “200” and insert:

100

10. Section 81 amended

In section 81(1)(a) delete “200” and insert:

100

11. Section 85 amended

- (1) In section 85(3)(b) delete “equipment, or” and insert:

equipment that the person is not entitled to possess under this Act, or

(2) In section 85(4) delete “subsection (5),” and insert:

subsections (5) and (6A),

(3) After section 85(5) insert:

(6A) Subsection (4) does not apply to the possession of a gaming machine or gaming equipment of a kind referred to in that subsection, in prescribed circumstances.

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