

Correct Weight?

A review of wagering and the future sustainability of the NSW racing industry



A report for the NSW
Minister for Gaming and Racing

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28 November 2008

Dear Minister

Review of wagering arrangements and the future growth and sustainability of the NSW Racing Industry

I am pleased to present to you the Report of the Review of wagering arrangements and the future growth and sustainability of the NSW Racing Industry.

I wish to record my thanks to the Office of Liquor, Gaming and Racing, who provided much guidance with the background to the Report, and the team from PricewaterhouseCoopers who were my secretariat and of vital assistance in compiling the background papers and this Report. Needless to say, the Review is my sole responsibility and neither the Office nor PwC are responsible for any shortcomings or errors which may be found or perceived.

The Report was written against a rapidly changing landscape of commercial actions, judicial decisions and regulatory change both in NSW and elsewhere, which contributed to some delay in finalising the Report. The Report was settled as at mid-October 2008.

I appreciated the opportunity to carry out this Review on behalf of the Government.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alan Cameron', with a long horizontal flourish extending to the right.

Alan Cameron, A.M.

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Executive Summary

Background

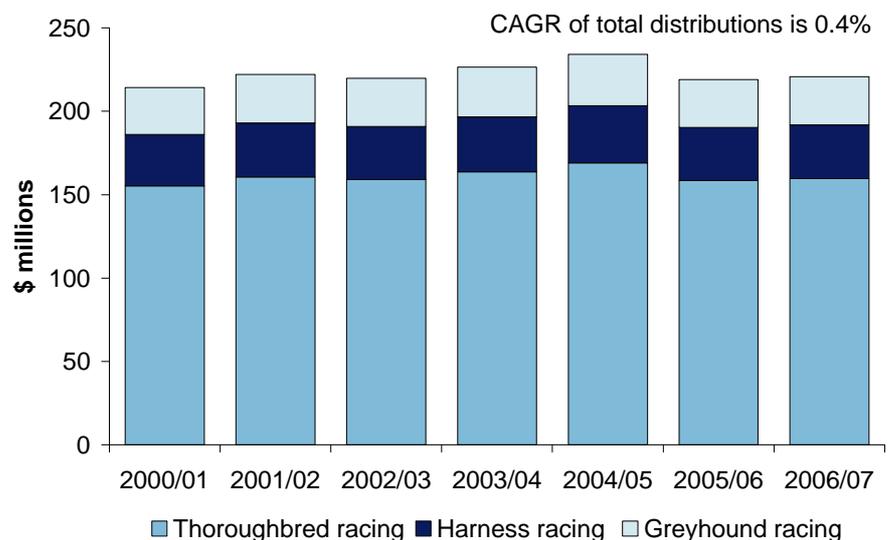
The Minister for Gaming and Racing (at the time, the Hon. Graham West) commissioned this independent Review of wagering in New South Wales (NSW) to consider reforms to the NSW wagering industry which would provide a framework for the future growth and sustainability of NSW racing.

This request arose because of the perception, both by the Government and the racing industry, that fundamental challenges are facing NSW racing because of changes taking place in the wagering industry. In particular, the emergence and growth of a national wagering market, a result of improving technology that enables wagering to be conducted cross-borders, and arguably a recent High Court decision, may limit the ability of state governments to ‘protect’ a wagering industry that has historically been state-based.

The NSW racing industry’s primary source of revenue is the distributions that it receives from the NSW TAB under an agreement (i.e. the Racing Distribution Agreement) negotiated at the time of the TAB’s privatisation.

Industry concern has arisen because, as shown in the following figure, wagering-related funding of the NSW racing industry has stagnated in real terms (i.e. once the effects of inflation are taken into account), in recent years.

Real Tab Ltd distributions to NSW racing codes (\$2007)



Source: Source data provided by NSW OLGR, adjusted to real terms by PwC

The decline in the level of funding for the NSW racing industry since 2004/05 reflects the intersection of three very different forces; the first

two are one-offs, while the third is considered the possible long term threat.

