



NSW Legislative Council Hansard

Racing Legislation Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Tuesday 14 November 2006.

Second Reading

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs), on behalf of the Hon. Ian Macdonald [10.37 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

- The Racing Legislation Amendment Bill 2006 has two objectives.
- The first is to provide in the Racing Administration Act 1998 that it is an offence to publish New South Wales race fields unless they have been first authorised by the relevant controlling body of racing.
- The second is to amend the proprietary company bookmaker provisions in the Thoroughbred Racing Act 1996 and the Greyhound and Harness Racing Administration Act 2004 to the extent that such provisions were found by the Federal Court to be invalid.
- The main purpose of the race fields proposal is to address the issue of wagering operators 'free-riding' on New South Wales racing events. Some operators do not contribute to the cost of staging racing events but they use them as a platform for their gambling services from which they profit.
- The object of this bill is consistent with the Government's racing policy, which is to encourage the ongoing viability and future economic development of the racing industry and ensure that lawful gambling is conducted with integrity.
- The racing industry is a very important part of our economy and our sporting culture. Its contribution to regional New South Wales is particularly significant.
- The racing industry provides a substantial economic contribution to the economy of New South Wales, including employment opportunities for 50,000 people across the State.
- The racing industry also enjoys an enthusiastic following in the community both at the participant level and also with those that keenly follow the form or enjoy the spectacle of racing.
- At this time of year, that is, Spring Carnival time, the racing industry stages many wonderful showcase events. The industry attracts hundreds of thousands of spectators and generates many millions of dollars to the NSW economy.
- The gallops have the Epsom Handicap in Sydney and the Melbourne Cup.
- Harness racing has the Miracle Mile and all the lead up races.
- Greyhound racing has the traditional Vic Peters Memorial Classic and more recently the Paws of Thunder and Pepsi Max series of races.
- The Government congratulates Greyhound Racing NSW and the National Coursing Association on the enormous success of the recent Pepsi Max Cup and the 'Dollars or the Dog' promotion, in front of the largest crowd seen at Wentworth Park in the last decade.
- The principal source of funding for the industry comes from the distribution of TAB revenues from race day operations and from sponsorship.
- The industry is, in effect, self funding.
- Racing people are justifiably proud and independent.
- Accordingly, they have sought and been granted by successive Governments the right to manage their own strategic commercial direction and business development.

- However, the lemma Government is committed to working with the industry to deliver practical solutions to ensure that racing has a sustainable future. This bill is another example of this commitment.
- As I said this bill proposes amendments to the Racing Administration Act to provide for authorising the publication of New South Wales race fields.
- The central provision is that it is an offence to publish New South Wales race fields unless there is prior approval from the industry or a failure to comply with any relevant conditions attached to an approval as set by the industry.
- The maximum penalties for unauthorised publication are substantial. For a corporation it is \$55,000. For a person it is \$5,500 or 12 months imprisonment, or both, for a first offence. For subsequent offences the maximum penalty is doubled.
- The Bill provides for a relevant controlling body to give approval to publish race fields. Such approval may be subject to conditions, including the payment of a fee for the right to publish race fields.
- A relevant controlling body is Racing NSW for thoroughbred racing, Harness Racing NSW for harness racing and Greyhound Racing NSW for the greyhounds.
- The relevant controlling body must, when considering whether to grant or deny approval to an application, have regard to:
 - The requirement for consultation with each racing club that conducts a race meeting in respect of the approval sought. The controlling body must consult their race clubs in this process.
 - They must have regard to the criteria prescribed by regulation which will be available to applicants to assist them with framing their applications and which must be taken into account during the decision making; and
 - If a controlling body denies an application or imposes a condition on their approval they are required to provide written reasons for that decision.
- The obligation to obtain prior approval to publish race fields is directed principally at wagering operators. These are persons who profit from taking wagers on racing events.
- A wagering operator may publish a race field on their betting board when fielding at a race course while taking bets over the telephone or by way of the operator's Internet site—or some similar form of electronic communication.
- I repeat: this will capture wagering operators who publish race fields on the Internet.
- For obvious reasons, these provisions do not capture circumstances where race fields are published in an exclusively social setting such as in an office sweep or in an authorised manner such as in a newspaper or a magazine.
- The bill provides that such circumstances can be exempted by way of regulations. There is no intention to change the status quo except for wagering operators that profit from publishing race fields. From now on they will have to pay a fair price to the owners of that information.
- The imposition of a fee is appropriate compensation for the use of the racing industry's race fields information.
- All revenue raised through those wanting to use NSW race fields would be fed straight back into the industry.
- According to estimates from similar arrangements made elsewhere and advice I have received, the New South Wales racing industry may be able to obtain several million dollars of from this source.
- This is entirely appropriate and justified because the compilation of race fields information involves considerable effort on the part of the racing industry. For example:
 - o Each racing animal must be registered and handicapped.
 - o The costs of training each animal by a licensed trainer.
 - o Licensed jockeys and harness drivers are engaged for each race.
 - o Racecourses are maintained to ensure they are safe.

