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# NSW Legislative Council Hansard

## GAMING MACHINES AMENDMENT BILL

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### Second Reading

**The Hon. HENRY TSANG** [Parliamentary Secretary] [1.20 a.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.

In November 2003, a subsidiary of Melbourne-based Tabcorp Holdings Limited made an offer to buy all of TAB Limited's shares. This offer succeeded in mid-2004, over a rival offer from Brisbane-based UNiTAB Limited. The Government stated at the early stages of the offer that, if either bidder acquired more than 50% of TAB's shares, TAB would be required to divest the business arm operating under the CMS and linked gaming system licences within 18 months. This timing was required to remove any potential conflicts of interest, given Tabcorp currently owns and operates poker machines at Star City Casino and throughout Victoria and the CMS links all gaming machines in clubs, hotels and the Casino and provides daily data on the usage and turnover of each machine and is the basis for monitoring gaming machines and the collection of tax by the Government.

Tabcorp subsequently entered into a Deed with the Minister for Gaming and Racing, which committed it to divest the business within this timeframe. The Government also indicated at the early stages of the offer that the investment licence would be withdrawn, subject to Tabcorp completing its contractual obligations for gaming machines provided under this licence.

During the offer period, Tabcorp agreed to procure the sale of the CMS and linked gaming system business to UNiTAB. The divestment is subject to Tabcorp and UNiTAB concluding contractual arrangements, which is currently expected to occur prior to December 2004.

In December 2003, Parliament passed the Totalizator Legislation Amendment Act for the purpose of amending the Totalizator Agency Board Privatisation Act 1997 and the Totalizator Act 1997 to facilitate the takeover offers being considered at that time. This Bill follows on from that initial step. The amendments in the Bill are required to enable completion of the commercial arrangements regarding the divestment of the TAB gaming licences to UNiTAB to take place.

I note that the amendments are not of a policy nature. There is no major policy shift in the way the CMS or linked gaming system licences are to be run. There is no change to the exclusivity arrangements for these licences. There is no change to the way gaming machines will be monitored through the CMS, or additional requirements for the holder of the linked gaming system licence. The Bill contains only machinery amendments that will facilitate the finalisation of a commercial agreement between Tabcorp and UNiTAB regarding the ownership and operation of the CMS and linked gaming system businesses.

The Bill seeks to remove the specific references in the current legislation to TAB Limited as the holder of the exclusive licences for the CMS and linked gaming systems. The amendments will not disturb the exclusivity that the legislation confers upon the CMS and linked gaming system licences. The references to TAB are to be replaced with a more generic expression that allows these provisions to apply to UNiTAB, and any other future owner of the CMS and linked gaming systems licences, without the need for further amendment to the legislation.

The amendments also enable the transfer of the exclusive licences from TAB Limited. This is necessary to allow the CMS and linked gaming system businesses to be transferred to UNiTAB. The provisions are clear that any such transfer is only allowed with written consent of the Minister and subject to any terms and conditions determined by the Minister. It is anticipated that the timing of the licence transfers would converge with other components of the divestment strategy.

As part of the transfer of the licences it is important to ensure that services continue their smooth operation. To facilitate this the Bill incorporates a number of savings provisions. One savings provision ensures that current third-party contracts that are in force remain applicable to the new licence holder.

As a precaution, a provision has been included to allow the Minister to publish an order in the Gazette to require parties to contracts to give any consents that are necessary to permit the assignment of such contracts to the new CMS or linked gaming system licence holder. The relevant contracts must be identified and published in the Gazette.

The contracts must be, in the Minister's opinion, necessary for the continued operation of the CMS or linked gaming system businesses, and reasonable conditions can be applied to the consents. Typical examples are a contract for telecommunication services, or a contract for CMS equipment maintenance services.

It is understood that the existing provisions of the Procurement Agreement between Tabcorp and UNiTAB require Tabcorp to use best endeavours to secure the assignment of contracts. The legislation need not be used if the parties to the contracts give consent, and given the power to require consent it is considered likely that the majority of contracts will not require the legislative power to be exercised.

