

## **GAMING CONTROL AMENDMENT BILL 2009**

### **Second Reading**

**Mr AIRD** (Derwent - Minister for Racing - 2R) - Madam President, I move –

That the bill be now read the second time.

The Gaming Control Amendment Bill 2009 can be considered in three distinct parts. Firstly, it provides for the regulation of TOTE Tasmania's gaming and wagering activities under the Gaming Control Act and the repeal of legislation currently governing the operation of the TOTE, namely the Racing (Totalizator Betting) Act 1952 and the TOTE Tasmania (Racing Regulation) Act 2004. This is achieved by creating a new Tasmanian Gaming Licence totalisator endorsement, for the conduct of pari-mutuel wagering. This is the same process that was used to provide for betting exchanges.

Secondly, it provides for a new totalisator operator, if the TOTE is sold, to be licensed and regulated under the Gaming Control Act. There are also changes to the endorsement fees and tax rates for sports-betting and fixed odds wagering that will facilitate the attraction to Tasmania of corporate bookmakers. The Government is confident that this will help to make the sale of TOTE more attractive.

Thirdly, the bill addresses several unrelated matters that have been raised by Betfair. These matters have arisen out of administering the regulatory and tax arrangements specific to its betting exchange activities.

Since the original TOTE operations were established, the world has changed substantially and the gaming and wagering industry in particular is now more complex and commercially oriented than ever before. At present, a self-regulatory framework is in place for totalisator operations. This essentially means two things. First, the business itself is responsible for regulatory oversight of its wagering activities. Second, in responding to new market opportunities, the TOTE is often reliant on the Government or Parliament either to approve changes to the rules under which it operates, or for legislative change to introduce new products or services. Given that the commercial world requires quick assessment and fast response times, the current arrangements can be a cumbersome and time consuming process. This can inhibit product development. It is also the case that Government, through the relevant minister, and Parliament, should not be involved in normal commercial decisions of TOTE. In fact, in the absence of any need for policy change, this is not an appropriate role for either. In those cases where there is a relatively low level of change required, and changes in wagering rules is a good case in point, the Gaming Commission is more technically equipped to make such decisions.

Furthermore, as the Government intends to sell TOTE Tasmania to a private sector operator, this cannot be done while the current regulatory arrangements are in place. This would open the Government to unnecessary risk in terms of accountability. It would also look to be treating other gaming providers in the State differently to have a situation in which the self-regulation model was permitted to transfer from a Government-owned entity to a new owner. Therefore, sale or no sale, the current arrangements for regulatory oversight are no longer appropriate.

The bill before the House will bring TOTE under the same regulatory framework as other gambling providers in Tasmania, such as Betfair and lottery providers.

This will introduce a number of new requirements on the TOTE in relation to probity and the management of problem gamblers and consumer protection. On balance, these requirements will be no more or less burdensome for the TOTE as they are for other licensed Tasmanian-based gaming providers.

There are key regulatory considerations that have been applied to the wagering business model and these are contained in the bill. For example, under the Gaming Control Act the TOTE will:

- have certain key employees and technicians licensed;
- establish the ability for its customers to self-exclude, or for third party exclusion;
- enable its registered customers to be able to pre-commit loss limits;
- have all its wagering equipment and systems independently tested; and
- have independent oversight of its wagering rules, its agent agreements, and the operation of its retail outlets.

The Gaming Control Act currently provides for a Tasmanian gaming licensee to hold endorsements separately for the activities of: sports betting; fixed odds wagering; major lotteries; simulated gaming; and betting exchanges.

The amendments in this bill provide for a new totalisator endorsement and the necessary financial and regulatory provisions needed to govern this activity. However, while other endorsements are non-exclusive, the totalisator endorsement will be provided on an exclusive basis, this being consistent with the exclusivity of licensing totalisator operations in other jurisdictions.

Bringing the TOTE activities directly under the regulatory control of the Gaming Control Act does not require significant change to the way in which TOTE activities are governed at present. However, it does need to remove some key inconsistencies between current TOTE practices, and the way other gaming

providers are regulated. Bearing this in mind, the bill provides for some transitional arrangements so that the main changes required of the TOTE, for example the validation of its systems, or the licensing of its employees where required, won't have to be in place immediately the new licence takes effect.

