

IN THE HIGH COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY

No. S118 of 2011

BETWEEN:

SPORTSBET PTY LTD
(ACN 088 326 612)
Applicant

STATE OF NEW SOUTH WALES
First Respondent

RACING NEW SOUTH WALES
(ABN 86 281 604 417)
Second Respondent

HARNESS RACING NEW SOUTH WALES
(ABN 16 962 976 373)
Third Respondent

STATE OF SOUTH AUSTRALIA
Fourth Respondent

APPELLANT'S CHRONOLOGY

Part I: The chronology is in a form suitable for publication on the Internet.

Part II:

DATE	EVENT	REFERENCE
December 1964	December 1964 - TAB NSW was established as a statutory authority to provide an off-course wagering service on thoroughbred, greyhound and harness racing. Similar bodies were also created in other states. Legal bookmaker activity was restricted to fixed odds betting at racecourses.	
1 July 1997	<i>Totalisator Act</i> 1997 was assented to (commenced 6 March 1998). This legislation provided the legal framework for licences to be granted	

Date of Document: 8 April 2011
Filed on behalf of the Appellant by:
Fitzpatrick Legal
Level 16, 190 Queen Street
Melbourne VIC 3000

Contact: David Fitzpatrick
File Ref: DJF:LB:080030
Telephone: (03) 9602 5444
Facsimile: (03) 9602 5094
Email: dif@fitzpatricklegal.com.au

	for the conduct of a totalisator.	
11 December 1997	RDA entered into the original parties to the arrangement were TAB, RNSW, HRNSW, GRNSW and Racingcorp Pty Ltd ("Racingcorp") or predecessors in title to those entities. Racingcorp (originally NSW Racing Pty Ltd) was appointed by the three industry body parties - RNSW, HRNSW and GRNSW - as their agent for the purposes of meeting their obligations and securing their entitlements under the RDA	Perram [34] AB 199-275
3 March 1998	Intra-Code Deed entered into between NSW Thoroughbred Racing Board, Australian Jockey Club, Sydney Turf Club, Provincial Association of NSW and NSW Country Racing Council.	AB 276
9 November 1998	<i>Racing Administration Act</i> assented to - commenced 1 March 1999.	
1998	Totalizator Agency Board conducted by NSW privatised	Perram J [12]
1 November 2002	Reports of the Cross-Betting Task Force Conference of Australasian Ministers.	AB 305
February 2003	Betting Exchange Taskforce established by the "Australasian Racing Ministers Conference"	
December 2004	Deed of Accession, cooperation and amendment (relates to Racing Distribution Agreement).	AB 487
24 June 2005	Letter by CEO Racing NSW to Minister proposing amendments to NSW racefields legislation.	AB 663
June 2006	HRNSW Annual Report 2006 race fields fee welcomed as providing protection to industry	
Late 2006 to June 2008	OLGR convenes three workshops (February, May and July 2007) and otherwise liaised with the racing control bodies for the purpose of	AB 1123

	preparing drafting instructions for the Regulations	
20 October 2006	Ministers 2 nd Reading Speech <i>Racing Administration Amendment Bill 2006</i>	AB 784
21 November 2006	<i>Racing Legislation Amendment Act 2006</i> assented to. (Date of commencement 1 July 2008) (Act No. 91)	
20 December 2006	<p>RNSW Board meeting Mr V'Landys (CEO RNSW) reports to the RNSW Board: ... <i>"it will be imperative that [NSW] bookmakers are not double taxed and that NSW race clubs are not adversely affected"</i>.</p> <p><i>No fee payable on face to face betting 2% turnover levy payable on telephone betting 2.5% levy payable on internet betting</i></p> <p><i>Totalizator Operators A fee of 4 1/2 % payable on totalizator betting Full Credit is given to totalizator operators who have financial arrangements with the racing industries in each of the States and Territories</i></p>	AB 817, 818
22 December 2006	Meeting with Race Clubs	AB 825
23 April 2007	<p>RNSW Board meeting</p> <p>V'Landys reports to RNSW Board the clubs' levy would be discontinued and that it was necessary for <i>"race clubs to be compensated for the loss of bookmakers' fees from new revenue"</i></p> <p><i>Totalizator A fee of 4 1/2 % payable on totalizator betting Full Credit is given to totalizator operators who have financial</i></p>	<p>Perram J [80] AB 867 AB 879</p>

