

## **GAMING CONTROL AMENDMENT BILL 2009**

### **NOTES ON CLAUSES**

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| Clause 1 | Short title.   |
| Clause 2 | The Act will commence on a day to be proclaimed to allow time for the Tasmanian Gaming Commission to put in place systems and process to be able to regulate the TOTE.   |
| Clause 3 | Provides that the <i>Gaming Control Act 1993</i> is the principal Act.   |
| Clause 4 | Provides for a range of new definitions required in the Act which among other things, provide for the TOTE (or its purchaser) to be able to conduct its current wagering business.   |
| Clause 5 | <p>An associate includes someone who has a financial interest in the licensed gaming or wagering operator under the Act.</p> <p>This amendment to section 4 is required to ensure that a customer is not taken to be an associate, and therefore subject to investigation, by reason only that the totalizator has provided the customer with a rebate or discount on the normal commission taken out by the totalizator operator.</p> |
| Clause 6 | Amends section 76B to remove the current exemption of TOTE Tasmania from requiring a Tasmanian gaming licence. The TOTE will now require a Tasmanian gaming licence under the Act.   |
| Clause 7 | <p>Clarifies that the endorsement on the licence must show where the wagering activity occurs (i.e. the equipment and infrastructure that facilitates the wagering activity) and that such activity can only be located at an approved location.</p> <p>This is achieved by reference to an approved location.</p>   |
| Clause 8 | A grammatical improvement only to an existing provision.   |
| Clause 9 | Clarifies that a sports betting endorsement is required for the conduct of sports betting (as opposed to being just an agent).   |

Omits the reference to “Tasmania” as the current drafting is unclear and potentially prevents a sports betting operator from offering sports bets on events held outside Tasmania (such as the Australian Tennis open) to persons physically present at the operator’s Tasmanian premises (approved location).

Clause 10                Replaces the term “fixed odds” wagering endorsement with “race wagering” endorsement. This enables a broader definition than fixed odds to be covered under this endorsement.

However the definition of race wagering in section 3 excludes brokered wagering (betting exchange) or totalizator wagering which are covered under other endorsements.

Ensures that a race wagering endorsement is required for the conduct of race wagering (as opposed to being just an agent).

Clause 11                Fixes an omission in section 76V to a reference to paragraph (e).

Clause 12                Creates new section 76VB to establish a new totalizator endorsement for the conduct of totalizator betting, and the accepting of wagers from approved outlets.

Creates a new section 76VC to establish an agent endorsement. This allows Tasmanian gaming licence holders to enter into agent arrangements with third party gaming and wagering providers based outside of Tasmania.

For example, providing an internet portal from the Tasmanian gaming licence holder’s web site to the business partner’s website. An agent endorsement can be disallowed by the Gaming Commission if the business partner is considered to be an unsuitable person to be associated with.

An agent endorsement is not required for arrangements with third party gaming or wagering operators based in Tasmania because the third party operator will already be licensed under the Gaming Control Act.

Clause 13                Amends section 76W to clarify that a prescribed endorsement cannot be used to conduct an activity that would require a totalizator endorsement.

- Clause 14            This amendment clarifies that a licence can be for a longer term than 5 years under section 76Z, if it is provided for elsewhere in the Act (i.e. under s76ZEE). – this is the second totalizator endorsement only, which will be issued to the purchaser of the TOTE.
- Clause 15            This provides that in the case of the TOTE, it is authorised to transfer its licence to a wholly owned subsidiary of the TOTE. This may be a necessary step before the TOTE is sold, i.e. its subsidiary is sold.
- Clause 16            This is required because the current legislation does not provide a process for varying an existing licence, only the conditions of a licence.
- The Gaming Commission currently has to cancel and reissue a licence if a variation such as a change of address is needed.
- Clause 17            This provides that when the Tasmanian gaming licence with the second totalizator endorsement (the licence issued to the purchaser of the TOTE) ends under section 76ZEE, the Gaming Commission cannot refuse to renew the licence unless there has been no breaches and the holder of the licence or its associates are suitable.
- This is to give greater certainty for potential purchasers of the TOTE as the normal renewal process set out in section 76ZC does not state the reasons a licence would not be renewed.
- Clauses 18,19,20    Repeals definitions and sections that relate to registered player exclusions for betting exchange operators and will now be incorporated into a broader “TGL exclusion” process in Div 7, subdivision 2 of this part, (i.e. the exclusions provisions will include all Tasmanian gaming licence holders such as a totalizator).
- Customers that wish to self exclude from a venue (including a totalizator customer) can still do so under the existing exclusions provisions under Part 5 Div 3.
- Clause 21            Inserts a new Part 4A, Division 5A relating to totalizator operations. The Division applies to a Tasmanian gaming licence with a totalizator endorsement.