Firstly, there was a reduction in NSW wagering in 2005 caused in part by the '**split broadcast**' that reduced the availability of live coverage of Sydney metropolitan race meetings. This was an industry self-inflicted impact that reduced NSW wagering turnover by more than \$180 million,¹ and more than \$8 million of funding for the NSW racing industry.

Secondly, the recent **equine influenza** outbreak reduced TAB wagering in NSW in 2007/08, and hence industry funding. Tabcorp's NSW racing turnover fell by 16.9% during the period 25 August 2007 to 30 November 2007 in comparison to the same period the previous year.²

Thirdly, there has been an accelerated leakage of wagering dollars from NSW wagering providers (i.e. the TAB and NSW licensed bookmakers) to **non-NSW wagering providers**. This leakage is largely driven by a range of interconnected forces:

- Differences in the regulation of the wagering industry between Australian states and territories have provided the opportunity and incentive for non-traditional wagering operators to enter the market and provide their services to NSW residents (e.g. corporate bookmakers licensed in the Northern Territory, and Betfair operating from Tasmania).
- These regulatory differences have allowed these new wagering operators to offer a wider range of wagering products, and the improved technological delivery (e.g. by phone and the Internet) has made the products increasingly accessible for NSW residents.
- Lower tax regimes for Northern Territory-licensed bookmakers and Betfair (coupled with different operational models with lower takeouts) are attracting higher value punters away from NSW TAB and NSW bookmakers.
- Falling revenues for the NSW TAB result in reduced distributions to the NSW racing industry.

The Boston Consulting Group (BCG) estimates that if the racing wagers placed by NSW residents through Northern Territory-licensed bookmakers and Betfair were to pass through NSW TAB, there would have been additional revenue as follows:

¹ Chappell, T 2006, *Tabcorp, TVN confirm deal*, available at <http://www.foxsports.com.au/story/0,8659,19153855-32343,00.html>

² Kupper, E 2008, *Tabcorp Half Year Results Analyst Presentation - Feb 21 2008*, p.12

- in 2006/07: an additional \$19 million of revenue for NSW racing (i.e. 8.6% of actual TAB monies paid) and an additional \$10 million of tax for the NSW Government; and
- in 2008/09: a forecast additional \$27 million of revenue for NSW racing and an additional \$14 million of tax for the NSW Government.³

At least partially offsetting this decline in funding, new revenue is expected to be generated as a result of the recently introduced race fields legislation. BCG estimates that this will increase industry funding by approximately 3.8% per annum through 2013, or \$45 million in total through 2013.⁴

Otherwise, there are no other new short or medium term sources of funding for the NSW racing industry. This necessarily places an onus on the industry to ensure that their operations are as efficient as possible and existing revenue sources are maximised.

This is the challenging funding environment facing the NSW racing industry, but it is not catastrophic. The Review suggests steps which should be taken in an endeavour to arrest the decline, but also with the view that the long term solution probably requires a national approach.

Principles guiding this Review

The regulation of racing and wagering seeks, at its core, to ensure the integrity of outcomes and to minimise socially harmful wagering.⁵ Therefore two broad goals have been at the forefront of this Review:

- Is what is being done – or what is suggested to be done – consistent with the achievement of responsible wagering outcomes?
- Is what is being done – or what is suggested to be done – providing sufficient integrity of racing and wagering outcomes? Although ‘integrity’ is not a specific term of reference for this Review, it arises in a number of contexts in this Review, such as with respect to betting exchanges and different behaviours associated with pooling.

In addition to ensuring that racing and wagering are taking place in a manner that supports integrity and socially responsible wagering, reform

³ Boston Consulting Group 2008, *Report to Racing NSW – Response to the Independent Review of Wagering in NSW*, pp.20-21

⁴ *Ibid.*, pp.56-57

⁵ See Productivity Commission 1999, *Australia’s Gambling Industries*, Report No. 10, AusInfo, Canberra, p.12.1

of the NSW wagering and racing industries should be guided by the following specific reform principles:

- 1 That wagering operators should provide recompense to the racing industry in recognition of their reliance on the racing product and the revenue that they earn from racing-related wagering products.
- 2 Revenue received by each of the racing codes should bear some relationship to the controllable activities of each racing code.
- 3 Funding arrangements should provide for the optimal use of facilities.
- 4 Funding arrangements should be sustainable over time and as patterns of betting change.
- 5 Like wagering products should be treated equally, regardless of technology used or organisation through which product is offered.⁶
- 6 Regulatory structures should not drive legitimate, employment generating business and recreational activity (whether racing or wagering) out of NSW.
- 7 Regulation should meet best practice principles in relation to the reduction of red tape.
- 8 Where reforms require significant structural changes, transitional arrangements should be made.

