

Mr TERRY EDWARD CLARKE WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Hall) - Terry, you have been before parliamentary committees before and so you are aware of privilege and all those sorts of things.

Mr CLARKE - Yes.

CHAIR - Obviously you are aware of our terms of reference, which is to inquire into the sale of TOTE and whether that is a good thing, bad thing or whatever. What I would invite you to do is to give your evidence to the committee, make some opening statements if you like, and then give the committee a chance to ask questions, bearing in mind that we are on a very tight time frame of 30 minutes per witness.

Mr CLARKE - I will make some opening observations, Mr Chairman, and then I would like to deal with a number of issues which have been stimulated by this decision by Cabinet to sell TOTE Tasmania.

Up until December 2008 there were two States in Australia where the racing industry, in my opinion, was set to really develop and had a good base. Those industries were in Western Australia and Tasmania and both were operated by combined wagering and racing bodies. In the other States, where privatisation has occurred in one shape or form, they are all in some trouble regarding their future funding - and I will come back to that later.

It appears to me - and I am making observations at the moment - that this decision is driven by two issues. One is that there is some value in the TOTE now that was not there years ago, so let's jump in and grab it before it disappears, and the threat of expulsion from SuperTAB might well be the driving motivation there.

The other one is an ideology that governments should not own gambling businesses, and I would like to challenge that later as well. The solution is, 'Well, let's fix the racing industry up. We'll put them on a budget and they won't need to complain anymore because they've got a guaranteed income - but hang on, there was no mandate to do that'. If I take Mr Aird's evidence at face value, I don't claim to be the world's best mathematician, but that tells me that the citizens of Tasmania need to fund something over \$900 million in the next 20 years. They were not asked whether they wanted to do that, so there has been no public interest test as to whether or not this is a good decision. That is in stark contrast to when the Labor Party came to power in 1998 when they had a mandate to merge racing and wagering.

The second issue is that the Tasmanian racing industry now, whether they like it or not, is exposed to sovereign risk. If we do not think sovereign risk is real for the industry we only have to look at Melbourne and what happened to Tabcorp and Tattersalls, who were encouraged into privatisation on the basis they would get back some \$600 million for their licence fee if they were not reallocated the licence in 2012. But the Government there has

come in and said, 'No, we are not honouring that pledge; you can take us to the courts if you do not agree'.

The second thing is that without the TOTE, this organisation that has been created, the Tasmanian Racing Board, will effectively be going to the market with one hand tied behind its back. It will have very little power or ability to win its way compared to now with the TOTE, and I'm talking nationally and globally. The other thing that should be worrying people if they're interested in public finance is what incentives will there be for the Tasmanian Racing Board - I don't care whether it's a State-owned company or GBE - where are the market forces that are going to drive efficiency, or is it just going to roll back up to the Government and get caught up in the negotiating for each annual budget?

They are my observations. I think there are issues of public finance principles that are being violated here. I don't understand how a submission can go through Cabinet without the consultation section being filled in, without the economic and social impact, without the licence fees for the new operator having been determined, or the period or the licence. Worse still, if we listen to Mr Aird's evidence, we're just negotiating the deal with the racing industry now, so how did the Government take a decision to sell the TOTE? Where or when was the economic or public benefit test done?

I will now address a few issues that come out of this which I think might be of interest to the committee. TOTE Tasmania effectively provides half of the economic stimulus. In 2005-06, that was estimated to be \$74 million, so if you sell off the TOTE to some company that takes it out of this State, you're looking at effectively impacting half of the impact on GDP in this State. As I said, if you take the face value figures given in evidence, that suggests something like \$900 million is going to be paid out of the coffers to run racing for the next 20 years.

By the way, the new owner won't have any real necessity to put money back into Tasmania because with the product fee regime, if the Tasmanian racing is not of a quality that fits the new owner's perspective as far as offering product to the wagering punters - and they are the ones who in the end will determine what the new owner bets on - then he has no obligation unless it's part of the deal to put product fees back into Tasmania. If it's part of the deal, then it's going to impact the price.

