

TAB (DISPOSAL) BILL 2019

Introduction and First Reading

Bill introduced, on motion by **Mr B.S. Wyatt (Treasurer)**, and read a first time.

Explanatory memorandum presented by the Treasurer.

Second Reading

MR B.S. WYATT (Victoria Park — Treasurer) [12.26 pm]: I move —

That the bill be now read a second time.

I am pleased to present members with the TAB (Disposal) Bill 2019. This bill represents the culmination of years of debate on the future of the Western Australian TAB. After years of false starts and inaction from the previous government, the McGowan government is acting to secure the future of the Western Australian racing industry.

Members will recall that the current Leader of the Opposition, then Treasurer, announced as part of his 2014 budget speech that the government's ownership of the TAB was under review. Since then, there has been an ongoing debate amongst the racing industry and broader community about the merits of a sale of the TAB and the conditions upon which it could be supported. The government recognises that the local racing industry relies on the TAB for funding. Since coming to office, the McGowan government has undertaken an earnest and concerted consultation process to develop a TAB sale framework that balances the various interests of different stakeholders and sets the foundations to support an independently sustainable and competitive racing industry into the future.

On 6 September 2017, the Minister for Racing and Gaming informed Parliament that the government was commencing a process to inform a sensible and responsible decision on the future of the TAB. In his statement, the minister noted the importance of achieving the long-term sustainability of the industry in a fast-changing landscape.

On 6 March 2018, the minister and I announced that the scoping study report on the future of the TAB had been completed, with the report concluding it is possible for a transaction to be structured in a way that meets the interests of both the state and the racing industry. The government then commenced a two-stage consultation process on the findings of the report. The first stage of consultation involved discussions with the board of Racing and Wagering Western Australia and its subcommittees representing the three racing codes, which was conducted from February to April 2018, resulting in general alignment and acceptance of key principles with the racing industry leadership. The second stage of consultation commenced with the publication of a discussion paper by the Department of Treasury on 29 June 2018. The discussion paper explained how a potential sale of the TAB could be structured to benefit the racing industry, and facilitated input and feedback from key stakeholders and the community. Following the publication of the discussion paper, the Department of Treasury and Racing and Wagering Western Australia conducted 12 consultation forums, including regional forums in Bunbury, Albany, Geraldton and Kalgoorlie. In total, 107 submissions were made to the discussion paper from a range of individuals and stakeholder groups, with submissions published on the Department of Treasury's website. On 9 October 2018, following the conclusion of the consultation process, the minister and I announced the government's decision to move forward with the sale of the TAB. As we declared on that day, the long-term interests of the racing industry have been, and will continue to be, front of mind throughout the sale process. In moving forward with a sale, the government's objectives are to: support an independently sustainable and competitive racing industry; optimise value for both the state and the racing industry; ensure the integrity of racing and wagering activities in Western Australia are maintained; and conduct a fair and robust process.

As members are aware, the origins of the TAB date back to the 1960s. The TAB was established to be the sole provider of off-course betting services in Western Australia, to address the rise in off-course betting shops and to direct revenue from wagering back to racing. Since then, the racing industry has relied on revenue from the TAB. The TAB is currently operated by Racing and Wagering Western Australia. RWWA is also the principal racing authority for Western Australia, making it responsible for the governance and integrity of all three racing codes: thoroughbred, harness and greyhound. RWWA's functions and powers are defined by the Racing and Wagering Western Australia Act 2003. The TAB has served the Western Australian racing industry well for many years under government ownership. However, given the evolution of the Australian wagering market, there are significant competitive challenges if the TAB were to remain as the only standalone state-owned TAB in Australia. These challenges include: intense competition from larger, domestic and internationally backed corporate wagering operators with strong economies of scale; customer preferences shifting from the TAB's traditional strengths, with trends toward online channels, away from physical premises, fixed-odds betting, away from parimutuel, and more wagering on sports relative to races; and the TAB's relatively small scale constraining its ability to leverage investment in marketing and technology compared with its competitors.

