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THE HOUSE OF ASSEMBLY SELECT COMMITTEE ON THE ROLE AND FUTURE VIABILITY OF TOTE TASMANIA MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON FRIDAY 18 NOVEMBER 2011.

Mr BEN SMITH, MANAGING DIRECTOR, CONSUMER, RETAIL GAMING AND PROPERTY, INVESTEC BANK (AUSTRALIA) WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Booth) - Thank you for coming along. Would you like to make an opening statement?

Mr SMITH - Yes, I am a senior executive within the investment banking division of Investec. Investec is a specialist bank listed in the London and Johannesburg stock exchanges. It engages in a range of services, both lending and advisory services. I work in the part of the business that provides advice and implementation services to corporates, governments and individuals. We act across a number of different industry sectors and I am responsible within the Sydney team for two sectors, consumer and property. Within consumer, that not only covers the retail-related businesses but also gaming and wagering businesses.

With some of my colleagues in the team we have extensive experience in the gaming and wagering sector in Australia. I started work on some of the TAB privatisations in the 1990s and have carried on working in the sector ever since. We provide advice not only of a general nature to those organisations that I mentioned but also in relation to transactions, whether they are sales, acquisitions, divestments, capital raisings and so forth. That is our role generally.

Specifically we were engaged by Treasury to consider the sale of TOTE and to provide the usual services relating to that around the execution of a potential sale, dealing with potential interested parties and so forth. But that was only to such point as the Government decided to sell or not and that was made clear to us at the time. That was our role. I think that my only other opening remark would be regarding the confidentiality of information.

We did ask in writing that the evidence I was asked to provide be in camera in its entirety and also for that information not to be published. The committee wrote back and said that they would consider on a case-by-case basis those responses, but I raise it because depending on where the direction of the committee's questioning goes, an awful lot of the responses I may caveat by saying it is commercial-in-confidence information, highly sensitive, and that cuts not only to the sale process but potentially also to the value of the asset. Whilst respectful of the committee's need to make those inquiries, I would also point out that we have a responsibility to our client in the form of Treasury. That was the background to the request so if I get a bit repetitious by prefacing a lot of responses by asking that evidence that is commercial-in-confidence is said in camera, I apologise now, but I think that may be the case depending on where the committee's line of inquiry goes.

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CHAIR - Okay, thank you. Just to clarify that, obviously if there are matters of commercial-in-confidence we have no wish for them to be disclosed and are happy to take them in-camera. One thing that we do need you to undertake, however, is of course that you are under oath and the evidence that you wish to provide in camera has to be on the basis that you have stated that it would in fact be commercially damaging or harmful in that sense.

The problem the committee has with regard to that is that these hearings are supposed to be held in public, and for our reports we need to refer to evidence, so generally the less in camera the better, but if it is a commercial-in-confidence thing that is fine. So what we might get you to do is ring-fence the matters that are commercial-in-confidence and we might try to put them into one part if we can so if we get to a point where you have something then we could refer to that later on in an in-camera hearing, otherwise we have to move everybody out to have that part of the hearing.

Mr GUTWEIN - What date were you appointed to begin this process?

Mr SMITH - I think it was in the very first few days of September, as appointed by Treasury.

Mr GUTWEIN - Have you brought with you the brief in respect of the work that expected and the terms that you were contracted under?

Mr SMITH - I have not brought it. It was a Treasury contract, government contract, which we negotiated. There was a schedule of services attached which I think you may have been provided by Treasury which set out what the role was.

Mr GUTWEIN - No, we have not received that as yet.

Mr SMITH - It was to act as advisor in relation to the potential sale - and this is going from memory - unless the Government decided not to sell the asset. The range of services included advice around who might be interested in buying the asset, so potentially interested parties, handling approaches to those parties, the material that might be provided to those parties, the structure and timing of the sale and advice around valuation, which are all pretty standard in the context of the role we were asked to do.

Mr GUTWEIN - In relation to that, we have heard from both the Treasury secretary and the Premier in Parliament that there were some unsolicited interests in the sale of TOTE. How many parties were you dealing with and were you asked to go wider to the market?

Mr SMITH - I think in terms of the unsolicited interests, there had been a number, as I understand it, prior to our appointment. You would have to ask Treasury the exact details of those. The number of parties that we approached was relatively narrow and was based on our experience and knowledge of who would be not only interested in the asset but also who was likely to be able to pay for it and operate it in a manner which was appropriate for a gaming business in the State.

Mr GUTWEIN - For my clarification - other members of the committee might have a different view on this - my understanding was that it certainly appeared from what has been said publicly about this particular issue that there were a couple of unsolicited

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expressions of interest and that Investec was asked to explore those and follow them through, but you've just indicated that you'd gone to other parties as well?

Mr SMITH - Yes.

Mr GUTWEIN - How many other parties?

Mr SMITH - Without going into specific numbers, from memory we would have gone out on a very informal basis in addition to contacting the ones who'd made expressions of interest, so inbound inquiries. We went out to a number of parties which would have been in the order of six to eight, and of those, some were interested and some weren't. In the context of the process it's a very small number.

Mr GUTWEIN - But quite clearly the brief from Treasury was that you were to broaden that or to approach whoever you felt might be an interested party?

Mr SMITH - Yes, obviously with the intention of seeing a way to maximising value and minimising risk for the Government.

Mr STURGES - Following on from the line of questioning of Mr Gutwein, this is in relation to the process that you've followed in looking at the setting of a structure, the valuation advice, approaching potential parties et cetera. I'll preface this by highlighting to you, Mr Smith, that part of the revised terms of reference require the committee to look at the role of TOTE Tasmania within the racing industry and advise on options regarding the future of TOTE within a modern and viable racing industry. Therefore I assume as part of that process you have spoken about that you've undertaken an assessment of the industry in general?

Mr SMITH - No, it wasn't part of the brief.

Mr STURGES - Do you have a comment regarding where TOTE fits into a modern wagering system in the country? Is that part of your brief?

Mr SMITH - No, it isn't part of the brief to Treasury and it hasn't been.

Mr BEST - Do you have a view about that at all?

Mr SMITH - I don't know whether it's relevant in the inquiry or not, but I do have a view. I can provide a view but I don't think it's relevant to our brief. To be clear, as I understand and I think it is correct, there's no direct nexus between the funding of the racing industry and the performance of the TOTE.

Mr BEST - No, that's true.

Mr SMITH - I would think the racing industry would probably feel very fortunate about that, given the performance of the TOTE in the last year and the future of the TOTE potentially. It could go very well or it could go very badly.

Mr BEST - Do you feel it's a good time for TOTE to be up for sale? Do you have a view about that?

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Mr SMITH - The way the wider gaming and wagering industry is going, I think the sooner the better.

Mr BEST - Would you like to give us some reasons why?

Mr SMITH - The TOTE really competes in two broad segments and you may be surprised to hear that it competes in the retail segment, but it increasingly does, and it's been competing in the wholesale non-retail segment for a number of years. That is a very dynamic, price-sensitive, aggressive marketplace where you're competing with the other big TOTES now they're wagering - and fixed-odds operators are not only in Australia but around the world - for some very, very hot in-form money.

So that business has been competitive for a long time. The other part of the business is the retail business which, as you know, is the agencies, the hotels and clubs, and even there there are a number of changes, both on the technology front and also on the regulatory front and legal challenges to exclusivity which are making that environment competitive. People are betting increasingly online, they're using mobile phones, they're sitting in pubs looking at the TOTE screens and betting on their smartphones. So it is not just competitive in the wholesale space any more, it is becoming increasingly competitive. You only have to look at the way the world generally is going to see that that will continue.

I think in addition to that you have the challenges to the regulated exclusivity in the form of corporate bookmakers and so forth trying to put devices such as Bet Boxes, as they are commonly called, into pubs and other establishments. We have the court case going on over the one in Victoria and that is on the back of a few years ago Betfair winning the case to be able to advertise, which opened the doors to bookmakers being able to advertise in other States, which previously hadn't happened. So it is all going one way, even for retail, and the environment is becoming increasingly competitive.

Mr BEST - How do you view a government running or owning something like a TOTE?

Mr SMITH - I think it is highly risky.

Mr BEST - Why do you say that?

Mr SMITH - Because you are competing against very big players who are willing to accept and mitigate those risks. They have the scale to do it and they also have the willingness to invest capital in those businesses.

CHAIR - Is this in the wholesale side of things more than the retail, which has a fixed commission?

Mr SMITH - I think it's both. As I said, I think it is already there and competition is very aggressive and strong in the wholesale non-retail business but I think you're increasingly going to see over the coming years the theoretical exclusivities that State TOTES have, or supposedly have, being eroded.

CHAIR - So the parimutuel way that TOTE operates at retail wouldn't necessarily count -

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Mr SMITH - No, I don't think parimutuel wagering will disappear; it is very attractive to certain punters and it's also part of the Australian way of gambling. But I think there will be increasing competition. You are seeing fixed odds in most States taking an increasing share and becoming increasingly attractive to gamblers, and the channels through which you do it - smartphones, online, potentially these devices in venues on a non-exclusive basis - they're all going to increase competition and therefore increase risk to owners. It's going to be full on.

CHAIR - What about if you had a model where TOTE stuck purely to parimutuel betting, given the performance of TOTE hasn't been particularly stunning in regard to the corporate bookmakers and so forth?

Mr SMITH - I can give you a view but you'd be better off asking someone like the CEO of TOTE. You can see in the empirical data that the growth in the market is in fixed-odds betting, on racing and sports and other exotic bets, whether it is political outcomes or whatever. Clearly there is an increase in fixed-odds betting and parimutuel is either growing at a much slower rate or in some areas declining.

Mr GUTWEIN - TOTE hasn't been all that profitable in the last 12 months. Have you formed a view as to why TOTE's profitability fell?

Mr SMITH - Yes. I think it's very much a function of the business mix and the strategy they are undertaking at the moment. The cost base is not covered by the retail net wagering and therefore you have this need to have other sources of revenue in the form of wholesale or non-retail revenue in order to cover those costs, or you have to cut the cost base.

Mr GUTWEIN - Can you expand on the issues in respect of their strategy?

Mr SMITH - It is in their annual report. Their strategy is quite clear. They're operating a retail network and servicing the retail punters through those agencies of PubTABs and ClubTABs. They also have an international and domestic wholesale arm which seeks out business from wholesale punters, corporate bookmakers and so forth and they also have an interest in a software business which provides services to punters and other TOTES to develop systems for those businesses. That is the business.

Mr GUTWEIN - I thought that when you mentioned their strategy and we were talking about their loss of profitability over the last 12 months, or the decline, you said that that had occurred as a result of their strategy.

Mr SMITH - Sorry, in that regard the margins on the wholesale business, through fierce competition from the other TOTES, have shrunk, they have been competed away, and that has reduced the profitability of that business which means that you get to a point where you are not covering your costs and your capital expenditure with your revenues.

Mr GUTWEIN - In your view, can those costs be better managed?

Mr SMITH - I don't think that is something we have been asked to look at and I don't think it is something that we usually take a view on. It is a view for the board and management of TOTE. We haven't got into that level of detail as it is not our role.

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CHAIR - Just for clarification, our brief is very broad and what we are trying to do is obviously find information specific to your terms of engagement but also in a general sense as an expert in the industry. Have you any comments with regard to better models of profitability in line with what we are doing here today? If you feel you have any information that would be very valuable to our deliberations we would be happy to hear it.

Mr SMITH - I think the key thing about this business is its current status which is very limited profitability, the cash flow deficit. If you look at the cash flow statements in the accounts, which I see you have, you can see that there is a break-even at best on some interpretations from the cash perspective and the question is what happens going forward? The business could go on in an upward trajectory and perform well but the risk for government is that it doesn't and there is not only the environment it operates in, which I have described as increasingly competitive and provides a sort of more generic risk, but there are specific risks that this business faces. The pooling arrangements are the key risk and who knows what will happen to those in August next year? Obviously if the business is to go forward under the current ownership those need to be addressed.

Mr STURGES - Just for clarification, that is the contract with Tabcorp which is up in August next year.

Mr SMITH - Yes, Tabcorp.

Mr STURGES - At the moment from my understanding that is a pooling fee of about 2 per cent, is it?

Mr SMITH - In that order, I believe.

Mr STURGES - Mr Smith, you have spoken about the direction of the wagering system in Australia and I understand that you may not necessarily have undertaken any analysis around this but, as the Chair rightly said, you have expertise in the wagering system so if we could tap into your knowledge I would appreciate that. Given the development of the modern wagering system marketplace, in your opinion how well placed do you see TOTE is now in relation to its existing structure and what level of investment do you think may be required for TOTE to develop to meet the evolving market demands?

Mr SMITH - That is an incredibly broad question.

Mr STURGES - Yes, it was intended to be so.

Mr SMITH - First of all I will just go back to the basic premise. I think it is an incredibly risky business, both because of the general operating environment it faces but also the specific nature of its own business and some particular challenges it faces in the next 12 months. Combined with that, on a basically stay-in-business approach to capital expenditure there is the need to put in \$20 million-plus of additional funds in the core wagering system. You would need to get the specific numbers from TOTE but as I understand it the current core wagering system is very old and needs to be replaced. That is not even talking about what you would need to spend on the business to put it into a competitive position but even to get it back to a -

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Mr BEST - So you're saying that as a minimum you're looking at \$20 million?

Mr SMITH - You'd have to ask TOTE, but that's the number we've been provided with.

Mr BEST - There are other issues which you may or may not be able to apprise us of. What would need to be done apart from that? What strategies would TOTE need to take if it was going to secure itself in this market? That would be quite an investment.

Mr SMITH - I couldn't quantify that.

CHAIR - Has there been anything in the racing industry over the last couple of years that has changed the forward opportunities or created some sort of business threat that wasn't evident, say, two years ago?

Mr SMITH - I think going back even further, the key thing was the breakdown of what was called the 'gentleman's agreement' between the racing industries and the TOTEs, which basically allowed the TOTE in each State to benefit from being able to use the interstate product in that TOTE free of charge. What that means is that the Tasmanian TOTE was not charged for a race being run in Victoria and it was largely on a State-by-State basis. That sort of system allowed through the gentleman's agreement, which was that the racing industries didn't charge each other or the other TOTEs for the racing product, has started to break down over time. You are seeing race-field fees come in. It's not just the TOTEs, obviously the corporate bookmakers came in and were regarded by the racing industry and the TOTEs as getting a free ride.

Mr STURGES - More commercial aggression.

Mr SMITH - Yes.

CHAIR - When was that?

Mr SMITH - Whenever race-field fees came in a few years ago. That was the first sign that it was happening, but it was really precipitated not so much by the TOTEs but by the bookmakers coming in and starting to take market share from each other.

CHAIR - And the gentleman's agreement, that was broken down for what reason?

Mr SMITH - As I said, it was an informal agreement. I think there were a number of reasons. One is that there was a desire for corporate bookmakers to pay their way - I am talking about off-course bookmakers, not the on-course bookmakers who were always regarded as part and parcel of the daily fabric of racing. I think also there is increasing competition within the racing industry. Not only is there an entertainment product but on a global scale at the top end certainly cost pressures were coming to bear. They wanted more money. How could they get more prize money into the industry? It was through whatever means they could, whether it was selling their product to their own TOTE or to corporate bookmakers and charging them a race-fields fee or getting a fee from Sky Channel for the right to broadcast. I think there were a number of factors, as is usually the case in the world, pushing for what was then the status quo to change.

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CHAIR - You said earlier that you were engaged by Treasury in early September. When were you approached by them to accept that engagement?

Mr SMITH - August.

CHAIR - Prior to that, I understand you were giving advice to TOTE, is that correct?

Mr SMITH - Yes, that's right.

CHAIR - How long have you been advising TOTE?

Mr SMITH - We were approached initially, I think, by the CEO in February this year. We were sent a letter in early April asking us to respond to that with a proposal, which we did. I understand that was a competitive process but you would have to ask TOTE about that. Then there was a gap and then we were told we were engaged to look at a possible sale of the TOTE on behalf of the board of TOTE. We started work, I would think, probably the end of May.

Mr GUTWEIN - So you were engaged in early April?

Mr SMITH - No, we sent a proposal in and were told that we would be engaged and could we start work, which is not unusual; we often start work before we finalise the terms of engagement, and we worked on a report which we provided in draft form towards the end of July.

CHAIR - And was that engagement to look at the sale proposal or was it to advise TOTE of their general business model or some other matter?

Mr SMITH - No, it was to consider the sale. It was specifically around that and it raised a number of issues in the context of the sale or possible sale. The overarching premise was to meet the shareholders' objectives of maximising returns and minimising the risk in the business.

Mr GUTWEIN - One matter for clarification, the core wagering replacement project, you said about \$20 million?

Mr SMITH - I do not have the exact numbers in my head, I am sorry. I think there is a number in here of 14.

Mr GUTWEIN - Yes, just under 14, yes.

Mr SMITH - It depends on where you draw the lines around what is the core wagering system. I understand that it is over \$20 million and there is additional capex that is required in addition to that. You would have to ask TOTE as to what the exact numbers are.

Mr GUTWEIN - So you were engaged by the board in May to look at the sale of TOTE, and provided a draft report at the end of July to the TOTE board.

Mr SMITH - Yes.

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Mr GUTWEIN - You were then engaged by Treasury to go further and to not only approach those who provided unsolicited offers, which have broadened. Is the contract you are engaged on weighted at all? Do you receive a bonus if the TOTE is sold or is it on an hourly rate? How is that contract structured?

Mr SMITH - It is very standard contract for the kinds of services we are providing, which is to look at a sale and maximising value and minimising risk. It has a monthly retainer and a completion fee. If you want to call that a bonus then yes, it is a bonus.

CHAIR - A success fee.

Mr SMITH - You could call it a success fee. The intention is that our objectives are aligned with those of the client - in this case, Treasury and Government.

Mr GUTWEIN - So obviously it is in your interests if TOTE were to be sold.

Mr SMITH - Correct. In this engagement, yes.

Mr GUTWEIN - I am just wondering how objective some of the previous comments might have been because obviously you are in a situation where you are going to receive an increased payment.

Mr SMITH - I understand that, but I would say that this is not just a once-off. If we were to provide advice that was found to be incorrect and was not objective, we would never work again for the Tasmanian Government and we would very much like to. It is one of the things that Investec does on a wider basis, provide services and so forth. Also word gets around. If we have done a duff job, if we have provided the wrong advice or if we have mishandled the transaction, we will not work again. It is that simple. So I hear what you say but I would suggest, given that I have been doing this for a long number of years and I have been working in the gaming industry as well, I think that you are only as good as your reputation and if that is gone, that is the end of your business.

Mr GUTWEIN - Did you provide any advice at all in respect of the investment TOTE made into Bet Worldwide?

Mr SMITH - No.

Mr GUTWEIN - You were not involved in that process?

Mr SMITH - No, that was prior to our engagement.

Mr GUTWEIN - Do you mind if I ask what sort of weighting is there in respect to the contract for the success fee? You say that you are on a monthly retainer, so do you get paid on the basis of the value that is derived from the sale?

Mr SMITH - Yes, we do, which is quite standard.

Mr GUTWEIN - So it would be fair to say that it is certainly not in your financial interests to recommend that the Government does not sell TOTE?

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Mr SMITH - Not in our financial interests, no, but as I said, we would not work again if we had given the wrong advice.