Provides that on “changeover day” (the day the amendment Act commences) that the TOTE is deemed to hold a Tasmanian gaming licence (“the transitional licence”) with the initial and only totalizator endorsement. The TOTE is also deemed to hold an agent endorsement, a race wagering endorsement and a sports betting endorsement [s76ZED(1)].

Provides that the TOTE can transfer its licence to a wholly owned subsidiary of the TOTE with the approval of the Minister. (This may be required as part of the sale process). [s76ZED(2)]

Clarifies that the holder of the initial and second totalizator endorsement is not required to be a registered as a bookmaker and pay taxes under the *Racing Regulation Act 2004*.

Provides that upon a “terminating event” (the TOTE or its subsidiary is sold either by shares or as a business), a second totalizator endorsement can be granted by the Gaming Commission with the written approval of the Treasurer [s76ZEE(1)].

The second totalizator endorsement is for a 15 year exclusivity period. ( i.e. only one totalizator endorsement is granted for a period up until 15 years after the terminating event).

Clause 21(cont)      The exclusive totalizator endorsement is authorised under the Act for the purposes of the *Trade Practices Act 1974* and the *Competition Policy Reform (Tasmania) Act 1996*.

The Tasmanian gaming licence with a totalizator endorsement is granted for 50 years renewable for a further 49 years [s76ZEE (2)].

Provides for special conditions to apply to a totalizator endorsement similar to conditions that apply to a betting exchange endorsement that relate to the management of wagering funds, establishment of wagering rules and which rules can be disallowed by the Commission.

Provides that a totalizator operator must conduct programmed race meetings for race clubs (as currently occurs by TOTE as a service to clubs to enhance their

special race meetings). A limit of 40 meetings is set, about 10 more than currently required. [s76ZEF(L)].

Provides for the holder of a totalizator endorsement to be entitled to commission (the take out rate from each totalizator pool) in respect of totalizator betting, up to a maximum rate as the Commission authorises. [s76ZEG]

Provides for the calculating and paying of dividends, and for the rounding of dividends as is current practice in all jurisdictions. [s76ZEH]

For example, under section 76ZEH(2), a dividend of \$1.32 has a fraction of 2 cents so the fraction becomes zero i.e. dividend rounded to \$1.30. A dividend of \$1.35 has a fraction of 5 cents so the fraction becomes 5 cents, i.e. dividend rounded to \$1.35. A dividend of \$1.38 has a fraction of 8 cents so the fraction becomes 5 cents i.e. dividend rounded to \$1.35.

In 2007-08, the amount of fractions retained by the TOTE under this method was \$4.4 million.

Provides that certain key employees and technicians of the TOTE or the purchaser of the TOTE are deemed to hold special employees or technicians licences for an initial 12 month period. [s76ZEI and s76ZEJ]

Provides for the TOTE's existing wagering equipment and systems to be compliant for an initial two year period and its control systems (operating manuals) for six months, or longer as prescribed. [s76ZEK and s76ZEL].

For the purchaser of the TOTE, the deeming period is 12 months for equipment and six months for control systems. A shorter period applies as the expectation is that the new operator will have existing systems that is likely to have already been assessed by another regulator.

Clause 22	Inserts new heading Part 4A, Division 7, Sub-division 1 "General Protection".
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Clause 23	Registered players of a Tasmanian gaming licence holder can establish self limits on the amount wagered. This is already in place for registered players of Betfair. [s76ZK]
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This provision gives the TOTE or its purchaser a transitional period of 12 months to establish the necessary software and systems changes before this requirement takes effect.

Clause 24 Replaces the current exclusions provisions for Tasmanian gaming licence holders in the Act that currently apply only to registered players of betting exchanges [s76ZDH to s76ZDK] with the general provisions that will apply to registered players of any holder of a Tasmanian gaming licence, including a totalizator. [sub div 2 s76ZNA to s76ZNG]

This provision gives the TOTE or its purchaser a transitional period of 6 months to establish the necessary software and systems changes before this requirement takes effect [s76ZNG].

Customers that wish to self exclude from a retail outlet can do so under existing provisions under Part 5 Div 3.

Clause 25 As an account can still be active even if no wager has been made for 2 years e.g. monies deposited or withdrawn. “If no wager has been recorded” is replaced with “if no activity is recorded”.

Clause 26 Amends section 76ZR to define “prize” as including winnings so as to include, for example, wagering winnings from a totalizator.

Clause 27 Inserts new section 76ZRA which requires unclaimed monetary prizes or dividends in respect of a Tasmanian gaming licence holder to be paid monthly to the Treasurer after a period of 6 months.

