

## **paper for Product Co.**

From: **Malcolm Tuttle** (mtuttle@queenslandracing.com.au)  
Sent: Tuesday, 7 October 2008 11:49:12 AM  
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Adam/Shara

Can you pls prepare a paper for Product Co on race fields legislation.

Adam if you can cover off on the financial model and include some of the matters that appear in my issues paper including the options. Show the options, at least, to Tony to make sure he is happy for them to be included. These options set the fundamental approach to the billing and paying process. Ideally QRL will have a position on this prior to going to the Product Co meeting and this position can only be properly considered subsequent to the modelling that you are looking at.

Shara

Your part of the paper needs to discuss legal challenges to any existing legislation to bring product co up to date.

Pls coordinate the preparation and presentation of the paper.

Regards Mal



## NSW Race Fields Legislation

### Race Fields Legislation

- Amendments to the *Racing Administration Act 1998 (NSW)* (the Act) which require the approval of Racing NSW to any publication of a NSW thoroughbred race field (whether that publication occurs in NSW or elsewhere) unless the publication is specifically exempt under the *Racing Administration Amendment (Publication of Race Fields) Regulation 2008* (Regulations).
- The express purpose of the legislation, as stated by both the Minister for Racing and Racing NSW is to require all race wagering operators, regardless of location, to pay a fee for use of the racing product for wagering purposes – this legislation covers the three (3) racing codes.
- As at 1 September 2008, it is an offence under the Act, punishable by fines and/or imprisonment, to publish a NSW thoroughbred race field without the necessary approval from Racing NSW.
- According to clause 19 of the Regulations, an application, in writing, is required to be lodged with Racing NSW at least **30 days** in advance.
- All entities using NSW race information for wagering purposes will be required to register with the NSW racing control bodies and for those with a turnover above \$5M pa, would be required to pay a fee of 1.5% of turnover on NSW races, regardless of the location of the punter.
- Exemptions have been provided for the following publications which do not require approval from Racing NSW:
  - (a) Controlling Bodies – publications by the controlling body of any code in any Australian State or Territory or the national racing bodies for internal administrative or regulatory purposes
  - (b) Racing Clubs – publications by any Australian racing club of any code for the purposes of a race meeting, for instance, race books, administration, and promotion of race meetings
  - (c) News Media – publications by public news media in accordance with a contract or other arrangement with Racing NSW, and
  - (d) Not-for-Profit – publication made solely for a 'not-for-profit' purpose.

All other publications of NSW thoroughbred race fields require the prior approval of Racing NSW.

- In considering an application from a wagering operator<sup>1</sup> for approval to publish a NSW race field, Racing NSW will take into account whether the operator holds a wagering licence issued under the laws of an

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<sup>1</sup> Wagering Operators, whether totalisator operators, bookmakers or betting exchanges, who hold a wagering licence issued under the laws of any Australian State or Territory.

Australian State or Territory and other matters required under the Regulations.

However, Racing NSW will not take into account:

- (a) Whether the applicant's wagering licence was issued in NSW or under the laws of another Australian State or Territory, or
- (b) The location in Australia in which the applicant resides or carries out his or her activities or, in the case of a corporate applicant, in which it has its head office or principal place of business.

In relation to approvals to publish a NSW thoroughbred race field in Australia in the course of the wagering operations of an Australian-licensed wagering operator Racing NSW will apply the following conditions:

- (a) the wagering operator may pay a fee equal to 1.5% of the wagering operator's wagering turnover on NSW thoroughbred race meetings to the extent that turnover exceeds an 'exempt turnover threshold' of \$5 million over a financial year. Where a number of wagering operators are 'related', a single 'exempt turnover threshold' applies to the entire group.
  - (b) Other conditions designed to enable Racing NSW to administer the arrangements and to discharge its responsibilities and functions regarding the protection of the integrity and reputation of NSW thoroughbred racing industry.
- Under the Product & Program Agreement (Agreement) between UNiTAB, Queensland Race Product Co Ltd (Product Co) and each of the Queensland Racing codes, any charge levied by other States for their racing product gets offset against the payment to the racing industries. Thus, Tabcorp (NSW) will charge UNiTAB for Queensland wagering on NSW races which is netted against the fee payable to QRL. Thus, the net effect is that the charge levied by NSW racing for race wagering by interstate punters is passed through to the racing industries in the other States, subject to the specific provisions in each agreement.
  - On review of the Agreement, clauses 9.5 and 10.2 of the Agreement relevantly provide that should Product Co be unable to procure the supply of Australian Racing Product as required by UNiTAB, UNiTAB may reduce the product fee payable to Product Co by any amount required to be paid by UNiTAB to procure the Australian Racing Product for use in its race wagering business.