A suggested way forward

The principles above have guided the development of a reform strategy that will create efficient and sustainable wagering and racing industries able to cope with changing patterns in consumer demand.

The Review's recommendations for the way forward (listed below) can be summarised under three main themes:

- The attractiveness of a national solution
- Reform of wagering regulation
- Reform of funding arrangements for the racing industry.

⁶ It is noted that adherence to this principle may be limited by existing contracts that provide for the TAB's exclusivity over certain products or services

The attractiveness of a national solution

Many of the issues confronting the wagering industry in NSW (and therefore NSW racing) result from the transition of wagering from a state-based industry to a national industry.

The NSW Government is limited in its power to address these issues given its inability to control the activities of operators located outside NSW. Indeed, seeking to impose more stringent standards on NSW operators has encouraged some to move to jurisdictions with lower standards, and hence resulted in lower standards for those NSW consumers who make use of their services.

In order to eliminate the problems that result from a lack of consistency between the treatment of wagering operators across jurisdictions a national approach to regulation is recommended. Indeed, there are a number of issues that are unlikely to be resolved without a national approach.

Many of the issues being faced by NSW are also currently confronting other state and territory governments,⁷ or will need to be addressed in the next few years as legislative arrangements for TAB exclusivity come up for review. This ought to provide some scope for a more holistic national position to be developed to address common issues.

The challenges for the development of a national approach include:

- A mechanism that provides sufficient incentive for Tasmania and the Northern Territory to operate in a manner more aligned with the majority of the states and territories in the wagering context
- Dealing with state and territory racing organisations that may see a loss of power and/or prestige in the event that there is a true national reform agenda with respect to racing.

Despite these challenges, and acknowledging the probably longer term nature of the ambition, the NSW Government should take the lead in the development with the Commonwealth of a national approach to the regulation and funding of wagering and racing.

Recommendation 1: The NSW Government should pursue a national coordinated approach to the regulation and taxation of the wagering industry.

⁷ As an example, see Bookmaking Reforms Working Party 2008, *Report of the Bookmaking Reforms Working Party*, Melbourne

Reform of wagering regulation

The current regulatory arrangements for the NSW wagering industry are largely blind to the reality that the racing and wagering industries have evolved from a local market (i.e. with a focus on racing and wagering consumed on-track or through state based TABs) to a national market that is increasingly shaped by the delivery of services across jurisdictional borders.

As a result, the existing regulatory arrangements are:

- overly complex and duplicative, reflecting a patchwork approach to reform that has generally sought to protect incumbents; and
- a barrier to effective oversight - since the relative attractiveness of regulatory and tax arrangements (i.e. particularly in the Northern Territory) has driven wagering operators outside NSW's regulatory reach.

Broadly, the recommendations made in respect of the wagering industry are as follows:

- update regulations pertaining to betting exchanges and the advertising of interstate wagering providers in a manner consistent with the High Court's decision in *Betfair Pty Ltd v State of WA*;⁸
- streamline the licensing arrangements such that there is a single licensing standard for all parties wishing to provide non-totalizator wagering services in NSW. This removes the anachronistic distinctions between corporate and traditional (i.e. on-course) bookmakers and treats the TAB consistently in respect of its non-totalizator operations; and
- liberalise the detailed rules governing the operations of bookmakers, bringing them into line with the operating models provided for interstate. While this may be seen as a potential expansion of wagering opportunities, the risks for problem gambling are slight.