In light of these challenges, the case for selling the TAB essentially boils down to the idea that a larger operator will be better placed to manage these challenges over the longer term through the benefits of scale and efficiency and thereby provide a more reliable revenue stream for the racing industry into the future. This bill provides the framework for an incoming operator to be granted a new wagering licence in accordance with a revised regulatory regime. Following the commencement of operations under the new wagering licence by the incoming operator, RWWA will cease its wagering operations and become Racing Western Australia, continuing its functions as the principal racing authority for the three racing codes and maintaining its role in distributing funds to the racing industry.

This bill also preserves the continuing role of the TAB in funding the industry by requiring the incoming wagering operator to enter into a contractual arrangement with Racing WA, which will be called the racing distribution agreement, but referenced in the bill as a racing industry arrangement. The racing distribution agreement will establish the core relationship between the wagering operator and the racing industry, including the obligation for the operator to provide ongoing funding to Racing WA in the form of a product fee, and for Racing WA to coordinate the delivery of the annual racing program. The product fee will be paid by the operator from its wagering activities and set as a percentage of the operator's gross wagering margin. This contractual model was agreed to with the racing industry on the basis that it provides greater certainty for both parties relative to other models and removes the racing industry's exposure to the operator's ongoing operating costs and capital expenditure.

Drafting of the racing distribution agreement is underway and will be finalised ahead of the commencement of the market process in which potential new operators will be invited to express their interest in taking on the new Western Australian wagering licence. Apart from formalising the agreed funding formula with the new operator, the racing distribution agreement will include a number of contractual protections for the racing industry. These protections include: a funding guarantee period that will lock in the minimum level of funding provided by the TAB operator to the racing industry for the initial three years of the arrangement; mechanisms to prevent licence arbitrage; and a positive contractual obligation for the operator to act in the best interests of the TAB, thus maximising funding flowing to the racing industry. Importantly, the term of the wagering licence and racing distribution agreement will be aligned. The bill provides a licence term of up to 40 years, with a possible two-year extension. Previous consultation and market sounding has suggested that a term of around 25 to 30 years would likely be sufficient to align the interests of the operator to invest in and operate the TAB for the long-term growth and prosperity of the racing industry. The government will assess the value of extending the term up to the full 40 years as part of the market process.

In terms of the legislative framework, the key measure that protects the racing industry's interests is that it is a requirement of the new wagering licence for the racing distribution agreement to be in place. In other words, a new wagering operator is not licensed to operate without an agreed racing distribution agreement with the racing industry. There is no deal unless Racing Western Australia is onboard. This balance of interests reflects the government's view that this reform is not something that is being imposed on the racing industry; rather, the framework has been developed such that agreement is required for the sale of the TAB to proceed. The fundamental principle that has underpinned consultation on funding has been that the racing industry should be no worse off. In other words, the racing industry can expect to receive at least the equivalent amount of funding from the privately operated TAB as it would if the TAB remained in government ownership, with appropriate mechanisms in place to support this outcome. However, beyond the no worse off funding principle, there are other parts of the reform package that will make the racing industry significantly better off. Building upon the government's decision last year to legislate an allocation of 30 per cent of the revenue derived from the new point-of-consumption wagering tax receipts to the racing industry, this bill locks in the government's commitment to allocate 35 per cent of the net proceeds from the sale of the TAB to establish a racing infrastructure fund.

The racing infrastructure fund will be administered by Racing Western Australia, with the investment strategy and funding allocations approved by the Minister for Racing and Gaming as part of the annual strategic development planning process. The assessment of priority needs and associated business cases will be undertaken by Racing Western Australia.

The racing infrastructure fund represents a one-off opportunity for the racing industry to capitalise the value the industry and state have together built in the TAB business. In this regard, the government is pleased to have agreed a fair position with the racing industry that will provide for a rejuvenation of racing infrastructure across the state. In addition, as I announced in my budget speech last week, the government has decided that the balance of the proceeds will be used as a down payment for the planned new maternity hospital to replace King Edward Memorial Hospital for Women.

