RACING REGULATION AMENDMENT (RACE FIELDS) BILL 2011

SECOND READING SPEECH

THE HON. BRYAN GREEN, MP, MINISTER FOR RACING

THE HON. DOUGLAS PARKINSON, MLC, LEADER OF THE GOVERNMENT IN THE LEGISLATIVE COUNCIL

MR SPEAKER/MADAM PRESIDENT:

I move that the Bill now be read a second time.

Mr Speaker/Madam President, the Bill before the House today has three main purposes.

The *Racing Regulation Amendment (Race Fields) Bill 2011* amends the provisions in the *Racing Regulation Act 2004* and the *Racing (Race Field) Regulations 2009* –

- to incorporate changes recommended by the Solicitor-General to address deficiencies identified with the existing race fields legislation as a direct consequence of recent Federal Court decisions in New South Wales;

- to require wagering operators to pay publication fees on Tasmanian race field information from 1 November 2010; and

- to transfer responsibility of certain powers and functions of the Director of Racing to Tasracing in terms of the race fields regime.

Mr Speaker/Madam President, Tasmanian race fields legislation was first implemented on 1 July 2009. The purpose of such legislation was to provide the capacity to charge a fee and impose integrity conditions for the right to publish Tasmanian race field information.

It prevents the unauthorised use of racing industry intellectual property, that is, wagering operators not contributing to the cost of staging racing events but using them as a platform for their gambling services from which they profit. This practice is generally referred to as 'free riding'.

While there is strong support from a national perspective that race fields legislation is essential to prevent wagering operators from 'free riding', the continuing major issue is how racing authorities at the state and territory level structure their product fees.

The national debate with respect to the most appropriate and fair model to utilise in determining the quantum of the race field publication fee to be charged to wagering operators remains largely unresolved. From a legal perspective, the matter continues to be played out in the courts, with no definitive ruling to date.

Mr Speaker/Madam President, this Government has always held the gross revenue model to be the the most equitable and fair; a position, I might add,

supported by the *2010 Productivity Commission Report into Gambling*, which found the gross revenue model to be the more appropriate basis upon which product fees should be charged as it has “greater flexibility to support diverse business models” and is “conducive to price competition between wagering operators”.

Having said that, Mr Speaker/Madam President, Tasmania does not currently charge a product fee to wagering operators using its race field information. The Government’s decision in August 2009 to temporarily defer the imposition of a fee was in response to a recommendation by the Solicitor-General based on the Victorian Supreme Court’s ruling that race field fees imposed on wagering operators by Racing Victoria Ltd (RVL) for the use of Victorian race field information were invalid.

More recently, the New South Wales (NSW) Federal Court handed down decisions in two separate cases involving legal challenges by Betfair and the Northern Territory-licensed Corporate Bookmaker, Sportsbet, to the NSW race fields legislation.

As a consequence, the Government again sought advice from the Solicitor-General in terms of the impact that Court’s decisions would have on the Tasmanian race fields legislation and the ability of the Government to impose fees.

The Solicitor-General recommended a number of amendments be made to the *Racing Regulation Act 2004* and the *Racing (Race Fields) Regulations 2009* to address identified deficiencies, both legal and constitutional.

Mr Speaker/Madam President, the result of the Solicitor-General's advice is embodied in the legislation before the House today, and includes amendments which will –

- enable Tasracing to impose race field information publication fees determinable by the application of a formula;

- abolish the threshold which exempts wagering operators with turnover of $2.5 million or less from paying a race field information publication fee; and

- remove the obligation on Tasmanian registered on-course bookmakers to pay commission on their racing turnover.

Mr Speaker/Madam President, I will now address these amendments in turn.

Firstly, the imposition of fees by Tasracing which are determinable by the application of a formula.

In the Victorian Supreme Court case that I referred to earlier, where TAB Ltd challenged the validity of the fee conditions imposed by RVL, Justice Davies found that fees imposed and which were based on gross revenue, "would be void for uncertainty because the amount payable was not capable of precise quantification".

Having regard to that finding, it is essential that Tasmanian race field information publication fees be appropriately quantifiable and that the method by which any formula and calculations are to be applied or performed are specified in sufficient detail. That is to say, Tasracing will be obliged to

“express its fee condition in terms that fix a definite standard or criterion by which the amount of the fee can be ascertained with certainty”.

To this end, the Bill includes provisions to enable Tasracing to impose race field information publication fees determinable by the application of a formula or formulae, the calculation of which must be specified in a notice to be published in the *Gazette* or in a publication referred to in that notice.

This should satisfy the requirements of procedural fairness by enabling wagering operators to understand with reasonable certainty and clarity the likely financial consequences of seeking an approval to publish Tasmanian Race Field information.