Recommendation 2: The NSW Government should prohibit all wagering operators licensed in NSW from providing credit betting and from publicly promoting their services by way of inducements such as free bets. The only exception to the ban on credit betting should be bookmakers dealing with established customers.

Recommendation 3: The NSW Government should require G-line services to be advertised by all wagering providers providing services to NSW residents.

⁸ [2008] HCA 11, available at <<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/2008/11.html>>

Recommendation 4: The NSW Government should revise out-dated restrictions on wagering operators, as follows:

- a NSW bookmakers be permitted to accept bets using the Internet, telephone or other technology, on a 24/7 basis;
- b NSW bookmakers be permitted to maintain back office, support and administration offices off-course, at locations notified to the supervising authorities and open to inspection by them, but not to receive bets in person at the locations;
- c all wagering operators be permitted to offer fixed odds betting products up to the start of an event; and
- d the types of events on which wagering is permitted should be set out in regulations, and should include political elections and reality television programs.

Recommendation 5: Retail bookmaking kiosks and other retail outlets off-course should not be permitted in NSW.

Recommendation 6: The NSW Government should remove existing restrictions on the corporate model that may be adopted by a bookmaker, while retaining provisions relating to fitness and propriety.

Recommendation 7: The Government should introduce a single wagering operator licence with harmonised probity requirements to address all wagering related operating models.

Recommendation 8: The powers of the Casino, Liquor & Gaming Control Authority (CLGCA) should be extended to include the licensing of wagering providers in NSW. The CLGCA should be renamed the Gambling and Liquor Control Authority (GLCA).

Recommendation 9: Once licensed, a wagering provider should not require any additional approvals to operate on NSW racetracks.

Recommendation 10: The GLCA should be responsible for a single licensing framework with harmonised probity requirements for all key racing industry participants (e.g. owners, jockeys, trainers, vets, strappers).

Recommendation 11: The NSW racing codes and the NSW Government should collaborate to ensure that NSW adopts a combination of turnover levies and taxes that is competitive with other jurisdictions and provides racing codes jointly, so far as possible, with the same level of revenue as they presently enjoy.

Recommendation 12: The Government may authorise betting exchanges to operate from NSW as long as each exchange takes steps reasonably required by the GLCA to address integrity and responsible wagering concerns.

Recommendation 13: The GLCA should determine the range of parties that should be prohibited from using betting exchanges to bet against their animals, and all such parties should be licensed or registered.

Recommendation 14: Betting exchanges operating in the NSW wagering market should be required to not accept wagers against 'events' from licensed or registered participants and their associates, and where such a party seeks to place such a wager the betting exchange should be required to report this to the GLCA.

Recommendation 15: There should be 'rules of racing' sanctions for licensed or registered parties and their associates who seek to place a wager against an event on a betting exchange.

Recommendation 16: The Government should permit the introduction of wagering services provided on subscription television, subject to appropriate protections.

Recommendation 17: The Government may treat electronic gaming devices not linked to racing, as a wagering activity rather than gaming activity.

Recommendation 18: That the NSW Government remove restrictions on the publication of betting odds.

Recommendation 19: In the absence of a national approach to totalizator odds betting, the Government should permit wagering operators other than the TAB to offer totalizator odds.

Recommendation 20: The Government should permit the NSW TAB to enter into pooling arrangements with other Australian totalizators.

Reform of the funding arrangements for the racing industry

As proposed above, the NSW racing industry is in a challenging (but not catastrophic) position.

There is no external magic bullet that will provide for the long term sustainability of the industry. Perhaps unsurprisingly, none of the submissions received by this Review from racing industry stakeholders offer an overarching solution to the funding challenges facing the industry.

The NSW racing industry appears now to be in a forecast lower revenue growth phase of its evolution, at the same time as the move to a national wagering market limits the scope for government intervention. Therefore the NSW Government should:

- provide the right incentives to encourage the individual codes to operate efficiently, which they are most likely to do if they receive a fair proportion of the available monies that reflects their relative contribution to the wagering activity
- facilitate the industry to move to a more sustainable business model. While some public assistance (both financial and non-

financial) may be warranted, reform ultimately needs to come from within the industry. The history of the industry suggests that this will be challenging

Recommendation 21: The three racing codes should agree to amend the Inter-code Agreement to provide that returns to each code from TAB distributions are in proportion to the percentage of wagering generated by each code; in the absence of such an agreement, the Government should over-ride the Inter-code Agreement and the RDA such that the distributions from the TAB are made directly to each code and in proportion to the percentage of wagering generated by each code.