It will be the responsibility of the licence holder to come to the Minister with any contracts where consent is not given, and it will need to convince the Minister that consent is necessary to the running of the CMS or linked gaming system business, before a Ministerial order is made.

If consent is not given within 60 days after it has been sought under an order, the consent is taken to have been given unconditionally. This sanction is to encourage the prompt resolution of this matter and to encourage dialogue between the parties particularly in relation to any conditions sought on the consent.

These are sensible provisions, as they will ensure that the new owner of the CMS and linked gaming system businesses is in the same position to operate these businesses as TAB, prior to the sale.

Another savings provision relates to the collection of fees via direct debit. A great number of venues have provided information to enable the CMS monitoring fee, and fees associated with the operation of linked gaming systems to be paid via direct debit. Rather than requiring all of these venues to provide this information again, in the same form, to the new CMS and linked gaming system licensee, this provision allows the direct debit payment authorisations to continue to operate in favour of the new licence holder.

As mentioned above, one of the requirements to allow the takeover of TAB Limited was that the investment licence would be withdrawn. The investment licence currently enables TAB Limited to own gaming machines and operate them in hotels on a profit-share basis.

Few hotels took up contracts under the investment licence with TAB and all but one of these contracts have expired. The proposed legislation is drafted to remove all references to an investment licence, but includes a savings provision which allows the remaining investment licence contract to continue until its expiry date and to prevent any extension of this contract.

The Gaming Machines Act currently requires that the CMS and linked gaming system licensee have commercial arrangements with the NSW racing industry.

During the negotiations for the takeover of TAB Limited by Tabcorp, Tabcorp and the racing industry entered into a Heads of Agreement in relation to the ongoing commitment to the racing industry. This agreement supersedes the specific agreement between the CMS and linked gaming system licensee and the racing industry. It means that the defined legislative requirement is no longer necessary, and can therefore be removed from the Bill.

I now turn to the issues of interest to the Legislation Review Committee. I believe that this Bill does not contain any provisions that fall within the areas of interest to the Committee.

The Bill does not contain any provisions that trespass on personal rights or liberties.

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.

There are no new regulation-making powers conferred by in the Bill and as such it is not considered that it would inappropriately delegate legislative powers or insufficiently subject the exercise of legislative power to Parliamentary scrutiny.

As I have said before this is a Bill that removes technical impediments to the transfer of the CMS and linked gaming system licences from TAB Limited to UNiTAB. The amendments are machinery and necessary and appropriate to enable a commercial agreement to take place.

The Department of Gaming and Racing will continue its role to regulate UNiTAB as licensee.

I commend the Bill to the House.

**The Hon. MELINDA PAVEY** [1.21 a.m.]: I lead for the Opposition on the Gaming Machines Amendment Bill. The Opposition will not oppose the bill. The bill has come about because it provides for the divestment of TAB Ltd's compulsory functions under the centralised monitoring system [CMS] and linked gaming system licences to UNiTAB. That was one of the important requirements of the takeover by Tabcorp Ltd of TAB Ltd. The CMS is a compulsory arrangement to which all licensees must adhere by connecting their poker machines to that system. This applies not only for monitoring in respect of taxation but also for linked gaming systems within licenses premises in New South Wales.

In a linked gaming system two or more specially approved gaming machines are linked electronically to contribute a percentage of the money wagered on the gaming machine to a separate jackpot pool. The CMS is frequently the subject

of complaint by licensees in both registered clubs and hotels. Licensees largely criticise the nature and cost of that system. The system involves a significant cost, a monthly payment that is made by licensees to the CMS. The Minister has stated in explanatory notes on this bill that the setting of fees for the CMS will remain unaltered. The Treasurer, on advice from the Independent Pricing and Regulatory Tribunal [IPART], sets those fees and those fees remain unchanged, despite this being the most unpopular aspect of this whole arrangement.