Another key value add for the racing industry in this reform will be the potential introduction of simulated racing products at TAB outlets. The government is aware that this topic is likely to be used for political pointscoring. Nevertheless, the government has taken a considered approach, weighed up the options, consulted with stakeholders, referred the matter to the experts and is ultimately satisfied that the introduction of simulated races will assist us

delivering on the objectives to support an independently sustainable and competitive racing industry and optimise value for both the state and the racing industry. The facts are these: the local racing industry, TAB agents and state finances will all benefit from the introduction of simulated races as the result of increased revenue flows. The benefits are incremental and should be considered in the context of the overall wagering market product mix. In New South Wales and Victoria, simulated races represent a relatively minor product in terms of percentage of total wagering turnover at around 3.4 per cent of turnover. Strict regulatory boundaries will be imposed such that simulated races may only be accepted at the physical premises of betting agencies; they will not be available online or via betting apps. The hours of operation and intervals between simulated races will be restricted. Betting on simulated races is akin to betting on live races. The races will be shown on TV screens and bets will be placed at existing terminals. The Gaming and Wagering Commission has considered the matter and does not oppose its introduction subject to the regulatory measures proposed. As it is a product that can currently be offered only at the Burswood casino, the government has secured agreement with Crown Perth to provide for the state to authorise simulated races at betting agencies. Should the incoming wagering operator elect to offer simulated races, they will be required to pay a one-off sum of \$1.2 million to Crown Perth. The introduction of simulated races in betting agencies in Western Australia has been mooted by various industry participants for many years. The government's decision to include it within the package of reform measures for the Western Australian racing industry followed an extensive consultation process with stakeholders. Its introduction is not "pokies by stealth" or other such hyperbole we may hear in the course of debate. Its introduction essentially replicates a product that already exists in betting agencies—that is, betting on horse and dog racing. I reiterate that the introduction will be measured and controlled, with strict limitations in place.

Another stakeholder group the government has been consulting with is TAB agents. Although supportive of the proposed sale, TAB agents are concerned about their status quo contractual standing and what additional protection may be included within the sale framework to address these concerns. The bill allows for the preservation of TAB agents' existing contractual rights as part of the transfer of operations to the new operator—contractual rights that were negotiated under the previous government. Nevertheless, the McGowan government has committed to TAB agents that it will secure additional protections relating to their contractual termination provisions under a new operator. In response to the concerns raised by TAB agents, the government has agreed to require the incoming operator to offer termination payments to agencies identified for closure upon review of network requirements. These payments will be in addition to the 12-month notice period currently required under the standard agency contract and will be set at a minimum of 60 per cent of the prior year's commission up to \$100 000 for the first five years of the new operator taking control. In addition, within the first 12 months of the new operator taking control, any TAB agent that falls below a low commission threshold can choose to be bought out of their agency to the uncapped value of 100 per cent of their previous year's commission. Although these generous conditions will ultimately come at the expense of the broader racing industry, the government considers it a reasonable compromise. Due to the detailed nature of these measures and the cross-referencing to existing contracts, these protections will be secured as a contractual undertaking by the new operator rather than within the bill. However, this does not devalue the importance the government has placed on providing greater certainty for TAB agents going forward.

Lastly, I would like to refer to Racing and Wagering Western Australia's staff. The McGowan government is acutely aware of the importance of the fair and respectful treatment of employees in such processes. RWWA's management has kept staff well informed through formal communication sessions both leading up to and during the sale preparation process. RWWA's staff are considered key stakeholders in the TAB sale process and, in this regard, the successful renegotiation of the general staff agreement, signed in April 2019, is testament to staff being listened to and supported. I would like to thank RWWA's staff for their continued diligence in working to support the local racing industry of Western Australia.