As to the relationship between TOTE and racing, Mr Challen, I note, said that his decision was a personal one, 'based on, I confess, not huge expertise of the industry' - so again, he got some experts to help him. I would like to ask the committee, what do Japan, France, Ireland, South Africa, Sweden, Norway, Hong Kong, Macau and Singapore have in common? Why is the British Government trying to sell its TOTE to the racing industry? The one thing in common globally with all the major racing industries is that it is one organisation. Racing and wagering is the supply and demand side of the equation.

When the Western Australian Government review was under way into the future administration of that industry, I met the chairman and he told me that the Tasmanian model was the best they had identified after a widespread review. That is what they implemented,

apart from the fact that they put probity into the organisation, whereas we argued it was the public good and should be funded for the wider public benefit.

Mr WILKINSON - Terry, what year was that review, please? Can we be provided with a copy of it?

Mr CLARKE - I think Craig might be able to help with that; I don't have that with me here.

Subsequent to the WA decision, New Zealand went the same way, combining racing and wagering into one organisation. In contrast, the most recent example of the privatisation of the TAB in Australia was the sale of SA TAB. Not only did the government there have a massive early return on its purchase price, but it also lost taxation on \$80 million of wagering that we got here at TOTE Tasmania. That's because the punters want to stay in the big pool, and the same thing is going to happen here if you move out of the SuperTAB pool. More importantly, it's brought South Australian racing to its knees because the relationship with UNiTAB has not delivered the amount of revenue and income that they need. I understand recently the tax rates have been adjusted to acknowledge that.

Mr Aird quotes that activities in Victoria are a factor in his decision to sell TOTE. From my work with the industry in that State, the racing industry is very unhappy about being prevented from bidding for the parimutuel licence post-2012, and I can tell you from contact within the Government that the industry has tried hard to convince the minister to change his mind and let them bid for the licence. Racing and wagering are inextricably linked; they are the supply and demand sides of the one industry. By separating the wagering from racing and selling off the TOTE, the industry's bargaining power will be significantly impacted, such that the Tasmanian Racing Board, in my opinion, will have little capacity to achieve the targets for selling this racing nationally and globally that Mr Coleman has announced as part of the justification for the split in the administration. It is a suboptimal outcome and the decision to do this in Tasmania is not going with the trend nationally or globally, it is actually going against it.

Indeed, I recently had a phone call from the managing director of one of the two major thoroughbred transport companies in Australia, and I quote him. He said: -

'What is going on down there? Have people got rocks in their heads selling off the TOTE?'

The third issue is the impact of funding racing from consolidated revenue. At the time of the incorporation of TOTE Tasmania, an investment bank was engaged to define the options for an appropriate financial relationship between the industry, government and TOTE. The consultants were critical of the option of direct funding of racing, noting it would make the allocation of funds largely a recurrent political issue, based around lobbying and negotiations which would tie up resources that could be better used elsewhere, as there is no direct interactive economic relationship between the Government and the racing industry. The consultants considered it difficult to conceive that a proper incentive structure could be established in such circumstances. Even more importantly - and I see you have had the head

of Treasury giving you evidence - in their 2003 Regulatory Impact Statement to the National Competition Commission, the following is what the Treasury said five years ago:

'Retention and exclusivity for TOTE Tasmania's parimutuel wagering activities is the best model for providing stable, long-term and reliable sources of funding for the racing industry. This view is because the interests of TOTE Tasmania and the racing industry are aligned. This nexus creates market incentives for both the TOTE and the racing industry to maximise outcomes for both parties.

The TOTE has a direct interest in maximising funding for the racing industry to make it more appealing to the public as a betting product and likewise, the racing industry has an incentive to provide the appropriate racing product mix and quantity demanded by the public to maximise betting opportunities and therefore funding by the TOTE.'

Again, quoting:

'This market would not exist if the Government rather than TOTE funded the racing industry as it would no longer share the TOTE's success.'

I ask, what has changed the Treasury's stated position? Has someone been leaned on?

Mr Challen claims the connection between the TOTE and the racing industry is just an accident of history. The connection between racing and the TAB was never an accident of history. It was because of the racing industry that governments established a TAB in all States.