Mr SHELTON - Mr Smith, you mentioned earlier on that the future of TOTE could go very well or very poorly, and I guess I'm interested in the very well section. It's all right talking about the very poorly and you've already mentioned that TOTE has indicated that \$20 million is needed, so that's probably part of it, but in order for the business to go very well, for it to be of benefit, how do you see that going? I guess it goes to in-camera stuff as far as the issues are concerned, but I would imagine the sale price would increase if there was a higher chance of it going very well rather than very poorly and therefore I am asking about the sales issues that can be highlighted around the advantages of TOTE performing well.

Mr SMITH - If we're going to get into that realm of inquiry it might be better handled in camera.

CHAIR - What I propose, Mark - with the committee's consent - is that if people have matters that they think are commercial-in-confidence we have about 25 minutes left of your time formally, so perhaps at some point towards the end we'll break and go in camera.

Mr BEST - I'm happy with that. I want to get this right for the purposes of *Hansard*. You are a professional expert at Investec and you have a lot of experience in this area - that is, betting agencies, sales and so forth - and your professional advice is that TOTE is worth more now than it's likely to be in the future.

Mr SMITH - Again, if we can talk about -

Mr BEST - No, without going into specifics, or do you want to do that in camera?

Mr SMITH - I would rather do that in camera but generally it depends on the risk appetite of the owner and I think there are significant risks, as I've explained at some length, to do with the operating environment specific to TOTE.

Mr STURGES - Can I pick up there? It's more broadly the risk appetite and the capacity of the owner to take that risk - is that a reasonable assessment of what you're saying?

Mr BEST - I think it's something else, actually. I think it's scale of ability.

Mr SMITH - I think there are a number of factors involved in it.

Mr BEST - It's an aggregate scale.

Mr SMITH - Scale and willingness invest and to accept losses.

Mr STURGES - I won't go into the commercial sensitivities, Mr Smith, but you've already indicated that there'd be a significant requirement to invest capital to bring TOTE up to, no pun intended, scratch.

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Mr SMITH - That is what we've been told by TOTE.

Mr STURGES - And then a significant amount more if it's going to be fair dinkum and get into the wholesale wagering sector.

Mr SMITH - It is in that sector.

Mr STURGES - Yes, but to be competitive.

Mr SMITH - It is fairly subjective, and again TOTE would be better placed to answer that question.

Mr GUTWEIN - At what stage of the process are you at in regards to your advice back to Treasury? Have you provided advice to them to sell? Have you narrowed it down?

Mr SMITH - No. If we could take that in camera I could give you a better answer, I think, because it's commercially sensitive as to where we're at.

Mr GUTWEIN - Okay. Can I ask you when you're intending to provide advice back to Treasury? Are you working to a time frame?

Mr SMITH - Yes.

Mr GUTWEIN - Can you provide details of that time frame?

Mr SMITH - Again, I'm happy to answer the question but I think it's commercially sensitive because timing, process, participants, value, all relate to the value of the business and a potential value of the business, and I think it would be prudent to deal with those in camera.

CHAIR - We can note them when we go in camera. With regard to the work that you've done for TOTE prior to this, TOTE had approached you, I understand, and wanted you to prepare a case for sale. Is that the way it was or was it to analyse the value of the business? What were the actual terms of the engagement of TOTE themselves?

Mr SMITH - I trying to remember the specifics. The brief was to provide advice on the sale, having regard for the objectives of the shareholders being to maximise returns and value and minimise risk. There were a number of specific issues to look at which related to how one might approach the sale, who one might approach, what the potential value of the business was to parties you might approach, whether you would sell the business in its entirety or in pieces or whether you would retain an interest in the business. There was a series of questions of that nature - fairly standard kinds of things that boards like to ask advisers.

CHAIR - So it wasn't just a straight-out instruction to prepare for sale necessarily?

Mr SMITH - No, it wasn't a straight-out instruction to prepare it for sale, far from it.

CHAIR - Was there an analysis of the business performance of TOTE - the models they are using, their structure?

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Mr SMITH - No.

CHAIR - So effectively the performance of TOTE has been ring-fenced from your consultancy in that sense? You didn't look at that, they just said, 'Here it is. See what the best way to sell it is'?

Mr SMITH - It was clearly to provide a view on how best to sell it. You can't ignore the past or where the business was at the current point in time. Equally, you can't ignore where it is going, the risks it is facing, the opportunities and current performance of the business.

CHAIR - So it involved an analysis of their current performance and ways to improve the business?

Mr SMITH - No, we weren't asked to provide a management consultancy-style report on how you could improve performance. It was specifically around the sale.

CHAIR - So it was more, 'This is the business, do your best to advise us whether we should sell it and in what way', not, 'Can we fix it or generate higher profits for ourselves'?

Mr SMITH - Yes.

Mr SHELTON - Just to clarify, you were engaged by TOTE at the end of May and then the State Government asked for submissions for a variety of companies as far as submitting another study on the sale of TOTE. Would you say you were in a better position than most companies?

Mr SMITH - I don't know what Treasury did. We received a phone call in August to say, 'Would you be interested in doing a piece of work for us around the sale? Can you come and tell us about your credentials? Can you come and talk about the report you've done for TOTE?' We said yes because it is what we do. I don't know what process they had been through.

CHAIR - In terms of the engagement with TOTE, do you think the engagement by Treasury is pursuant to the advice you gave TOTE, presumably that the business could be sold in certain ways, and Treasury has now virtually taken over that same terms of engagement?

Mr SMITH - I don't know, you would have to ask them that.

CHAIR - But you are now engaged by Treasury, aren't you?

Mr SMITH - Correct. We completed our assignment for TOTE and moved on to work for Treasury.

CHAIR - But are they different assignments? They're both effectively sale proposals, aren't they?

Mr SMITH - They are different. The report to the board of TOTE was to consider the sale and to answer various issues that I have just outlined. The role for Treasury was

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specifically around a sale rather than a desktop confidential review. It was a piece of advice, whereas the work for Treasury was, 'How are you going to implement this? Can you implement it once we've decided we're going to move ahead?'

CHAIR - Is there a range of options still? You talked about the TOTE modelling you did - there are options for whether it be part sale, full sale, shared sale.

Mr SMITH - There are still options. Until potential bidders put something to government I won't be able to answer that question, but yes, theoretically there could be a sale in its entirety, no sale, a sale of most of it or of some of it.

Mr GUTWEIN - I would like to get onto that timing process and value issues that we spoke about a moment ago but just so I am clear, because the Parliament and I think this committee were given the impression by Treasury - certainly from my reading of the *Hansard* from couple of weeks ago - that Treasury had a couple of unsolicited offers and as a result they chose to ask you to have a look at them. There is a bit more to it than that, though, isn't there? TOTE had actually gone through a process with you from May this year looking at whether or not the sale of TOTE was an option and I am presuming that that was used as the foundation or the key reason.

Mr SMITH - I don't know what the timing of those expressions of interest were and what sequence of events unfolded. We were just asked to do a piece of work. We were provided with some background and information by TOTE. We conducted our analysis and provided our preliminary findings and after we completed that role then moved onto a role with Treasury. I don't know where or when those approaches from other parties were and I don't know whether they precipitated the piece of work from Treasury or they precipitated the piece of work for TOTE.

Mr GUTWEIN - I am just looking at the catalyst for Treasury's engagement of you, whether it was the fact that you had provided the body of work to TOTE and that was the reason for the phone call.

Mr SMITH - I don't know, you would have to ask them, but you are always pleased to get an inbound phone call rather than having to go and pitch for business.

CHAIR - Just for clarification then, when you got the engagement from Treasury did they say, 'We want you to do this job, here are the terms of reference and here is a couple of leads, like these people who have rung up'?

Mr SMITH - They explained to us - and I don't know whether they were Treasury or ministers or whatever - that they had had a number of expressions of interest over some period of time, as I understand it.

CHAIR - They gave them to you as a kind of follow-up, was it? 'Fred Smith wants to buy it - go and talk to him.'

Mr SMITH - Yes.

Mr BEST - You mentioned that in your view - not that it is probably a matter for you to comment on too much - you felt that Tasracing was fortunate in a way that the funding is

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not tied to the operations given the way that the markets are headed with competition with TOTE?

Mr SMITH - A personal comment?

Mr BEST - Yes.

Mr SMITH - I would agree with that view. I think if you look at the performance of TOTE in the financial year that has just finished and how they would have managed to pay the racing industry anywhere near what they received from government without borrowing significant sums of money, I just don't see how they could have done it.

Mr BEST - Do you see that that would be an additional challenge for TOTE given the evidence you have provided this morning about what is happening and so forth with competition? Would you see juggling all of those things as just another issue that they would have to deal with?

Mr SMITH - Do you mean if they had to fund the racing industry directly?

Mr BEST - Yes.

Mr SMITH - I think it would be another complication to their business and whether they could actually satisfy the needs of the racing industry, I just don't know. Just going on the FY11 year that has just gone I don't see where the money would have come from.

CHAIR - I remind members that we only have about 12 minutes left.

Mr BEST - I just want to ask this last one and then I understand you want to go into camera. I was recently apprised of a Macquarie Bank report regarding TOTE and what is happening. Are you aware - and I am interested in your opinion as well - of deliberations such as inquiries like this? I am not saying it shouldn't happen because it is important for the public record but is there some interest in the outcome of the findings of this committee as to how things may proceed?

Mr SMITH - I am sure there is.

Mr BEST - We are going in camera shortly and you are going to give us some figures and those figures really in some ways hinge very much on what plays out, doesn't it?

Mr SMITH - I don't know if I said I was going to give you any figures but I will certainly try to answer your questions in more detail. I think you are absolutely right, there will be a lot of people and organisations that would be very interested in material that potentially became public as a result of an inquiry like this.

CHAIR - I might suspend this part of the session, Charles, and we will go in camera.

Evidence taken in camera.

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Mr MICHAEL KENT, CHAIR, AND **Mr CRAIG COLEMAN**, CHIEF EXECUTIVE OFFICER, TOTE TASMANIA, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR (Mr Booth) - Thank you very much for coming in today. I am sure you are both aware of the procedures of this committee. We have run slightly over time with our last witnesses and we made need to run a bit over time with you, too. We will give you what time you need but if we can all try to keep it as brief as possible that would be good.

Mr KENT - Firstly, as to the TOTE board's position with respect to a potential sale, the board continues to fully cooperate with the Government following its decision to consider offers for the TOTE group. Secondly, in offering its cooperation the board has sympathy in the difficulty of the Government being both the regulator of the gambling industry and the owner of a wagering business like TOTE.

The board is of the opinion that the TOTE business needs shareholders who are willing to invest in the business to enable it to grow and prosper in a global competitive market. The board is not in a position to form any opinion on any sale options the Government is currently considering as it is not in receipt of the relevant details to reach a considered opinion. The board notes it is not involved in the decision or the process relating to the Government's potential disposal of its equity in the TOTE group.

Thirdly, as to the matter around TOTE and Sports Alive, the chief executive and I are happy to answer all questions you have in respect to this matter. We would like the opportunity in addressing these questions to be put in context by TOTE which made the decision to invest and the risk associated with being a bookmaker. The TOTE board and I are keen to see the matters surrounding the collapse of Sports Alive fully investigated in the appropriate places. There may be some matters you ask about which are likely to be considered through inquiries in other places by relevant regulators. We would ask to answer questions which pertain to confidentiality matters in camera as we cannot say anything to compromise those inquiries.

CHAIR - Just to clarify that, if there are areas that come up during this hearing that are matters of commercial-in-confidence - and we remind you they have to be matters of commercial-in-confidence because if we go into camera and they're not, that makes it difficult for us to report, so you are bound to be absolutely sure that the request is based on that foundation. If we ring-fence those areas towards the end of the time for this hearing, we will go into camera then if there are some of those matters brought up.

Mr GUTWEIN - I would like to touch on some of the previous evidence we heard this morning. In opening I want to touch on the fact that in the most recent annual report, Mr Kent, you indicated that from the board's perspective your position regarding ownership remains unchanged in relation to TOTE's remaining with government. Also, Mr Coleman, I was interested in a comment you made in the previous annual report - and this was when the sales process was stopped. You said:

'In TOTE our potential for growth is enormous and we look forward to realising the potential for the ultimate benefit of the Tasmanian community.'

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We heard this morning that the board had approached Investec back in April and engaged them in May to look at a sale of the TOTE. What had changed in your view as to why you would look at a sale of the TOTE, when the two most recent annual reports since the sale never went ahead indicated that the board was very keen to realise the potential of TOTE and to retain ownership as it currently stood?

Mr COLEMAN - There are a number of factors that the board takes into account over time and the dynamics of a business like TOTE, in what is a highly-competitive marketplace, are ever-changing. In the context of our comments in 2009, we had a particular view about where we would trade and where we would go. The market became aware of a number of key factors around our business as a result of the last sale process, which put us under even greater competitive pressure, and they became evident to us during the course of the last financial year - and you have seen the results of that.

That said, we took the view that we needed to provide the best advice we could to the shareholder about the future of TOTE. They hadn't formed a view about whether the company should be sold and we sought advice about that. Indeed, the advice extended to options in relation to some of the subsidiary entities within the company, bearing in mind we had received advice after the midyear review from the Government that its interest in investing in risk businesses was diminished from where it was previously. They were taking a far more conservative view. Our position was that we needed to run the business in the best way we could to return the greatest value we could to the shareholder, in this case the citizens of Tasmania.

Mr GUTWEIN - When you say you received advice from the Government that they didn't have an appetite for retaining businesses that had risk, was that after the midyear financial report?

Mr COLEMAN - Yes.

Mr GUTWEIN - What form did that advice take?

Mr COLEMAN - It was in a letter to the TOTE board.

Mr GUTWEIN - What did that specifically say?

Mr COLEMAN - I'm assuming it went to all government business enterprises, so I assume it was a general letter. In the case of TOTE it talked about concentrating its business operations in Tasmania and divesting any elements of the business which extended beyond that. At the same time we were having discussions about whether TOTE could be a bookmaker.

Mr GUTWEIN - So the advice from government to you post the midyear financial report was that you should look at divesting elements of the business outside Tasmania?

Mr COLEMAN - That would have been discussed as a consequence of that. The Agility business was discussed as a divestment opportunity and that formed part of the TOTE's corporate plan for 2011-12. That was ostensibly dealing with international business operations.

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Mr GUTWEIN - As a result of that advice from government, you then approached Investec in April and contracted them in May. We heard this morning there was a draft report provided to you in July. What did the final report say and when did you provide that to Treasury?

Mr COLEMAN - We didn't provide a final report to Treasury. We were keen to get advice to them at the earliest possible time so we provided the draft report we received from Investec to Treasury.

Mr GUTWEIN - When was that?

Mr COLEMAN - It would have been in late July, just after it was received from Investec.

Mr GUTWEIN - What did that report say?

Mr COLEMAN - I can touch on the broad details of the report -

CHAIR - Please do.

Mr COLEMAN - but I can go into greater detail at the end of the session.

CHAIR - As much as you can, then.

Mr COLEMAN - The report noted that, despite the best endeavours of a business like TOTE, a business of that size, it would have difficulty trading into the longer term given the nature of its business. That was predicated on considerations of the aggressiveness of the market, the pooling agreement and other commercial considerations which TOTE needed to take account of, and also the limitation of our product range.

CHAIR - What suddenly changed, then? Why was that not apparent in the year preceding that when you were giving very glowing accounts of the potential profitability of the business in the future?

Mr COLEMAN - We had a view about where we would invest and, frankly, the Tasmanian market is too small to sustain a business like TOTE. We took the view that we needed to reach out beyond the shores of Tasmania and when that opportunity was not open to us and the opportunity to become the bookmaker was not open to us that changed the horizon.

CHAIR - That is because of the directive from Treasury not to have any venturist external Tasmania operations, is that what you are saying?

Mr COLEMAN - That was certainly the catalyst for the board to rethink its strategy in relation to the future of the company.

CHAIR - Do you believe, apart from that, that every other modelling you have done has come true? In other words, have your business plans been fulfilled other than the external investment?

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Mr COLEMAN - We have written a corporate plan for this year which highlights the risks and opportunities and there is a 20-point action plan in there. That is being delivered on now. In terms of the performance of the company, at this point in time it is strong. We expect to return to good profit in this year, but having said that, the risks are enormous around the business and they have to be managed.

Mr BEST - In relation to the overview that you provided, the third point you made was that TOTE needs investment. There has been some mention about the aggressiveness of the market. You had a plan of expansion, you have sourced that, and you have moved in certain ways outside of Tasmania. Is your experience in those other markets now starting to factor in with your views as to how you see it moving forward?

Mr COLEMAN - There is still a good opportunity for an owner of TOTE to exploit the business of those things but in reality it is a very difficult position and we have sympathy for the Government's position to be the regulator of a business and continue to invest in a business which is in the gambling space.

Mr BEST - This investment that would be required, do we know what it might be, can we talk about that, or is it something that we need to talk about in camera?

Mr COLEMAN - I would rather we discussed it privately at the end of the meeting.

Mr BEST - But it would be fair for me to propose to you that it would be substantial and that money would need to come from the State Budget from somewhere, wouldn't it - such as Health or something like that?

Mr COLEMAN - Our estimates are that the capital required to be invested in the company over the next three years is about \$20 million.

Mr BEST - That's a base figure, though, isn't it?

Mr STURGES - On that ballpark figure of \$20 million, our understanding is that that would be just to bring you up to scratch at the risk of further investing to, as Mr Kent said, go out there and compete quite aggressively in the marketplace. I understand that the marketplace is developing in the wholesale sector.

Mr COLEMAN - There are elements of that I would like to answer later in the proceedings if I could, but to say that TOTE needs to invest in its systems and processes to bring it up to par, to make it competitive, is correct. Indeed, at the moment we are embarking on a call wagering replacement process which in part is required for compliance requirements with the Tasmanian Gaming Commission but is also required so that we can be competitive. We do not have a full range of products available in the marketplace so it gives opportunity to our competitors to take a hit at us.

Mr STURGES - So, in summary - and this will be my last point and we will deal with some more specifics at the end - it would be fair to say that significant investment is required in a business?

Mr COLEMAN - In other aspects, yes. I'll go into that detail with you.

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Mr STURGES - Thanks, Chair.

CHAIR - Getting back to the business model that you have been operating on, we've generally had glowing reports from your successive annual reports about how rosy the future looked and how it would be great to retain TOTE, keep operating under that business model, you've now said that because the Treasury has written to you and said, 'Look, we don't want you to get involved in offshore investments and risky investments', you've now decided that it might be appropriate to sell the TOTE. But your financial figures from last year are absolutely appalling and they haven't been predicated on an investment offshore because you haven't made that yet. So what went wrong last year?

Mr COLEMAN - In terms of the numbers last year, the results were as published, and you've seen those results. But you have to see it in the context of some factors in the market which have occurred since TOTE was separated from racing. In the last year with racing it had a sports betting business which was with another provider but through commercially aggressive tactics that was denied to us and that's the key part of the reason for Sports Alive. But that decision alone cost the company \$8 million in revenue.

CHAIR - When did that occur?

Mr COLEMAN - That occurred in May 2009.

CHAIR - But you were still making highly speculative optimistic projections about the value of the TOTE post that point in time.

