Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the Racing Administration Act 1998 (the Principal Act) as follows in response to the recent court cases of Betfair Pty Limited v Western Australia [2008] HCA 11 (the Betfair Case) and Tom & Bill Waterhouse Pty Ltd v Racing New South Wales [2008] NSWSC 1013 (the Waterhouse Case):

(a) to provide that certain provisions in the Principal Act relating to the publication and advertising of betting information and betting services apply equally to wagering operators licensed in New South Wales and those licensed in other States and Territories,

(b) to amend the provisions of the Principal Act that prohibit the publication of NSW race field information by any person without authorisation to provide that:

(i) specified listed uses of that information (not just publication of that information as at present) will be prohibited without authorisation, and

(ii) those provisions will apply only to wagering operators and persons (or persons belonging to a class of persons) prescribed by the regulations under the Principal Act, and

(iii) those provisions extend to using information about an individual horse or greyhound in a race (or scratched from a race),

(c) to make other miscellaneous amendments.

The Bill also makes consequential amendments to the Racing Administration Regulation 2005 (the Principal Regulation).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the Racing Administration Act 1998 set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Racing Administration Regulation 2005 set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after the proposed Act commences. Once the amendments contained in the proposed Act have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Racing Administration Act 1998

Amendments in response to the Betfair Case

On 27 March 2008, the High Court handed down its decision in the Betfair Case and held that certain laws of Western Australia were invalid as they were contrary to section 92 of the Commonwealth Constitution. Section 92 requires trade, commerce and intercourse among the States to be absolutely free. The effect of the decision is that State laws must not operate to discriminate against wagering operators (bookmakers and operators of totalizators and betting exchanges) who are licensed in other States or Territories of Australia in order to protect wagering operators licensed in this State. The following amendments are proposed in response to that court decision. In summary, the Principal Act is to be amended so that certain provisions relating to the publication of betting information and advertising of betting information and betting services apply equally to wagering operators licensed in New South Wales and those licensed in other States and Territories.

Schedule 1 [1] inserts a number of new definitions into section 27 of the Principal Act for the purposes of Part 4 of that Act (Betting information and advertising). Among the new definitions is licensed wagering operator which is defined to mean a wagering operator that holds a licence or authority (however described) under the legislation of this or any other State or Territory to carry out its wagering operations (whether in that State or Territory or elsewhere).

Section 29 (1) of the Principal Act makes it an offence to publish any betting information (as defined in section 27). Section 29 (2) contains certain limited exclusions from the offence. Schedule 1 [5] substitutes section 29 (2) and provides instead that the offence in section 29 (1) does not operate to prohibit the publication of:

(a) betting information relating to a licensed wagering operator, or

(b) betting information (of the kind prescribed by the regulations) relating to a wagering operator (other than a licensed wagering operator) prescribed by the regulations.

Section 30 (1) of the Principal Act makes it an offence to publish certain advertisements relating to betting information or betting services. Section 30 (2) contains certain limited exclusions from the offence. Schedule 1 [6] substitutes section 30 (2) and provides instead that the offence in section 30 (1) does not operate to prohibit the publication of an advertisement relating to a licensed wagering operator. However, it is made clear that section 30 does not limit the operation of any regulations relating to responsible practices in the conduct of betting, including regulations restricting or prohibiting the conduct of promotions or other activities (including advertising).

Schedule 1 [4] and [7]–[9] make consequential amendments.

Amendments in response to the Waterhouse Case

Currently, section 33 of the Principal Act makes it an offence for any person to publish, whether in New South Wales or elsewhere, a NSW race field unless the person:

(a) is authorised to do so by a race field publication approval and complies with the conditions (if any) to which the approval is subject, or

(b) is authorised to do so by or under the regulations under the Principal Act.

On 29 September 2008, the Supreme Court held in the Waterhouse Case (among other things) that:

(a) "publish" in section 33 means publish to the world at large (not one-on-one communication, such as when placing a bet with a bookmaker), and

(b) a "NSW race field" in that section means the complete list of all greyhounds or horses in a race (or all scratchings).

The effect of the decision was that a bookmaker who accepted a bet on a horse or greyhound in a NSW race (without doing anything further such as putting up the list of horses or greyhounds racing) would not be required to obtain authorisation under section 33.