In relation to the specific elements of the bill, it substitutes references to TAB Ltd with a generic provision that permits ownership of the CMS and linked games systems to be in the name of UNiTAB or any other future owner of the licences. The bill removes all references to an investment licence, which previously enabled TAB Ltd to own gaming machines and operate them in hotels on a profit share basis. As there is only one remaining hotel with a contract under the investment licences, the bill allows the remaining investment licences contract to continue, but only until its expiry date.

At the time of the takeover battle for TAB Ltd, Tabcorp Ltd reached an agreement with the racing industry that superseded the current arrangement between the CMS and linked games and the racing industry. Settlement of this matter was a critical precondition of the takeover as included in the enabling legislation. The Opposition, along with ClubsNSW and the Australian Hotels Association, remains critical of the CMS monopoly and its inefficiency generally. However, the shadow Minister in the other place, George Souris, said that the Opposition supports the bill and wishes Tabcorp best fortunes for the future.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [1.23 a.m.]: The Gaming Machines Amendment Bill implements further amendment resulting from the passage of the Totalizator Legislation Amendment Act, passed last year. The bill allows for the transfer of the exclusive licences for the central monitoring system [CMS] and linked gaming systems. The principal Act was amended to enable all shareholders to consider voting on two commercial propositions for the purchase or possible merger of TAB Ltd. The Government acknowledged at the time that if Tabcorp were successful in its proposition to purchase the New South Wales TAB, Tabcorp would have to divest the CMS business arm within 18 months of the purchase. However, I was critical that no such provisions were contained in that bill. I was very concerned about this as TAB holds an exclusive 15-year licence on the New South Wales linked jackpot system that links all machines in New South Wales to the CMS.

However, the Government has pulled through and delivered on its promise. The amendments do not change the way the CMS or linked gaming system licences operate or the exclusivity arrangements for the licences. It will remove specific references to TAB Ltd so that other entities can take over the licence. The Government may then gazette the contracts between the holder of a CMS licence or links licence if it deems necessary. I had spoken against the concept of the CMS licence being exclusive in the same way as Telstra could not have a monopoly on telephone services. The CMS should be used for positive messages as well as the collection of profits. That has not yet happened, but it needs to be done.

As of June last year there were 1,830 hotels with 24,255 electronic gaming machines and 1,381 registered clubs with 75,214 electronic gaming machines. For 2002-03 the turnover on gaming machines in hotels and registered clubs totalled more than \$47 billion. Every time a bill comes before the House that amends the Gaming Machines Act I attempt to move amendments to legislate player-for-player activity statements; that is, harm minimisation through technology that will interact with the player activity statements that inform players of their total turnover during the month for the period covered by that statement; the total wins recorded during the monthly period; the net expenditure, that is, turnover less wins during the monthly period; the total points earned and redeemed during the monthly period as a result of playing gaming machines under the scheme; the total length of time over each 24-hour period during the monthly period when the participant's player card is inserted in gaming machines under the scheme; and the total length of time that the participant's player card is inserted in gaming machines under the scheme during the monthly period.

The technology exists to display on-screen time and harm minimisation icons. Every time I have done this the Government comes up with some lame excuse, and promises me it will do something about getting the technology on line within six months, and the Opposition glibly backs the Government every time. This has been going on since 2001. Now such amendments may be beyond the leave of this bill, but I remind the Government of the necessity to insert after section 49 of the Gaming Machines Act 2001 a new section 49A, which would read either:

A hotelier or registered club must ensure that the following is displayed on each operating gaming machine display screen in a club or hotel prior to the commencement date as determined by the regulations being no later than two years from the date of proclamation of this section:

- (a) the time in either a digital or analog display accurate to 7 minutes of the correct time, with numerals for a digital display 1 cm or greater or the circumference of the analog clock 3 cm or greater.
- (b) between the period of 10-15 minutes of machine play since zero credits and within each following period of continued play since zero credits 10-15 minutes display messages as determined by the regulations.
- (c) further on-screen harm minimisation information and other items as determined by the regulations.