Mr COLEMAN - If you allow me to go on with the points - that's only one.

Mr GUTWEIN - Mr Booth just raised that point, which I think is worthwhile, and I refer to your statement back in 2009-10. You said:

' and in addition to our enormous potential for growth, our performance in 2009-10 was very strong with an overall increase in turnover and an increase in profit before and after tax.'

How have things changed so dramatically? You've just indicated that in May 2009 there was a significant hit to revenue. In fact you've left nobody under anything other than the impression that the business was in very good shape. In fact you went on to say:

'Our potential for growth is enormous. We look forward to realising this potential for the ultimate benefit for the Tasmanian community.'

What has happened?

CHAIR - It's even been highlighted on the top of the report.

Mr COLEMAN - To continue on with that point and to answer the previous question from Mr Booth, because I think they're related in part, the difference between our position at that time and now and then what went wrong last year, we weren't paying race field fees in the years that we were funding Tasmanian Racing and this year we expect to pay \$16.4 million in race-field fees. So our profit needs to be able to cover that.

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CHAIR - No, but that's prospective. We're talking about the actuals from previous years.

Mr COLEMAN - I'm answering the question in terms of where the variations are in the financial performance of the company today as it was in previous times.

CHAIR - That's including those race-field fees, is it, then?

Mr COLEMAN - It didn't include the race-field fees when we were funding the racing industry, no.

Mr GUTWEIN - That being 2009-10?

Mr COLEMAN - In 2009-10 I think the amount of race field fees was \$5 million and \$16.4 million this year. So there's a difference of \$11.4 million.

Mr GUTWEIN - You didn't think that that was going to -

Mr COLEMAN - I'll come to that point in a moment.

At the time we were funding the racing industry we didn't pay a licence fee to the Tasmanian Government, which is \$6.5 million.

CHAIR - When did that come in?

Mr COLEMAN - It came in from 1 July 2009, and we didn't pay compliance costs. We were self-regulating prior to 2009 and the compliance costs this year were about \$6 million. That is to comply with the requirements of the Tasmanian Gaming Control Act.

CHAIR - When you say this year, are you referring to last year's annual report?

Mr COLEMAN - In last year and in this year; it's an ongoing cost so it can be applied to both years.

Mr BEST - So the Government was wearing some of those costs until TOTE started to pay.

Mr COLEMAN - There were things that weren't done previously because we were a government-owned business and now there is an independent oversight of the business. So it's not that the Government was wearing the costs, it is just that things were done in a different way.

Mr BEST - Someone must have been paying something.

Mr COLEMAN - It was all paid for within the TOTE.

Mr BEST - Yes, I understand but now it is accounted for is what you are saying.

Mr COLEMAN - No, that is additional costs to the business as a result of compliance. In terms of what went wrong, as I said at the very beginning of the meeting, the impact of opening the kimono - and I use that rather rude expression quite purposefully - in the last

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sale process was to expose the business to a whole range of investigation by a whole range of other people who used that information to their commercial advantage. We had a business model which we reported on.

Mr GUTWEIN - My understanding is, though, that any details of TOTE's financials or strategy or in fact their financials primarily would have been dealt with in a data room through a process where strict confidentiality agreements had been signed. Are you suggesting that people had gone outside of the bounds of the confidentiality agreements that were signed and that information that was commercially sensitive to TOTE is being used in the wider marketplace?

Mr COLEMAN - Yes.

Mr GUTWEIN - Have you taken action in respect of that?

Mr COLEMAN - I will talk about that at the end of the meeting, if we can.

CHAIR - Can you give us a reason for the significant decline in the profitability of TOTE in the face of a 27 per cent increase in turnover?

Mr COLEMAN - If you turn to page 23 of the annual report, and I assume that you have that there -

CHAIR - It might be worth putting in the *Hansard* because people who read the *Hansard* will not have the report.

Mr COLEMAN - If you turn to the top line, you will see that revenues went up \$961 million compared to \$756 million in the previous year but yet the net wagering income decreased by \$2 million. That is because of commercial pressure on this business as a result of others becoming aware of our business model and using that information against us with our customer base. We gathered more business but we had to do it at a finer price, and that in dollar terms cost us \$16.4 million.

Mr GUTWEIN - I know that you have indicated that at the end of the meeting when we are in camera you will talk about what actions you have taken but I presume there are a couple of actions. Are there issues that have been raised under the Trade Practices Act? Are you seriously pursuing other people in the marketplace for utilising your information?

Mr COLEMAN - I would rather not respond to that question and that detail now but you should consider that we have explored all and every means to deal with that matter.

Mr STURGES - If I can move forward, I understand that in August next year the pooling fee arrangement with Tabcorp is up for renegotiation. You may care to provide more specific information at the end of the hearing but my understanding is, and again I am basing my comments on a Macquarie report that was produced recently, that it would potentially place TOTE under significant pressure to increase that pooling fee arrangement. What sort of impact do you anticipate that is going to have on your business?

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Mr COLEMAN - If the Macquarie report predictions are correct, we will be making losses next year.

Mr STURGES - That is why I am asking you. Do you think they are near the mark with their prediction?

Mr COLEMAN - I would like to answer that question privately at the end because it would go to commercial-in-confidence.

Mr STURGES - You don't anticipate Tabcorp will reduce the pooling fee?

Mr COLEMAN - Can I answer that this is a commercially sensitive negotiation. I am happy to give you complete details but I would not like to talk about what our hand is in advance of those discussions.

Mr GUTWEIN - Can I ask you a question indirectly from the annual report? I note that your expenses went up considerably in certain areas. There was roughly a 30 per cent increase in wages and salaries.

CHAIR - It was 39 per cent.

Mr GUTWEIN - Can you provide a breakdown of what happened there and if I could start at the top, did board fees go up, for example?

Mr COLEMAN - There was no change in board fees in that period and the board is paid in accordance with the Government's scheduled policies in relation to that. My understanding is that the board fees freeze in that period so that won't be adjusted. The adjustments and salaries are a part of the sorts of things I have already indicated to you in and around our compliance costs and our need to improve our core wagering systems so that we can provide a competitive offer in the market. Most of those costs are in compliance and IT.

CHAIR - The employee benefits increased by \$4.8 million, which is a 39 per cent increase, in the 2010-11 year, which accounts for 57 per cent of the decline in profit on operations over previous years. In other words, 50 per cent of that decline was directly due to increased employee benefits. Were they for new employees for compliance or was it just additional work?

Mr COLEMAN - In that period there would have been 12 employees engaged in the business just to maintain our compliance requirements.

CHAIR - Twelve extra ones?

Mr COLEMAN - Yes, 12 extra employees.

CHAIR - Were any of the employee benefits a result of payment of commissions or bonuses to TOTE or subsidiary company executives?

Mr COLEMAN - No commissions or bonuses were paid to executives. There have been no bonuses paid to any executive employee in TOTE over the last two years.

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Mr GUTWEIN - Regarding Agility Interactive and the contribution to consolidated net profit, which appears to be close enough to an \$800 000 loss; that is a company you've invested \$4 million in?

Mr COLEMAN - Yes.

Mr GUTWEIN - And the last two years has provided losses to the tune of close to \$1 million?

Mr COLEMAN - No. Agility is a consolidated entity into the accounts of TOTE. We account all the expenses into Agility but we don't account the revenues into Agility. So that is the cost of running Agility in the business. The profits that are derived for Agility in that period came into the TOTE group and it was done that way because we only provide consolidated accounts.

Mr GUTWEIN - Is Agility making any money for you?

Mr COLEMAN - Now that we have separated the accounts out for this year the answer is yes.

Mr GUTWEIN - How much will that be?

Mr COLEMAN - In terms of direct revenues from some of the clients it manages to the TOTE, about \$16 million.

CHAIR - Who receives commission payments from TOTE, over and above the operators of retail outlets? I understand they're on a commission basis. Is there anybody else who is not an actual retail outlet who receives commission?

Mr COLEMAN - As a matter of course, no. Commission payments are only paid to the people who bring people to us, which are retail operators. Some of them might be internet operators, but they are third-party introducers of business to TOTE.

CHAIR - Can you give us a breakdown on those commission payments, not necessarily to individuals?

Mr COLEMAN - I don't have the numbers here with me. The vast majority of it would be to the retail operators.

Mr GUTWEIN - The liquidator has made a statement that at the time that TOTE invested \$5 million worth of taxpayers' money through Bet Worldwide, and therefore into SportsAlive, the company was effectively insolvent. What is going on?

Mr COLEMAN - There were some comments we wanted to make generally on that investment in SportsAlive.

Mr KENT - In simple terms, TOTE, along with Western Australia, ACT and Tatts were physically thrown out of Tabcorp. This was back in 2009. We all then had to endeavour to find somebody to take on our fixed and sports betting opportunities. It meant

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effectively that TAB controlled the sports bet market and we were left out in the cold, so we had to make alternative arrangements. The smaller TABs were forced to make rushed decisions about alternative sports betting solutions so they could be implemented in time for the cessation of contract with Tabcorp. The result was an inferior solution which cost TOTE market share in the amount of \$7 million per annum in gross wagering revenues as our international customers left us for more competitive products. We took the view that TOTE could not be exposed to this risk in the future and needed to develop so as not to be exposed to this kind of risk in the future. I will ask Craig to give you the dynamics of that situation in Australia as it is today.

Mr GUTWEIN - One thing I would like to hear is the due diligence that occurred at that time. Mr MacKinnon commented at the creditors meeting that he believed the company had been insolvent from at least 2008. That was based on the financials that were provided at the most recent creditors meeting. Can you step us through the process you went through to actually convince yourself and the board to invest in SportsAlive?

Mr COLEMAN - The market in Australia, believe it or not, is moving towards fixed-odds betting. That is a reality.

Mr STURGES - Is that more in the wholesale sector or retail?

Mr KENT - No, this is sports betting, fixed-odds betting, bookmaker betting. What we have today is parimutuel, which has the market.

Mr COLEMAN - The move in the market from 2000 to 2020 will be a drop in market share for parimutuel wagering of about 60 per cent. In 2020 it will be 67 per cent fixed-odds betting. This is forecast from Macquarie Bank. The remaining portion of 33 per cent will be for the TABs. If we stick to the parimutuel market we will have share of a dying market sector.

Mr KENT - Then we see ourselves in the role of a regulator of bookmakers, not being a bookmaker, which TOTE must become if it is to compete in the domestic market in the future. So we need to be a one-stop shop so that we have everything. If we have not got everything then at some stage in the future we are out of business.

Mr STURGES - That is the very point that I would like to make. I understand the nature of your business, the level of risk and I also understand the professional manner in which the board goes about managing that risk, but is it fair for me to say that under the current structure, given all appropriate measures taken by the board, and I am certainly not in any way questioning the professionalism of the board, but at the end of the day given the risky nature of the business government ultimately underwrites that risk. Is that a reasonable assessment of the structure?

Mr COLEMAN - Shareholders in any corporation underwrite the risk.

Mr STURGES - So government underwrites the risk?

CHAIR - I would have thought that would be blindingly obvious.

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Mr STURGES - I am just asking for matters to be placed on record as we gather information regarding this particular inquiry.

Mr COLEMAN - I think as a matter of law that is not quite the case. The Government underwrites the risk to the extent that its investment is devalued or diminished of something to nothing. It loses in that way. If the company goes into loss and has to pay other people out, the government certainly does not underwrite that.

Mr GUTWEIN - It is the government's equity that is at risk.

Mr COLEMAN - That is right. The company is worth something today. In some future time if it became insolvent or ceased trading, what is left is the value that would ensue to the government, and a corporation that became insolvent would be worth very little.

Mr KENT - The TOTE board took the position that it needed to find a way at an affordable price to control its own future in the fixed-odds betting area. SportsAlive was known to TOTE as a bet-back customer of TOTEs and was available at a price TOTE could afford without putting the company at risk. There were no shortcuts in the evaluation process of SportsAlive. TOTE commissioned an independent due diligence of SportsAlive at about the time of the first sale process of TOTE when it commenced. The report clearly identified the issues within SportsAlive and, frankly, these were expected given the price we were paying for a 25 per cent stake in the company.

The Government and their advisers took the view that the simplest path was to defer consideration of Macquarie SportsAlive until the new owner had a chance to consider the option. This is a perfectly reasonable position. As we are all aware, the sale did not proceed and the board recommended to the shareholders the acquisition of a 25 per cent stake in the unit trust which ultimately owns SportsAlive supported by an updated independent due diligence report and a detailed assessment of the risk associated with the investment.

I can assure you that the TOTE board withheld no details and was very clear on the potential risks associated with the acquisition. However, there were other factors of which it was not aware on which I would like to reserve comment until we get in camera. I say this because the comments will involve comments in a matter which will be subject to inquiry in other jurisdictions and I would not want my comments or those of the CEOs to compromise pending investigations except to say that TOTE wants a wide investigation of all the facts and where there is a wrongdoing, for those involved to be brought to account.

In conclusion, I am strongly of the view that for TOTE to prosper into the future it must provide its customers with a competitive product offering and clearly a competitive product range and pricing are a key to this. TOTE Tasmania cannot survive as a viable retail operator in the longer term without a full service offer. It is for this reason I say there is a need for a proper fixed-odds service for TOTE if it is to compete in the evermore competitive global economy.

Mr GUTWEIN - As I say, it is disturbing that the liquidator has suggested that that company was insolvent at the time when TOTE bought into it. Mr Coleman, you were on the board of that company through that period?

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Mr COLEMAN - In answer to your first question, the comments of the liquidator weren't supportive of the due diligence report. They made no assertion that the company was trading insolvent at the time.

Mr GUTWEIN - Did whoever conducted the due diligence for you get it wrong? And can I put a couple of questions and then you can run down the line on them? Firstly, did whoever conducted the due diligence get it wrong? Secondly, on the basis that the liquidator has also suggested that not only was the company trading insolvent in 2008 but in 2009 and 2010 as well when you, I understand, were the delegate from TOTE on the board of that company, why weren't you aware of the financial circumstances of the company at that time?

Mr COLEMAN - In relation to the question, who got it wrong? That remains to be seen. The investigations that will ensue into the company will get to the bottom of that, I trust. We engaged Deloitte to undertake the independent due diligence and they did a check of due diligence on the company at a subsequent time when the sale processes were completed.

CHAIR - That is the two due diligences that Michael spoke about before, is it?

Mr COLEMAN - Correct. That was done by them. We accepted those reports and it did make a range of comments around a number of matters in the company which we dealt with and which were considered fully in the assessment of this proposition. In terms of trading in 2009 and 2010, there are some things I would like to say about that in camera but I can say that at every board meeting that I attended the question of solvency was raised and I received assurances from the management of the company that the company was trading solvently.

CHAIR - You raised the question of solvency at every board meeting that you attended?

Mr COLEMAN - At the board meeting when the financial reports were tabled I asked the question, 'Is there any reason that the directors of this company should form a view that this company cannot pay their obligations as they arise?' and I received assurances no, there was no risk of that.

Mr GUTWEIN - In asking that question is that a standard practice that you would engage in?

Mr COLEMAN - Yes.

Mr GUTWEIN - You were not led to that?

Mr COLEMAN - No.

Mr GUTWEIN - There were no circumstances that gave rise to the fact that you felt that you needed to satisfy yourself at every board meeting?

Mr COLEMAN - As a director of any trading company that I attended board meetings of I would ask that question as matter of course - at every board meeting.

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CHAIR - Were you provided with convincing evidence then that in fact the answer was correct and in fact there weren't matters that -

Mr COLEMAN - At every board meeting there was a detailed set of financial accounts presented to the board, and I'd like to comment on those accounts privately.

CHAIR - Were they independently audited?

Mr COLEMAN - Can I comment on that privately?

CHAIR - It seems that some of these things that you want to comment on privately may not be commercial-in-confidence, so I will remind you that they have to be.

Mr COLEMAN - The matters that I want to comment on privately will go to the heart of the investigation by ASIC if they make inquiries. So they're not commercial-in-confidence but they will go to the heart of that inquiry.

CHAIR - Just to be clear, there's no current inquiry taking place?

Mr COLEMAN - I read with interest that the liquidator is awaiting funds to come from a tax return and that as soon as he's in funds he intends to fund that inquiry.

Mr GUTWEIN - On that basis, and as we'll no doubt be going in camera shortly on this matter, can I put it to you very bluntly that from what has been written about this matter so far, obviously your reputation is one of the matters in question - without doubt - and I think in a lot of people's minds the fact that we have the liquidator who has made certain comments and the fact that you're on the board, and the fact that, at the end of the day, this organisation, TOTE, has lost about \$5 million.

I would urge you to use this process to place on the record whatever information you can, bearing in mind that what's said in camera to this committee will never see the light of day. So where you can, I would urge you to say what you can.

Mr KENT - I take offence at the suggestion that he's in difficulty here. As far as I'm concerned we have a fantastic board, we have fantastic staff, this is a volatile business, it's a high-risk business. You talk about one part of the business; with over \$1 billion worth of turnover \$5 million is certainly a lot of money, no question, but that's the business we're in. There are other parts of the business that are worth considerably more than we have lost in one situation.

Mr GUTWEIN - But this was an investment directly in a company where due diligence occurred where the CEO of TOTE has been delegated to the board of that company. The liquidator, now that we've lost the money, is suggesting that the company was insolvent. I think it's a fair and reasonable thing to suggest that perhaps, potentially, Mr Coleman's reputation -

Mr KENT - That's the liquidator's view at this point in time. I'm looking forward to a full investigation to determine the outcome because I don't, for one minute, have any doubt that the people in this business, including Mr Coleman, did what was required of them during this process.

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CHAIR - Have you formed a view then why SportsAlive went under?

Mr KENT - Yes, which we'll talk to you about in camera.

CHAIR - Was that a matter of commercial-in-confidence? They are, in fact, now insolvent.

Mr COLEMAN - It's not commercial-in-confidence but it will be matters which will go to the heart of the inquiry. I can say that I have particular views about the activities of certain individuals and how things were presented to the board, how things were done and how the non-executive directors in that company were dealt with. Let me leave it at that and I'll go into specific allegations in camera.

CHAIR - All right, without going into the allegations then, are you suggesting that there may have been criminal behaviour involved in that in terms of ASIC regulation?

Mr COLEMAN - Potentially.

Mr GUTWEIN - Can I ask you then to respond to something that is on the public record, and again I refer to the creditors meeting and the draft statement by the director, I think Mr Chant, where he makes the point:

'The reason we are here today is we believe SportsAlive has been badly let down by TOTE Tasmania. TOTE Tasmania made certain undertakings and promises to the board of SportsAlive which, on their reliance, SportsAlive expanded the business. TOTE Tasmania did not come good on their undertakings and promises'.

How do you respond to that?

Mr COLEMAN - First of all, that's his account of the process and I suspect that desperate people say desperate things at times. But that said, no commitments were made by TOTE Tasmania to SportsAlive and we were not in a position to make commitments. We had said that we would investigate and pursue the opportunity for further capital to be put into the business but we could make no commitments around that because it was subject to a due diligence which needed to be performed and that led to certain conclusions for us. It was also subject to shareholder approval which we never proceeded with. So to the extent that we made commitments to the SportsAlive board, that is inaccurate. To the extent that the SportsAlive business expanded, again that is inaccurate. The accounts of that business will show that there was no expansion as a consequence of that. Indeed, our discussions with them at the time was about reducing costs, not about expanding the business.