## **RISA Participation Agreement – Grandfathered Arrangements with Wagering Operators – Schedule 6**

- Schedule 6 of the RISA Participation Agreement includes a list of *'Grandfathered Arrangements with Wagering Operators.'*
- Included in the list contained in Schedule 6 is reference to a UNITAB agreement, which is grandfathered until the expiry date of the current supply agreement, which is 19 November 2008.
- Schedule 6 includes the following *'RISA may sub-licence to a Wagering Operator named in the following table the right to Exploit the Local Racing Information of a Principal Racing Authority on the terms and conditions of the written agreement between RISA and the relevant Wagering Operator as at 1 August 2005'.*
- The agreement with UNITAB which was in place with RISA as at 1 August 2005 and expires on 19 November 2008 is a Supply Agreement and does not deal with the granting or sub licence of rights other than supply of Principal Racing Authorities Local Racing Materials.
- Separate to the Grandfathered Agreements listed in Schedule 6, the RISA Participation Agreement includes Nominated Arrangements defined as the following; *'Nominated Arrangements means in respect of a Principal Racing Authority, any agreement, arrangement or understanding referred to in that part of Schedule 5 referable to that Principal Racing Authority'.*
- The actual nominated arrangements of each Principal Racing Authority were not listed in the RISA Participation Agreement or shared between the Principal Racing Authorities for TPA reasons. Rather the RISA Participation Agreement refers to the nominated arrangements within Schedule 5 as follows; *'As agreed in writing with RISA on or before execution of this Agreement and initialled for identification purposes'.*
- RISA can find no nominated arrangements on file for QRL.
- Therefore, Schedule 6 does not impact on the 1.5% of turnover fee payable under the race fields legislation.

## **Waterhouse v Racing NSW**

- The Supreme Court of NSW found a technical deficiency in the race fields legislation in relation to the way that Tom and Bill Waterhouse Pty Limited conduct its betting operations. The Court made a declaration that the manner in which those operations are currently conducted does not require an approval under the Act.

- Racing NSW is requesting that the Government urgently introduce legislation to address this "loophole".
- I note that the Waterhouses did not challenge the validity of the legislation but rather sought to confirm that their operations did not require an approval under the legislation.
- The decision only affects very specific circumstances where a **wagering operator does not display a betting board or have any internet betting operations.**
- The above Supreme Court decision has no impact on the way the legislation is to be applied to UNITAB and in turn to Product Co and QRL. That is, QRL does not stand to benefit in any way as a result of the Supreme Court decision. UNITAB is a wholly owned subsidiary of Tatts Group Limited. UNITAB holds licences in Queensland to operate totalisator and fixed price betting on racing and sports events, and as such, is deemed to be a wagering operator and is not exempt from NSW Race Fields Legislation.