o A race meeting is approved of on a particular date, and individual races are programmed with the consideration in mind that the race meeting as a package should be as attractive as possible to trainers and to the race going public.

o Racing stewards supervise the race meeting.

o Prize money is allocated according to the quality of the race.

- It is therefore fair and equitable for wagering operators that profit from using racing as a platform for their gambling services to contribute to the cost of staging a race meeting.

- To not contribute is what economists call "free-riding" _that is, the use of intellectual property to make a profit without paying the owner a fair price.

- A number of State governments have introduced, or are in the process of introducing, legislation which prohibits the publishing of race fields without prior approval from the racing industry. That approval may also be subject to a fee.

- The Bill also provides for merit review of decisions made in the circumstances where an application is denied when conditions are imposed and if an approval is cancelled or varied. Appropriate associated notice and procedural matters are set out in the Bill.

- The first level of review is to the Minister who may appoint a qualified arbitrator to assist with the review.

- The second level of review is to the Administrative Decisions Tribunal on an appeal from the Minister's decision.

- Other administrative and procedural matters are provided for in the Bill and associated regulations for the purpose of the form of the applications, the imposition of conditions on approval, the service of documents and the collection of fees.

- The proposal has been carefully developed with legal advice to take account of Constitutional requirements. We have also closely consulted the industry regarding their operational needs.

- The underlying premise is that each application for race fields approval will be handled on identical terms, irrespective of the location of the applicant.

- The detail of the regulations will be developed, as was this Bill, in consultation between the racing industry the regulator and the Government's legal advisers.

- The regulations will be developed over the next few months.

- Significantly, the Bill provides that the approval is limited to the publication of race fields and does not operate to authorise the holder of the approval to do, or omit to do, anything other than to publish race fields in accordance with the approval as granted.

- This provision makes it abundantly clear that the other provisions of the Act remain in force, and that compliance with, for example, statutory restrictions on advertising and the distribution of betting information is unaffected.

- The race fields provisions are an appropriate and lawful way of ensuring that the racing industry secures a reward for their intellectual property and that those persons that are 'free-riding' on the industry are required to pay their way.

- Each controlling body will administer the race fields provision, collect the fees and distribute the fees to their industry.

- The second matter the Bill deals with is a piece of legislative housekeeping, that is, the repeal of certain provisions of the *Thoroughbred Racing Act 1996* and the corresponding provisions now in the *Greyhound and Harness Racing Administration Act 2004*, which were found to be invalid by the Federal Court.

- The Federal Court found in the 2003 *SportOdds* case that the requirements that a NSW bookmaker company was to have no involvement in betting activities in other jurisdictions and that the company had to be registered and be present in locations in NSW were discriminatory and protectionist.

- It is my view that the Bill does not contain any provisions that make rights, liberties or obligations unduly

dependent upon insufficiently defined administrative powers or upon non-reviewable decisions.

- The Bill has been developed with the advice of the Crown Solicitor's Office with specific regard to Constitutional matters and the establishment of appropriate merit review provisions.
- After thoroughly considering all issues relating to race fields the Government is confident that this legislation will provide a welcome boost to racing in NSW.
- I commend the Bill to the House.