In Victoria the industry claimed ownership rights over the TAB and this was tested in the High Court at the time of its privatisation with the case being based on the fact of the funding of the assets of the TAB from profits withheld from the industry.

In a debate over the TOTE Tasmania Bill 2000 the then Minister for Racing, Paul Lennon, said in his second reading debate response, quote:

'We are enabling the industry to capitalise its assets for the first time in history, whilst at the same time continuing the government guarantee which underpins the industry now ... We are moving it to a State-owned company under this legislation, and on our way through, are recognising' -

The Government is saying this -

'what the High Court recognised during the sale of the Victorian TAB, that there is in fact some ownership right of the racing industry in the TAB. This legislation is better than what the Victorian racing industry gets in terms of its share of the profits of the privatised Tabcorp.

They get a profit. Here we are giving them earnings before interest, tax, depreciation and amortisation and that is quite unusual ... They get it off the top and that maximises the amount ... they get 25 per cent there ...'

It is worth noting the member of the Legislative Council responsible for taking this bill through the upper House was none other than Mr Aird. I believe therefore, and I want the committee to take this in, the industry should now argue that whatever the sale price is for TOTE Australia, 25 per cent of the proceeds should be provided to the TAB and this is in addition to the funds that the Treasurer has already identified he is prepared to give.

A minor issue in Mr Aird's evidence was that he said that he needed to separate out the three assets of the TOTE; the radio station, the TOTE and the racing business. The radio station loses about \$700 000 a year. There are probably two logical buyers - Radio Sport 927 and UNiTAB, if they are a buyer. Whichever way it goes, if that was a separate issue it would be a fire sale. That indicates a misunderstanding of the importance of the integrated nature of the industry; without that radio station some 40 per cent of the business would potentially be at risk. If it is going to be sold as a statewide radio network then you would simply undermine the value on that basis of the licence.

Another issue which Mr Aird raised, is there are changes within the industry that I think will be an interesting challenge and I do not think the Government should be involved in that. Any potential buyer would be well aware of what those issues are and would already have discounted the price. He knew that is was likely because a proportion of the business only exists because TOTE co-mingles its board with SuperTAB. That is what we lost. Also it is widespread industry knowledge that most of TOTE's growth since 2007 has been attracted by rebates to punters to improve their returns and a potential buyer would clearly discount this business if it is not prepared to offer the same rebates.

The major characteristics of a successful TAB are strong local racing, access to a betting pool of more than \$1 billion, a competitive taxation regime and position against other forms of gambling and state-of-the-art IT equipment and software. All this would suggest to me that, unless it is a strategic buy and that seems unlikely without the buyer having access to one of the three Australia pools, the buyer may seek to pay the purchase price over a period on an earn-out basis, no doubt frustrating the Government's reinvestment plans; albeit, we do not know what assets they are going to put that money in and how it is going create more benefit than the existing arrangement.

The seventh issue is, another reason for selling a State-owned company is that it is not performing or could be perceived to perform better in the private sector. Since the establishment of the current arrangement, funding to racing has increased by more than 90 per cent and the organisation has never called on the Government to fund its operational activities. Because of its expertise and experience it has become the fastest-growing TAB in Australia.

In 1997, KPMG did a report for the Government and there were consultants who looked at the ACT about the same time. Both consulting groups could not see how the TAB could survive in the then turmoil in the market. It has, 12 years on and it is stronger than ever. I reject completely therefore, the ideologically-driven view that governments should not own TABs. Providing the racing wagering are operated together, and I am sure the Western Australian Government reached this view, the public benefits test will mean the overall social and economic benefits will outweigh the risks to the Government of the gambling business. If it is operated as an incorporated company, it is operated properly and ministers keep out of the day-to-day business, then they should have no reason to be concerned that is it going to come back and bite them.

CHAIR - Terry, I am aware that we are down to about 10 minutes, so if you can just encapsulate what you have to say.

Mr CLARKE - I can finish there, Mr Chairman. I do have another point to make later.

CHAIR - Yes, thank you. You gave us a multitude of information at 100 miles an hour, so we are probably still all absorbing that. That was good.