	<p>arrangements with the racing industries in each of the States and Territories</p> <p>The affect of the above fee schedule may have on Tabcorp's fixed odds operations will need to be examined in conjunction with the racing Distribution Agreement</p>	
21 May 2007	<p>RNSW Board meeting</p> <p>V'Landys reports to RNSW Board: fees should be expended "firstly towards reimbursing clubs for the loss of revenue previously generated from the levy on on-course bookmakers (1% metropolitan, 0.5% country and provincial)".</p> <p>Estimated revenue from the proposal assumes nil from Tabcorp tote and no estimate made in relation to Tabcorp's fixed odds betting on race events</p>	<p>Perram J [80] AB 923 AB 940 AB 943</p>
16 July 2007	<p>Meeting of RNSW CEO Report</p> <p>Unlike the system which was adopted in Victoria it is not recommended that any rebate be allowed to wagering operators in respect of their contributions to their local industries. At the same time however it is felt that any payments made to Racing NSW in terms of any other contractual obligations or any other legislative requirement should be offset against amounts payable under the Race Field Legislation Scheme</p> <p>Any payments made to Racing NSW in terms of any other contractual obligations or any other legislative requirement to be offset against amounts payable under the Race Field Legislation Scheme</p> <p>Although Tabcorp would be faced with</p>	<p>AB 1030, 1035, 1041,</p>

	<p>a \$6 mil payment for reciprocal interstate payments ...Tabcorp believes that the proposed fee structure will create a more level playing field and enable it to become more competitive with its competitors thereby increasing its profitability who currently operate with an unfair financial advantage</p>	
30 August 2007	<p>Letter HRNS to John Whelan Director OLGR</p> <p><i>HRNSW intends to charge a zero fee in certain circumstances, importantly this would include all face-to-face activity undertaken by licensed wagering operators</i></p>	AB 1089
6 September 2007	<p>Letter Tabcorp to Minister for Gaming & Racing</p> <p><i>It is clear that the NSW wagering market and its Wagering Operators (Tabcorp and NSW Bookmakers) urgently require a total reform package to satisfy the NSW customer base and to ensure maximum commercial benefit is realised to grow the NSW Racing Industry and the financial returns to participants</i></p>	AB 1926
September 2007	<p>Tabcorp NSW Fixed Odds Wagering (Racing & Sport) Reform Issues & Recommendations sent to Minister on 6/9/07</p> <p><i>NSW operators (Tabcorp and NSW Bookmakers) have suffered a significant reduction in market share in the overall Australian Wagering market since FY04</i></p> <p><i>The NSW providers of fixed odds betting- Tabcorp and NSW bookmakers- face increasing unfair competition from interstate bookmakers who are able to offer more aggressive pricing as a result of</i></p>	AB 1113

	<p><i>favourable tax treatment and their failure to make any contributions to the NSW Racing Industry</i></p> <p><i>The internet has contributed greatly to the expansion of these operators... NSW wagering revenue is being unfairly lost to other jurisdictions</i></p>	
14 September 2007	<p>OLGR Briefing Notice headed "Race Fields regulations Report on Consultation with Racing Controlling Bodies</p> <p>Race Fields Conditions (including fees)</p> <p><i>These are 'commercial decisions' for the racing controlling bodies</i></p>	AB 1945, 1947
9 October 2007	<p>Draft OLGR Briefing Note</p> <p>Economic criteria</p> <p><i>NB Tabcorps existing payments to the NSW racing industry exceed the proposed fee and would not involve additional payments</i></p>	AB 1121
30 October 2007	<p>Letter CEO RNSW to Minister</p> <p><i>Minister the racing industry is well aware of the significant wagering turnover and therefore revenue which has been diverted to [Betfair and the corporate bookmakers] over the past 10 years or so and the difficulties involved on restricting that diversion because of Trade Practices Legislation, National Competition Policies and Constitutional issues.</i></p>	AB 1131
November 2007	<p>TAB Presentation on need to 1.5-2.0% fee on turnover put before the RNSW Board by Mr Nason of Tabcorp</p> <p><i>The breakdown of protections has</i></p>	<p>Perram J [66(c)] AB 1143, 1150 1151</p>

