RACING REGULATION AMENDMENT (RACE FIELDS) BILL 2014

SECOND READING SPEECH

HON JEREMY ROCKLIFF MP, MINISTER FOR RACING

Madam Speaker,

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

Madam Speaker, the *Racing Regulation Amendment (Race Fields) Bill 2014* is an important element of the Government's commitment to safeguarding the Tasmanian Racing Industry's sustainability over the longer term by providing enhanced opportunities for Tasracing to maximise its revenue in an increasingly competitive national racing market.

The purpose of the Bill is to remove those prescriptive provisions from the *Racing Regulation Act 2004* which currently limit Tasracing's ability to be commercially responsive to changes in the market place in terms of setting fees for the use of Tasmanian race field information.

Madam Speaker, I think it appropriate to provide some context in respect of the history of race fields legislation and its significance to the racing industry, both locally and nationally.

The accepted rationale behind race fields legislation is two-fold:

- firstly, it prevents the unauthorised use of racing industry intellectual property; and
- secondly, it establishes a revenue stream for the racing industry by imposing a fee on wagering operators who utilise the racing product.

Historically, there was a 'gentlemen's agreement' between the various racing jurisdictions which permitted wagering operators to have access to race field information and accept bets on events held in any state or territory, without having to pay a 'product fee' or a percentage of wagering turnover. Underlying the gentlemen's agreement was the assumption that wagering at local TABs on races outside the state or territory would generally cancel each other out.

However, the emergence over the past decade of corporate bookmakers and betting exchanges has significantly changed the wagering landscape and thus made the previously mentioned gentlemen's agreement untenable and unsustainable.

TABs had traditionally provided a key source of revenue to racing bodies within their jurisdiction and it was vital that new wagering operators also provided revenue if they were profiting by the use of the racing product. This, combined with the need to impose integrity

conditions on all wagering operators, was the catalyst for the move towards the statutory model known as 'race fields'.

Of course, Madam Speaker, some of the honourable members in the chamber today may recall that the introduction of this statutory model in certain mainland jurisdictions was not without a measure of controversy. Litigation was launched by a number of high-profile wagering operators questioning either the legality of a controlling authority levying a fee for the use of race field information or simply the methodology used to calculate that fee.

In March 2012, in what was seen as a positive outcome for the Australian racing industry, the High Court of Australia upheld the constitutional validity of race field fees. The Court's decision provided much needed certainty for the various legislative race fields regimes around Australia, including Tasmania, and established once and for all that the racing industry was entitled to set and be paid a fee by those who use its product.

Madam Speaker, Tasmanian race fields legislation has undergone a number of iterations since it first came before Parliament in 2008.

In late 2008, as a consequence of New South Wales and Victoria implementing race fields legislation in their respective States, Tasmanian enacted legislation which required wagering operators to obtain

approval to publish Tasmanian race field information and allowed for the imposition of a publishing fee and integrity conditions for the use of this information.

However, due to a number of ongoing legal challenges to the interstate race fields legislation, the Government of the day deferred the implementation of the Act, in order to monitor movements in other jurisdictions. Nevertheless, Tasmania was in a position to respond promptly and positively to movements in other jurisdictions.

Madam Speaker, the legislation was eventually implemented in July 2009, although it was decided to defer the imposition of fees, having regard to interstate court determinations at that time which raised concerns about the validity of the methodology proposed by Tasmania to calculate the fee.

In the wake of a subsequent review of interstate litigation, it was determined that, subject to further amendments to the legislation, Tasmania could reasonably commence the imposition and collection of race field fees.

As a consequence, in 2010 the Parliament considered and agreed to changes to the Tasmanian race fields legislation, giving legal effect to the imposition of product fees. This move was designed to maximise financial returns to the State's racing industry, with an estimated

$4.9 million a year in fees going directly into Tasracing's operating budget.

Madam Speaker, initially, Tasracing charged a fee equivalent to 10 per cent of a wagering operator's gross revenue. The formula used to calculate the fee at that juncture was consistent with that in place in a number of other jurisdictions.

In late 2012, Tasracing determined to vary the gross revenue model to a hybrid model which largely retained the revenue basis for collection of fees and incorporated a minimum payment based on turnover. This variation, which came into effect on 1 July 2013, imposed a fee which in general terms was the greater of 13 per cent of net revenue and .05 per cent of net turnover.

In early 2014, Tasracing determined to make changes to the Standard Conditions of Approval that apply to wagering operators who are granted an approval to use Tasmanian race field information. The changes related to specific definitions for a betting exchange model. The new definitions followed those utilised by other jurisdictions where betting exchange specific provisions had been adopted. The timeframes for reporting and payment of fees were also changed and shortened. The changes came into effect on 1 July 2014.

Madam Speaker, while Tasracing has been able to effect these changes, the race fields legislation in its current form constrains the Company's ability to react to changes in the market in a commercially responsive manner. Full commercial practice could be argued to equate to the ability to alter race field fees and terms at any reasonable time to optimise commercial revenues to the racing industry, according to market rates influenced by, amongst other things, trends, customers, pricing by other principal racing authorities and product positioning.