Along with its totalisator activities, the TOTE currently offers fixed odds (race wagering) and sports betting products. The bill provides for TOTE to initially be deemed to hold a Tasmanian Gaming Licence to enable it to operate its full current range of wagering activities. This deemed licence will be for an indefinite period while held by the TOTE.

TOTE also offers racing products on behalf of third parties that are licensed in other jurisdictions. TOTE offers these third party products under agency agreements, which are very similar in nature to a franchise. For example, the TOTE currently participates in agreements with the operators of South African and Swedish international totalisator pools.

In order to deal with these agency arrangements the bill provides for the establishment of what will be referred to as an agent endorsement. This will allow for the continued participation of TOTE in its current third party-agent arrangements.

Given that the TOTE does not conduct these activities itself, rather it is an agent under an agreement with the primary licensed operator, the annual licence fee for an agent endorsement will be set lower than other endorsements. The fee will be 5 000 fee units per annum (which is currently equivalent to \$6 400), to reflect the lesser regulatory oversight required for this type of activity.

These arrangements have also been accommodated because they are relatively common in the wagering industry and in recognition of this these endorsements will be made available to other licensed operators.

The bill provides for the current use of retail outlets, most of which are not actually owned by TOTE, to continue to be operated in the same way. This includes stand-alone totalisator retail outlets (that is the TOTE branded shops); retail outlets in licensed premises (such as in hotels); and retail outlets at various race courses.

Rather than licence each outlet and its employees, the actions of the outlet owner will be taken to be the actions of the primary licence holder.

However, certain disciplinary provisions will apply directly to these owner/agents for breaches of conduct, such as allowing minors to gamble, for providing credit betting; for not enforcing wagering rules as may required by the Gaming Commission; and for not complying with player exclusion requirements.

Transitional arrangements will apply for the certification and testing of systems and equipment. This will be achieved by deeming the TOTE's existing systems and equipment to be fully compliant for an initial two-year period. This will allow time for the progressive independent validation of the TOTE's IT infrastructure and any non-compliance issues to be addressed during that period.

Key TOTE employees requiring a special employee licence will be given a 12 month period to apply for a licence, during which time they will effectively be deemed to be licensed. Similar transitional arrangements will be given to the purchaser of TOTE, with 12 months for the testing of equipment and 12 months for the licensing of special employees.

Consistent with current practice, unclaimed winnings are held for six months by the TOTE. However after this period, the unclaimed winnings will be paid to the Treasurer as unclaimed monies, rather than kept by the TOTE, as currently occurs.

This requirement for the payment of unclaimed winnings to the Treasurer will also apply to all Tasmanian gaming licence holders.

Also, consistent with current business practices of TOTE, the amendments provide for the deduction of commissions from bets and for the rounding of dividends.

The roundings from dividends, which amounted to \$4.4 million in 2007-08 for the TOTE, are to be retained by the totalisator operator.

Country race meetings remain an important part of the racing industry in all jurisdictions, but particularly in Tasmania and we need to continue to have totalisator services at those meetings. While not profitable services for the TOTE to provide, the amendments in this bill will require that where a Tasmanian racing club needs a totalisator to operate at a programmed race meeting, or betting only meeting, the TOTE (or its successor) will be required to conduct the totalisator on behalf of that club.

This ensures that the current arrangement continues whereby the TOTE conducts the totalisator on behalf of the club. However, the Government must strike a balance between the expectations of the community and the commercial viability of the TOTE, or its successor. There cannot be an expectation by clubs that they will be able to request totalisator arrangements for any number of meetings they may wish to conduct. Therefore a limit of 40 meetings has been set that must be conducted by the TOTE or the new operator.

This is 10 more Tasmanian race meetings than the total number currently conducted by the TOTE.

I have detailed the key changes required to bring the TOTE under the regulatory oversight of the Tasmanian Gaming Commission. However, there are some issues that the Government has considered, which are of direct relevance to the sale of TOTE. I will now deal with those matters.

Once the TOTE is sold there will need to be a new licence to the new operator. The amendments in this bill provide in the first instance for the TOTE to be deemed to hold an exclusive endorsement to cover totalisator operations in Tasmania; and this will not be transferable to the new operator. Therefore the new operator will need to be licensed in its own right by the Gaming Commission.