Furthermore, details of calculations to be applied or performed, or the publication in which such detail is specified, will also be made available on Tasracing’s website.

Secondly, Mr Speaker/Madam President, **the abolition of the $2.5 million exempt threshold.**

The existing threshold exempts wagering operators with turnover of $2.5 million or less from paying a race field information publication fee.

The rationale behind the decision to abolish the threshold is to address doubts over the validity of the race field information publication fees under the Commonwealth Constitution.

Having regard to the outcome of Betfair and Sportsbet’s initial litigation in respect of the NSW race fields legislation, the Solicitor-General advised that, if

challenged, the threshold would likely be deemed to discriminate in a protectionist way against wagering operators with turnover in excess of $2.5 million such that it breaches section 92 of the Constitution.

Although a subsequent appeal to the Full Federal Court by Racing NSW resulted in a finding which, according to the Solicitor-General, may leave some room for argument on whether the threshold was protectionist, this Government is of the firm view that abolishing the threshold reduces the likelihood of the Tasmanian legislation being deemed to breach the Constitution in any future litigation.

Thirdly, Mr Speaker/Madam President, **removing the obligation of bookmakers to pay commission.**

A consequence of abolishing the $2.5 million exempt threshold is that Tasmanian registered on-course bookmakers will have to pay a race fields information publication fee, in common with all other wagering operators approved to use Tasmanian race fields information. However, on-course bookmakers also have the additional financial burden of paying commission on their turnover. Removing the obligation on these bookmakers to pay commission on their racing turnover will eliminate this inequity.

Importantly, the Tasmanian Bookmakers Association was consulted in terms of the impact on on-course bookmakers of removing the $2.5 million exempt threshold level and abolishing the payment of commission on racing turnover. The Association is of the view that the impact on individual bookmakers will be negligible.

Mr Speaker/Madam President, one effect of removing the obligation on these bookmakers to pay commission will, however, be a loss of revenue to race clubs - the ultimate recipients of the bookmakers' commission. This loss would have equated to $21,000 in the 2009/10 financial year. It is with this in mind that I have instructed Tasracing to consult with individual race clubs to address the shortfall resulting from the abolition of bookmakers' commission on racing turnover.

It is expected that the aforementioned changes will address legal issues that have arisen with respect to interstate race fields legislation and remove any doubt about Tasracing having the legislative authority to impose an appropriate fee for the publication of Tasmanian race field information.

Mr Speaker/Madam President, a number of other policy changes are incorporated in the Bill and I will now briefly outline each one individually.

When the Tasmanian race fields legislation was initially passed by Parliament in 2008, TOTE Tasmania had commercial responsibility for the Tasmanian racing industry. As TOTE was also a wagering operator, it was not appropriate for that entity to issue race field information publication approvals. As a consequence, the responsibility for approvals was vested in the Director of Racing.

Tasracing, a State-owned Company, subsequently assumed responsibility from TOTE for the commercial arm of the racing industry.

Mr Speaker/Madam President, in light of this, the Government believes it is appropriate to now transfer responsibility for the race field information publication approval process and the administration of the race fields regime from the Director of Racing to Tasracing. Not only does this accord with the Company's functions and powers in terms of corporate governance and strategic direction of the Tasmanian racing industry, it is also consistent with the approach taken in other racing jurisdictions.

It is important to note that the Director of Racing's responsibility for determining integrity conditions to be imposed by Tasracing on race field information publication approvals has been preserved under the proposed changes to the legislation. This will ensure that the highest level of integrity of the Tasmanian racing industry is retained.

Mr Speaker/Madam President, in addition to conferring authority on Tasracing to set race field information publication fees, the Bill also authorises Tasracing to collect and vary those fees, which accords with the Company's responsibility for funding of the local racing industry. Again, this is consistent with the approach taken in other racing jurisdictions.

Tasracing has currently set the race field fee at 10 percent of gross revenue and has chosen to emulate the methodology adopted by RVL in terms of the fee calculation, given the synergies that currently exist between RVL and Tasmania in terms of –

- the revenue model implemented;
- the fee amount; and

- the treatment of the various bet types.

Income from race field fees – estimated to be $4.9 million a year – has always been identified as an additional future funding source for the Tasmanian racing industry, separate to the $27 million operational funding it receives from the Government each year, and will help deliver sustainability and revenue predictability for the industry in future years.

Mr Speaker/Madam President, although the Government's decision to defer the imposition of race field fees in August 2009 was necessary, having regard to the Solicitor-General's advice in respect of legal determinations in other jurisdictions at that time, it has had a negative impact on the Tasmanian racing industry's revenue base.