	<p><i>changed the wagering market in Australia</i></p> <p><i>Tote odds betting provides the means of transferring turnover from NSW & Victoria to the Northern Territory</i></p> <p><i>FY07 Leakage to NT NSW: \$873m</i></p> <p><i>Betback Turnover Flow from NT to other TABs</i></p> <p><i>The overall impact of this marketplace activity is to seriously erode government and industry returns in VIC and NSW and significantly devalue the exclusive totalisator licence</i></p> <p><i>Stemming the leakage requires immediate action:</i></p> <ol style="list-style-type: none"> <i>1. Protect the exclusive pari-mutuel licence issued to Tabcorp</i> <i>2. Allow Tabcorp and NSW Licensed Bookmakers to compete</i> <i>3. Ensure that all competitors pay a fair price for the racing product: introduce a fee of 1.5-2% of turnover on all corporate bookmakers</i> 	<p>1167 1173</p>
<p>12 November 2007</p>	<p>Letter CEO Tabcorp to Premier NSW</p> <p><i>Tote odds betting [by corporate bookmakers] is a direct means of transferring government tax, racing industry funding and Tabcorp revenues directly out of NSW and into other jurisdictions</i></p> <p><i>Leakage from the NSW wagering market is currently costing the Government \$26 million per annum and the Racing Industry \$50 million per annum</i></p> <p><i>...decisive action must be taken ...to address this erosion of the NSW</i></p>	<p>AB 1181</p>

	<p>wagering market</p> <p>We recommend:</p> <p>.....</p> <p><i>introduce a fee of 1.5-2% of turnover on all corporate bookmakers and betting exchanges who wish to publish NSW race fields</i></p>	
19 November 2007	<p>RNSW CEO Report to Board</p> <p>The consensus of the Chairmen of RNSW, HRNSW and GRNSW that</p> <p><i>The TAB franchise was being progressively undermined by internet bookmakers and betting exchanges with inherently lower cost structures and no product fees. In this environment, it was agreed that it was critical that the three codes control pricing for the use of their product under the umbrella of Race Fields Legislation</i></p>	AB 1185 1187
20 November 2007	<p>Business Strategy Committee Meeting under the RDA (including representatives of Tabcorp, RNSW, HRNSW)</p> <p>Mr Nason (Tabcorp): <i>revenue leakage was the single biggest issue facing racing in New South Wales.</i></p> <p><i>Revenue leakage has been exacerbated by a loosening of restrictions on competitors of Tabcorp particular interstate corporate bookmakers</i></p> <p><i>Tabcorp considering its own commercial response</i></p>	AB 1193, 1195
18 December 2007	<p>RNSW Board meeting CEO Report</p> <p>Tabcorp letter of 12 November 2007 and November Presentation on Revenue leakage tabled</p>	AB 1205 AB 1207
2007	HRNSW Annual Report	AB 1159

	<p><i>HRNSW continued to work in partnership with Tabcorp, both directly and through Racingcorp, to further the aims and interests of the harness racing segment of the racing industry.</i></p> <p><i>In 2007 Racingcorp continued its focus on promoting benefits of merged pools, providing support for the introduction of race fields legislation aimed at protecting racing industry intellectual property</i></p>	
9 January 2008	<p>Meeting between Nason (Tabcorp) and V'Landys (RNSW)</p> <p>Nason outlines several options being considered by Tabcorp to counter the continued diversion of investments to the corporate bookmakers including setting up bookmaking operation in Northern Territory</p> <p>V'Landy's refers to <i>the ever increasing damage being caused to the revenues of Tabcorp and the NSW racing industry by the NT corporate bookmakers</i></p>	AB 1241
18 March 2008	<p>Minutes Business and Strategy Committee</p> <p>Mr Pemberton (RNSW) <i>confirmed in relation to thoroughbreds that their response is that they understand the logic of Tabcorp obtaining a Northern Territory bookmakers licence and are supportive in principle"</i></p> <p>Mr Nason advised that any impact on profit share would be made good</p>	AB 1251
26 March 2008	<p>HRNSW Bopard Meeting CEO report</p> <p><i>The CEO Reported that the final draft of the Race Fields legislation Regulations which set out the rates and applicable conditions for approval were agreed at</i></p>	AB 2709