CHAIR - Have you as a board recommended to the Government that TOTE should be sold? Is there a position that TOTE has given to the Government?

Mr KENT - No.

CHAIR - How did it come to pass then that it went from apparently you asking Investec to do some sort of audit of your business?

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Mr COLEMAN - The realities of the business are that we had a particular view about how we could trade going forward and that involved TOTE becoming a bookmaker. That is not consistent with the Government's risk appetite and that is a key element. As I said to you earlier, the realities are that in the last four years, for instance, the market share for fixed-odds or parimutuel wagering has dropped by 11 per cent of the total wagering business. That is the only business that we are effectively in; 98 per cent of our turnover is in parimutuel wagering. If we want to grow we have to expand our operations into the fixed-odds betting market which means being a bookmaker and taking more risk and that is not consistent with the Government's risk appetite.

CHAIR - So that was part of the broader consultancy you got Investec to do for you?

Mr COLEMAN - The board needed to get advice about how it could go forward and capitalise the business to do these things and to diminish the risk appetite for the shareholder who has no appetite for TOTE being a bookmaker.

Mr GUTWEIN - Could we ask for that correspondence from the Treasurer which I presume was from earlier this year after the midyear financial report? Would you be able to table that or provide it to us?

Mr COLEMAN - I certainly can. I do not have it here but I will get that to you today.

CHAIR - With regard to the operations of a GBE such as TOTE and its relationship with Treasury, how much oversight does Treasury run of TOTE's operations?

Mr COLEMAN - I would think it was appropriate, but that said, it is probably a question more for Treasury as to whether it was consistent with their processes or not.

CHAIR - No, just in terms your relationship with Treasury - I want to know how much oversight.

Mr COLEMAN - We have a constructive relationship with them. We do not agree with everything that they say and I do not know that anybody in any business or any department related to Treasury agrees with everything they have to say.

CHAIR - How does it work, the relationship?

Mr COLEMAN - We have regular bi-monthly meetings. We provide a performance update on the company, how things are tracking, how things are going and from there they produce reports to the Treasurer. We submit all our budgets and corporate plan to Treasury -

CHAIR - Did you submit a plan to Treasury that you were going to buy SportsAlive?

Mr COLEMAN - Yes.

CHAIR - Were they consulted over that?

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Mr COLEMAN - In terms of the full process of discussion there was a paper submitted and due diligence was submitted. In terms of the actual discussions I had with them, I cannot recall.

CHAIR - Did Treasury give you advice in regard to it?

Mr COLEMAN - Yes, we received a letter signed by the Treasurer presumably prepared by Treasury supporting the decision.

CHAIR - Can you provide that letter to the committee?

Mr GUTWEIN - Does that decision need to be signed off by the Treasurer and the shareholder ministers?

Mr COLEMAN - Yes.

Mr GUTWEIN - So both shareholder ministers agreed to the investment in SportsAlive?

Mr COLEMAN - That's correct.

CHAIR - But, more importantly, Treasury gave the advice with regard to it?

Mr COLEMAN - The Treasurer takes all of her advice now. In that case it was Michael Aird and he took all his advice from Treasury, which is right and proper. Treasury would have reviewed the documents and passed its opinion on to the Treasurer.

CHAIR - So that was your second line of assurance, effectively? You did your own due diligence and then provided Treasury with your corporate and business plan and they then gave you advice on that?

Mr COLEMAN - Yes. On any initiative the company undertakes which requires shareholder endorsement it goes to the shareholder - and in our case the shareholder is the Treasurer - or the portfolio associated to the company is Treasury, and all those proposals are vetted by Treasury.

Mr GUTWEIN - Can I ask two other questions? The annual report indicates that in December 2010 TOTE advanced another \$350 000 to Bet Worldwide. I note that by balance date that had been reduced to \$209 000. What was that advance for?

Mr COLEMAN - It was in relation to commission payments. Bearing in mind that SportsAlive, because we owned it, directed its business to TOTE, and in that period we had earned almost \$1.8 million in profit from them. That is net of that outstanding amount, so it would have been more than \$2 million in profit from them. It was associated with that element of the business.

Mr GUTWEIN - I note in respect of the appointment of Mr McKeown as a director of the company that in the month preceding that there was a payment of \$580 000 for consulting services to his company. I quote:

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'TOTE Tasmania and Agility Interactive paid Sydney Consulting Corporation, a company which Jonathan McKeown is owner and managing director of, \$580 841 for consulting services before Mr McKeown commenced as a director.'

I understand Mr McKeown commenced as a director in August of that year, so I am presuming that if it was paid in the financial year it could have only been paid in July, so a month before Mr McKeown joined.

Mr COLEMAN - That was for services. I don't have the specific details with me at the moment, but he performed a number of services for the company over a period of time. It wasn't for a month, it would have over the course of more than a year.

Mr GUTWEIN - So that was for a contract that had been previously been let or for ongoing consultancy services he retained?

Mr COLEMAN - He was a retained consultant and it involved a number of employees who we paid through Mr McKeown for our Asian strategy. He is based in Bangkok and that operation was located there and it was an affordable way for TOTE to have its presence there and explore a number of opportunities without bringing people from Australia all the way to Asia.

CHAIR - I think, if the committee agrees, perhaps we could go into camera now. We're running out of time so maybe we could call TOTE again at a later date to drill down into some of those things such as the Asian market.

Evidence taken in camera.

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Mr BRIAN SPEERS, CHAIR, **Mr DEAN COOPER**, VICE CHAIRMAN AND **Mr GARY LOTTERING**, CHIEF EXECUTIVE OFFICER, TASRACING, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR (Mr Booth) - Thanks for coming along. Before you begin to give the evidence, I presume that you have received and read the guide that came to you with regard to giving evidence before a parliamentary committee but we will just briefly again remind you that the committee hearing is a proceeding in Parliament which means it receives the protection of parliamentary privilege which is an important legal protection that allows individuals giving evidence to a parliamentary committee to speak with complete freedom without fear of being sued or questioned in any court or place out of Parliament. It applies to ensure that Parliament receives the very best information when conducting its inquiries. It is important to be aware that this protection is not accorded to you if statements that may be defamatory are repeated or referred to you outside the confines of the parliamentary proceedings but whatever you say in here is absolutely unimpeachable and protected. It is a public hearing and members of the public and journalists may be present and this means your evidence may be reported. It is important that should you wish all or part of your evidence to be taken in camera, you make that request and the committee will consider that.

Mr BEST - What is your view about the potential sale of TOTE?

Mr SPEERS - As the Chair and your committee are fully aware, Tasracing and TOTE are two entirely separate entities. The sale of TOTE or otherwise rests with the Government of the day. I think that is where we sit on the issue and we have not got an opinion on that except to say, Chair, that when the sale of TOTE was last proposed the Government of the day indicated that there would be \$40 million moved to the racing industry so we would have some interest in pursuing some of those matters bearing in mind the economic climate of the day.

Mr GUTWEIN - Have you raised that matter with the Government now that obviously the issue of the sale of TOTE is a public matter again? What is your understanding of the Government's view in regard to that \$40 million?

Mr SPEERS - We have had a meeting. We asked the minister to attend a meeting last Monday and we spoke to our minister about this and of course he was not able to speak about the sale of TOTE and we appreciate that. We wanted to see where we, the racing industry, would be situated if there was an eventual sale or even if there wasn't an eventual sale. We asked some questions and that is about where we got to.

Mr GUTWEIN - Just so I am clear, whether TOTE is sold or not sold, is the key issue the \$40 million and are there other issues that would impact on Tasracing if ownership wasn't retained with the Government?

Mr LOTTERING - I might answer that, Chair. I think when the Government initially promised us \$40 million in the initial sale of TOTE it was seen to be a funding injection into our business mainly, obviously towards funding of capital works projects but I think we also saw it as a opportunity to generate interest from that amount of money. If it was

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going to be invested we would generate income for the business to run on, so I guess that would have been a favourable position for us to be in at the time.

Mr SHELTON - And at this point in time you're accessing some of that \$40 million but you're not getting interest from the loan?

Mr LOTTERING - Correct.

CHAIR - How do you model that into your business plan, an expectation that you would use that capex money as an investment portfolio rather than expenditure?

Mr LOTTERING - In the initial stages, the first time prior to the Government deciding not to sell the TOTE, we would have modelled it as bringing into the business \$40 million as a grant and the interest that we would have derived from that for the foreseeable period. We didn't have any plans at that stage as to how we were going to draw that down, but we would have seen that as a generation of revenue for us.

CHAIR - How would you have distributed in terms of infrastructure, because it was a capital expenditure grant for necessary improvements, development of facilities and so forth?

Mr LOTTERING - We will still look at it, even with the current facility, as the needs of the business as far as growing revenue, making the industry sustainable and for the benefit of the industry.

CHAIR - Does that mean keeping it in the bank and using the interest to carry out those works?

Mr LOTTERING - No, I think the intention was that at some stage it would be drawn down, depending on when the business required it.

Mr SHELTON - Has it ever been part of a business plan of Tasracing to utilise the interest rate of that \$40 million? The industry says there is a shortfall in the amount of money it receives now compared to what is needed to get it to a certain point, but that has never been part of the business plan.

Mr LOTTERING - No. When the Government decided not to sell TOTE, I think in the second half of 2009, we had to take that out of the plan as far as that opportunity to grow the revenue or get interest revenue from that grant.

Mr GUTWEIN - Obviously we understand the separation that occurred with the establishment of the deed, but I am trying to understand from Tasracing's point of view is your take on whether TOTE is retained or sold? Does Tasracing have a view? Are there detrimental impacts on your business if it's retained and not sold, and likewise if it is sold?

Mr SPEERS - It's difficult to answer that question. As I have already indicated, we are two separate organisations.

Mr GUTWEIN - We were part of the legislation that was established for the deed, so we understand that completely.

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Mr SPEERS - The situation is that we, the racing industry/Tasracing, is keen to derive more income to sustain our business. If there is a sale we would be putting our hand up to see if there is something that would come back to the industry. There are many Tasmanians who feel that TOTE is owned by the racing industry. We all appreciate that it is not and understand that we have moved forward from there, but if there is a sale we would anticipate that we, the racing industry, would derive some benefit from it. What that benefit is would be negotiable, and obviously would be determined by the Government of the day and what other commitments they had.

Mr STURGES - So you would anticipate, taking this hypothetical scenario, that it would be over and above the current 20-year deed that you have for the funding arrangement?

Mr SPEERS - Yes, I would.

Mr STURGES - Have you been given an indication that that would be the case?

Mr SPEERS - No, none whatsoever.

CHAIR - What is your view of how much the industry needs? Do you have a considered view of how much it needs to survive and grow and maintain viability?

Mr SPEERS - How long is a piece of string? Last year we had a \$3 million shortfall and that would be the starting point, so I would guess probably \$3 million to \$5 million would be what we would be looking for.

CHAIR - So you're talking about the \$27 million going up to \$32 million?

Mr SPEERS - Yes.

CHAIR - Do you think \$32 million would be sustainable? How much of that would Tasracing need and how much would then go to stake?

Mr SPEERS - I can't answer that question off the top of my head. Our business is driven by stakes. The viability of our business is what we can put back into stakes and we have a difficult task at Tasracing to balance that amongst all areas of the racing fraternity and the three codes. It is our aim at all times and the aim of the board to put as much back into staking as we can.

Mr LOTTERING - We are committed by virtue of the deed to put in a CPI increase to the industry every year. Obviously we are saying that out of those funds we have to get we would look to derive some of it to drive corporation plan initiatives to try to improve the product which obviously has a knock-on effect of growing turnover but, as the chairman said, the inference would be to return as much as we can back to the industry because that is the business we are in.

Mr STURGES - Are you suggesting that the current deed is not sustainable for the industry going forward? Is that what I am hearing?

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Mr LOTTERING - I think what we are saying is that the current deed was struck with a guaranteed amount of money for 20 years and that is a -

Mr STURGES - Indexed?

Mr LOTTERING - Indexed.

Mr STURGES - At CPI?

Mr LOTTERING - At CPI of at least 1 per cent. There is an efficiency dividend there. It was a good move in that it gave the industry sustainability over a 20-year period and probably no other entity or wagering body or racing body in Australia would have that kind of certainty. It provides base funding for the industry. It entitles the industry to get 67 per cent of that funding towards stakes money. It provides surety that there will be at least a CPI increase provided going back to the industry. I think what we are saying is that we need some extra funds to be able to take the industry forward and if you go back to when we were first formed, obviously the whole business of racing and wagering changed so we are now in a position where we have to make up the difference in our funding from race-field fees.

Mr STURGES - So at a board level what strategy do you have to generate funds over and above the money that is provided by Government through the deed? Are you able to give that in camera?

Mr LOTTERING - That is a figure between \$4.5 million to \$5 million in terms of race-field fees which is a product fee derived from sale of your product, and it is important that this is the change in the whole racing business. When Tasracing came into being it suddenly became a business whereby you were generating a return on your product whereas beforehand, in the days when TOTE Tasmania administered the racing industry, there was just this gentleman's agreement between the States that everybody could wager on your product and there was no payment of a fee. But that changed and I guess it was partly the strategy for government to say to us, 'You are going to get \$27 million and you are going to be able to earn the rest of your revenue from race-field fees'. In order to do that we need to understand that from Tasracing's point of view our wagering return is probably 2 to 3 per cent of the national market.

Mr GUTWEIN - Mr Speers, you said that if there were to be a sale obviously the issue of the remainder of the outstanding capital is one issue but it is \$3 million to \$5 million a year extra on a recurrent basis would be about what you would like to negotiate for. What value does TOTE provide you with now or what other support do you get from the Government whilst TOTE remains under its current ownership structure?

Mr SPEERS - I am sure Garry can answer the financials of it and sponsorship and the like. We have a close working relationship with TOTE - we are in the same business. To grow our business one of the things we need is for overseas people to take our product so that we get the raceday fields, which is straightforward. TOTE have been around the world and have these negotiations and relationships with various people, so we have been hanging closely on their coat-tails to go to these racing jurisdictions. Most recent is New Zealand and New Zealand take our product and that is moving forward. We have been to Singapore, we have been to Europe and we have been to China.

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Mr LOTTERING - By current sponsorship the TOTE funds are to the tune of about \$250 000 a year and that is based on an exclusive deal that says that TOTE can be the exclusive TOTE wagering operator on course at all our venues. That is a basic commission based on all the dollars that are wagered on course on the product. In addition to that TOTE have to pay a race-field fee, just like any other jurisdictional customer. They would be paying us between \$400 000 and \$500 000 a year in race-field fees to wager on the Tasmanian product.

CHAIR - What was the administrative cost of running TOTE prior to disaggregation?

Mr LOTTERING - I would not have those specific details. I can give it a fair go. On top of the stakes money there may have been \$4 million-\$5 million in terms of fees and administration costs - if you relate that to the fact that under TOTE's administration of the industry TOTE administered the provision of stakes money, the provisions of payments to clubs, the maintaining of all the venues across the State and the costs associated with that. The related staff costs were within TOTE and shared between racing and the wagering business and administration costs.

CHAIR - What I am trying to get to is that there has been quite a lot of comment and disquiet amongst racing industry participants about the administration costs of Tasracing, looking at salary levels, bonuses and all those sort of things that we might drill down to shortly. Is it more expensive now to administer those components that Tasracing currently does as opposed to the functions when it was an aggregated business model?

Mr LOTTERING - I think we need to recognise that, even under the old model, TOTE's focus was on driving wagering turnover to fund the racing industry. I think what we have seen in the disaggregated model is basically a wagering business and a racing business. The opportunity now for the racing business is to look to be more sustainable and to try to improve and grow its product. There was not a lot of work being done to improve the racing product domestically under the TOTE model, whereas now each business is able to focus on driving their own products. As well as saying that, when the two businesses separated there were claims made that this was not being done to reduce costs. This was going to be two separate entities that would be independently managed and with that would come associated costs involved in that.

Mr SHELTON - If TOTE is sold, I can only imagine that after the sale and a period of time has elapsed, the separation will become greater. Will that be a negative for Tasracing or a positive?

Mr LOTTERING - It may depend on who buys it - if it is sold.

Mr SHELTON - That is the point. Say it went to the mainland, would that affect Tasracing?

Mr LOTTERING - It would be very important for us to ensure that, if it is sold to a mainland wagering provider, if people in Tasmania are wagering in Tasmania on the Tasmanian product, that money is going into an interstate pool. That is where we are saying, we are deriving \$400 000-500 000 worth of race-field fees from TOTE. That is because TOTE Tasmania is wagering into the SuperTAB pool. If it was only wagering

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into its own pool there would be little scope for Tasmanian wagers to look at driving returns from that.

The likelihood would be that Tasmanian punters would look to open accounts in other jurisdictions which would mean that we would still get the race-field fees back but we would have lost the home advantage, instead of having that partnership or relationship with the local wagering operator.

Mr GUTWEIN - I do not think that this year's annual report has been tabled as yet?

Mr LOTTERING - No.

Mr GUTWEIN - I want to ask a question about the income side or the revenue that you have received. I note that under government income, there is the \$27 million-plus that was the government appropriation and then there was operational funding from TOTE Tasmania of just over \$5 million. What will the annual accounts look like this year?

Mr LOTTERING - There will be no appropriation from TOTE Tasmania. That was a one-off payment and was based on the fact that race-field fees had not come into effect in the first year of operations; race fields had been suspended. Tasracing made an approach to TOTE Tasmania to negotiate to get that from them. The only funding from TOTE Tasmania is what we've outlined will be race-field fees and -

Mr SHELTON - Race-field fees will come in at about \$4.6 million?

Mr LOTTERING - Overall, race-field fees across all our customers - so we are talking about every wagering operator who wagers on Tasmanian racing across the country. TOTE Tasmania's share will only be about 10 per cent of that.

CHAIR - In the submission you provided to the recent Legislative Council inquiry into Tasracing's finances you provided financial estimates that forecast a loss on operations in each of the next five years, out to 2015-16. How can you justify that this represents a going concern? Where is your plan B, if you're anticipating for five years in row you are going to be losing money? Are you solvent?

Mr SPEERS - Chair, just before we answer that question, I would like some clarification from your good self. I have looked at the terms of reference and they clearly indicate to me in (a), (b) and (c), that this group is asking us questions about the sale of TOTE, associated matters and any matter that pertains thereto. We have sat with the Legislative Council for three meetings and that report is about to come down. They went all through these matters and I am wondering how that pertains to this group and the matters that are at hand.

CHAIR - It is matter incidental, so it gives the committee fairly broad terms of reference to inquire into any matter basically, but particularly to the developing of a long-term sustainable racing industry model. It is pertinent to that because it might be that the committee could, for example, argue that we should have a re-aggregated model. I'm not pre-empting that but it is one of the options so it is important for the committee to understand whether Tasracing can survive in its current funding model and cash flows, and particularly therefore the cost of administration is very important to that.

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Mr STURGES - Chair, if I may, and I heard what Mr Speers has said - I understand the terms of reference look at specifically the role of TOTE Tasmania within the racing industry. These are revised terms of reference.

CHAIR - Do you have a point of order here?

