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PARLIAMENT OF TASMANIA

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**SELECT COMMITTEE INTO THE  
ROLE AND FUTURE VIABILITY OF TOTE TASMANIA**

**Interim Report**

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*Brought up by Mr Booth and ordered by the  
House of Assembly to be printed*

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**MEMBERS OF THE COMMITTEE**

Mr Booth (Chairperson)  
Mr Best  
Mr Brooks  
Mr Shelton  
Mr Sturges

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## 1 APPOINTMENT & TERMS OF REFERENCE

- 1.1 The Honourable Member for Bass, Kim Booth M.P., the eventual Chair of this Committee, on 25 May last proposed an amendment to the motion that the Sale of TOTE Tasmania Repeal Bill (No. 28 of 2011) (the Bill) be read a second time.
- 1.2 Such amendment, having been moved was debated and resolved in the affirmative. The final resolution of the House was as follows:-

*Resolved, That: -*

- (1) *The Sale of TOTE Tasmania Repeal Bill 2011 (No. 28) be referred to a Select Committee of the House of Assembly for investigation and report thereon; and that: -*
- (2) *The appointed Select Committee have the power to send for persons and papers, have leave to sit during any adjournment of the House exceeding 14 days, with leave to report from time to time and to adjourn from place to place, to inquire and report upon the Sale of TOTE Tasmania Repeal Bill 2011 (No. 28), including the following matters:*
  - (a) *to investigate and examine the potential impacts should the TOTE Tasmania (Sale) Bill 2009 be repealed;*
  - (b) *to examine the role of TOTE Tasmania within the racing industry, and to advise on options regarding the future of TOTE Tasmania within a modern and viable racing industry;*
  - (c) *other matters incidental thereto; and*
  - (d) *provided, if the House is not sitting, the report may be presented to the Speaker and then the contents of the Committee report may be made public.*
- (3) *The Committee shall consist of 5 members being 2 from the Government nominated by the Leader of the House; 2 from the Opposition nominated by the Leader of Opposition Business in the House; and 1 from the Tasmanian Greens nominated by the Leader of the Greens.*
- (4) *The committee report by Tuesday, 22 November 2011.*

## 2 CONDUCT OF THE INQUIRY

- 2.1 The Committee resolved at its first meeting, to invite by way of advertisement on the Parliament of Tasmania Internet page and in the three daily regional newspapers, interested persons and organisations to make a submission to the Committee in relation to the Terms of Reference.
- 2.2 The Committee has, to date, met on 3 occasions.

### 3 PROGRESS REPORT

- 3.1 It is the very strong desire of the Committee to produce a final report to the House which fully addresses the terms of reference.
- 3.2 At the meeting of the Committee on 24 October last, the Committee came to the view that the volume and complexity of the subject matter of the inquiry is such that the requirement to provide a final report by Tuesday, 22 November next cannot be achieved.
- 3.3 The Committee was also of the view that the House should not be unduly constrained from proceeding with the consideration of the Bill whilst the inquiry continued to its end.

### 4 EVIDENCE

- 4.1 The Committee resolved to include in this Report certain evidence heard in respect of the government processes surrounding the proposed sale of TOTE Tasmania (TOTE).
- 4.2 The Committee heard evidence from Martin Wallace, Secretary, Department of Treasury and Finance (Treasury) and Derek Inglis, Director, Property Projects, Department of Treasury and Finance on Monday, 17 October last.
- 4.3 The Committee questioned the witnesses as to what stage the sale of TOTE was at. The following exchange ensued:-

**Mr WALLACE** - *Whether or not TOTE is sold is a government decision. As the Treasurer indicated in Parliament, the Government doesn't want the TOTE sale act repealed because it wants to keep its options open in case it receives a favourable offer. There is a process which relates to the test, based on advice from the TOTE board, testing things about the operations of TOTE Tasmania - the commercial value of the business and those sorts of things. From Treasury's perspective, TOTE has been through a period where it's operating in an industry now which is characterised by intense price competition and increasing focus on more high-risk-type betting activities. From a Treasury perspective, issues are always about whether this business should be owned by government and where taxpayers' funds are potentially at risk. So whether the Government wishes to sell TOTE or not is something for it and we provide advice to the Government about the issues that TOTE faces and what is likely to happen in the future.*

**CHAIR** - *If I can just go back to the process itself, at what date did the process officially end of trying to sell TOTE?*

**Mr WALLACE** - *December 2009.*

**CHAIR** - *What happened in December 2009? What was the formal process for disengaging with the sale process?*

**Mr INGLIS** - The then Treasurer issued a press release indicating that the sale process had finished without an acceptable offer for TOTE.