Clause 28 Inserts new sections 76ZZ, 76ZZAAA and 76ZZAAB to allow a Tasmanian gaming licence holder with a totalizator endorsement to establish approved outlets (i.e. TOTE’s retail agencies such as in a hotel or a standalone shop) to accept wagers on behalf of the licence holder.

Rather than licence the outlets, the actions of an agent are taken to be the actions of a licence holder unless the licence holder has acted in good faith.

Disciplinary action under the Act that would apply to licence holder may also be brought against the agent for such matters “prescribed offences” i.e. providing credit, not

enforcing rules, not complying with player exclusions provisions or accepting bets from a minor.

Approved outlets are allowed unless disallowed by the Commission (for example if the outlet or the agent is considered to be unsuitable). It will be a requirement to give 10 days notice to the Commission of an intention to open or close an outlet. A totalizator operator will have to give 3 days notice if there is a change in occupation of the premises.

Clause 29

Extends the ability to operate a trading account with debit and credit balances to a totalizator operator. [s76ZZAA]

Trading accounts are generally used by large customers that need to make large wagers at short notice to lay off bets for example.

The licence holder accepts any financial risk of enabling a large customer to operate a trading account.

Approval from the Gaming Commission is required to operate a trading account.

Clause 30

This provision clarifies that a licensed provider (which includes a totalizator) can give its registered players discounts.

Registered players are players that operate a wagering account with the operator.

Volume discounts are given to large customers of the TOTE on the take out rate (commission on turnover).

Clause 31

Amends section 76ZZC to clarify a prohibition on special employee wagering only in the course of that employment applies only while the employee is on duty. Thereby allowing the employee to wager with its employer when off duty.

TOTE employees can already bet with TOTE whilst off duty and there are no grounds to restrict this under the Gaming Control Act.

This is also consistent with employees of a licensed premises gaming licence holder (i.e. a hotel with gaming machines or Keno) where there is no restriction on gaming staff gaming while off duty. [s56(3)]

Clauses 32 & 33	This provision requires that gaming equipment and control systems used by Tasmanian gaming licence holders must comply with gaming machine standards as set by the Gaming Commission. [s76ZZG and s76ZZI]
Clause 34	<p>Clarifies that the holder of a foreign games permit cannot conduct the activities authorised by a Tasmanian gaming licence.</p> <p>That is, a foreign games permit does not allow the permit holder to conduct a totalizator for which a Tasmanian gaming licence would be required with a totalizator endorsement. [s77J]</p>
Clause 35	<p>Amends section 77V to expand the existing provision for the approval of certain contracts by the Commission to include licensed providers (any Tasmanian gaming licence holder's contracts including totalizator contracts).</p> <p>Approval is required to ensure fairness, probity and to ensure that any of the contract requirements would not be in breach of Act.</p> <p>This would cover contracts between the TOTE and its retail agents.</p>
Clause 36	Amends section 91 to expand the coverage of the Commission's power to establish rules to include any licensed gaming or wagering operator (including a totalizator).
Clause 37	Amends section 92 to expand requirements relating to availability of rules to include licensed providers (any Tasmanian gaming licence holder including a totalizator).
Clause 38	<p>Expands the existing provision enabling the removal of persons from a venue by a venue operator to include retail outlets of a totalizator operator or an approved location of a Tasmanian gaming licence holder. [s99]</p> <p>This will cover approved outlets such as a TOTE retail outlet.</p>
Clause 39	Expands the existing provision enabling the detention of suspected persons in a venue by an inspector to apply to



retail outlets of a totalizator operator or an approved location of a Tasmanian gaming licence holder. [s100]

This will cover approved outlets such as a TOTE retail outlet.

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| Clause 40 | Expands the coverage of existing restrictions relating to minors under section 113 to include retail outlets of a totalizator operator or an approved location of a Tasmanian gaming licence holder.  |
| Clause 41 | Amends section 125 to expand the functions and powers of the Commission to include the regulation of wagering activities.   |
| Clause 42 | Expands the coverage of the existing provisions under section 127A relating to inspectors to include retail outlets of a totalizator operator or an approved location of a Tasmanian gaming licence holder.   |
| Clause 43 | Amends section 130 relating to the entry onto premises by police officers or Gaming Commission inspectors to include retail outlets of a totalizator operator or an approved location of a Tasmanian gaming licence holder.   |
| Clause 44 | Expands the coverage of the investigation of complaints under section 132 from patrons at a venue or premises to include retail outlets of a totalizator operator or an approved location of a Tasmanian gaming licence holder.   |
| Clause 45 | Expands the coverage of the powers of inspectors under section 133 to include retail outlets of a totalizator operator or an approved location of a Tasmanian gaming licence holder.  |
| Clause 46 | Expands the coverage of offences relating to inspectors under section 135 by including “wagering” in addition to gaming.  |
| Clause 47 | Expands the provision that enables a betting exchange operator to keep records at a place other than at an approved location (for example in another jurisdiction if there are other premises outside of Tasmania) to all Tasmanian gaming licence holders (including a totalizator). |
| Clause 48 | Corrects an incorrect reference section 77 should read section 77V.   |

Clause 49 Replaces the reference to a “fixed odds endorsement” to a “race wagering endorsement”.