Mr STURGES - No, I am trying to assist in progressing this inquiry. I am referring to the terms of reference, which I think is an important point: 'The role of TOTE Tasmania within the racing industry and advise on options regarding the future of TOTE Tasmania within a modern and viable racing industry'. I fully appreciate that under the current structural arrangements of racing Tasracing has a significant part to play. Mr Speers seemed a bit concerned about drilling down into business plans and predictions, so it might be appropriate if we go into camera and Mr Speers might elaborate further. I am just trying to assist the inquiry. We need to get as much information as we can but if people giving evidence are concerned that it could prejudice their business plans and the future of the industry going forward that is an option we might have.

Mr SPEERS - If I could just speak on that issue for a moment, the terms of reference are quite clear and when one reads paragraph (2)(c) and the reference to 'other matters incidental thereto', that phrase must be read sui generis with (a) and (b) and so it is matters that are incidental to (a) and (b) only and, with all respect, it doesn't canvass beyond that spectrum.

CHAIR - Thank you, but I have made my ruling in that regard. Would Mr Speers like to answer the question?

Mr SPEERS - Would you like to repeat the question, Chair?

CHAIR - With regard to the administration costs of Tasracing, and given that the submission you recently provided to the Legislative Council inquiry into Tasracing's finances, you provided financial estimates that forecast a loss of operations in each of the five years out to 2015-16. How can you justify that Tasracing is a going concern and is not insolvent? What is plan B?

Mr SPEERS - I am happy to discuss that but I think in camera would be the appropriate area for that.

CHAIR - I would like to hear from you why that would be a matter of commercial-in-confidence.

Mr STURGES - Chair, if I may raise a point of order, it's standard practice that if a witness wants to give evidence in camera that he will make his case with the room cleared.

CHAIR - We could clear the room if Mr Speers would like to do that.

Mr SPEERS - Yes.

Evidence taken in camera.

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CHAIR - We were touching on where the racing industry might find itself over the next five to 20 years. We would like a general view of what you think the challenges are facing the industry and what you think it might look like over those time frames.

Mr COOPER - In terms of a need to restructure there is clearly, in my view, a need for not only Tasracing to look at itself or TOTE to look at itself but there's an obligation incumbent upon the industry, whether harness, greyhound or thoroughbreds, to look at itself as well. The bottom line is that we're all short of money so we need to cut our costs; I don't think there's anybody in this room that would disagree with that. So looking down the track in terms of restructure of clubs, for example, one can take a salient lesson from what's occurred on the mainland where you have, for example, in New South Wales, looking at the thoroughbred industry, the two largest clubs in New South Wales - the Australian Jockey Club - the oldest club in Australia - and the Sydney Turf Club, who were years and years at each other's throats. They have ultimately come together and they have become one operation now known as the Australian Turf Club. The same thing has happened in Queensland where you had the VATC and the QTC; again, mortal enemies in many respects but they've recognised the realities of the financial situation that each State faces and they've brought their clubs together. There are two of the three major States in the Commonwealth where there has been a significant slimming of operations. I don't have the figures as to what dollars and cents were actually saved - I suspect an inquiry could be made to obtain those - but I venture to say that they will be substantial.

If look at Tasmania and we look at the thoroughbred industry, we have three clubs. We have two principal clubs for a very small population. In my view it would be incumbent on the members of those clubs to look at it say, 'Do we need two clubs? Do we need two of this and two of that? Can we make it one?'. I am pleased to say that, certainly from the Tasmanian Turf Club's perspective, that is an idea they are certainly prepared to embrace and to discuss with the TRC. I am not sure what the TRC's position is on it but that is a classic example of where industry - and in this case I am looking at the thoroughbreds - expenditure can be reduced. It is just an example of what we all need to do, whether we are sitting on a board or on a committee of a club.

CHAIR - That would be because of the savings in costs of running those clubs?

Mr SPEERS - Yes, and I suspect that would make it a little easier, a little more efficient, in terms of the obligations that Tasracing has towards those clubs - the maintenance of plant and equipment, tracks and the like - if you are dealing with one person and not one here and one there.

Mr LOTTERING - I would say that we are again, on the basis of trying to be more efficient, looking at the individual roles of Tasracing and the clubs. That has originated from where a club would have been responsible for all aspects of conducting racing and race meetings et cetera. That responsibility has now been rationalised into perhaps one principal authority. If Tasracing is responsible for 80 per cent of the responsibilities of managing or conducting race meetings, then what is the other 20 per cent and how do we structure that accordingly to make sure that that side of the business is as efficient as it can be?

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From a sustainability perspective, while there has always been this reliance on looking at the principal racing authority to say they are responsible for providing funding to the industry, I think we have been down the track long enough and we can see the changes in the economy, the changes in wagering environments, the changes in racing environments to safely say that the industry themselves need to look inward. We touched on clubs but participants need to look inward as well and say, 'Where am I with this new model and with this new cost structure?'. We are here and we appreciate and understand that there are rising costs across the industry in terms of their own fixed costs and some of their other overheads, but for example a trainer does have an opportunity to levy a charge for their services. Perhaps that is not necessarily going to be at a recognised Tasmanian benchmark, but we have to look at that and say, 'Is that going to deliver a sustainable future for training?'. We can't keep saying we just have to look to the principal authority to drive the returns back to the industry. We are there to provide sustainability. We are there to drive stakes money. That is the business we are in but we need to look collectively across the whole industry and say, what is it that we need to change.

There has been some discussion of late around the challenges facing the breeding now. There have been some comments about the number of entries for the Tasmanian yearling sales next year. The numbers have dropped; why is that? Is it because of the confidence in the industry. It could be a component of that but more importantly it is about what the customer is looking for to purchase. Are we producing the same horses that we have produced over the last five or six years for the same market which has now a lot more choice, a lot more demands on what kind of horses they are actually looking for? We have to go back and as a breeding industry look at that and say, what does the customer want now in terms of bloodstock that we are preparing for sale?

CHAIR - What about the challenges of a much broader range of betting opportunities, everything from football to cockroaches crawling up a wall - anything that can move you can bet on. What do you think the industry is going to look like then in 10 years' time?

Mr SPEERS - Chair, to give you an indication, I was in London in December last with perhaps the largest bookmaking group in the UK and they indicated to me seven years' prior sports betting would take about 5 per cent of their business and today, heading towards the end of their financial year, sports betting would represent 40-odd per cent of their business.

CHAIR - Has their business grown as well in that period?

Mr SPEERS - It is a huge operation, yes.

CHAIR - Has the non-sports betting stuff shrunk then as a result of that?

Mr SPEERS - I think it has been mentioned twice this morning that the pie as far as parimutuel betting is concerned has been stagnant for 20 years.

CHAIR - Has anyone else any other questions? Would you like to make any closing remarks?

Mr SPEERS - I just thank you for your attendance and your indulgence on some matters, I appreciate that, Chair.

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CHAIR - We appreciate your coming along and we may decide that we need to get more information off you to meet our requirements so that would be great. Thank you very much.

THE WITNESSES WITHDREW.

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Mr TERRY CLARKE, AWARE STRATEGY, FORMER CEO TOTE TASMANIA; Mr NOEL SLATER, PRESIDENT, TASMANIAN PACING CLUB; Mr MIKE JONES, SECRETARY, LIGHT HARNESS TASMANIA; Mr JOHN DEVEREUX, CEO, TASMANIAN PACING CLUB; Ms DENISE FYSH, PRESIDENT, HOBART GREYHOUND RACING CLUB; AND Mr MERV HILL, PRINCIPAL, RACING ADMIN SOLUTIONS AND FORMER GENERAL MANAGER TOTE TAB AGENCY WA, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR -(Mr Booth) - Welcome, everyone. Before you begin giving evidence, did you receive the guide to giving evidence before a parliamentary committee? The committee is a proceeding of Parliament. You receive the protection of parliamentary privilege which is an important legal protection that allows individuals giving evidence to parliamentary committees to speak with complete freedom without the fear of being sued or questioned in any court or place outside of Parliament. It applies to ensure that Parliament receives the very best information in conducting its inquiries. You need to be aware that this protection is not accorded to any statements that may be defamatory or repeated or referred to outside the confines of the parliamentary committee. It is a public hearing and members of the public and journalists may be present and this means that your evidence may be reported. Should you wish all or part of your evidence to be heard in private, you must make this request and give an explanation prior to giving the relevant evidence. Would somebody like to be a spokesperson for the group and indicate what you represent as a collective group or individuals.

Mr DEVEREUX - Can I kick proceedings off. I think, all except for Merv, have been involved in giving evidence previously but it became apparent to us when we gave evidence last time that the rules of the game had changed a little. There was a lot of activity going on trying to sell TOTE that we were not aware of then, so it changed our position quite markedly. We then made application to come back and give further evidence. There was some little-less-than-honest stuff going on around the place at the time.

Because Terry had given some evidence and from the industry we had, we look at that and had a meeting of mostly these people here in this group. We also talked to others and said, 'Is there a common position that we can come to in this?'. We were also mindful of the fact that we wanted to get the view of the industry on it and see what people thought out there. Because of the time it took to put the executive summary together we attached to that summary a petition - at the back of it is the overview and executive summary of the stuff we want to talk about today. We circulated petitions - and I have copies there, Chair, signed by people in the industry. There are just under 400 of them, and bear in mind that has been about six days in which they were collected. When we went around with the petition we insisted that people read the executive summary because that was the thrust of what we were going to be putting to the committee here today. I think we can claim right across the board to be saying, 'This is a very representative view of the industry that we are putting here today'. While we do have representatives of the industry here, Terry is part of the group and I don't think he needs any introduction as former CEO of TOTE. Merv Hill has also joined us. Merv has been the CEO of racing in New South Wales, South Australia and I think something like five years as manager of the TAB in Western Australia, so there is some not

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inconsiderable experience in this area amongst the group here today. We have probably two experts in the field to assist us in what we are putting forward today.

Mr BEST - We have heard a lot of evidence from other witnesses as to where they think the industry is going in terms of TOTE and where they are placed. How do you see the TOTE position? I think you might have sat through some of what we have heard, but you would be aware of what is going on, though. I am interested in what your view is as an alternative perhaps.

Mr DEVEREUX - We have an alternative view and I think it might be better if I turn it over to Terry to talk about that because he knows far more about the whole wagering and finance side of it.

CHAIR - Just before you do, Terry, I would like to get on the record for *Hansard* that we have people here we haven't interviewed before. Merv, could you run through the areas of your expertise so that we can frame that in relation to the joint submission?

Mr HILL - I will start from the top and work down. On the national side I have been a member on the Australian Racing Board for 10 or 15 years, instrumental in the change from the Conference of Principal Clubs to the Australian Racing Board with a view to taking it a bit further. That has not happened but that was a significant change on the State scene. I was CEO of Racing New South Wales at its inception, or just shortly after when it was the New South Wales Thoroughbred Racing Board. I managed the transition from AJC. New South Wales Racing had about 135 thoroughbred racing clubs under its jurisdiction. At that time I was also a board member of what is now called Racing Corp - New South Wales Racing - which is the joint venture between the TAB of New South Wales, then, and racing and on various other committees - animal care and ethics committees, integrity committees, racing appeals tribunal, racing appeals panel and a host of positions associated with that. Prior to that I was CEO of Thoroughbred Racing South Australia though its different guises. I took that from being a principal club with just the SAJC to a controlling authority. It actually did the split there. Prior to that I was CEO of the Western Australian TAB for a number of years. I took that through some significant changes. Wagering aside, a long, long time ago I was a committee member of the Hobart Metropolitan Trotting Club. My platform in getting on that was to merge the Hobart Metropolitan Trotting Club and the Southern Tasmanian Trotting Club because you had two entities racing on the one track.

I guess I have had a long history with both racing and wagering and both harness and thoroughbreds. I can only claim some relatives who train greyhounds; I only know that through family associations.

CHAIR - You are obviously endorsing the executive summary that has been tabled here today from your group?

Mr HILL - Yes. I have read through that and the thrust of that I agree with.

Mr CLARKE - The executive summary that John has indicated went with the petition was actually taken from a paper I submitted to the earlier session of this committee. I suppose to answer Mr Best's question, if we start with the conclusions there are five reasons why the industry believes that TOTE should not be sold. The structure that you

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could have could range from what existed prior to 1999-2000 when the merger was, which was TAB where the Government had permitted the profits to be paid to racing, right through to what we had before the split up, which was putting them both in the one company again. I am biased in the sense that, looking around the world, that is the model that works best in countries like South Africa and France - which is the fastest growing wagering industry in Europe. Interestingly it has gone past the UK, which is operating on a model which is now about to come into Australian racing, which Mr Lottering referred to, and has changed the environment forever. Or you could go to something like in Victoria now under the new wagering licence where the parties have a 50-50 joint venture between the independent incorporated body, Tabcorp, and the representatives of the three codes of the racing industry. They sit down at the table. I am not sure that you would get the same cost savings and synergies by having them stay separate like that. They are the arrangements in terms of a broad spectrum and there are variations on the theme around that.

Mr BEST - In other countries there are differing models around parimutuel and splitting up or combining of the two?

Mr CLARKE - The Scandinavian countries, European countries, particularly France, and South Africa - it is a model which is proven. Hong Kong Jockey Club and Singapore Turf Club - there are some very good examples there where the two bodies are together. As the paper says, when you go out to the market you are dealing both sides of the ledger. You are not only selling wagering product but you have the capacity to buy wagering product. This is one of the problems that Tasracing referred to. If the TOTE leaves our shores in the context of a mainland buyer they are primarily going to be interested in the non-territorial wagering, if you like, because the territorial-based wagering in Tasmania is so small that it is almost negligible. In fact I think that Macquarie advisory report that has been released in the last couple days is quite deficient in that respect because no-one in their right mind running a TAB today would be wanting to put investment into bricks and mortar when every kid on the block is running around with a mobile phone or an iPad - and most of the punters these days.

The problem that Tasracing faces is that if there is no local TAB then who is going to pool their racing because it is less than 2 per cent now with the local Tasmanian TAB. As we go through what I call the vicious cycle, where if the stakes money is not keeping pace with interstate benchmarks and people are starting to vote with their feet in this industry, eventually the quality of the product falls off.

CHAIR - Is that happening now, Terry?

Mr CLARKE - Yes, it is. As a matter of fact just prior to going on the radio yesterday to do an interview I opened up the racing calendar for the thoroughbreds. For Tasmania and Victoria, and I picked 14 and 15 December to get equal meetings, already for the benchmark of Kyneton, which was one of our benchmarks of provisional racing in Victoria, we are now \$2 000 behind. If I own a horse why am I going to race it here for a \$15 000 gross stake when it can go to Victoria. Already for a place like Terang, which is a lower level meeting, we are \$500 behind so it has already started to fall behind.

I know Mr Lottering referred to the breeding stats. The fact is that the two major thoroughbred studs in this State are down 50 per cent on their business last year. The

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2010 yearling sale had 330 entries, but 150 for the 2011 sale. People are cutting back. You can't upgrade your product, as Mr Lottering says, unless there is some incentive to go out and invest in quality product. It is a vicious cycle. If the quality falls off, in this world now where wagering operators have to buy the product and pay a product fee for it, then clearly if it is not quality product and if it is not in a deep pool - and as technology is improving rapidly and we start to pool with places like Singapore, the UK and France as the pools get deeper on their wagering - then you are just going to get pushed off the map. Or, as is already happening, you get pushed into a timeslot where the customer demand is not heavy. We have been pushed off Sunday and people who understand gambling know that the best time to be putting your product up is at the end of the week when the pay packets are out and people have money. By the time you get to Monday, Tuesday and Wednesday -

Mr STURGES - You are referring to the retail sector in that regard?

Mr CLARKE - Yes, the retail sector but not only that. There are really three segments of wagering: the gamblers, if you like, the David Walshes of the world, the big hitters - 'whales' as they call them; then there is the retail; then there is another group of pretty serious punters in the middle.

Mr STURGES - In previous evidence it has been referred to as the retail and the wholesale sector.

Mr CLARKE - The retail sector is very dependent on when pay packets come in at the end of the week.

Mr GUTWEIN - As the former CEO of TOTE, have you had a good look at this year's financials?

Mr CLARKE - Yes.

Mr GUTWEIN - What is your view?

Mr CLARKE - I will make a statement which I think will put this into perspective. Why is this TAB now in this position, where from \$940 million of parimutuel business it can only make \$1.5 million profit? The core problem they have here, and Macquarie Bank have completely overlooked this, is that in its wisdom, and I was party to the deal at the time, the Government of the day decided to take the wagering tax off TOTE Tasmania. We agreed to that with glee because that gave us approximately a 6.5 per cent price advantage in the market.

That is why it's got itself into this position because it's used the 6.5 per cent to go out to the marketplace and win serious volumes of business. I don't know the proportion that comes out of Asia but our tactics were to develop an Asian wagering hub. Our first business came out of Monaco and so we set up a structure where commissions were paid to people to aggregate their wagering.

If you look at the Macquarie report - and it's useful because it has some evidence from one of the TABs - when you have a 6.5 per cent price advantage - let's just call it that for the moment - and you can offer 10 to 15 per cent rebates and your competitor can only

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offer 5 or 6 per cent because he's paying at 19 per cent gross revenue wagering, it's a hell of an advantage, isn't it?

So that's what has happened and interestingly the accounting has been changed this year because they've put the commissions, which was about just under 4 per cent. For every other year ever since the TAB has been in existence it was accounted for in the expenditure area of the annual report; it has now gone up into the determination of gross revenue so you can't see what's being paid in commissions and rebates. It's all lost in that area.

So that's the major strategic advantage they have. Governments could change that at a stroke of a pen. If TOTE Tasmania, now it's got to \$1 billion, was required to now pay taxation to the State, it would pretty soon come back to a more level playing field with the other TABs.

The problem, I suspect, as Macquarie have rightly pointed out now publicly, is that they've been told that these practices have got you off-side with the racing industry in Victoria and if you want to stay in our pool then the fees are either going to double or you can go somewhere else. As you'd all appreciate, if the pool is not deep then the customers vote with their feet. For example, if TOTE Tasmania only had retail betting it would be about \$250-odd million; it would wither on the vine.

So a key issue for the committee is just that, that that price advantage has allowed them quite an amount of latitude in seeking business.

CHAIR - It's made a lazy business model.

Mr CLARKE - Yes, and then if you look at the cost structure, why have the costs gone up 13.6 per cent, year on year? The biggest part of it - 60-odd per cent of it - is in employee benefits. Is someone getting paid commissions or what's gone on in that area? It's not explained in the accounts. Is this a one-off that would be available, \$5 million profit had it not gone in to people who got that money? Other costs are fairly legitimate; if you're buying a new wagering system then clearly you're probably going to have some higher depreciation.

CHAIR - Does it need a new wagering system?

Mr CLARKE - It did in this respect that the wagering system that had had this title 'Alpha' was a legacy system and therefore lacked flexibility in modern products so it took them a long time, for example, to get fractional betting and so forth. So, as I understand from what I read, they've decided now that that system has to go and they're going to pay \$13-plus million to buy a new system which has greater flexibility, modern coding, programming and so forth.

If you are a parimutuel operator, by law - and, of course, governments can change the law - it should average out when you're in the Victorian pool at around 16.4 per cent. You lose a per cent to GST. You're starting with a gross margin of 15 per cent so how can you get such a small profit? You're either going to pay it away for someone or you've blown your costs out.