To limit the potential loss of revenue to Tasracing in the 2010/11 financial year, the Bill includes provisions that require wagering operators to pay race field information publication fees on all bets accepted on races conducted in Tasmania on and from 1 November 2010. This is consistent with advice provided by the Director of Racing to wagering operators in late October 2010 following Cabinet approval to proceed with this legislative initiative.

It is important to note that although race field information publication fees will apply from 1 November 2010, there is no lawful capacity for Tasracing to collect any fees until the proposed legislative amendments have been implemented. As such, to help safeguard the industry's sustainability over the longer term in an increasingly competitive market, it is critical this Bill passes at the earliest opportunity.

Mr Speaker/Madam President, the Bill also includes provisions that remove the prescribed restriction in terms of the upper limit of the fee that can be imposed on a wagering operator, which, under the Racing (Race Fields) Regulations, is currently set at a maximum of 10 percent of gross revenue derived from each code of racing.

Having regard to both interstate legal determinations and the changing landscape across Australian racing jurisdictions since the initial fee decision was made, the Government considers the existing legislation is now too prescriptive and inflexible. It is essential that Tasracing has the ability to respond to changing market conditions and any future legal determinations without the need to seek legislative amendments.

In terms of industry consultation, the Act already provides that Tasracing must consult with the respective race clubs in determining the fee to apply in respect of a particular code. The Bill ensures this consultative process is retained.

Mr Speaker/Madam President, the Bill also has a mechanism for Parliament to disallow any variation to the fee determined by Tasracing from time to time.

Tasracing will be required to give wagering operators three months notice of any proposed variations to the race field information publication fee. This notice is to be published in the *Gazette* and tabled before each House of Parliament within the first 10 sitting days of the House.

This will enhance the transparency and accountability of decisions by Tasracing in this ever changing key area.

Mr Speaker/Madam President, it is also proposed to repeal the current provisions in the Racing (Race Field) Regulations in relation to the time and manner in which race field information publication applications must be made, including the information that is to accompany each application. Such provisions are considered too prescriptive and inflexible for matters of an administrative nature.

It is also proposed to repeal those regulations that set down the criteria for determining applications for race field information publication approvals and which prescribe the grounds for the cancellation or variation of those approvals. Essentially, the criteria and grounds prescribed by relevant regulations relate to the suitability of an applicant to hold an approval.

An applicant's host jurisdiction would have already considered like criteria in granting the applicant's wagering licence and would also have regard to similar grounds for cancelling a wagering licence. Given a current wagering licence is a prerequisite for a Tasmanian race field information publication approval, those particular regulations are considered redundant.

Mr Speaker/Madam President, a number of minor inconsistencies or anomalies which were identified during the drafting process has also been addressed by provisions in the Bill. These include –

- clarifying that Tasmanian registered on-course bookmakers are subject to the race field provisions of the *Racing Regulation Act 2004*, in addition to other provisions in the Act as stipulated, and the directions and regulations made thereunder;

- amending the definition of 'wagering operator' to clarify that, in addition to domestic wagering operators, international wagering operators must also obtain approval if they wish to publish Tasmanian race field information;

- amending the regulations to ensure that a wagering operator's customer identification procedures comply with the Commonwealth's *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

- removing certain definitions made redundant by the proposed policy changes;

- amending the definitions of 'totalizator' and 'betting exchange' to ensure consistency with the *Gaming Control Act 1993*;

- clarifying that Directors of both TOTE Tasmania and Tasracing are ineligible to be appointed as members of either the Tasmanian Racing Appeal Board or the Integrity Assurance Board; and

- removing legislative references that are no longer relevant.

Mr Speaker/Madam President, the national landscape with respect to race field legislation continues to evolve.

Both Betfair and Sportsbet have sought leave to appeal to the High Court of Australia in respect of the recent NSW Full Federal Court's decisions in their respective cases, and this Government will be maintaining a watching brief on the outcome of that process.

There have been calls for a national approach to race fields legislation. However, at his stage there is considerable opposition to a scheme that could potentially result in a loss of a racing jurisdiction's ability to charge what it considers appropriate for its racing product. This makes it unlikely that a national solution will be found in the foreseeable future.

The financial sustainability of the Tasmanian racing industry is an issue that needs to be addressed now. Tasmania is at a financial disadvantage in an increasingly competitive national racing market by not being in a position to charge wagering operators a fee for access to its race fields information.

Mr Speaker/Madam President, the Government remains committed to maximising financial returns to the racing industry whilst delivering the highest level of integrity. It is the Government's firm view that the policy changes contained in the Bill before you today will help safeguard the Tasmanian racing industry's sustainability over the longer term.

Contingent on the successful passage of this legislation through the Parliament during the current session, I anticipate that the amended race fields regime will commence on 1 April 2011, with the payment of fees taking legal effect from 1 November 2010.

I commend the Bill to the House.