The bill's key functions are to provide the necessary authority and framework to enable a sale of the TAB; provide for the racing infrastructure fund to be established from a portion of the sale proceeds; establish a licensing regime to provide for the grant of a wagering licence to a new operator; amend the existing wagering regulatory framework to incorporate the new wagering licence; ratify and authorise the implementation of the fifteenth supplementary agreement to amend the agreement ratified by the Casino (Burswood Island) Agreement Act 1985, as varied, to provide for betting on simulated races to be authorised under the wagering licence; repeal the wagering functions of RWWA and change its name to Racing Western Australia; abolish the racing bets levy as administered by the Gaming and Wagering Commission and introduce a new race field regime to be administered by Racing Western Australia; and commit to a post-sale review of the arrangements, including the structure and functions of Racing WA.

The bill is divided into 11 parts.

Parts 1 to 5—Disposal sections: parts 1 to 5 of the bill provide the responsible minister with the authority to order the disposal of any TAB asset and liability, as well as the framework in which the disposal can be effected. These parts of the bill incorporate the standard provisions that have been enacted in recent disposal legislation, providing the necessary powers to relevant parties, such as RWWA and the state, to conduct the transaction. These parts of

the bill also provide the minister with the authority to issue transfer orders relating to any disposal order. This includes specifying which assets and liabilities are to be transferred, the timing of the transfer and the proceedings in which a transfer is to occur. For the purposes of a disposal, legal protections are provided to the state and RWWA for the disclosure of information. Finally, these parts of the bill stipulate that 35 per cent of the net sales proceeds from the sale of the TAB, defined as gross proceeds minus transaction and implementation costs, must be credited to a racing infrastructure fund administered by RWA. The bill provides that the racing infrastructure fund may, with the approval of the minister, be applied for providing and improving infrastructure for the state's racing industry.

Part 6—Betting Control Act 1954: part 6 of the bill makes amendments to the Betting Control Act 1954. The key amendments in this section of the bill include the introduction of a new wagering licence regime. This part introduces the framework and process for the application and grant of the wagering licence and enforcement of the licensing scheme, and amends the existing wagering regulatory regime to incorporate the new wagering licence. The key features of the wagering licence regime are as follows. The licence will authorise totalisator and fixed odds betting on races, events and simulated races with only one licence to be in operation at any one time. In granting the licence, the minister may invite persons to apply for the licence with a list of factors that the minister must consider in determining applications. The term is to be specified in the licence with a maximum 40-year term plus a maximum two-year extension. The licence may include an up-front and/or ongoing fee—likely both. It will be a condition of the wagering licence that the licensee will have in place, and give effect to, arrangements with Racing Western Australia, including for the provision of funding. This requirement will provide the necessary structure for the racing industry to receive ongoing funding under a privately operated TAB. Any failure to have in place or give effect to the racing industry arrangements is a ground for disciplinary action. Unclaimed moneys relating to bets on sporting events will go to the sports wagering account, while unclaimed moneys from all other wagers will be paid to Racing Western Australia.

The Gaming and Wagering Commission will have powers to licence key employees, approve associates, approve events that may be bet on, approve rules of betting, approve a consumer protection policy, disallow establishment or require closure of betting agencies, and give directions to the wagering licensee in limited matters such as systems of internal control and consumer protection policies. In terms of disciplinary action, the Gaming and Wagering Commission will have powers to issue a letter of censure to the wagering licensee, which may include a direction to rectify a matter, require the wagering licensee to pay a fine, or recommend to the minister that the minister take action against the licensee. The minister is given powers to amend, suspend or cancel the licence, or refer the matter back to the commission. If the licence is suspended, cancelled or surrendered, the minister may appoint a temporary wagering licensee. Regulations may be made about various matters concerning the wagering licence regime.