#### Financial Impact of Race Fields Legislation

Barrie Fletton, CEO UNITAB wagering, has confirmed:-

- Thoroughbred and Harness = 1.5% of sales (the first \$5M is exempt) prorata from 1 September \$4,166,167 for the 10 months  
Greyhounds will charge 10% of gross margin capped at 1.5% of sales
- QRL forecasted 3% growth in P&P fee for FY0708 \$97,821M with a surplus of \$690K and a deficit of \$8.9M after extraordinary items of \$9.65M for FY0809  
Based on current growth for FY0809, QRL is forecasting P&P fee to be \$99M with a \$6.7M revised forecasted budgeted deficit.
- With the proposed Racing NSW Race Fields legislation for the month of September 2008 the fee will be \$684,955 based on \$46,025,327 of wagering through UNITAB on NSW product for Thoroughbred, Harness and Greyhounds.
- It is estimated annually that the fee to be charged to UNITAB and deducted from the Turnover to Queensland Race Product Co Ltd for all three codes to be \$7M based on \$460M of turnover.
- The thoroughbred share based on 76% would be \$5.3M deducted from forecasted P&P fee of \$99M realising an increase in the deficit to \$12M after extraordinary items or
- It would be more advantageous to QRL if the allocation of the race field's legislation fee was not based on the 76% Product and Program

agreement with UNITAB. QRL would be approximately down 2% or \$160K annually based on the Product and Program agreement formula. It would be less advantageous for Harness and more advantageous for Greyhounds for the allocation to be in accordance with the Product and Program Agreement.

- If the race fields' legislation was deferred to January 1, 2009, the cost for 6 months would be \$4.2M to the 3 Queensland codes, \$3.1M to thoroughbreds.

The table below reflects the impact of race field's legislation for September 2008 based on NSW product.

# Race Fields Legislation Impact on Wagering Turnover through UNITAB on NSW Product Only

NSW Only		FY0708		FY0607	
Turnover					
Gallops	70%	\$	306,029,046	74%	\$ 381,229,762
Harness	11%	\$	46,223,112	12%	\$ 63,436,292
Greyhounds	19%	\$	85,070,334	14%	\$ 70,916,705
Total	100%	\$	437,322,492	100%	\$ 515,581,759

  

NSW Only Based on UNITAB Alloc		FY0708		FY0607		7 YR Average	
Gallops	76%	\$	4,871,476	76%	\$ 5,763,632	76%	\$ 5,185,667
Harness	14.50%	\$	929,426	14.50%	\$ 1,099,640	14.50%	\$ 989,371
Greyhounds	9.50%	\$	608,935	9.50%	\$ 720,454	9.50%	\$ 648,208
	100%	\$	6,409,837	100%	\$ 7,583,726	100%	\$ 6,823,246

  

NSW Only		FY0708		FY0607	
Gallops	70%	\$	4,515,436	74%	\$ 5,643,446
Harness	10%	\$	618,347	12%	\$ 876,529
Greyhounds	20%	\$	1,276,055	14%	\$ 1,063,751
	100%	\$	6,409,837	100%	\$ 7,583,726

  

Variance		FY0708		FY0607	
Gallops	6%	\$	356,041	2%	\$ 120,186
Harness	5%	\$	311,080	3%	\$ 223,111
Greyhounds	-10%	\$	667,120	-5%	\$ 343,297

Actual		Forecast		Annual	
	Sep-08		FY0809 10 months		FY0809
74%	\$ 34,101,189	\$	341,011,890	\$	409,214,268
11%	\$ 4,849,047	\$	48,490,465	\$	58,188,558
15%	\$ 7,075,092	\$	70,750,916	\$	84,901,099
100%	\$ 46,025,327	\$	460,253,271	\$	552,303,925

  

Actual		Forecast		Annual	
	Sep-08		FY0809 10 months		FY0809
76%	\$ 520,566	\$	5,205,658	\$	6,246,790
14.50%	\$ 99,318	\$	993,185	\$	1,191,822
9.50%	\$ 65,071	\$	650,707	\$	780,849
100%	\$ 684,955	\$	6,849,550	\$	8,219,460

  

Actual		Forecast		Annual	
	Sep-08		FY0809 10 months		FY0809
74%	\$ 505,268	\$	5,052,678	\$	6,063,214
10%	\$ 66,486	\$	664,857	\$	797,828
17%	\$ 113,201	\$	1,132,015	\$	1,358,418
100%	\$ 684,955	\$	6,849,550	\$	8,219,460

  

Actual		Forecast		Annual	
	Sep-08		FY0809 10 months		FY0809
2%	\$ 15,298	\$	152,980	\$	183,576
5%	\$ 32,833	\$	328,328	\$	393,993
-7%	\$ -48,131	\$	-481,307	\$	-577,569