Recommendation 22: Assistance, extending if necessary to short term financial assistance, should be provided to the racing industry in order to assist with this transition, but only when the provision of such funding is supported by a clear business case.

Recommendation 23: The Government should, if necessary, amend race fields legislation to allow a controlling body to recover unpaid levies under the legislation.

Recommendation 24: The Government should, if necessary, amend race fields legislation such that the penalty imposed on a wagering operator found to be breaching the legislation is greater than the amount of unpaid levies.

The need to see the suggested reforms as an integrated package

It is likely that there are few stakeholders who will feel that they have come away from this Review with everything that they would have wanted. For example:

- At an aggregate *racing industry* level, there is no 'solution' to the funding challenges facing the racing industry which will *ensure* higher revenues into the future. However, greyhound racing may feel that changes to the RDA which have previously penalised them will be beneficial, while harness racing will conversely feel that the changes are damaging and unwarranted. The idea of public support for a transition will likely be welcomed, but not necessarily with the strings that it is suggested should be attached.
- *Local bookmakers* will likely support the liberalisation of their operations, but will not necessarily be in favour of reforms that make interstate bookmakers even more competitive (e.g. removal of prohibition on interstate advertising⁹).

⁹ The Review recommends that the NSW Government remove the prohibition on interstate wagering operators advertising in NSW, and notes that the Government has independently announced that it will repeal this ban

- The *TAB* will support a number of measures (e.g. pooling), but will be disappointed about other areas (e.g. allowing bookmakers greater flexibility in the range and delivery of wagering products).
- *Betfair* will likely welcome the removal of the prohibition on interstate advertising but may oppose the extent to which it is required to comply with responsible wagering provisions.
- *Advocates of responsible wagering* will likely be disappointed at the apparent liberalisation of access to wagering, but may welcome suggestions for new regulatory controls regarding betting exchanges, promotional 'give-aways' and advertising.

This mix of costs and benefits suggests that there is limited scope if any for selective implementation of these reforms and that they should be implemented as a complete package, with amendments being negotiated in a way which avoids stakeholders simply cherry picking those changes which suit them.

1 Introduction

Terms of Reference

The Minister for Gaming and Racing (at that time the Hon. Graham West requested that an independent review of wagering in NSW should consider reforms to the NSW wagering industry which would arrest further decline in state wagering activity and provide a framework for the future growth and sustainability of NSW racing.

The Review was tasked with considering, but not being limited to, the following areas:

- Racing as a significant industry and employer;
- Bookmaker structures and operating conditions;
- Publication of betting odds;
- TAB odds betting;
- Pooling;
- New technology and wagering;
- Sports betting;
- Betting exchanges;
- Advertising laws;
- Responsible wagering;
- Impacts from NCP legislation; and
- Other wagering issues considered relevant.

Review process

The Review sought input from industry in an impartial and controlled manner.

Initially, meetings with the three racing codes and selected key industry stakeholders were held to identify issues of relevance to the Review and to obtain information considered relevant to the Review.

Then, two papers were prepared and issued publicly:

- An *Issues Paper* in March 2008, which dealt mainly with issues relating to the sustainability of the racing industry funding arrangements.
- A *Background Paper* in June 2008 which set out information specific to wagering and the issues facing the NSW wagering industry that have the potential to impact on the revenue that flows to racing.

Both the *Issues Paper* and the *Background Paper* invited submissions from stakeholders. The Review received 43 formal submissions.

In addition, the Minister for Racing and Wagering provided a selection of recent ministerial correspondence that raised issues considered relevant to the current terms of reference. While not treated as formal submissions, this correspondence has also been taken into account in framing this report.