This part provides for consistent processes between the wagering licensee and oncourse bookmakers. For example, the bill provides a single approval process for events on which betting may be conducted by bookmakers or the wagering licensee. It also establishes a single process by which the commission may approve the rules of betting for both bookmakers and the wagering licensee. In addition, the racing bets levy, as administered by the Gaming and Wagering Commission, will be abolished and replaced with a new race field regime administered by Racing Western Australia. This is possible once RWA is no longer a wagering operator and has no conflict of interest collecting wagering data from other wagering operators. Included at the request of the racing industry, this reform will give RWA more control over its race field revenue and frees the commission of this responsibility.

Part 7—Casino (Burswood Island) Agreement 1985: part 7 of the bill ratifies the fifteenth supplementary agreement to amend the agreement ratified by the Casino (Burswood Island) Agreement Act 1985, as varied, which provides for the state authorising the wagering licensee to offer wagering on simulated races, subject to certain conditions.

Part 8—Gaming and Wagering Commission 1987: part 8 amends the Gaming and Wagering Commission Act 1987 to remove the commission's function to supervise the gambling operations of Racing and Wagering Western Australia and ensure it has appropriate powers to regulate the wagering licensee. The commission's administration of the racing bets levy account is also removed in part 8.

Part 9—Racing and Wagering Western Australia Act 2003: part 9 of the bill amends the Racing and Wagering Western Australia Act 2003, primarily to remove RWWA's wagering functions. As such, RWWA's name is changed to RWA. Part 9 also gives RWA the power to enter into a racing industry arrangement with the wagering licensee. RWA will also administer the race field publication and use approval under part 6, as well as the racing infrastructure fund credited from net sales proceeds of the TAB under part 3 of the bill. The existing rules of wagering will be abolished and replaced with the rules of betting in part 6 of the bill, which will apply to both the wagering licensee and bookmakers. The principles around how RWWA distributes funding to racing clubs remain unchanged.

Part 10—Consequential amendments to other acts: part 10 of the bill makes the necessary amendments to other legislation including replacing references to “Racing and Wagering Western Australia” with “Racing Western Australia”, and replacing references to the “Racing and Wagering Western Australia Act 2003” with the “Betting Control Act 1954”, where applicable. The Racing Bets Levy Act 2009 is repealed under this part.

Part 11—Review of act: the provisions in part 11 of the bill require the minister to undertake and table in Parliament a review of the post-sale arrangements. This review has been included at the request of the racing industry. The review must address the impact of the changes in this bill on the Western Australian racing industry, the structure and functions of RWA and the administration of the racing infrastructure fund. The review must be tabled in Parliament within one year following the third anniversary of the new arrangements.

Commencement dates: the bill is structured to allow variable commencement dates. It is envisaged that the commencement dates be staged as follows: date 1 is the day after the day the act receives royal assent. Parts 2 to 5 and 11 and other provisions of the bill are enacted. The sale is permitted to be progressed and a wagering licence granted but commenced at a later date. RWWA’s wagering functions, and the regulation of these functions, are retained. Date 2 is a day to be fixed by proclamation, intended to coincide with the day the wagering licence commences. RWWA’s wagering functions cease and RWWA becomes RWA. The Gaming and Wagering Commission’s oversight of RWWA’s wagering functions also ceases. Date 3 is a day to be fixed by proclamation that will be on or after date 2. The racing bets levy is repealed, and the new race field publication and use approval scheme administered by RWA commences.

This bill and the associated reform package represents the culmination of an extensive consultation process undertaken by the government. It is the most significant reform package in the history of the Western Australian racing industry. This reform package can help realise the value the industry and the state have built in the TAB business. At the heart of this reform package, however, is the objective to secure the future of an industry in which around 25 000 people participate, and in which more than 7 000 people are employed on a full-time basis. Such reform opportunities do not come around often. The debate on the future of the TAB has been long and often passionate. I look forward to working with the opposition and crossbenchers to achieve an outcome that is in the best interests of the racing industry and the state overall.

I commend the bill to the house.

Debate adjourned, on motion by **Ms L. Mettam**.