**CHAIR** - Was that transmitted to people who were interested in the purchase of TOTE at the time officially?

**Mr INGLIS** - Yes.

**CHAIR** - So there was an official notification that the process would no longer proceed?

**Mr INGLIS** - That is right, they were advised.

**CHAIR** - What was the form of that advice?

**Mr INGLIS** - Probably it would have been through our financial adviser at the time.

**CHAIR** - Are you saying that you had advised them in writing?

**Mr INGLIS** - I do not recall that we advised the bidders in writing but they would have been advised by our financial adviser, Deloitte's, who managed the sale process for Treasury.

**CHAIR** - At that point in time was the sale process terminated absolutely or was the letter equivocal in that sense?

**Mr INGLIS** - That sale process was terminated.

- 4.4 The Committee questioned the witnesses as to what may have prompted the Government to reconsider the decision to terminate the sale process and what role, if any, did Treasury have in such process. Mr Wallace responded:-

*That is a question for the Government.*

*... - Treasury monitors the operations of all the government businesses, regularly and will provide regular advice to the shareholder ministers in relation to the performance of businesses. Clearly TOTE is now in an environment of very high level competition. The previous situation where each State government owned a TOTE and there was a monopoly on parimutuel wagering, as you know, has changed substantially. Only three Totes have remained in the ownership of State and Territory governments and all Totes have expanded their operations into beyond pari-wagering on racing into range of other betting products, particularly fixed-odds betting. That is inherently a much riskier business than parimutuel wagering.*

*Obviously, from Treasury's perspective we ask why government should be the operator of these gambling activities. To own an operation that is required to compete with private sector businesses is obviously something that we believe there is a limit to the extent to which that is appropriate, particularly in the future if TOTE needs capital. That capital will then come at the cost of other needs for company capital. Or if it is to become unprofitable, then potentially you call on government funds.*

We do provide regular advice to the Government about all our businesses, including TOTE. So the Government is aware of the financial performance of TOTE over the last couple of years.

... We have provided options for TOTE based on advice that the TOTE Tasmania Board provided to us.

4.5 The Committee questioned the witnesses as to whether the TOTE Board provided advice to Treasury regarding the sale. The following exchange ensued:-

**Mr WALLACE** - ... (The CEO of TOTE) provided advice to the Treasurer around August and based on that they would provide advice back to the Government as to its options.

**CHAIR** - To Treasury?

**Mr WALLACE** - Yes; independent advice that the TOTE board had received. As a result of that, Treasury has provided advice to shareholders about what actions there are. As the minister has said, it is important to keep options open to provide the flexibility in case the Government does decide to sell TOTE. As far as I am aware they haven't made any such decision.

**CHAIR** - So the board of TOTE sought some advice themselves or they provided advice to Treasury with regard to an option to sell?

**Mr WALLACE** - No, it was around the valuation of the business. They engaged specialist firms to develop financial models to look at TOTE's business and to look at it going forward.

**CHAIR** - Is it the view of the board of TOTE - and we may call them anyway - that the business should be sold?

**Mr WALLACE** - I am not aware of what their view is.

**CHAIR** - Right. So they got advice as to options but they didn't come to a conclusion themselves, to your knowledge?

**Mr WALLACE** - Yes. I do not recollect it having been there. It was really about the dynamics of the Australian racing industry, their segmented financial forecast, the operating environment and the risk for the business and preliminary findings of the corporate advisers about the implications of this, which talked about the options which included no possible sale, but I would have to check. I can take it on notice today. I can't remember them ever actually providing recommendations before; it was really about, 'Here's the advice we've got about the business'.