Mr CLARKE - I am happy to provide it to you as a paper, if you wish.

CHAIR - It is on *Hansard*. If you want to table that it would be handy.

Mr BEST - We have the picture; you are not happy.

Mr CLARKE - As a citizen I am a bit concerned when someone whacks \$900 million on the budget and we were not asked, as people, whether or not we wanted that to happen. It is a very convenient way to say, 'Don't worry about the risk, I'll look after it. I am sorry, I do not agree. As we saw with Tabcorp and Tattersalls, sovereign risk is just that, it is sovereign risk and it exists in western governments as it exists in any other form of government.

Mr BOOTH - Terry, in your previous role with TOTE, was the sale of TOTE ever discussed before, at any level?

Mr CLARKE - No, it was not.

Mr BOOTH - When did you first become aware of it?

Mr CLARKE - I will put it to you this way, since I left TOTE as far back as in January 2008, I asked if I was to roll up with the right amount of money to do a MBO, how would I go? I was told it would be well received.

Mr BOOTH - Who did you ask?

Mr CLARKE - I prefer not to comment.

Mr BOOTH - Not the Treasurer?

Mr CLARKE - No, it was not the Treasurer and I guess I have then picked up things through the press and I knew that despite the Treasurer saying on WIN Television, on 10 November, it was not on their mind, I know that at the Oaks on 6 November there was discussion in the committee room with the VRC. Amongst people who had been invited there was just the Treasury in the sale of the TOTE. Clearly, it was on people's minds before 10 November.

Mr BOOTH - They had been invited to assist.

Mr CLARKE - To assist the Treasury in the sale of TOTE.

Mr BOOTH - Who were those people?

Mr CLARKE - Again, I am happy to give you that name in camera.

Mr BOOTH - Perhaps the Chair or someone can ask that in camera in regard to that just to clarify it.

Mr WILKINSON - Will we take that opportunity at the end of this session?

CHAIR - If it is quick we can do that.

Mr BOOTH - Just to clarify, what you are saying at the moment is that the industry is supported okay through TOTE and that model could take it in the future, whereas it becomes then a political risk and an argument every year for funding and support of the industry.

Mr CLARKE - It goes further than that because not only is the industry caught up in the machinations of the budgets, you actually weaken the organisation that runs racing because it no longer goes to the table with the ability to talk across the full range of wagering. If you are going to try to sell Tasmanian wagering into Asia, for example, it would certainly assist if you had the TAB there who is buying product on the other side. That is an issue which I know is part of the process to justify the separation and selling of Tasmanian product into Asia. The fact is that up until 2014, 2016 Sky Channel control all the vision rights of Racing Tasmania. So anything you sell you are going to get half-rights for it anyhow. So you are going to have to sell a hell of a lot of product, for example, if you wanted to economically justify putting lights on at Mowbray.

Mr GUTWEIN - You mentioned right at the end of the presentation - and if I can just commend you on that, I thought that was very well presented - that ministers should keep their hands off the day-to-day running of the business. Implicit in that is that in the past that has not been the case?

Mr CLARKE - That is absolutely the case. TOTE and the racing industry reaches out so far into the community that in my experience - 10 years at the head of it - you are in daily conflict because people do not get enough money or this dog had not been listed - a whole range of issues that all of you are well aware of. They go to the minister and they lobby the

minister. The minister's support staff think they better get involved. A classic case with the current arrangement with people here is with the hotel down in the Channel. There was clearly no economic case for putting a TAB in there and yet we have spent weeks and weeks arguing because someone in the minister's office had that view. This is not consistent with operating a State-owned company. If you set up a company, you set up the board. It operates under Corporations Law and, as far as government is concerned, it should restrict its input to the strategic plan and the policies. If you are going to go around trying to solve every minor complaint from the racing industry and the betting public then you are effectively, instead of walking away and saying that this is a matter for the TOTE to solve, getting involved needlessly. In those circumstances I can understand why you probably would want to get rid of it, get it off the book.

CHAIR - The committee will now move in camera for a couple of minutes. Would you switch off any recording devices. We will not be long and then Mr Craig Coleman will be the next witness.