This report

This report sets out the guiding principles for future reform of the NSW wagering industry, and provides recommendations that the future direction of the NSW wagering industry should take.

The report is structured in the following way:

- PART A – Background
 - Chapter 2 provides the context in which this Review has been undertaken.
 - Chapter 3 sets out the fundamental challenges facing the wagering and racing industries.
- Part B – Guiding Principles
 - Chapter 4 explains the twin reasons for the regulation of racing and wagering (i.e. the maintenance of probity and to ensure that wagering is undertaken in a responsible manner).
 - Chapter 5 sets out a series of principles that should guide the consideration of reform in the racing and wagering industries.
- Part C – A Long Term Solution
 - Chapter 6 explains that the only long term stable and sustainable solution for the racing and wagering industries is likely to be a coordinated national response.
- Part D – Reform of the Wagering Industry
 - This Part assumes that in the short to medium term a national approach to wagering issues is unlikely to be satisfactorily developed and implemented. Therefore, Chapters 7 to 14 address a range of wagering related issues.
- Part E – Reform to the Funding of the Racing Industry
 - This Part also assumes that in the short to medium term a national approach to racing issues is unlikely to be satisfactorily developed and implemented. Therefore, Chapters 15 to 17 address current and future funding arrangements for the NSW racing industry and the three codes.
- Appendix A lists those submissions publicly provided to the Review.

PART A - Background

2 Industry overview

Key points

- The NSW racing industry comprises three recognised racing codes: thoroughbreds; harness; and greyhounds. (For the purposes of this review, wagering and breeding are treated as industries separate to racing.)
- The racing industry itself is not a major contributor to the NSW economy, with considerably more economic value provided by breeding and wagering activities.
- In recent years, activity in the racing industry (e.g. number of races, race tracks, trainers and other industry participants) has generally declined across the three racing codes. This could relate in part to the increase in costs, whilst prizemoney has stagnated in real terms, making participation in the industry for some increasingly unviable.
- In recent years the numbers of people attending thoroughbred and greyhounds racing events, at least once a year, have increased relative to population whilst harness racing attendances have decreased.

Background

As a threshold issue, it is important to have a common understanding as to what constitutes the NSW 'racing industry'.

While the NCP review of NSW racing and wagering legislation noted that "The racing and betting industries are interrelated markets, structurally linked through legislation and financially interdependent",¹⁰ the fact that two activities are reliant on each other does not mean that they should necessarily be classified as being within the same industry. Indeed, the Australian Bureau of Statistics (ABS) views the 'horse and dog racing' (ANZSIC 9311) and 'gambling services not elsewhere classified' (ANZSIC 9329) industries as distinct industries.¹¹

¹⁰ NSW Government 2001, *National Competition Policy Review of Racing and Betting Legislation*, viewed 25 August 2008, <http://www.olgr.nsw.gov.au/legislation_reviews_racing_ncap.asp>

¹¹ This distinction is maintained in the newly revised (but not yet implemented) standard industry classifications — ABS and Statistics New Zealand 2006, *Australian and New Zealand Standard Industry Classification 2006*, ABS cat. no. 1292.0

As a result, this Review proceeds on the basis that the NSW racing industry comprises three recognised codes — thoroughbred racing; harness racing; and greyhound racing — and sits in a supply chain as described in Figure 1.

Figure 1: The NSW racing industry in its supply chain



The three recognised codes of racing are currently regulated by two 'controlling bodies': Racing NSW (RNSW) and the Greyhound and Harness Racing Regulatory Authority (GHRRA).¹² They aim to:

- safeguard the welfare of racing participants (e.g. by licensing trainers, jockeys and drivers to ensure that a minimum level of vocational competence is present)
- ensure the integrity of racing and betting by way of controls on bookmakers, other licensed persons and the conduct of racing (i.e. race steward inquiries) so as to deter malpractice and the infiltration of criminal elements
- maintain the orderly operations, and to some degree the business viability, of the respective codes (e.g. by the registration of race clubs, the allocation of race dates to race clubs, etc)¹³