Potential purchasers of the TOTE will, therefore, need to apply for a Tasmanian Gaming Licence so that they can be tested against Tasmania's strict probity tests. The licence endorsed for totalisator betting can only be granted by the Tasmanian Gaming Commission with the approval of the Treasurer. Therefore, this will ensure that only the successful bidder is granted the licence endorsed for totalisator betting and this licence will be granted for an exclusive period of 15 years after the TOTE is sold.

In addition to being exclusive for 15 years, the new operator's licence will be for a term of 50 years, renewable for a further 49 years while the operator holds a totalisator endorsement and continues to meet the probity standards required of all Tasmanian-based gaming operators. In return, the Government will be requiring that the new owner establishes a corporate presence here in Tasmania for the period during which it holds the exclusive licence endorsement.

The licence term I have outlined is consistent with licences granted to totalisators in other jurisdictions.

The tax arrangements for the new operator have been difficult to establish. On the one hand the Government wants to be able to demonstrate to the community that this wagering opportunity is valuable and can support the commitment to directly fund the Tasmanian racing industry. However, we also need to recognise that a tax-free environment will potentially generate the greatest sale value in the TOTE business. The balance must also take into account that the tax environment here in Tasmania for totalisator activities will need to remain broadly aligned with totalisator tax regimes in other jurisdictions.

Therefore, the Government has decided that a fixed annual levy, rather than a tax on turnover, will provide the right balance. The holder of the totalisator endorsement will be required to pay a fixed annual wagering levy of 4.7 million fee units (currently about \$6 million per annum). No tax in respect of the turnover of its totalisator activities will be required.

By using a fixed levy, this will allow growth activities now and into the future to be effectively tax free. This means that the incentives will be right for the operator to grow the TOTE business.

In addition to conducting a totalisator, potential new purchasers of the TOTE will most likely also wish to conduct the same or similar sports betting, fixed odds and other related third party race products as the TOTE currently does.

Sports betting, race wagering and agent endorsements will therefore be available to the purchaser of TOTE, but in recognition of the fixed annual levy the fees associated with these additional endorsements will be waived while these endorsements are held in conjunction with the totalisator licence.

In preparation for the sale of TOTE I have been made aware of the possibly synergies in having corporate bookmakers establish in Tasmania alongside our totalisator operator. Corporate bookmakers are potential major customers for the TOTE through the use of TOTE to lay-off substantial bets on their books.

With corporate bookmakers basing their operations here in the State, this would enable further opportunities for joint business arrangements between the TOTE (or its successor) and corporate bookmakers.

However, since the introduction of fixed odds and sports betting licences under the Gaming Control Act there have been no applications for such licences because of Tasmania's uncompetitive taxation regime.

Currently, the most competitive taxation regime in the nation for these activities is in the Northern Territory, where the majority of fixed odds and sports betting operators are located.

Therefore, to make Tasmania the most competitive jurisdiction for corporate bookmakers, the proposed amendments abolish the current tax rates on race wagering of 1 per cent of turnover; and sports betting of 0.25 per cent of turnover.

In addition, the endorsement fees where both a sports betting and race wagering endorsement is held will be 200 000 fee units (\$256 000) in total for both endorsements. In return, the Government will be requiring that corporate bookmakers that are licensed in Tasmania will need to establish their risk management teams in Tasmania so that the State gets the employment benefits associated with the concessions made on fees and taxes.

Members will be aware that new governance arrangements for the Tasmanian racing industry, which came into effect in January 2009, transfer the

TOTE's racing development functions to the new Tasmanian Racing Board - the TRB

By separating the TOTE from the governance of the racing industry, the proposed amendments in this bill sever the long-standing funding nexus between the TOTE and the Tasmanian racing industry.

The current requirements for the TOTE to directly fund the Tasmanian Racing Board under the TOTE Tasmania (Racing Regulation) Act 2004 will, therefore, be abolished. The amendments also abolish the need for tax and product levy fee revenue from Betfair to be appropriated to the TOTE under the Gaming Control Act and then passed-on to the racing industry.