Maximum penalty: 50 penalty units.

Or would read:

49A Display of on screen time and harm minimisation items

A hotelier or registered club must ensure that on screen harm minimisation information and other items as

determined by the regulations is displayed on each operating gaming machine display screen in a club or hotel prior to the commencement date as determined by the regulations being no later than two years from the date of proclamation of this section.

Maximum penalty: 50 penalty units.

The Department of Gaming and Racing issued the first determination on technical standards in November 2000, and we are still waiting for the legislation. The Liquor Administration Board's submission to the Independent Pricing and Regulatory Tribunal of New South Wales entitled "Review of Gambling Harm Minimisation Measures" endorses the implementation of such measures. It states:

In preparation for introduction of this measure, when the remaining matters in the First Determination are implemented, the Board arranged for the focus group research into the contents of the messages, and as set out earlier, to be undertaken. The Board has determined the contents of the first 4 messages to be mandated.

In particular the board stated:

The Board believes that gamblers should be provided with as much information as possible to assist them to decide whether to commence or continue playing. The contents of the proposed messages will provide such information. The time taken to provide the message will also be a circuit-breaker.

The board also agreed with the recommendations of the Productivity Commission that there is a need for enforced breaks to allow gamblers to pause before automatically playing on. The board also supported the idea that the prescribed messages should be required to scroll across the screen at least once during every 30 minutes of continuous use and that the content of those messages should be consistent with all other harm minimisation messages. In June this year IPART released a report entitled "Gambling: Promoting a Culture of Responsibility", in which it considered the merits of periodic information messages, display of payout ratios for gaming machines and information on individual gambling sessions. The IPART report states on page 58, under the subheading "Evidence":

There are two studies of particular relevance to periodic information messages. The first, conducted by Tony Schellink and Tracy Schrans, focused on responsible gambling features and other changes to 1,400 gaming machines in Nova Scotia, Canada. One of the responsible gambling features introduced was a pop-up reminder, which advises the player how long they have spent playing that machine after 60, 90 and 120 minutes. The study was based on a sample size of 164 people who played gaming machines at least monthly, of which 30 were classified as problem players. The same people were surveyed on four occasions over a period of nine months.

This study found that a message after 60 minutes of continuous play was effective in reducing session length. The message advised players how long they had been playing and asked whether they wished to continue.

There was also a second study. The tribunal considered that there is sufficient evidence and stakeholder support for it to recommend the introduction of pop-up messages after 60 minutes of continuous play. The introduction of this measure should be accompanied by research to evaluate its effectiveness. The tribunal also noted that the introduction of this measure would be linked to the introduction of clocks on gaming machine screens, in terms of both technology used and phase-in with new machines.

Page 61 of the report refers to information on individual gambling sessions. It notes that the existing technical standards for gaming machines require that these machines provide the player with information on the monetary value of their credits, bets and wins. These requirements could be extended so that gaming machines also provide information to players on an individual gambling session, including the time and money the player has spent gambling. The tribunal's recommendations address provision of a range of information for players of gaming machines about individual gambling activities and the gambling environment, including the display of the monetary value of credits, bets and wins on gaming machines; the introduction of 60-minute pop-up reminders on gaming machines; and more effective utilisation of longer-run player activity statements. Given the concerns expressed about the effect of providing further information about time and money spent during individual gaming machine sessions, the tribunal considered that this measure should not be introduced at this time. It recommended that the requirements to provide information on individual gambling sessions on gaming machines should not be introduced at this time. I think that is a highly conservative recommendation; I have merely included it for the sake of honesty.

I believe the CMS, as a monopoly, must take account of the social effects of gambling and the transfer of the CMS licence under this legislation should not stop the provision of harm minimisation measures in gambling using CMS technology to achieve that objective. As it is quite capable of collecting information about capital movements, such as jackpots and dividends, it should also be able to take account of the effects that it is having on individual players. The Australian Democrats do not oppose the legislation, as it merely transfers the contract.

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

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