Establishes an annual endorsement fee of 350 000 fee units (\$448 000 in 2008-09) for a totalizator endorsement.

Establishes an annual endorsement fee of 5 000 fee units (\$6 400 in 2008-09) for an agent endorsement.

Establishes a limit of 200 000 fee units (\$256 000) where both a sports betting and race wagering endorsement is held. This is to be competitive with other states in respect of corporate bookmaker licence fees.

In other cases other than above where multiple endorsement fees are held the endorsement fees are capped at 450 000 fee units (\$576 000).

For example:

Sports betting only - 200 000 fee units under s148A(a)

Sports betting and race wagering - 200 000 fee units (instead of 400 000 fee units) under s148A(f)

Sports betting and race wagering and agent - 205 000 fee units under s148A(f) and (dc)

Sports betting, race wagering, betting exchange and agent - 450 000 fee units (instead of 755 000 fee units) under s148A(g)

Waives the requirement to pay totalizator, race wagering, sports betting and agent endorsement fees in the case of the TOTE or its purchaser while a totalizator endorsement is held. [s148A(5)]

Clause 50 Repeals provisions relating to unclaimed winnings of Tasmanian gaming licence holders as this is now dealt with under section 76ZRA.

Clause 51 Amends section 150A by clarifying that taxation only applies where the section so provides. This clarifies that in the case of totalizator, race wagering and sports betting

endorsements where no tax will be levied, section 150A does not apply.

Abolishes current taxation provisions relating to fixed odds and sports betting. (1.0 per cent of turnover for fixed odds and 0.25 per cent of turnover for sports betting).

Clause 52

Provides that betting exchange commission that is subject to the payment of the 20 per cent product levy under section 150AC is to be determined in regulations.

This is required to adjust the commission that is subject to the 20 per cent product levy in the case where the betting exchange operator is required to also pay a product fee or race fields publication fee to a racing authority for the same event.

Regulations are being prepared to commence when the Gaming Control Amendment Bill commences.

Clause 53

Establishes the requirement that a totalizator operator pay a fixed wagering levy of 4.7 million fee units or \$6.016 million per annum. (a fee unit is \$1.28 for 2008-09).

Payment of the wagering levy is each financial year.

The levy is pro rata if the operator commences the licence, or the licence ends, part way through a financial year.

If a licence with a totalizator endorsement is surrendered the Treasurer may provide a partial refund.

Clause 54

Repeals section 152 so it removes the requirement that revenue from a betting exchange operator is appropriated to the TOTE to fund the Tasmanian racing industry.

This severs the nexus between TOTE revenues and racing industry funding under the Gaming Control Act. A separate deed between the Government and the new Tasmanian Racing Board will be established for the Government to directly fund the industry.

Clause 55

Amends section 153A by replacing the reference to a "fixed odds endorsement" to a "race wagering endorsement" in respect of a gaming and wagering guarantee.

Exempts the requirement to pay a wagering guarantee by the TOTE while the TOTE is a government owned business.

A wagering guarantee is required in the case of race wagering and sports betting as there is a potential risk the operator can make losses on these products.

Clause 56

Repeals the regulation making powers relating to the guarantee provided by a betting exchange operator to make up any shortfall in funding to the racing industry because of the impact of the betting exchange operations on TOTE's funding.

This regulation is not required as funding will no longer be provided by TOTE, rather be provided directly by the Government.

Provides for regulations to deal with any transitional arrangements if required (such as in connection with bringing TOTE under the Gaming Control Act).

Clause 57

Inserts in Schedule 5 of the Act a transitional provision that deems a Tasmanian gaming licence with betting exchange endorsement to also hold an agents endorsement.

This allows Betfair to continue participation with any existing agent arrangements on commencement of this Act.

Clause 58

Repeals the *Racing (Totalizator Betting) Act 1952*. The Act that currently regulates TOTE's wagering activities; and

Repeals the *TOTE Tasmania (Racing Regulation) Act 2004*. That Act sets out TOTE's current funding obligations to the Tasmanian Racing