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CHAIR - Is there something that you can identify in the books over, say, the last three years there, Terry, that could explain this massive turnaround from the hedonistic, optimistic predictions that were being made about the riches that TOTE could generate to the point now where it's almost become mendicant?

Mr CLARKE - It's gross margin has dropped since 2006-07 from 14.8 per cent to 12.5 per cent. You are talking about an extra \$580 million of business that would have had 15 per cent gross takeout on it, so there's your first answer. You are paying it to someone else; it is not going to these people. This is what I don't understand. What is the strategy for raiding the company? It is certainly not because the owners are getting a decent pay-off on the bottom line. Are these people being allowed to roam free in the international markets and do whatever they like? Why would the Government accept a \$1.5 million profit on \$961 million worth of business? Where is the logic in that? If you look at the segmentation in the report, the Agility Interactive software company has lost money for two years yet why hasn't the goodwill been written down? My understanding of accounting standards is that is the definition of an 'impaired asset' and you should be writing down the goodwill. It is known that SportsAlive has gone bust. Why are we only writing off \$900 000? Why are we paying dividends to the Government and telling the world we need money to invest? What is the financial strategy that is being permitted?

CHAIR - Can you see a trend in there that you would identify in a forensic way as a hollow log or a profit shifting into dividends for the Government to lower the value of TOTE?

Mr CLARKE - No, I don't see that. I think it has gone on above the gross margin level and I suspect that's why commissions have been moved from below the expenditure heading up into the revenue heading. It might be to do with the fact that race-field fees are paid on gross margins, so that may be a very legitimate accounting reason for doing that but you would have thought the other States - and Merv would probably agree - would be a wake-up to that. They would not be allowing you to knock off your gross margin and pay a lower fee simply by changing your accounting practice. But it is that area; it is commissions, rebates and whatever these employee benefits are.

Mr GUTWEIN - When we had Mr Kent and Mr Coleman here, I think he had raised an issue - and I can't think of his exact words - effectively that because of going through the previous sales process they were now under threat from the wider market because people understood their business. Were you here when he said that?

Mr CLARKE - No.

Mr GUTWEIN - What he was proposing there effectively was that people understood TOTE's model, having had a very close look at it, and whilst it was done in a data room, lessons were learnt and they were under pressure as a result.

CHAIR - Copy the system, I guess.

Mr CLARKE - In business lots of people find out, unless you have some form of copyright or intellectual property that stops people. Business models come and go. If you're not paying any tax and your competitor is, you have a pretty good walk up. The benefits of that concession were that that was to go to the Tasmanian racing industry. That is why

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the then Government decided not to tax us. That amount of money was to be directed to the racing industry, and it is not getting it now.

CHAIR - That was that legislation that removed the requirement to pay a dividend?

Mr CLARKE - No, the decision by the then Government, the Bacon Government, to not levy the wagering tax on us. In those days we weren't under the Gaming Control Act so there was no licence. The reason for that was that that money would be re-directed into the racing industry. My view about that is that by 2006-08 the business was growing to the point where I believed it could have meant putting tax gain back on again. At the moment it is paying a licence fee of \$6.5 million but it is not being taxed. Tabcorp pays 19.1 per cent. I do not think copying the business model is the answer - what is particular about the business model? If you are going to compete on price like the airlines you finish up in a race to the bottom.

Mr SHELTON - Cutting in there, back in those days when the 6 per cent tax was on, were they paying the \$6 million fee?

Mr CLARKE - No, they weren't paying any licence fees.

Mr SHELTON - You could shuffle that around to say that whatever figure is paid, whether it is a licence fee or a tax, I would be interested to go along that line and you made the connection between Tabcorp and 19 per cent and wondering what that would be an upfront figure or do they pay a licence fee as well as a tax?

Mr CLARKE - They paid to buy a licence in Victoria so I doubt that they are paying an annual fee as well. They paid \$400 million-500 million upfront.

Mr SHELTON - Huge figures.

Mr CLARKE - You would have thought that they would have been paying -

CHAIR - I am interested in what Merv has to say also, given his history of involvement at the levels he has been. I would like all of you to give us a picture of what you think the racing industry is going to look like over the next five, 10, 20 years and whether that picture or that future actually is with TOTE? Whether TOTE will be part of the industry, whether it is a necessary part of the industry, what it will be like if it was sold as opposed to if it was retained, the benefits of retaining TOTE effectively, is that part of the picture? Can you give us a bit of a summary of the capacity of TOTE as you understand it to be able to survive into the future and generate income flows.

Mr HILL - Certainly, Mr Chairman, it is going to be very difficult for both parties in the future because things have changed. But you have to change with it. It seems to me that in Tasmania there are a number of specific problems like the commission one for example, and paying 10 per cent. I have suggested to some of my fellow members on this side that perhaps we should set up a bookmaking business, offer fixed-price TOTE, bet into the Tasmanian TAB and cop the 10 per cent because that could be a very lucrative little business. It works on the other side so I cannot see how it would work for TOTE Tasmania to have that as such a significant part of their business at that sort of

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level. My feeling is that Tasmania just simply is not large enough to have two very big overheads - one being TOTE and the other being Tasracing.

But if you also go back to the 1960s when TABs were first set up they were set up of an integral part of racing. And as was mentioned this morning, a lot of people believe that racing owns the TAB. Well, I have been through that argument in two States, in Western Australia and South Australia, and whilst it does not, they have a nexus that is inextricable - you cannot really take the two apart and run them. When they have been privatised out, they go down a different path to the racing industry. You only have to look at arrangements between States, with possibly the exception of Victoria where they have got so much money, it is always one of bickering, acrimony even legal issues where you have had the split. I do not think that Tasmania is big enough to have the two. My other view is that whilst it is a very difficult path with a lot of change and if you could bring the industry and both the wagering and the racing sides of the industry together in the aggregation, which is the essential suggestion here, and have an organisation with a structure that took the racing industry and the wagering side of it along together then that is your only chance for success.

I think that from my overview - and it is very much an overview - that in Tasmania TOTE, TAB, parimutuel needs to get back to basics and take the industry along with it. I was a little bit taken aback this morning when Tasracing mentioned that they give back 67 per cent of what they get to stakes money. Without having examined their accounts - and the latest ones are not available - it seems to me that that is a very significant overhead. It means some one-third of the money is going into overheads. I understand that they look after tracks and so on, but I would be going back to basics with both organisations, having a hard look at them and trying to put in place a structure that took them forward together. I think that TOTE is an integral part of racing. I think in every State that sold it out with the possible exception of Victoria they probably regret that decision down the track. I do not think the future will be any rosier or there will be any panacea in selling the TOTE to whoever it may be, be it a private consortium, be it UniTab or whatever. I see more threats to Tasmanian racing in a very short time by a sale than I do from going forward together. That has less threat. It still has all the threats of competition, the aggressiveness, and so on, but as Terry has mentioned, the world has changed. Who would have thought that five years ago you would be doing the things on iPhones and iPads that you are doing today. Of course, TABs generally have been slow to respond to this, not just in Tasmania. Tasmania has been concentrating on other things.

There is future there, but it has to be a future together and it has to be a cooperative effort between the codes and the wagering arm. I think it is more difficult if it is sold out to a purely commercially driven operation. It really would be difficult for Tasmania to sustain market share for that organisation to concentrate on Tasmania and say we want harness racing to go ahead in Tasmania, we want greyhound racing to go ahead in Tasmania, when they probably have something closer to home.

CHAIR - Just one more then. Are you saying then that you see no future for the industry with TOTE sold? What would the industry look like then if TOTE were sold to a private entity?

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Mr HILL - There is a future there, but I would put it in three categories. I would say that thoroughbreds are very vulnerable because they have large overheads. It is becoming a very professional operation in most places, but I would say they are extremely vulnerable. In Tasmania you have probably read this week there was another announcement from Victoria on an addition to their breeders' incentive scheme. You can race there not in the incentive scheme and get \$6 500 or be in the incentive scheme and get \$22 000 in the country. That is a huge incentive to breed and race horses in Victoria.

Harness racing I sort of place in the middle. I think, with all due respect to my colleagues on this side, it is more of an owner/operator/participant-driven industry. Rather than buying the services of a jockey, buying a float company, and so on, harness racing people tend to get out rub the sweat off themselves, throw them in the float themselves, drive them themselves or their mate does, so they are in the middle.

Greyhounds are probably the best placed of the lot because they have different ownership and training models and arrangements between people. They can contain their overheads probably better. Denise might enlighten us on that, but I would see them as always having a place because - and I mean it in the kindest terms - it is a simple industry to run. Harness racing is not so involved; thoroughbred racing is more buying services and therefore more vulnerable.

I would think that with a sale that Tasmanian racing would be simply at the mercy of whoever the operator is.

Mr STURGES - I do not even pretend that I have got anywhere the level of expertise that you people have. The purpose of this inquiry is to get as much information from whatever area we can.

I just come back to Terry's contribution. Terry, you were talking about a business that had a turnover of \$961 million and returned a profit of \$1.5 million. Merv, I think you mentioned about the two thirds, and you questioned the two-thirds contribution of Tasracing to the industry each year, and we are yet to talk to Treasury about the old and new funding models. Under the current funding model where industry is guaranteed \$27 million - I won't go into the capex side of it - but \$27 million plus CPI, less 1 per cent I understand, could you just tell me, and I am not trying to be cute, when you look at the TOTE return last financial year, where would you be if it was the old funding model where TOTE was providing your funding as opposed to the current -

Mr CLARKE - I know where you're coming from but I don't think there is an answer to that question. If the shareholders tomorrow instructed the board of TOTE Tasmania to return to competing on the same price with the offers that are going out of Victoria - Tabcorp, for example - the real issue is how much of the \$940 million of parimutuel wagering would disappear. On my calculations, to get back to where you could start to think about taking the industry off the budget, provided the total parimutuel didn't fall below somewhere between \$500 million and \$600 million, you could restore a similar funding arrangement under one of the models I mentioned before. This is one of the issues that's dealt with in the Macquarie report. Say if Tabcorp or Tatts bought it, who is the common customer? These people like to spread their money around the pool, so if you're getting 6 per cent in Victoria and 10 per cent down here, when it goes together which one is going to survive? The answer to your question is that we need to know

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how much of the \$941 million of the parimutuel wagering is price sensitive such that if you change the rebate or commission they will go somewhere else or maybe even stop wagering. People are obviously using the rebate to offset losses - not every bet is a winning bet. You can't put them back together at the moment; it simply wouldn't work. There is no scope under TOTE. The real issue, as it says in my earlier submission, is that you have to come up with a model. If you believe Macquarie, 26 per cent is retail business; you're not like to lose your retail business only to the extent that it's retail business driven by a hugely deep pool. Let's assume you're not going to lose that, that leaves about \$700-odd million at 15 per cent takeout to play with. How much of that is going to stick with you if you reduce the rebate? If you could retain about \$300 million then I think you would have a model that would lend itself to some form of linking again between the funding.

Mr STURGES - Thanks for that; that has helped me to understand it better. Because of the size of the pool that Tasmania has we need to jump into a bigger pool, and in this case in Tabcorp, so therefore we have no control over pooling fees.

Mr CLARKE - That's right. It is 1.8 per cent at the moment. I doubt he has changed his colours because I have dealt with him for a long time, but the CEO of Tatts always said to me, 'You can come in our pool any time you like but you'll only come in if I own you because I don't want to mess around with pooling fees'. I think this is where this report is wrong. I think Tatts could get to a better figure more quickly than Tabcorp because Tabcorp is getting \$17 million worth of pooling fees. If you go to Tatts, they want to own you and if they own you he'll do what he did to South Australia. He gutted the retail network and I wouldn't be putting a cent of investment into fixed assets in retail, only in terminals and things so you service the industry - the walk-up punter. You wouldn't do it in any shops. He won't be worried about that. He only wants that part of the \$940 million of parimutuel, or the \$700-odd million wholesale, that will stick and he would have common customers. Our biggest group when I was there was the one we all know, David Walsh, and they'd bet in every pool. When South Australia was sold we got all their business because they didn't want to take that money out of the Tabcorp pool and put it into the Tatts pool.

In my day, our planning was that if you could get to \$1 billion on your own - and I suspect that's what you've attempted here - then you're almost big enough to say, 'Righto, we'll take the risk and see if we can stand on our own, or you might try to do a deal with ACTTAB or WA TAB or something like that.

Mr STURGES - Evidence that we have received is telling us that parimutuel wagering is withering on the vine. Do you accept that?

Mr CLARKE - No. Let's look at the figures: \$387 million to \$961 million in four years. You are opening up new markets. That is the ability of the technology we have now. Once the co-mingling of pools, once we bet into the Singapore and Hong Kong - not so much Hong Kong because they are restrictive - and French pools, for example, as has happened already with New Zealand. New Zealand punters bet into the Australian pool on Australian racing and we bet into the New Zealand pool. There is no doubt that sports betting is growing but that is not racing. I do not accept it. We have been told for years that wagering on horse racing is a mature product. Sure it is mature, but while ever there is racing, and it needs to be good quality in the right time slots, there will be parimutuel

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wagering on it. Sure you are losing serious business to the corporate bookmakers but that has been driven by best TOTE odds. The Productivity Commission gave the thumbs up to that and said that is okay, we are going to permit it, but that is facilitated by people being able to lay bets. They have to lay off their bets and, as Merv said, if they are getting a 10 per cent rebate then it takes a hell of a lot of your risk out of it. I cannot accept that. I accept that the market is more competitive.

Mr BEST - So you disagree with the evidence we are hearing about all sports betting and all the expense that is happening there and how that is putting pressure on the pie? You disagree that is the scenario?

Mr CLARKE - I don't disagree that there are new products coming into the market. What I am saying is that the parimutuel wagering is so big -

Mr BEST - It is not a factor.

Mr CLARKE - There is good money to be made there. You are starting at 15 per cent gross margin and you have got to compete with the sport. That is one of the issues all the TABs face - young people coming through and how to capture a share of their spend.

Mr BEST - So first of all you are suggesting that the parimutuel is expanding?

Mr CLARKE - TOTE Tasmania is, yes.

Mr BEST - And you are saying there should be some way that could be accessed?

Mr CLARKE - Yes. It is growing. I do not have the Australia-wide figures in front of me but my recollection is that it is growing at about 3-4 per cent a year. It is maintaining itself in real terms. If you shift people into the exotic trifectas and those sorts of bets that have the higher take-outs, you are obviously getting it at a margin and they are types of products the younger people are more attracted to.

Mr GUTWEIN - We have grown our turnover significantly and quickly on the basis that we are actually offering a cheaper product. I think you made the point before that we were to understand just how much we were giving away. If we were to revert to a product of like type, how much of that turnover would we hold and what that would do to our profitability.

Mr CLARKE - Obviously I do not have access to the internal workings of TOTE anymore, but if it was around \$500-\$600 million a year then you would start to look at either adding to what the Government gives or weaning it off the budget.

Mr GUTWEIN - The thing that has always perplexed me with TOTE is that in 2007-08 TOTE provided \$23 million directly to the racing industry - if my memory serves me correctly. Then for the last two years we seem to have been on this slide. Turnover has increased dramatically so again I think Mr Clarke has a point there in respect of our margins, which have obviously dropped considerably through that period.

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Mr CLARKE - It has dropped from 14.8 per cent, and I will have to estimate it for last year because I don't have access to that commission figure anymore. I estimate it to be 12.45 per cent so it has dropped nearly 3 per cent on \$600 million worth of business.

CHAIR - And that hasn't generated any revenue because the margins are not there.

Mr CLARKE - Yes. It has been paid to someone else, the punter.

Mr JONES - Perhaps I could take up one of Terry's earlier remarks about what would happen if, say, an organisation such as Tatts purchased TOTE. I think people need to understand that they are into making profits by rationalisation of administrations. I wouldn't think we would have a call centre in Tasmania anymore; you would be ringing a Queensland number. I would suggest any number of retail outlets would be closed or rationalised severely. We could be looking at 100-plus jobs lost to the Tasmanian economy and I think that needs to be considered when considering the income or the effect of the sale of TOTE because it is a real risk.

CHAIR - I am glad that you have brought that up because I was about to ask that question. Let us say a reasonable scenario then, were TOTE sold to Tattersalls or Tabcorp or whatever what would happen to the industry in Tasmania, not what would happen to TOTE itself but the actual industry? What is the likely scenario for the people who are feeding the horses, the jockeys running them around the track, the owners and trainers?

Mr SALTER - If I could start out there, Mr Chairman, on that because of the current funding model the industry has no ability to expand and in actual fact in real terms it would probably contract. That would have an effect of people leaving the industry and it certainly would have an effect on the breeding industry. Terry touched on the thoroughbred industry and I can tell you that with the harness industry the yearling sales, for example, this year are down some 25 per cent in nominations and the amount of money that vendors are realising for their stock is also decreasing this particular year so that has a knock-on effect on the quality of the stock that is going around and of course because there is a shortfall in funding what is happening in harness racing especially is that there is no increase and in actual fact money has been taken off our marquee races and put into just ordinary run-of-the-mill racing to maintain the amount of racing and for Tasracing to attempt to maintain a turnover. But in fact what is happening there is that the quality of our stock is gradually going down and that will eventually have an effect on the industry.

If I could just touch on another point that Mike Jones raised in relation to the employment, I think that the other thing that we need to look at here apart from the demise of the breeding industry is the lack of opportunity for the young people in the racing industry. You have to realise, and I don't mean this to be derogatory to some people who are in industry, that the racing industry does give an opportunity to a lot of young people out there who would not normally have an opportunity to be employed in respect of stable hands and handlers and that type of thing and there are a lot of young people in the racing industry who do have an opportunity there and who would normally not get that opportunity and would probably, unfortunately, be on social security or benefits of some sort. I think if we are going to have a contraction of the industry, there is going to be a knock-on effect there for young people. I also believe that the ability for the public in Tasmania to bet on the racing product is going to be seriously jeopardised

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and I think that Mr Clarke has highlighted that and especially if our pools are to be reduced. The wagering or the punter out there is quite clearly going to look for alternatives and of course the corporates, the Betfairs and those things in this world are very attractive to the punter to look for better value.

Mr JONES - Noel, could I interject there for a moment? Noel makes a very valid point. What happens if, say, Tatts buy TOTE, do they take TOTE's sport radio with them? Yes, I presume so. Will they continue to run it? Probably not. It runs at a loss now. That is the primary method of a lot of people listening to races obviously and listening to how their bet is going. I suspect that the Carricks, the Burnies, the Scottsdales, the St Marys will not be broadcast if TOTE is sold and TOTE's sport radio goes with it. So there will be this lack of interest in the industry because they cannot get access to it from a radio. Yes, probably they will still be able to access it via AUSTAR and Sky Channel but there is a real risk for a general lack of access to the industry by a lot of people and that will lead to them simply going on and doing something else with their spare time and their spare cash.

CHAIR - I am trying to measure this in terms of the threat because we obviously have the value of the asset that the Government is trying to get for it but then with the multiplier that you get through those jobs being generated and also the existence of the industry itself is it a reasonable thing to say that by selling TOTE the industry here may be more likely to collapse or it might collapse? I do not want to make this verballing at all, I am just very interested to know if there is a view?