	<p><i>a meeting attended by representatives of the three codes, the Office of Liquor, Gaming and Racing and the Crown Solicitors Office</i></p> <p><i>Agreement was reached on the terms and rates to be applied and the regulations were endorsed by the codes</i></p>	
27 March 2008	Decision of High Court in <i>Betfair v Western Australia</i> (2008) 234 CLR 418	
9 May 2008	Draft Regulations provided by State to RNSW	Perram J [62] AB 1295
19 May 2008	<p>RNSW Board meeting CEO Report</p> <p>The exemption of face to face betting replaced with threshold of \$5mil</p> <p>Estimate of Revenue from Tabcorp <i>nil</i></p> <p><i>Notes to Table:</i> 1. Any fees imposed under race fields would be offset by compensation required under clause 8 of RDA.</p> <p>V'Landys Report to RNSW Board on threshold: <i>the introduction of a uniform \$5 million threshold for commencement of fees – the net impact of which is that most inter-state on-course bookmakers will pay no fees as the turnover of most of those bookmakers on NSW thoroughbred racing will not exceed the \$5m threshold.</i></p> <p>2.9 Issues papers [contains overview of RDA] Identifies "key exposures" including</p> <p><i>Leakage to other operators: TAB's competitive performance and potential leakage of wagering fro TAB to other operators who pay no fees to the NSW racing industry (eg NT corporate bookmakers) or who pay a fee which is</i></p>	<p>Perram J [62]</p> <p>AB 1297 AB 1298 AB 1312</p>

	<i>lower than that paid by TAB (eg NSW bookmakers)</i>	
22 May 2008	<p>OLGR Briefing Notre</p> <p>OLGR met on 22 May 2008 with the three controlling bodies of racing to consult about a draft regulation. This group has acted as a working party to assist with the preparation of the regulations</p>	AB 1347
10 June 2008	<p>Memorandum Vance to V'Landys:</p> <p>Containing "sensitivity analysis" on impact of race field fee condition</p> <p><i>Corporate bookmakers ad Betfair have been gaining market share at the expense of the TAB's for several years.</i></p> <p><i>The introduction of race fields fees will directly impose additional costs on corporate bookmakers and betting exchanges</i></p> <p>It is noted that the proposed fee represents a significant proportion of the revenue margin being realised by those operators and that it could be expected to reduce the amount that punters bet with those operators as the costs of wagering is increased</p>	Perram J [62] AB 1360 AB 1365
10 June 2008	<p>V'Landys meetings with representatives of the AJC, STC, Provincial Association of NSW and Racing NSW Country: <i>"It was also pointed out that as the scheme would involve Racing NSW imposing a levy on NSW bookmakers it would be necessary for the race clubs to remove the fee they currently levy on bookmakers operating on NSW racing events. No change will be necessary for fees levied by clubs on interstate meeting turnover".</i></p>	Perram J [73]

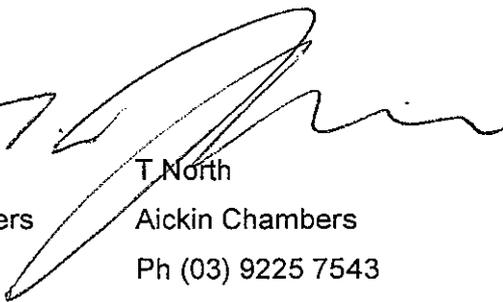
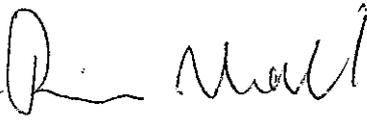
	<p><i>In addition it was confirmed that the clubs would be consulted in the determination of an appropriate scheme for the disbursement of revenue gained under the race fields proposal. In any event Mr V'landys confirmed that in the 1st instance race clubs should be recompensed for revenue foregone as a result of the abolition of on-course levies.</i></p>	
11 June 2008	Board of NRNSW resolves that fee of 1.5% of backbet turnover be charged	AB 1353
18 June 2008	<p>RNSW Board Paper: NSW racing clubs' bookmakers levies</p> <p>- <i>Racing NSW's fee structure is predicated on the assumption that NSW thoroughbred racing clubs will rebate or eliminate their turnover fee to NSW bookmakers who pay the race field levy to Racing NSW. This will require agreement with the clubs. It is understood that the clubs have indicated that they would agree to such a reduction but that agreement has not yet been documented.</i></p> <p>RNSW Board determined to impose a fee of 1.5\$ turnover in excess of \$5 million per annum on all wagering operators regardless of location</p>	<p>Perram J [64], [66]; Full Court [36]</p> <p>AB 1398 AB 1406</p>
18 June 2008	Letter Minister for Racing to Minister to Regulatory Reform	AB 1390
30 June 2008	<p>HRNSW Annual Report Race fields regime introduced to support the racing industry in reducing leakage to corporate bookmakers and other parties</p>	
1 July 2008	Amendments to <i>Racing Administration Act</i> commence to prevent publication of NSW race fields	Commencement Proclamation 25 June 2008