The racing industry will now enjoy funding certainty through the Deed with Government and have growth revenue opportunities to it through sponsorship arrangements and the revenue it raises directly through product fees or race-fields levies.

As I have said, a separate funding Deed will be finalised shortly between the Government and the TRB to directly fund the Tasmanian racing industry and I am pleased to inform honourable members that the that it has in-principle support from the TRB. I have tabled a draft of the Deed.

Under the Deed, which will have an initial term of 20 years, the TRB will receive at least \$27 million in annual recurrent funding, and this will be indexed, together with a one-off capital payment of \$40 million. The capital funding will become payable after the sale of TOTE has been completed.

There will also be a requirement in the Deed that the TRB must not reduce stakes money.

The new funding arrangements under the Deed will commence on repeal of the current funding arrangements under section 152 the Gaming Control Act and Division 3 of Part 2 of the TOTE Tasmania (Racing Regulation) Act 2004.

The other matters the bill addresses are as follows.

Since the licensing of Betfair, race-fields publishing fees have been introduced in some jurisdictions, including Tasmania, as a means for the industry to directly receive payment from wagering operators for the use of racing products.

There is currently no nationally consistent race-fields publishing regime. Therefore, it is not possible to adjust the rate of product levy payable to the State Government by Betfair to accommodate the payment of any race-fields publishing fee paid to racing authorities in other jurisdictions. At present, our

arrangements are in effect double taxing Betfair. This issue came to light on the introduction of the race-fields legislation in NSW. Betfair have raised this with me and I have agreed to address it.

The proposed amendments will adjust the tax base applying to Betfair to take into account the actual payment of publishing fees, product fees or levies in each jurisdiction, including where they may be required under Tasmania race-fields legislation. A head of power in the Gaming Control Act will enable the product levy tax base to be defined in a regulation. This will give flexibility to deal with unforeseen but legitimate needs for change as the racing environment and the use of direct product fees evolves further.

It is also recognised that for existing Tasmanian gaming licence holders (such as Betfair) or potential licence holders that may in the future require multiple endorsements, the total endorsement fees can be substantial (up to \$1.5 million per annum for four or more endorsements). This can be a disincentive for establishing operations in Tasmania, or to expand existing activities.

The endorsement fees are largely in place to cover the substantial costs of regulating these activities, such as: requests to approve product changes; have approved and introduce new products; and validation of operator systems and financial controls. However, if the trend in future is for fewer licensed operators to increase the breadth of their gaming activities through holding multiple endorsements, there will be some economies of scale in regulating the same firm for multiple activities, compared with regulating different firms for individual endorsement activities.

In recognition of this it is, therefore, proposed to cap the total amount of endorsement fees to 450 000 fee units (\$576 000 per annum) for any one licence holder with multiple endorsements.

Bringing the TOTE under the Gaming Control Act will expand the scope of the Tasmanian Gaming Commission to include the regulation of totalisator betting.

This will increase the regulatory work-load of the Tasmanian Gaming Commission. The increased regulatory costs of the Commission will be recovered from the wagering levy and licence fees from wagering operators.

In conclusion, the TOTE operating environment has changed significantly from when its activities were first established and licensed. This, together with the Government's intention to sell the TOTE, makes it important that the TOTE, or a new operator, is appropriately regulated. The community needs the confidence that all of our wagering and gaming activities under licence here in Tasmania are conducted to the high standards of regulation and probity for which this state has gained significant recognition. The Government, on behalf of the



community, will want the peace of mind that the regulation of the totalisator operator falls under the independent scrutiny of the Gaming Commission. The Government also wants the confidence that the risks associated with its activities in an increasingly complex and rapidly expanding commercial environment fall to the owners of the business. They are, after all, best placed to manage those risks.

The racing industry also wants certainty. It wants certainty in its funding streams so that it can confidently plan future development of the Tasmanian racing product. This will avoid it having to rely on the revenue risks associated with a direct reliance on the performance of TOTE and various tax revenue streams.

The Gaming Control Amendment Bill will achieve these outcomes.

Let me finish by advising honourable members that consultation has been undertaken with the TOTE in the development of the new regulatory framework and the TOTE supports the transition to regulation under the Gaming Control Act provided by this bill.

I commend the bill to the House.