Mr DEVEREUX - I think 'collapse' is probably a bit dramatic. It will not collapse straightaway but I think what you will see is a very slow death, that is what is going to happen. It is going to just gradually fade away over a period of time. That is the inevitable result, I think, because of the very point that Mike raised about lack of access. Tasracing come along and say that the only way they can get any extra funding is to get greater turnover on their product. They are not going to get any greater turnover on their product when either the radio station is closed down or, at best, you may get some broadcast in straight from Victoria and no local content at all. Nobody is going to be on there telling people about who is racing at Elwick this week and what the chances are. All that will go because instead of getting a program on what is happening Tasmania, they will be telling you what is happening at Sale in Victoria on that Sunday or Wednesday night or whatever.

You have \$27 million and that was never enough anyway, and I think Tasracing made that clear today in a roundabout way. They probably were not game to say it but they hedged all around it. It is indexed, but less 1 per cent. Okay, that might keep stake money just where it is and, as Terry has pointed out, it is going to keep dropping behind Victoria because there is no capacity to increase it. But the 1 per cent is going to come off the other things that you can do in the industry and gradually the amount gets eroded away. If you then do not have the ability to keep your turnover up, you are not going to get your \$5 million that they want out of product fees because gradually that will fall back. I think gradually it will decline and decline. In 20 years' time, incidentally - and there is no plan about what happens after that - as Terry pointed out on the radio yesterday, that is three generations of horses. That is not far away; there is three years of it already gone. At the end of it, where do we go? Just jump off the nearest cliff because that is about where it is going.

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Mr BEST - I do not think I am treading into confidential, in-camera stuff, but TOTE is saying to us that if they continue the way they are going, their forward projections are a little bit different to what you are saying, Terry, with all respect. They see a slow death for them or the alternative is that they need to move into riskier markets, without discussing what those are, and they are going to need some investment money from the Government and they are saying basically the shareholders, and I will not define what those are but I am just saying diverse, riskier operations. I am just trying to work out where it all pans out.

Mr DEVEREUX - Quite frankly my view is that TOTE have been floating around in fairyland for three or four years now.

Mr BEST - Right.

Mr DEVEREUX - Talking about going up there in the clouds and if you look at the stuff in the Macquarie report for instance, 76 per cent of your turnover and you are going to lose money out of, what is it, \$900 million - 76 per cent of that is in the wholesale area where they are going to expand and do all these wonderful things and they lose money. Well, you know, there is something a little cock-eyed there.

Mr JONES - Perhaps one of the reasons they do lose money is if you take note 22 in the financial notes of the current report - key management personnel disclosures - there has been an increase from \$2.1 million in payments to key management personnel to \$3.04 million - almost a million dollars in one year. If these are key management, I suspect key management means three to four people at the top of the tree in TOTE. I do not know how they can pay themselves an extra million dollars and come up with a \$1.5 million profit. That is probably one of the reasons -

Mr BEST - No, no, I am not here to answer for them.

Mr JONES - No, fair enough.

Mr BEST - All I can is that from my understanding what they have been saying is that they are in an increasingly competitive and volatile area and that then puts more demand on them. That is the story as I understand they are trying to paint for us.

Mr JONES - But they have made rods for their own back. They are whingeing about the fact that the pooling fee may go up. Well I do not blame anyone for putting the pooling fee up. They are undercutting them, they are undermining all of them and pinching their customers, well why wouldn't they say that?

If you got back to reality and said we are going to run a business here on the same level as some others and put a reasonable case to them, the pooling fee may well not change but if I were the people setting the pooling fee I would say, 'You are going to pay right through the nose'. If you want to go round and undercut all your mates down the road in the same business do not complain when they come back and say, 'Here cop this one, young Harry!' That is what is going on.

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CHAIR - The imperative to sell TOTE then, given that it has been driven by the Government and also potentially TOTE I guess, is that a result of a self-fulfilling prophecy effectively because of the way that TOTE has been managed since disaggregation?

Mr JONES.-Yes.

CHAIR - Is that the unanimous view here?

Ms FYSH.-Yes.

Mr DEVEREUX - They are living in fantasy land actually.

Mr SALTER - To a certain extent that is the case with Tasracing because quite clearly they have signed off on a funding model that was not enough in the first place. If I could just go back a step to late 2008 when it was first mooted to the industry and we had seminars around Tasmania to split the two entities, we were told then that the industry required \$36 million to be viable.

Well, as we know, as time went on they signed off at \$27 million. It concerns us and the people in the racing industry who are actually racing the horses or racing the greyhounds, that under the current funding model there is no room for expansion and in fact to answer your question, Mr Chairman, I think it is quite clear that the industry has got to contract.

The reason being that under Tasracing's own funding model they are saying that they are going to run at a loss up until the 2015-16 season and there is no evidence, especially from us people in the industry, to suggest that that funding model and that loss will be turned around, so where is the expansion? Quite clearly there is not going to be an expansion in this industry, there has got to be a contraction and that is going to have an effect on things.

I can tell you - and I am out there at the coalface of the harness industry and Denise could probably tell you of the greyhound industry - the confidence out there in the industry at the moment is at a very low level with all these sorts of things hanging over their head.

The ordinary person out there in the racing industry still sees a connection between Tasracing and TOTE. It is quite clear, as Terry has explained with his model, that we are suggesting in relation to a gradual - well first of all a merging of the two entities again. Quite clearly if we merge the two entities again we are going to do away with two CEOs, we are going to do away with two boards, we are going to do away with two marketing departments et cetera, et cetera.

There are quite considerable savings there to be made and I would suggest not hundreds of thousands but millions of dollars to be saved in that area. Also there is potential there for the TOTE to go back to being a parimutuel wagering operation where, over a period of time, they can go back to funding the industry and relieving the Government of the current funding model that we have in place. Quite clearly there is a concern in the community of the level of funding at the moment, and the shortfall, that is there.

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Mr STURGES - I hear what you're saying about the rationalisation issue for TOTE and Tasracing. The Chair raised this matter earlier: where does the industry sit in relation to accepting the need for industry rationalisation? Other evidence has suggested that the number of clubs and the structure of the industry in the State need to be closely scrutinised and rationalised. What is your opinion on that?

Mr SALTER - From my point of view as the Chairman of the Tasmanian Pacing Club, we have always taken a view that you need to rationalise wherever you can. As far as we are concerned, we are cut to the bone. I have no problem with rationalising but what you have to understand here is that there is a huge amount of voluntary input into the racing industry. Committees are completely voluntary so if you take that away and put it under a single entity, which is going to have to be financed and there are going to be salaries et cetera for that entity to run the industry, I think it is a balancing act. It is no good throwing out what you have there on a voluntary basis and paying an organisation to take up that work. There is a certain amount of work that still has to be conducted by those clubs. I have no problem with any rationalisation that will save funds for the industry.

The other side of that is that we need to look at the rationalisation, especially of Tasracing at the moment, because, as Merv pointed out, there will not be another area in Australia where 67 cents in every dollar goes into stake money. In other areas and jurisdictions of Australia that figure would be down around 10-15 per cent, and here it is up around 33 per cent; it is unbelievably high.

Mr DEVEREUX - Just on that, I was interested when they were talking about Tasracing and saying we should cut back the clubs et cetera. The clubs used to do the maintenance on their own venues, and I would suggest to you that could be done now much cheaper than it's being done. I would be interested to get Denise's comments because a few years ago I recall there was a takeover by the central authority, Tasmanian Racing and the Hobart Greyhound Racing Club. I well remember that David Peters was director of Racing and after they came out the other end of that little exercise he said never again should you try to take over one of the racing clubs because the costs skyrocketed through the roof about 10 times what it was before. I would be interested for Denise to make some comment on that. This all sounds fine but Noel's point about the volunteers et cetera is a very important one. When they go, up go the costs and you'll never contain them.

Ms FYSH - We have one greyhound club that is 90 per cent voluntary, and that is at Devonport. Without that they wouldn't operate at all. Devonport's turnover is just behind Hobart. It leaves Launceston for dead, so as value for money it's incredible. If you were to rationalise and get rid of that club, the cost then for Tasracing would be significant, so you could save absolutely nothing. If you can rationalise, I don't have a problem with it. You have to be realistic about it. They tried to do it with the Hobart club before and it blew out of all proportion. You would never even consider going down that road again.

CHAIR - Is there anyone who wants to make a final statement on behalf of the group?

Mr CLARKE - I would like to comment on Mr Best's comment about what the marketplace looks like. If you had a business that had a starting takeout of 15 per cent of gross margin and if you played in fixed-odds wagering sports betting in the retail market, where the margin is 10-12 per cent, and stuck to your knitting and didn't go and try to

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take on the corporate bookmakers and others who are seriously trying to make a living out of punting, I believe you can structure a market because you now have not just the Tasmanian market, you have the technology to go to the Australia market and beyond. Your market is bigger than ever, you don't need capital to back that - you probably need a few millions in terms of some net asset backing, but you don't need to go and raise capital on the market or from a shareholder. It's when you want to stray outside of that and try to play in a bigger pool or try to get into that pool by playing with the big people and you have this advantage. I think what ought to happen in this context, given the time line, is that we ought to be looking at what the business model is.

Mr BEST - What I was throwing back to you was the evidence that we've heard, that they had diversified and been burnt.

Mr CLARKE - I'm just here to say that that's their view, but they are biased, in my opinion.

Laughter.

CHAIR - Thank you very much, gentlemen.

THE WITNESSES WITHDREW.

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Mr MARTIN WALLACE, SECRETARY AND Mr DEREK INGLIS, DIRECTOR, PROPERTY PROJECTS, DEPARTMENT OF TREASURY, WERE CALLED AND EXAMINED.

CHAIR (Booth) - Thank you for coming along. Just a procedural matter - we had been expecting information, Mr Wallace.

Mr WALLACE - I will deal with that matter now before I go to my opening statement.

We have been asked, as you know, to provide certain information. We have the information ready and it is not a question of not wanting to provide information to the committee. Treasury wants to do everything it can to be of assistance to the committee but with certain identified information public disclosure would either significantly damage the commercial viability of TOTE or seriously compromise any potential sale process. What we ask for is a prior agreement that that specific information be able to be provided in camera and not released publicly. For those reasons, and I understand the Treasurer has written to you, Mr Chairman, I have been directed by the Treasurer not to provide evidence without first having the committee resolved it be received in camera and to prohibit its publication in relation to three items: the current process being undertaken by Treasury in relation to the potential sale, independent advice provided to TOTE or the Government in relation to the company, and commercial-in-confidence information in relation to TOTE and its commercial strategies. If the committee could resolve to receive that information in camera and not to publish it, we can provide that information now or straight after.

CHAIR - Did you receive the letter that I sent on behalf of the committee?

Mr WALLACE - I personally have not received it. I have been off all week.

CHAIR - I responded to the response requesting you to come back and detailed the terms with which we, the committee, accepted it.

Mr WALLACE - Sorry, I have seen that letter. The issue was that it did not specifically relate to the identified information. So it was just a clarification. It is the information relating to these three things.

CHAIR - That is different to the original letter you sent, which I do not have in front of me. You actually wanted to give your evidence today in camera and you also wanted all of the documentation that the secretary had asked for to go in camera but now it looks as though there are only three items.

Mr WALLACE - No, sorry, in our response, those items that were under those three categories so the rest of the information that you have asked for we are happy to provide - racing industry funding and that sort of information. I think it is just a miscommunication.

CHAIR - Okay. So effectively then what you are saying is it will be the three items, the three documents or reports that you have listed that you want in camera, and the committee is happy to accept them in camera.

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Mr GUTWEIN - Can I just seek a point of clarification; the documents received in camera but are you suggesting that we cannot ask you questions about either the current process, the advice to TOTE or -

Mr WALLACE - No. The issue is purely one of public disclosure of commercial information. I am happy to answer any questions. There will be ones that I will ask to take in camera if they relate to those three areas.

CHAIR - Does that clarify that for you, Peter?

Mr GUTWEIN - It does but I am not sure whether I am happy. You will not take any questions at all about where the current processes sit?

Mr WALLACE - I am happy to take questions.

Mr GUTWEIN - But in camera?

Mr WALLACE - Yes.

CHAIR - No, in public.

Mr BEST - Only if it is commercial-in-confidence, I think.

Mr GUTWEIN - I don't think that is what Mr Wallace is saying.

Mr WALLACE - I think there are two issues. One is the information that you have already asked for and if you are happy with it, we can provide that where the pieces that relate to those three things are kept confidential.

CHAIR - Have you identified those pieces in the documents?

Mr WALLACE - Yes.

CHAIR - The secretary needs those matters spelt out so that he can write them down.

Mr WALLACE - It is the three documents.

CHAIR - Is it the issues within those documents that you are talking about?

Mr WALLACE - It is the things in the letter that I have written, which I can read out in a second, that relate to the three things, the current process in relation to potential sale, the independent advice provided to the Government in relation to TOTE, and commercial-in-confidence information that Treasury has in relation to TOTE or its commercial strategies. So the specific pieces of information that we have that we want provided confidentially in camera are the advice received by TOTE Tasmania from the specialist advisers that it engaged; the Treasurer's note giving approval to the process undertaken by Treasury to value TOTE -

CHAIR - Why would that be commercial-in-confidence?

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Mr WALLACE - Because the letter contains comments that could be detrimental to the viability of TOTE or the sale process; the letter of engagement given by Treasury to its consultants, Investec, and use of it, for the same reason. I think your question was any advice from government or the Treasurer to engage in the process of valuing TOTE Tasmania and a formal understanding between the Treasurer and Treasury with regard to the sale of TOTE Tasmania. That piece of advice is a Treasury minute that we recommended to the Treasurer to follow this process and again reasons for following the process contain information that may be prejudicial to TOTE or to the process.

CHAIR - I think the best way to handle this then is that we need to accept on face value, remembering that you are under oath with regard to evidence you are giving to the committee, that if you say something is commercial-in-confidence then it needs to be commercial-in-confidence. That is a real issue because if the committee takes it in and finds that it is not, it puts the committee in a difficult position. Would you like to provide the documents? Have you the documents there that we can table here now?

Mr WALLACE - Yes, I have the documents and maybe the best thing to do is for me to sign a covering letter saying, 'Here are the particular documents that I want to be taken confidentially by the committee'.

CHAIR - How would you like that procedurally, Charles? It would be better to just mark the documents, wouldn't it?

Mr SHELTON - Mention it on *Hansard*.

CHAIR - The documents that you would hand in in camera to the secretary would be kept separate to the ones that are dealt with in our open hearing which we have now. Have you got them separated into two lots?

Mr WALLACE - Yes, we have.

CHAIR - How about if you give the secretary the file of the in-camera documents and then table the ones that are not in camera and he will faithfully keep them separate.

SECRETARY - The committee at our last meeting resolved to extend confidentiality to these documents but it maybe worthwhile just passing another motion now specifically in relation to those ones.

CHAIR - Can you tell us what they are then?

SECRETARY - He has just listed them.

Mr WALLACE - What you asked for is not quite what we give in your category. If you ask for any advice from the department or the Treasurer to engage in the process of that impact on Tasmania and a formal understanding between the Treasurer and the Treasury, what we are giving you is the Treasury minute to the Treasurer recommending the process, which is the only document

CHAIR - Are they in a separate folder?

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Mr WALLACE - Yes.

CHAIR - Is there a general opening remark that either of you would like to make?.

Mr WALLACE - Thank you for the opportunity to address the committee again on the role and future viability of TOTE. Joining me today is Derek Inglis, who joined me last time. He was the project manager for the previous sale process in 2009 and is also the project manager for the current process.

I note that the committee's amended terms of reference are to investigate and report on the potential impacts should TOTE Tasmania be sold, the role of TOTE Tasmania within the racing industry and advise on options regarding the future of TOTE Tasmania within a modern and viable racing industry and other matters incidental thereto. Firstly, the potential sale of TOTE. In discussing the potential sale of TOTE, I am going to address why it is appropriate to consider the sale now and what are the potential impacts of selling TOTE. In relation to why it is appropriate to consider the sale of TOTE, Treasury's view is that government is much better suited to being a regulator of wagering businesses than an owner, because as an owner the Government is directly exposed to commercial risks that are inherent in the gambling industry. The issues that are relevant to the ownership of TOTE include the dynamics of the wagering industry, TOTE's key risks and pressures, and TOTE's recent financial performance and financial position.

The wagering industry is a very dynamic industry in which TOTE is a participant. Several factors in the Australian wagering industry make it a very competitive and high-risk market, as indeed is the global gambling industry. A key requirement for parimutuel wagering operators like TOTE is to have access to a liquid parimutuel pool. Without a sufficiently liquid pool, wagering providers cannot provide competitive odds and would likely go out of business. This is a key risk for a small parimutuel wagering provider such as TOTE, who is to a large degree dependant on larger parimutuel wagering providers for access to their pool.

CHAIR - We have heard evidence from other people that diverts from that to some degree. Is that advice sourced from within Treasury or do you have advice from people in the industry who are experts in the field of parimutuel and that sort of thing?

Mr WALLACE - No, this is advice from our knowledge but largely sourced from experts in the industry, such as Investec.

In TOTE's case it is part of the SuperTAB pool operated by Tabcorp through Victoria. The terms of TOTE's access to the pool are to be reviewed and possibly amended by August 2012. Macquarie Equity's research report was released on 15 November and notes that there is likely to be upward pressure on TOTE's pool fee costs, which will increase pressure on the business. That is on top of increases that have already happened over a number of years in relation to the cost of access to the SuperTAB pool.

Secondly, a key trend within the industry is ongoing technological change. The industry is continually making significant investments in technology platforms and systems so that they can provide greater access to their products and services, for example, through mobile betting applications. Similarly, to compete in the industry wagering companies

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must continuously innovate and broaden their product offerings to attract and retain customers, which also requires significant ongoing investment. As you are probably aware, TOTE's CEO noted the importance of this in the 2010-11 annual report of TOTE. He said that TOTE was spending \$14 million in upgrading its core wagering system.

Thirdly, a major threat to established players in this industry is the popularity of the fixed-odds betting products through corporate bookmakers. These fixed-odds betting providers have a higher risk and receive lower margins than traditional TABs, which results in significant price advantages over traditional TABs such as TOTE. These pricing strategies, coupled with the growing popularity of sports betting and the aggressive strategies of corporate bookmakers has resulted in those bookmakers taking significant market share from traditional TABs over the past few years. TABs around Australia have responded to this threat by entering the fixed-odds betting space themselves and they now cover a much larger range of sporting and other events than they have in the past, where their focus was largely on racing. Again, this has required significant investment in product development.

In addition to competition for retail customers, there is intense competition within the industry for large wholesale customers. These are sophisticated customers and highly price sensitive, which results in both lower margins from these customers and significant revenue volatility for other wagering providers. Australian TABs are increasingly seeing opportunities overseas to broaden their revenue base and reduce exposure to the risks of the Australian market. This requires significant capital investment and is particularly pertinent to TOTE.

The other main feature that's happening in the industry at the moment is the constantly changing legal landscape which represents a significant ongoing exposure to wagering operators. Recent examples of this have been the race-field product fees introduced around Australia and they will continue to be refined. In many cases they are subject to legal dispute. Similarly, there are issues around terrestrial exclusivity of totalisator wagering in Australia and that is also being tested in the courts - for example, the internet betting terminals by VenueNet in Victoria. To manage these challenges and risks in the wagering industry wagering providers need access to sufficient growth capital and must have sufficient scale to remain competitive and hence be sustainable over the longer term.

