RACING ADMINISTRATION AMENDMENT BILL 2008

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Bill introduced on motion by Mr Kevin Greene.

Agreement in Principle

Mr KEVIN GREENE (Oatley—Minister for Gaming and Racing, and Minister for Sport and Recreation) [10.03 a.m.]: I move:

That this bill be now agreed to in principle.

The Racing Administration Amendment Bill 2008 has two main purposes. It amends the provisions in the Racing Administration Act 1998 relating to the publication of betting information and the advertising of betting services to remove doubts over their validity under the Australian Constitution. It also clarifies certain provisions in the Act relating to the publication and use of race fields in New South Wales following a recent decision in the Supreme Court. The publication of betting odds on racing events during the course of a race meeting, which includes broadcasting odds on radio and television, is prohibited in New South Wales under section 29 of the Racing Administration Act. Section 30 of the Act contains prohibitions on the advertising of betting services in New South Wales.

There are general exemptions to these prohibitions that effectively enable licensed bookmakers in New South Wales and the New South Wales totalisator licensee, TAB Limited, to advertise their wagering operations in this State. These laws have been challenged in the Federal Court by two interstate wagering operators, Betfair Pty Ltd, which operates a betting exchange out of Tasmania, and Sportingbet Australia Pty Ltd, which is a corporate bookmaker operating out of the Northern Territory. The applicants have sought declarations that sections 29 and 30 of the Racing Administration Act are invalid under section 92 of the Australian Constitution, and a similar provision in the Northern Territory (Self Government) Act 1978, which provides that trade, commerce and intercourse among the States shall be absolutely free. Betfair and Sportingbet have also challenged the Victorian wagering advertising laws.

The Federal Court action follows on from a judgement of the High Court of Australia, handed down on 27 March 2008, in relation to a challenge by Betfair over the validity of certain Western Australian legislation, on the basis that the legislation was contrary to section 92 of the Constitution. In essence, the High Court declared invalid the Western Australian legislative provisions that prohibited a person physically present within that State from betting through Betfair's Tasmanian betting exchange operation and prohibited Betfair from publishing or making available a Western Australian race field without authority.

The High Court judgement has implications for wagering laws across Australia, placing doubt over the validity of certain laws under the Constitution. It was initially intended to address any Constitutional issues within the New South Wales legislation as part of reforms coming out of a wagering review being conducted by Mr Alan Cameron, AM. The Government has commissioned Mr Cameron to conduct an independent review of wagering in New South Wales to provide a framework for the future growth and sustainability of the racing industry. The laws relating to the publication of betting information and the advertising of wagering services were issues specifically identified for examination as part of that review, which is expected to report in the near future.

The Federal Court challenge to the New South Wales laws has prompted a more immediate response, with the bill designed to ensure that the provisions of section 29 and 30 of the Racing Administration Act are valid under the Constitution. I should stress that the bill will not be repealing the legislative provisions in their entirety. While the restrictions on Australian licensed wagering operators will be lifted, it will remain an offence for a wagering operator who is not licensed in an Australian jurisdiction to advertise in New South Wales. In addition, the betting odds of a non-Australian licensed wagering operator may only be published if the operator is prescribed by the regulations.

Importantly, the bill amends clause 12 of the Racing Administration Regulation 2005 to extend the current responsible advertising provisions applying to licensees in New South Wales to include advertisements relating to interstate wagering operators. The regulations currently provide that wagering operators must not publish any gambling advertising that: encourages a breach of the law; depicts children gambling; is false, misleading or deceptive; suggests that winning will be a definite outcome of participating in gambling activities; suggests that participation in gambling activities is likely to improve a person's financial prospects; promotes the consumption

of alcohol while engaging in gambling activities; and is not published in accordance with decency, dignity and good taste and, in the case of a television commercial, in accordance with the Commercial Television Industry Code of Practice as in force at the time the gambling advertising is published.