		New South Wales Government Gazette No 76 27 June 2008, p 5869
1 July 2008	Regulations proclaimed permitting the levy of a fee: <i>Racing Administration Amendment (Publication of Race Fields) Regulation 2008 (NSW)</i> , the <i>Racing Administration Amendment (Race Field Publications Approvals) Regulation 2008 (NSW)</i> , and Schedule 2[10] of the <i>Racing Administration Amendment Act 2008</i>	
25 July 2008	RNSW endorses decision of 18 June 2008	Perram J [93] AB 1592
July 2008	BIS Shrapnel report Revenue loss model	AB 1537
31 July 2008	Boston Consulting Group report (Final) presented to Cameron Review for RNSW race field fee may have significant impact on lower proved operators	AB 1609
11 August 2008	Sportsbet applied for an approval under protest.	Perram J [94]; Full Court [37] AB 1693
13 August 2008	STC Board meeting CEO Reports to Board: <i>We have indicated to bookmakers that we prefer them not to be worse off as a result of this RFL and we may need to reimburse some bookmakers who are worse off. We do not know however how the RFL revenue will be split by RNSW, with the exception that they have verbally advised us that we will be made whole i.e back to the 1% level, however we do not know how the 'overs' will be split</i>	Perram J [82] AB 1700

15 August 2008	<p>RNSW granted Sportsbet an approval. Clause 2.1 of the standard conditions annexed to that approval imposed the fee condition of 1.5%. Sportsbet's monthly instalment was set at \$229,000 per month which was to be paid in arrears within seven days of the end of each month commencing with the first month of September being due by 7 October 2008.</p> <p>Approvals were also granted to the TAB on the same condition, namely, the payment of 1.5% of turnover on New South Wales racing events which constituted a monthly fee of \$665,200.</p>	<p>Perram J [94] AB 1711</p> <p>AB 1706</p>
26 August 2008	Sportsbet applied to HRNSW for an approval under protest.	Perram J [100] AB 1738
1 September 2008	HRNSW approval was issued which imposed a 1.5% fee and was of two years duration	Perram J [100]; Full Court [39] AB 1761
15 September 2008	STC Board papers: <i>The difference in revenue ... will be made up by RNSW from the 1.5% [fee] they will charge bookmakers betting on NSW races whose turnover exceeds \$5,000,000 per annum.</i>	Perram J [83] AB 1788
23 September 2008	The Board of HRNSW resolved to adopt a 1.5% fee based on turnover coupled, however, with a \$2.5 million threshold.	Perram J [96]; Full Court [38] AB 1815
21 November 2008	RNSW Board Meeting. Board paper observes: <i>"A reduction in NSW TAB turnover in the order of 20% is possible over the next few years and, could be greater, particularly if there is further deregulation, no changes to NSW wagering tax and "tote-odds betting" by bookmakers continues to grow.</i>	AB 1847 AB 1852
27 November 2008	Tabcorp Notices of Dispute	AB 1887, 1889, 1891

November 2008	Cameron Report	AB 1893
3 December 2008	<i>Racing Administration Amendment Act 2008 (NSW) amends Racing Administration Act to change prohibition from "publication" to "use" commence</i>	
1 June 2009	Email from V'Landys to Kennedy, Bulloch and Brown re settlement <i>Nason indicated [settlement] would be template for next year</i>	Perram J [66(g)] AB 2127
25 November 2009	Deed of Release: Board of RNSW executed a Deed of Release with TAB and Tabcorp, Luxbet, Racing Corp, GRNSW and HRNSW pursuant to which RNSW agreed to pay TAB an amount of money being the equivalent of the fee paid by TAB to RNSW	Full Court [41] AB 2184
16 June 2010	Judgment of Perram J	
17 November 2010	Judgment of Full Court	
11 March 2001	Special leave Granted	

Dated: 8 April 2011

		
Neil J Young Melbourne Chambers Ph (03) 9640 3272 Fx (03) 9640 3101	T North Aickin Chambers Ph (03) 9225 7543	R M Niall Melbourne Chambers Ph (03) 9640 3285 Fx (03) 9640 3108