Mr BEST - We have heard evidence from TOTE itself and there was a figure for refurbishment or equipment to bring things up to scratch so to speak. We have been told that there is base of \$20 million and then we have had other figures given to us about pooling and so forth. You would be very aware that it is quite significant. That money would have to come from somewhere, wouldn't it?

Mr WALLACE - The dilemma that is there at the moment is that TOTE's net cash position is not strong. I was not aware of the amounts of money that are being talked about. Their capacity to fund their capital expenditure over the next few years is very limited at the moment. It is one of dilemmas of course with government ownership. As a private player if these things make economic sense, while they might have high risks associated with them, non-government owned companies can raise capital and invest in those things. In being owned by the Tasmanian Government, that capital would have to be provided by

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the Tasmanian Government which would basically come out of the budget which would mean less money for other things.

Mr BEST - That money then, if it was required, would have to come out of State revenue so it would be competing against things such as the Health budget.

Mr WALLACE - Yes.

Mr BEST - We have heard from TOTE that there are two scenarios for them. One is to continue on in a shrinking market that they have. Even on that basis they are going to require money from somewhere for investment from their point of view. The other one is that they could try and do something different. They have some proposals which I cannot go into but they are very risky diversified proposals into other markets. How does that wear with Treasury. Are we of the mind that we want to get behind those types of investment.

Mr WALLACE - From Treasury's perspective we do not see why taxpayer funds should be exposed to that sort of risk. As for anybody in a private company that is involved in a highly competitive market, you need to invest in acquisition and make other strategic investments to keep a sustainable business and to grow a business and you take on significant risk in doing that. Some of these investments pay off and others don't. In the case of TOTE there is a recent example of SportsAlive that didn't. From our point of view we just think that is totally inappropriate for shareholders - and therefore taxpayers - to be wearing that sort of risk. This is not about core government services.

Mr GUTWEIN - We had some evidence this morning that seems to be slightly contrary to some of the evidence that you provided last time. One was in respect of the process being undertaken Investec. We heard this morning that not only were they to speak with those people that had made unsolicited offers of interest but they were to broaden the process as well.

Mr WALLACE - Yes, that is right.

Mr GUTWEIN - Do you mind expanding on that a little bit. Certainly from the evidence you provided last time, which I have read, it does not appear that point was made.

Mr WALLACE - Well, I certainly did not make any contrary point to that. In fact I said that a number of things happened at once. Probably about the same time there were unsolicited bids, offers, expressions of interest or whatever you want to call them made in relation to TOTE. At the same time as this was happening, TOTE, largely in response to looking at the same business and the issues that it was having, procured some external advice, including by Investec, about its business. When the CEO of TOTE wrote to me on 12 August - which I referred to at the last committee hearing - he said this information was so important that he thought it important to provide it to Treasury as soon as possible.

CHAIR - That was Investec?

Mr WALLACE - Yes and once we saw it, together with the fact that these unsolicited expressions of interest had been received, as a result of that we decided to recommend to

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the Treasurer a formal process to actually test in much more concrete terms the interest in TOTE. So it was not just the two unsolicited expressions of interest. It was to run a process that targeted the -

Mr GUTWEIN - What you said last time was, 'We have put this unsolicited interest into a process to take up the general interest'.

Mr WALLACE - Yes, that is right. So the unsolicited one at that stage was put into the process with the others.

CHAIR - Did the unsolicited expression come to Treasury or to TOTE?

Mr WALLACE - It came to me through three people in government. One person passed it to one person who passed it to another, and then -

CHAIR - Like a Chinese whisper or a bit of paper?

Mr WALLACE - Well first of all as a Chinese whisper and then at the end of that there was a phone call and a piece of paper provided to me.

Mr GUTWEIN - Was that ministers passing one to another?

Mr WALLACE - No.

CHAIR - A government employee - somebody spoke to somebody in government.

Mr WALLACE - Yes.

CHAIR - They spoke to somebody else and so on.

Mr WALLACE - Yes. Basically I said that nobody should be talking to these people. I am happy to have a chat to them but at the same time I got the letter from TOTE.

CHAIR - That was prior to 12 August?

Mr WALLACE - It would have been immediately prior, in the previous two or three weeks.

Mr GUTWEIN - You described the process that was underway as not a sales process but we heard this morning that as part of the agreement with Investec they would be paid a success fee.

Mr WALLACE - What I explained there is exactly what the situation was and still is. It was a concrete, formal process to get bids for TOTE but the Government had not made any decision to sell. It was Treasury that initiated to get approval from the Treasurer to do this, to give the Government some options. There was nothing else said previously that contradicts that.

Mr GUTWEIN - Perhaps you did not explain yourself clearly last time because very clearly what you do speak about is that it was the unsolicited interest alone -

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Mr WALLACE - Unfortunately it was the way the whole thing panned out because we were not sure what the questions were going to be. I was explaining that, given the various things happening, we thought there could be further expressions of interest and the advice from Investec suggested a particular way to go about it. As a result we wanted to put it in a process where we had probity advice, proper legal advice et cetera. That was all that conversation was really about.

Mr GUTWEIN - What sort of success fee is involved with Investec because you have a process underway and there is a different process involved in assessing the market as from perhaps the objective view that you might take of a level of interest on whether or not TOTE should be sold, depending on whether or not you got a success fee standing behind you and depending on what you ultimately recommend.

Mr WALLACE - As this is now getting into the area where I have been directed I ask that it be in camera.

CHAIR - If you could just note, Peter, we will go in camera and discuss that.

Mr SHELTON - On the same lines really, I am curious, Mr Wallace, as far as I understand the process now, TOTE has asked Investec to investigate some issues that they have and they have come up with a certain position, given their knowledge of the industry. Did you go through any other due diligence? You seem to have then employed them to go through a sale process. Have you asked anybody else in the industry whether that is the best place to go or anybody else?

Mr WALLACE - I am happy to answer the question but my request is to be in camera.

CHAIR - We can do that.

Mr STURGES - I have a broad question and I understand that we will be able to ask you some questions in camera in a little while. Can I come back to the issue - and again I have to be careful because some of this information was given in camera today - clearly I understand that figure of \$20 million is on the public record.

Mr GUTWEIN - It is \$13.8 million in the annual report.

Mr STURGES - I will talk about the evidence this morning. In evidence that we have received this morning an estimate was given of at least \$20 million being required - and I am not using a racing analogy intentionally - to bring TOTE up to scratch then there would be a requirement for significantly more capital expenditure if TOTE were to go out into the marketplace more aggressively and in particular into the fixed odds marketplace because also we have been told today that the parimutuel wagering system is withering on the vine. Having said that and talking about the level of investment required - and I don't have the level of expertise that you have - my understanding of the GBE act is that the only way TOTE could realise the capital to invest into the business is either through a loan from Tascorp or a direct payment from the State Budget. Assuming that they realise the capital through Tascorp as Tasrail has got money, to use a very clinical term, should TOTE go belly up into the future, and I understand the equity being zero, you will get nothing on the business, but if there were a loan from Tascorp who would wear the repayment of that loan?

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Mr WALLACE - At the end of the day, if it was the State Budget -

Mr STURGES - It is written off.

Mr WALLACE - It can't be written off as the cash would have to be put in - or the loans would be written off and one of the issues that TOTE has its activities don't support any new increased debt anyway and, as I say, I wasn't party to these discussions and I don't know exactly what was said but if they need significant capital over the next few years they would be -

Mr STURGES - Basically they are saying pretty well now.

Mr WALLACE - They would be looking at, I would say, an equity injection from the Government and that would come out of the Budget but that impacts on the budget deficit and would require adjustments to government spending or revenue to cover it.

CHAIR - Do you take them out of recurrent expenditure or do you take it out of capital?

Mr WALLACE - These days there is no difference under the uniform government accounting it basically would be a cash-out loan.

CHAIR - Can I ask you a question with regard to the contract with Investec - and I do not want to know the details but just a general pro forma - if you engage somebody like that to do something and you are offering them a success fee then you must have a bottom line that you have given them in terms of 'Go out and sell it and if you get x it is a goer.'

Mr WALLACE - I am happy to answer any questions but they have to be in camera under the directions from the Treasurer because these relate to the current process.

CHAIR - Yes, I will perhaps rephrase it then. I am not asking you for the bottom line. I am just asking whether the Government has given you a price that would be acceptable. So whether you have established a price above which the sale would proceed or whether it is just simply this nebulous ask: give us some offers and then we will think about it.

Mr WALLACE - I am happy to answer that and I think I answered it the last time. The process that we have put in place, if it were intended to get to a point where the Government had some options, the Government at that stage had not made any decision to sell TOTE and in fact the process that we put in place and the TOTE sale legislation requires a price to be fair and reasonable value. From our perspective all we are attempting to do is to get offers which are legally binding and where that assessment can be made and the Government can then decide whether to go ahead or not.

CHAIR - Comparing it to say selling your house, you go to the estate agent and you say I want you to sell the house.

Mr WALLACE - It has to be greater than the benefit of retaining or the cost of retaining TOTE in government hands.

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CHAIR - So in other words, you have computed that? You have figured out what that retention value is?

Mr WALLACE - No, actually we haven't at the moment. There are various ways of doing these calculations and we are in concert consequentially with the bid process, we are actually getting that done so that when we get the bids we can match them against that number and the Auditor-General has to do an assessment of that as well.

Mr GUTWEIN - Mr Wallace has made the point that they were looking at -

Mr WALLACE - I actually don't know personally. I can take it on notice and this is getting back into this area of the current process which I am feeling a little bit uncomfortable about providing information publicly because I have the letter from the Treasurer which basically instructs me what can be provided publicly and what cannot. These questions on the current sale process, if that is what you want to call it, are something I would ask to be taken in camera.

CHAIR - I just make the point again that you are under oath. For the stuff that you seek to go into camera is in fact of a commercial-in-confidence nature and the committee would not be happy if we went into camera and found that it wasn't.

Mr BEST - Just projections - and I am not sure if this is confidential or not so no doubt you will let me know - in terms of being a good time to sell, the way the market sits, the way competition sits and the way pitched projections are being forecast, firstly is it a good time to sell and, secondly, based on information that you might have - again I do not know if you can share that with us openly or not - is the Government further exposed moving forward? There is a view that if it stalled and they were allowed to keep trading as they are, say in two or three years, it might be a different or harder sell.

Mr WALLACE - There is a window of opportunity now. This is another reason why we suggested this process to the Treasurer and I suppose this was the initial expression of interest in this followed up by some other things and then the Investec advice and the information that I subsequently gained from talking to interested parties basically says this is a really good time to sell. Many of the challenges that TOTE currently faces aren't faced by other operators in the market at the moment. There is a lot of competition between them. I think there are a number of players who see a strategic benefit in TOTE. That window of opportunity could change at any time, and there are a number of reasons for that. If one of the other two State-owned TOTEs were to be sold, that would very much change the dynamics and the value of a sale of TOTE.

Mr GUTWEIN - We heard this morning from the broader industry that if TOTE were to be sold and, as the Macquarie report stated, Tascorp, Tatts or somebody outside the State purchased it, there was a concern about the employees of TOTE, for obvious reasons. I am wondering if you have factored into the process any consideration in respect of what the outcome may be in regard to job losses, how many jobs would be retained in the State and whether or not there are any preconditions being applied to maintaining a certain number of outlets, staff et cetera?

Mr WALLACE - I can talk in a general sense about that, but specific things I would ask to be in camera because it fits under one of the three categories that the Treasurer has

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written to me about. In general terms, the State has sold some businesses before and those businesses continue to provide good employment opportunities for Tasmanians. I have a couple of recent examples, such as the Printing Authority, the Southern Regional Cemetery Trust and the like.

Mr GUTWEIN - The Southern Regional Cemetery Trust, though, is geographically anchored to Tasmania.

Mr WALLACE - Yes. The other thing is that TOTE is a State-owned company; it operates under Corporations Law. Any State-owned company will look at its commercial strategies to be successful and united, so in that sense these issues are no different if TOTE is owned by a private company than if it was owned by the Tasmanian Government. A State-owned company approach tries to mimic, as far as possible, the private sector approach to this.

CHAIR - But you know that it's doesn't exactly.

Mr WALLACE - No, that's right. The dilemma of course is that you can't completely and you have the problem of government ownership, which is the access to capital and those sorts of things that we just discussed..

Mr SHELTON - And the board doesn't have somebody telling them what they should and shouldn't be doing.

CHAIR - I have a general question with regard to the oversight of TOTE by Treasury. Can you run us through how you look at this business in particular? Regarding their performance, I think it would be fair to describe it as an abysmal result from last year, as opposed to very extravagant and optimistic predictions in previous years as to where they are likely to be. Has Treasury ever got to the point of looking at TOTE's figures and saying, 'There seems to be a problem here'? Have you questioned why it is that with a turnover of almost \$1 billion they made \$1.5 million profit?

Mr WALLACE - With State-owned companies such as TOTE basically the model is you recruit an expert commercial board and they are responsible for the employment of expert CEOs and executive managers in the business. Treasury does not try to second-guess decisions that board should make. The boards are accountable to the shareholders and what we do is talk regularly to them about their performance, monitor their performance and provide advice to the shareholders if there are issues with their performance. There is a range of things that come up with any business from time to time. We do not have the resources to do our own independent analyses of their businesses. A lot of the information we use is supplied by the business itself.

CHAIR - I need to know whether or not you became aware that TOTE's fortunes appeared to be slipping away to the point where an independent company suggested it should be sold and a few years ago it was not.

Mr WALLACE - Since I have been in the job, I cannot talk about before that, since last December I have looked closely at the operations of all the government businesses. We have been concerned about the market in which TOTE is operating and how dynamic that market is, the thoughts and strategies TOTE will need to be successful and the

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capital it will need. One of the reasons why the Government bought out the new government business principles was to basically provide better accountabilities, strategic oversight and reporting back from businesses to the Government. We have been through that process with TOTE. We pointed out to TOTE that some of its activities, if not its whole business, was not a core activity of the Government and the sorts of things we would expect, given that about their financial monitoring and performances. That is what we do.

CHAIR - You identified there was a risk strategy in place and notified TOTE of that. Was that a formal advice?

Mr WALLACE - No, we meet regularly with them. Treasury people would meet with TOTE once a month.

CHAIR - To that degree you would notice there was a deterioration in their outlook. You advised them at meetings that you regularly have with them. In regard to SportsAlive, what advice did you give TOTE?

Mr WALLACE - The first 25 per cent tranche -

CHAIR - The \$5 million tranche -

Mr WALLACE - Yes, sorry, the only tranche that has happened. Because they are under Corporations Law as a State-owned company they did not required shareholder approval for acquisition of SportsAlive - the 25 per cent holding or whatever it was. If it had been a controlling interest it would have required shareholder approval. Under the new principles, businesses should inform their shareholders of significant acquisitions like that and we provide advice to the shareholders. Back in that time, TOTE, even though they did not need shareholder approval, wrote to the shareholders about it because it was in the previous sale process. I am happy to say what the shareholders response was so long as that is in camera.

CHAIR - Yes, we can take that in camera. So you did give advice to TOTE with regard to the SportsAlive?

Mr WALLACE - We gave advice to the Treasurer and we would have been in a lot of discussions with TOTE about that.

CHAIR - The Treasurer presumably has to sign off on it. Did he or she?

Mr WALLACE - No, the Treasurer did not have to provide approval.

CHAIR - But knew about it.

Mr WALLACE - Yes.

Mr GUTWEIN - Has Treasury taken a view in respect of what potential losses might be or what has occurred or is it a matter of sitting back and waiting for the liquidator?

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Mr WALLACE - We would use TOTE's information about potential losses. So we would not have our own advice about what they will be.

Mr GUTWEIN - What have they advised you?

Mr WALLACE - I do not know. They need to write off \$3.88 million of the balance of its original \$5 million, so it must have already written off \$1.2 million.

CHAIR - Why would they not have written off the whole lot in the year they lost it?

Mr WALLACE - I don't know; you would have to ask them.

CHAIR - There would be some oversight concern there?

Mr WALLACE - No, they have to follow the accounting standards, so the oversight of the Auditor-General and relevant accounting standards. That is not a role of Treasury.

One thing that is not on the list of things that the Treasurer has asked me to comment on in camera -

CHAIR - In fact it is up to the committee. It is very nice of her to request but unless it actually falls under the Standing Orders -

Mr WALLACE - I know but I am just explaining my dilemma, which is that I have been directed under lawful instruction and I have a conflict here in relation to not provide certain information unless it is in camera.

CHAIR - We won't force you to do that.

Mr WALLACE - Okay. One thing that is not covered in that is this issue of the industry funding. One of the documents we have done is quite a detailed analysis of what Tasracing would have received under the previous TOTE funding model and what it currently gets under the current funding model. It is quite a complex thing because of the way in which the funding worked with its direct link with TOTE, but the end of that paper basically summarises the situation, which is that Tasracing would have received, in the last two years, \$32 million less funding in total if it was still funded under the TOTE model than it has received under the new funding model.

Mr BEST - How much less was it?

Mr WALLACE - I think it was \$32 million over the two years of the new agreement.

CHAIR - That is another document you have tabled?

Mr WALLACE - It is the one document.

CHAIR - That is for those with short attention spans, is it, the two-page precis.

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Mr GUTWEIN - The instructions from the Treasurer in regard to what you can and can't talk about here, can you table those as well for the purposes of the record or was that a verbal instruction?

Mr WALLACE - No, I have a written instruction.

CHAIR - I think it is a reasonable request. I mean it is simply the matters that you want to go into camera on.

Mr WALLACE - Yes, the only issue is whether it was in the prefix - I was amazed at what she said. It actually fits under what I request be considered and taken in camera.

CHAIR - What about if you read out then for the record of *Hansard* rather than take the document in camera. The dilemma we have of course is that what is in camera can't be reported on and people reading the transcript will want to know reasons behind it and what the documents were effectively. Our letter to you is already in the public domain anyway - the request for the document.

Mr WALLACE - Sorry, what was the question?

CHAIR - I was just making the point that perhaps if you think there is this sort of issue with regard to your request to go in camera, the document itself could be taken in as part of the in-camera evidence but for the purposes of the public record at least if you read out the documents that she is seeking.

Mr WALLACE - The letter to you basically says what the letter to me says: 'On this basis I have instructed Treasury to not respond to your information request unless a direct guarantee can be provided' and then it relates to the three items that I talked about. So it is exactly the same letter.

CHAIR - Okay.

Mr BEST - Have we received that one then?

CHAIR - Have we got a copy of that there? I am not aware of that letter.

Mr WALLACE - So all that bit at the front was based on the assumption -

Mr STURGES - That is a letter to you.

Mr WALLACE - No, this is a letter to the Chair then. I apologise for that. What I was saying at the front which must have now sounded very confusing was actually based on the assumption that you had received that letter.

CHAIR - Is that the letter to me, a copy of that?

Mr WALLACE - Yes.

CHAIR - Well if you give that to me then that is a public document anyway because it is a letter to the Chair.

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Mr GUTWEIN - So that is the one to us.

CHAIR - Yes, that is the one to us so that has the same information. Thank you.

Just for clarification, that is the same information that you have in your letter, is it?

Mr WALLACE - Yes.

CHAIR - So the same detailed information, different name.

Evidence taken in camera