The need for legislative change has become more evident with recent moves by a number of mainland jurisdictions. Victoria, Queensland and South Australia all altered their race fields fees for the 2014/15 financial year. Tasracing is unable to respond to these latest national developments in a timely fashion under the existing legislative framework whereby a variation to the current fee cannot be implemented until 1 July 2015 at the earliest.

Madam Speaker, the Government notes that income from race field information publication fees has always been identified as an additional source of revenue for Tasracing, separate to the operational funding it receives from Government each year under a Deed of Agreement.

This Agreement with Tasracing, which was entered into by the former Government and is the Company's major source of funding, provides the State's racing industry with guaranteed funding over a 20-year

period. For the 2014/15 financial year, this translates to approximately $29.2 million.

Madam Speaker, it is imperative that the industry operates within the funding made available by the Government to provide enduring confidence and surety to industry participants.

The Government has committed to working with the racing industry to devise a long-term strategic plan to grow the industry so that it can become more self-sufficient, and less reliant on the Government's assistance. The most important element of this plan is that the racing industry must have control and ownership over its own future.

One of Tasracing's principal objectives is to perform its functions and exercise its powers so as to be a successful business by operating in accordance with sound commercial practice as efficiently and effectively as possible. In order for the Company to meet these objectives, it must have sufficient flexibility to be commercially responsive to developments in the local, national and international arenas which impact or potentially impact its revenue streams.

Madam Speaker, the Bill before the House will provide Tasracing with that flexibility in a number of ways:

Firstly, by eliminating the requirement for Tasracing to specify by Notice any proposed variation to the race field fee and publishing that Notice in the *Gazette* within a prescribed timeframe.

The Bill achieves this by removing from the Racing Regulation Act those specific provisions which make the Notice subject to the *Rules Publication Act 1953* and the *Acts Interpretation Act 1931*, and by removing the precondition that any variation to the fee must be gazetted by 1 April prior to the approval period to which the revised fee will apply.

Secondly, by dispensing with the process that requires any variation to the race fields fee to be examined by the Parliamentary Standing Committee on Subordinate Legislation and tabled in both Houses of Parliament.

Making the Notice subject to the *Subordinate Legislation Committee Act 1969* and specified provisions of the Acts Interpretation Act exposes it to disallowance by either House of Parliament, which may or may not be a consequence of a recommendation of the Subordinate Legislation Committee.

Potentially, this could give rise to a situation whereby Tasracing, in good faith, determines the race field fee to be imposed on wagering

operators over a 12-month period and enters into formal agreements with those wagering operators, only to have the fee determination disallowed by Parliament at some later stage.

Parliamentary approval of what is essentially a management function is an unusual step in the corporate arena where commercial pricing policy unrelated to provision of public services is invariably the domain of a company's board. Tasracing has developed and maintained relationships with wagering operators. Market acceptance of Tasracing's terms is tested through discussion and negotiation with key wagering operators prior to introduction of the race field information publication fee. This is a key control in the process as customer acceptance influences and limits the timing and extent of changes that can be made.

Nonetheless, the Government is cognisant of the concerns previously expressed by members of the Legislative Council in terms of the potential for Tasracing to under or overprice the Tasmanian product. To alleviate those concerns, the Bill contains a provision requiring Ministerial approval before a determination of Tasracing in respect of race field fees can take effect.

Thirdly, Madam Speaker, the Bill amends the definition of 'approval period' - which currently corresponds to the financial year - to enable approval periods to span financial years and to be longer than 12

months. This is considered desirable to provide Tasracing with a measure of flexibility to accommodate the commercial realities of the day and to reduce the administrative burden of having to renew approvals every 12 months if a longer period of time is considered more appropriate in the circumstances.

Finally, Madam Speaker, the amendment legislation requires Tasracing to publish details of both the approval period and the fees payable on its website 14 days before they take effect. In addition to ensuring transparency in the process, this accords with the requirements of procedural fairness such that it enables intending applicants for approval to understand with clarity both the intended operation and the likely financial consequences of maintaining or seeking an approval to publish Tasmanian race field information.

It is important to note that there is no change proposed in the Bill before the House today to remove the obligation for Tasracing to consult with relevant code race clubs when reviewing the race field fee. This is seen by the Government as an essential component of Tasracing's responsibility to provide corporate governance, strategic direction and funding for the industry.

Madam Speaker, subject to the Bill's successful passage through the Parliament, it is proposed to commence the provisions of this legislation on 1 July 2015. This timing will ensure that current agreements with

wagering operators are honoured and thus do not expose Tasracing to any legal or revenue uncertainty other than normal operational machinations.

Madam Speaker, the Government recognises the importance of race fields as a significant source of additional income for the Tasmanian racing industry.

The Bill before the House today is a step forward in achieving a more sustainable industry beyond the life of the funding deed which will expire in the year 2029 by enabling Tasracing to operate with a heightened commercial focus to maximise returns to the industry.

Madam Speaker, I commend the Bill to the House.