**CHAIR** - But that would be germane to whether or not Treasury would come to the conclusion that it will give advice to the Government to sell TOTE?

**Mr WALLACE** - The issue about whether government wishes to sell TOTE or not is a matter for government not Treasury.

**CHAIR** - No, but I said germane to advice that you might give government regarding that it would be inappropriate to sell and advise them to sell.

**Mr WALLACE** - Our advice is what you would expect from Treasury. Basically we would look at something like this and say, 'Is this core government business? What sort of risk would be involved in a business in a highly competitive market that doesn't actually deliver any form of public service? What sort of risk is being taken on? Does that potentially impact on taxpayers and the budget?' What Treasury would say is that if, taking into account the risk of the business, someone came along and made an offer that was greater than the retention value, then our advice would be to sell it. We don't know whether there is any such offer at this stage. But our advice would be the same as any other Treasury department on that. You look at these things as to whether government ownership is appropriate, whether it is core business to government or not, whether they deliver a public benefit and whether or not it is perceived that it would be greater than the retention value because we don't want to be selling businesses for less than what the retention value is if they are providing profits, dividends and taxes.

**CHAIR** - Is there some assessment there? Obviously you have not had an offer on the table but you must have some understanding of its net present value. Is that higher than its retention value at the moment or less?

**Mr WALLACE** - What we have is some advice about what its retention value is.

**CHAIR** - In the previous process, in the pre-December offers, did you actually have any firm offers for the sale of TOTE?

**Mr INGLIS** - In December 2009?

**CHAIR** - Yes.

**Mr INGLIS** - There were four offers and none of them were acceptable in terms of risks that would have been left with the Government.

**CHAIR** - When you say 'risks for the Government' what do you mean by that?

**Mr INGLIS** - Some of the offers involved the Government retaining parts of the TOTE business and it wasn't part of the Government's sale objectives. The objective was to sell the full TOTE.

**CHAIR** - So you never got an offer that exceeded the net present value in a sense that it was a complete sale with all risks, liabilities and opportunities?

**Mr INGLIS** - Yes. We didn't get an offer that met the Cabinet's objectives which was to sell TOTE and get a good price for it.

**CHAIR** - Did that have to exceed the net present value? Was that part of the trouble?

**Mr INGLIS** - It had the same objective driving it, that the offer should be greater than the retention value.

- 4.6 The Committee questioned the witnesses as to whether there are any current purchase offers being considered. Mr Wallace responded;-

*There are no offers. What has happened is that we started with some unsolicited interest and so basically and given the advice of the TOTE board, we have put that unsolicited interest into a process to take that from general interest to is there a particular value that people would attribute to this? Is there a real interest in buying it? Out of that we may not get anything or we may get some tangible values but they may be, considering the last process, not acceptable, and the Government is not, obviously, going to make any decision about whether or not it wishes to sell TOTE. A whole number of things need to line up to make it worthwhile. I would assume TOTE as well as us would be receiving these statements of interest, particularly after the Victorian situation. We thought it would be best to put those into a sensible process so that they would be objectively tested.*

- 4.7 The Committee sought further information about the process currently being undertaken. The following exchange ensued:-

**CHAIR** - Are you engaged in a formal process with any potential purchasers at the moment?

**Mr WALLACE** - The process is formal, and that was the whole point of it, so basically we are testing this interest through a formal process on a consistent set of assumptions, a consistent basis.

**CHAIR** - Have you signed a memorandum of understanding with any party?

**Mr WALLACE** - Not that I am aware of.

**CHAIR** - How would you describe the current sale process then in a formal sense?

**Mr WALLACE** - I wouldn't describe it as a sale process. The Government hasn't made a policy decision about whether to sell or not.

**CHAIR** - If the Government decided to sell it tomorrow, would you be then in formal negotiations with someone? Would you exchange a memorandum of understanding or subsequent heads of agreement?