The following amendments are made in response to that decision. In summary, the Principal Act is to be amended so that:

(a) section 33 is to apply only to wagering operators and persons (or persons belonging to a class of persons) prescribed by the regulations under the Principal Act, and

(b) only specified listed uses will be prohibited by the section, and

(c) the section is to apply to information about an individual horse or greyhound in a race (or scratched from a race) rather than the whole field (or all the scratchings).

Schedule 1 [11] omits section 33 of the Principal Act and replaces it with proposed section 32A and proposed new section 33.

Proposed section 32A provides that in Division 3 of Part 4 of the Principal Act, a person uses NSW race field information only if the person, whether in Australia or elsewhere:

(a) publishes any NSW race field information, or

(b) communicates any NSW race field information to a person (regardless of whether the person already knew the information), or

(c) acknowledges or confirms any NSW race field information communicated to the person (including acknowledging or confirming the information by accepting, or facilitating the making of, a bet), or

(d) makes a written or electronic record (such as a betting ticket, statement of account or notice) that contains or refers to any NSW race field information (regardless of whether the record is communicated to any person), or

(e) uses any NSW race field information in a manner prescribed by the regulations, or

(f) causes any of the activities referred to in paragraphs (a)–(e) to occur.

Proposed new section 33 makes it an offence for a wagering operator or prescribed person to use NSW race field information unless the wagering operator or person:

(a) is authorised to do so by a race field information use approval and complies with the conditions (if any) to which the approval is subject, or

(b) is authorised to do so by or under the regulations under the Principal Act.

It will be a defence to a prosecution for the new offence if a wagering operator proves that the use of NSW race field information:

(a) did not occur in connection with the making or accepting of a bet (or the offer to make or accept a bet), and

(b) did not occur in the course of the business of the wagering operator.

Schedule 1 [2] replaces the definition of NSW race field in section 27 of the Principal Act with a definition of NSW race field information. The new term is defined to mean information that identifies, or is capable of identifying, the name or number of a horse or greyhound:

(a) as a horse or greyhound that has been nominated for, or otherwise taking part in, an intended race to be held at any race meeting on a licensed racecourse in New South Wales, or

(b) as a horse or greyhound that has been scratched or withdrawn from an intended race to be held at any race meeting on a licensed racecourse in New South Wales.

Schedule 1 [3], [10] and [12]–[15] make consequential amendments.

Miscellaneous amendments

Schedule 1 [16] amends section 36 of the Principal Act to provide that if a written publication or communication (including on the Internet) of NSW race field information refers to a person as being the person by whom or on whose behalf the publication or communication is made, the person so referred to is, in the absence of proof to the contrary, taken to have published or communicated the information.

Schedule 1 [17] and [18] make consequential amendments.

Schedule 1 [19] inserts proposed section 40 into the Principal Act to provide that in proceedings for an offence under section 33 of the Principal Act, certain certificate evidence (relating to race field information use approvals and NSW race field

information) is admissible and is prima facie evidence.
Schedule 1 [20] amends Schedule 1 (Savings and transitional provisions) to the Principal Act to enable regulations of a savings or transitional nature consequent on the enactment of the proposed Act to be made.
Schedule 1 [21] inserts a Part into Schedule 1 to the Principal Act to provide that a race field publication approval in force immediately before the commencement of the proposed Act is taken, with all necessary modifications, to be a race field information use approval. Such a race field publication approval that authorises a person to publish a NSW race field in respect of a specified race or class of races is taken to authorise the person to use NSW race field information in respect of that race or class of races.
Schedule 2 Amendment of Racing Administration
Regulation 2005
Schedule 2 [1] amends clause 12 of the Principal Regulation to provide that the controls set out in that clause on publishing gambling-related advertising that currently apply only to licensed bookmakers, apply to all licensed wagering operators.
Schedule 2 [2] inserts proposed paragraph (h) into clause 12 (1) of the Principal Regulation to make it an offence for a non-proprietary association or licensed wagering operator (or an employee or agent of a non-proprietary association or licensed wagering operator), to publish any gambling advertising that offers any credit, voucher or reward as an inducement to participate, or to participate frequently, in any gambling activity (including as an inducement to open a betting account). The offence will carry a maximum penalty of 50 penalty units (currently $5,500).
Schedule 2 [3] makes a consequential amendment.

Schedule 2 [4]–[14] make amendments to the Principal Regulation consequent on the amendments to the provisions of Division 3 of Part 4 of the Principal Act referred to above.
Schedule 2 [15] makes an amendment to the Principal Regulation consequent on the repeal of section 28 of the Principal Act by Schedule 1 [4] (itself a consequential amendment).