In addition, gambling advertising in a newspaper, magazine, poster or other printed form must contain the G-line problem gambling message, which includes a telephone contact number for counselling services. Due to the uncertainty surrounding the validity of the advertising laws, a decision was recently taken not to enforce the New South Wales prohibitions until the legal position was clarified. A number of advertisements have since appeared on behalf of interstate-based wagering operators that have included the offer of inducements in the form of free bets to persons opening betting accounts. The Government is concerned that such advertising may contribute to problem gambling by luring persons who can ill afford to bet, or persons with a gambling problem, to open betting accounts.

The bill will address those concerns by amending the regulations to provide that wagering operators must not 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 offering an inducement to open a betting account. Understandably, the New South Wales racing industry has expressed concerns that the relaxation of the advertising laws will lead to further erosion of racing industry revenue streams. It has to be expected that interstate wagering operators will attract additional New South Wales customers by advertising their operations in this State.

Although the race fields legislation, which I will refer to in more detail shortly, will give the racing industry some respite from any redirection of betting turnover away from New South Wales wagering operators, it will not fully compensate the industry for any negative impact on betting turnover with this State's TAB. While sympathetic to the racing industry's concerns, on the basis that the advertising legislation in its current form is highly likely to be held as invalid under the Constitution, the Government is quite rightly taking action to address the issue. The Victorian Government is also proposing to amend that State's advertising laws along similar lines. Separately, the bill also clarifies the operation of the race fields legislation in the light of the recent Waterhouse judgement in the Supreme Court. In that judgement the findings were essentially that the definition of "publish" was not wide enough to cover the intended purpose of the legislation, and that the definition of a "race field" meant the whole race field. That ultimately resulted in the opportunity for a small number of bookmakers to put the proposition that they do not publish race fields because they do not use a betting odds board, and that their telephone clients advise them of the details of the bet.

The proposed amendments address these issues by reinforcing the intent and spirit of the legislation. The fundamental principle is that those persons, particularly wagering operators, who publish and use New South Wales race fields information for profit must contribute to the cost of putting on the racing. Accordingly, the definition of "publish" has been overtaken with "use race field information" in new section 32A. The meaning of "use a race field" provides for the usual bookmaker and wagering operator processes associated with taking a bet. This includes all aspects of using the telephone and electronic means to communicate the quoting of odds, the making of a bet and the paperwork associated with bookmaker betting.

The definition of "race fields" is also being amended to "race fields information" so that it includes the name of more dogs or horses that make up the field. The proposed legislation clarifies that publishing, communicating, using, et cetera, the name of a dog or a horse from a New South Wales race falls within the ambit of the legislation. Also included is a defence for the wagering operator, and staff, which provides the opportunity to demonstrate that a particular use or communication was not used in connection with making a bet, as defined in the Act. I repeat, the essential principle is that those who profit from using New South Wales race fields as a wagering platform should contribute to the cost of conducting New South Wales racing.

As I have said on a number of occasions, the Government fully supports the New South Wales racing industry. I am advised of some speculation that if the Government amends the legislation to close the loopholes identified in the Waterhouse judgement there will be a follow-up challenge. If that is the case, my firm intention is to respond as necessary to any future challenge to give effect to the decision of this Parliament when it approved the race fields legislation. In the interim, the proposed amendments include a regulation-making power that enables any new "uses" of race fields information to be prescribed so that they may be brought within the ambit of the race fields legislative scheme.

A new provision deals with the situation where a person causes such uses of New South Wales race fields information. The intent of the provision is to close the door on the practice of certain corporate bookmakers, such as Betezy, from spruiking to New South Wales race clubs and registered clubs an arrangement by which the bookmaker and the club would share in wagering turnover generated through a website created in the name of the venue but which is essentially a front for the bookmaker. Since it may be argued that in such a case Betezy may not itself directly use race fields information, it would at least be causing the information to be used, and therefore be caught by the legislation.

I am advised that the wagering operator Betezy has indicated it will not make application for race fields approval. In the circumstances, I wish to make it clear to all involved that this practice is not in the spirit of the race fields

legislation and that it will be an offence to engage in such activities. The underlying principle is that those that earn revenue from exploiting New South Wales race fields information must contribute to the organisers of the racing. The bill also appropriately deals with savings provisions and other miscellaneous matters providing for evidentiary procedure. I commend the bill to the House.