**Mr WALLACE** - No, we wouldn't do it at that stage. Obviously from our point of view we want to have maximum flexibility. If there is a window of opportunity, given the dynamics of this market, we would want to be in a position to take that opportunity so obviously from our perspective repealing this piece of legislation wouldn't necessarily enable us to take that window of opportunity which could be quite small. With the process we are in there aren't any bids at this stage. We have gone through an evaluation process, we have set up a formal process for people to put expressions of interest in but, from my understanding of the process, there are no values yet but there will be because of our process -



**CHAIR** - When you say 'your understanding of the process', why would it be possible that what you are saying would be right?

**Mr WALLACE** - Because it has been run further down in Treasury and I speak with them from time to time. It has only just started really.

**CHAIR** - It has only just started?

**Mr WALLACE** - Yes.

**Mr INGLIS** - We've received no formal valuations.

**CHAIR** - When you say it has only just started, run us through that. Have you started responding to unsolicited -

**Mr WALLACE** - The CEO of TOTE wrote to us. They also provided a copy of their report from their advising firm.

**CHAIR** - And that was 12 August, was it?

**Mr WALLACE** - Yes. That report basically said, 'Provide a comment on a range of things associated with the industry'. After some discussion and providing advice to the Treasurer, and particularly at the same time as this we started to get some interest, so it was from that where we put it in a formal process, but these formal processes take time to set up properly, with specialist financial advisers and legal advice. As Derek said, there are no offers and no indication from the Government that it will proceed even if it does get an offer. That's a government decision.

**CHAIR** - Do you have written advice from the Government of its intentions with regard to TOTE post December?

**Mr WALLACE** - Not that I'm aware of.

**CHAIR** - Any verbal instructions?

**Mr WALLACE** - I am not aware of that either.

**CHAIR** - So in December last year the Government announced that at some point in time they are not selling, that they were going to abandon the sale process?

**Mr INGLIS** - That was December 2009.

**CHAIR** - So something occurred between December 2009 and 12 August 2011, where somebody decided to start negotiating with people about something the Government had said was not for sale.

**Mr WALLACE** - No, sorry, that's not the correct interpretation. What has happened between those two times is that the industry has become even more competitive than it was before, more dynamic. The profitability of TOTE is reduced. I think the clarity around the licence in Victoria has led to at least one unsolicited

expression of interest - without any value, I might add. People are basically sniffing around asking, 'Is the Government still interested in selling this business?'

**CHAIR** - What date was that?

**Mr WALLACE** - I can't remember. It's unsolicited phone calls and those sorts of things.

**CHAIR** - The point I'm making, Mr Wallace, is that the Government made a clear statement in December 2009 that the business was not for sale but we now discover that a whole lot of things have been happening in the meantime, some of them quite proper.

**Mr WALLACE** - From my understanding, I thought what we talked about was two things. One was the advice from the TOTE board with accompanying reports and the other was the commencement of unsolicited interest, which was going, potentially, to different areas in government. We decided we would provide advice to the Treasurer that, given that, we think it should be put into some sensible process, some sort of formal process. So, what are these things and what are people talking about? The Government have provided no instruction to Treasury and they have been very clear about why they want keep options open. They have not made a decision about sales. I want to be absolutely clear about that so there is no misunderstanding.

**CHAIR** - You are saying that in December 2009 when the Government said the sale process was off, you would normally then abandon efforts to sell it? In 2009, you in fact said that you wrote to the accountants and told them it was no longer for sale?

**Mr WALLACE** - Yes, that is absolutely right.

**CHAIR** - Is that letter available to the committee? Can you provide it?

**Mr INGLIS** - This was verbal advice to Deloitte's who would have verbally advised the bidders.

**CHAIR** - So in 2009 the Government advised that the sale process was off, but at that point in time there had been very formal process engaging Deloitte's, who were negotiating with buyers, so you just picked up the phone and advised them orally that it was off? Or did you tell them that it was sort of off?

**Mr INGLIS** - No. We received advice from Deloitte on what the offers were. Those offers came with a recommendation from Deloitte and were put to the Government. Our recommendation was that the sale process not proceed.

**CHAIR** - Your recommendation process, because the price was not high enough, obviously?

**Mr INGLIS** - Yes.

**CHAIR** - So the sum of those were unsatisfactory, obviously. In 2009, the Government made an announcement that the sale process was off. We now know it was pursuant to your advice to the Government. But for some reason, at 12 August 2011 we discover that - pursuant, you say, to a report from TOTE - a sale process,

informally, without an actual offer, was instituted again. So despite the Government saying that it is not going to be sold, somebody has decided to try to sell it.

**Mr WALLACE** - I explained before the process that we went through. We provided advice to the Treasurer about putting this into, given the financial performance of TOTE, some sort of process and the Treasurer has approved that.

**CHAIR** - So the Treasurer approved post August -

**Mr WALLACE** - Yes, this process that we put in. But I have to stress that any decision to sell has not been made by the Government. I am certainly not aware of it.

**CHAIR** - But there has been advice from the Treasurer, which is effectively from the Government, to engage in a process to at least to determine its value and get it market ready. Is that correct? Would that be a fair comment?

**Mr WALLACE** - Yes, to determine its value and to see if this interest is concrete and what conditions are associated with this interest. Then, at the end of this process, basically you can advise back to government about the outcome of the process. Then they can make decisions about what they want to do.

4.8 The Committee later questioned the witnesses as to the administrative arrangements put into place to manage the process. Mr Wallace submitted that Mr Inglis had been brought back from the Property Branch to manage the process. The Committee questioned Mr Inglis to describe his role, the following exchange ensued:-

**CHAIR** - What would you describe (your role) as, Derek? How would you describe your role? Are you just establishing some vague parameters about a sale or are you soliciting firm offers - in other words, are you trying to sell it?

**Mr INGLIS** - We've appointed advisers to manage the process for us. As Martin said, there have been unsolicited offers.

**CHAIR** - Who are the advisers you've appointed? Is it Deloitte's or someone?

**Mr INGLIS** - Investec and Clayton Utz.

**CHAIR** - Now we're starting to get somewhere. When were they appointed?

**Mr INGLIS** - At the beginning of September.

**CHAIR** - What's their brief?

**Mr INGLIS** - To examine the unsolicited offers that have been made, as well as to round up those into a process to investigate whether there is interest in TOTE, given that things have changed in the last two years.

**CHAIR** - So previously the process was that you advertised for expressions of interest, I understand, through Deloitte's and I think there were even advertisements placed by Deloitte's. Have there been advertisements placed under this process?

**Mr INGLIS** - No.

**CHAIR** - Is there an intention to do so?

**Mr INGLIS** - No.

- 4.9 The Committee questioned the witnesses as to when the advice of the advisers was anticipated. Mr Inglis responded, “Mid November”, and when questioned as to whether such advice would include some form of recommendation to sell or not to sell and to whom, he responded, “That is right”.

## 5 CONCLUSION

- 5.1 It is likely that the ‘evaluation process’ currently operating within the Treasury will have concluded before this Committee is able to fully complete its inquiry. The Committee is of the view that the House should immediately proceed to express its view on the principle of the Bill so as to clearly inform the Government as to the current view of the Parliament as to the sale of TOTE.
- 5.2 The Committee sees great value in the continuation of the inquiry but that such inquiry not be tied to the Bill itself as the basis for the inquiry.

## 6 RECOMMENDATIONS

- 6.1 The Committee recommends that the House immediately resume debate on the question “That the Sale of TOTE Tasmania Repeal Bill be read a second time”.
- 6.2 The Committee recommends that the House allow the continuation of the inquiry of the Committee in accordance with the following motion varying the previous Order of the House:-

*That the Select Committee into the Role and Future Viability of TOTE Tasmania investigate and report upon: -*

- (a) *the potential impacts should the TOTE Tasmania (Sale) Act 2009 be repealed;*
- (b) *to examine the role of TOTE Tasmania within the racing industry, and to advise on options regarding the future of TOTE Tasmania within a modern and viable racing industry; and*
- (c) *other matters incidental thereto.*

- 6.3 The Committee recommends that the reporting date for the Committee be extended until Friday, 30 March next

**Parliament House  
HOBART  
24 October 2011**

**Kim Booth M.P.  
CHAIR**