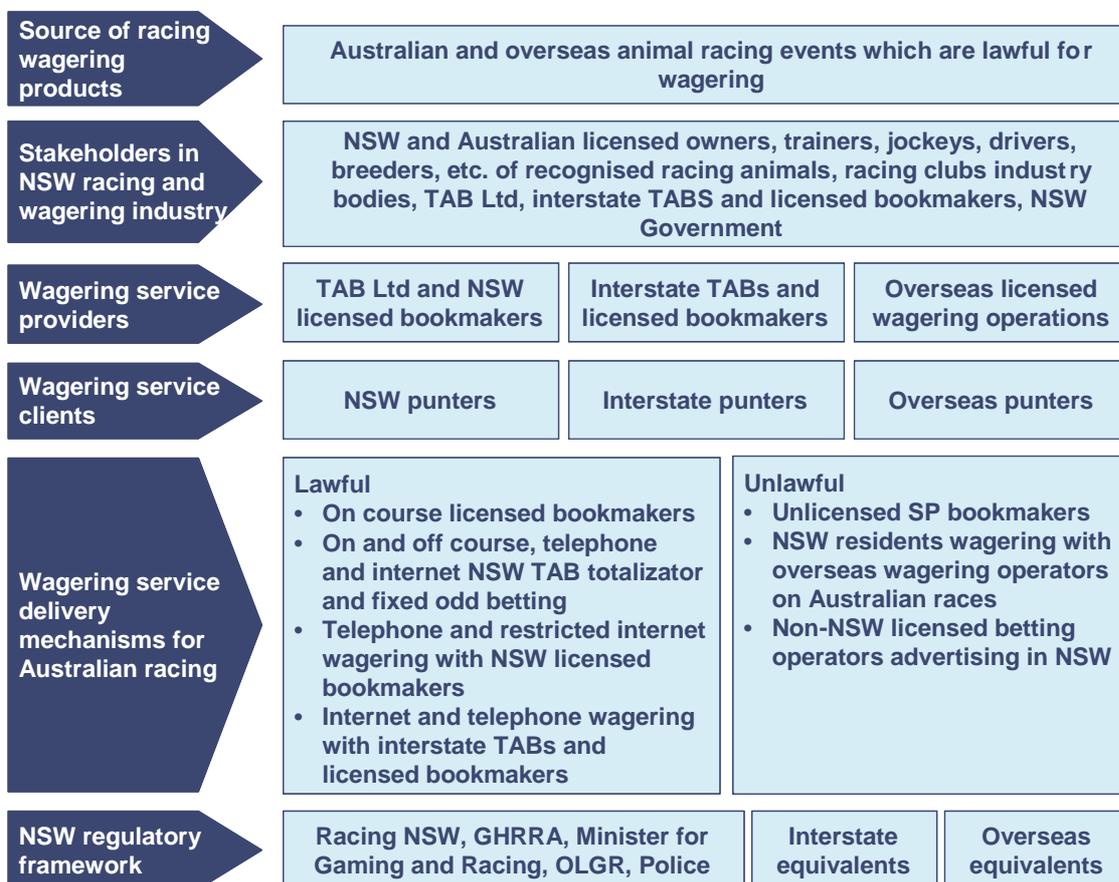
While wagering is technically only a user of the racing industry's outputs, it is important to have some understanding as to how the NSW racing industry sits with the wagering industry. In this regard, a stylised overview is provided in Figure 2, which shows that the main players in the NSW wagering industry are NSW licensed bookmakers and the NSW

¹² An independent review of the regulatory oversight of the NSW racing industry, the 'Scott Review', recently recommended the transfer of all regulatory functions to the controlling bodies for each code, GRNSW and HRNSW, and the establishment of a company to conduct stewarding operations across all three codes

¹³ Note that in relation to harness and greyhound racing this function is performed by HRNSW and GRNSW and not GHRRA

TAB (i.e. Tab Ltd, which is a wholly owned subsidiary of Tabcorp Holdings Ltd, a public listed company). Tab Ltd offers totalizator and fixed odds wagering on racing taking place in NSW, interstate and overseas.

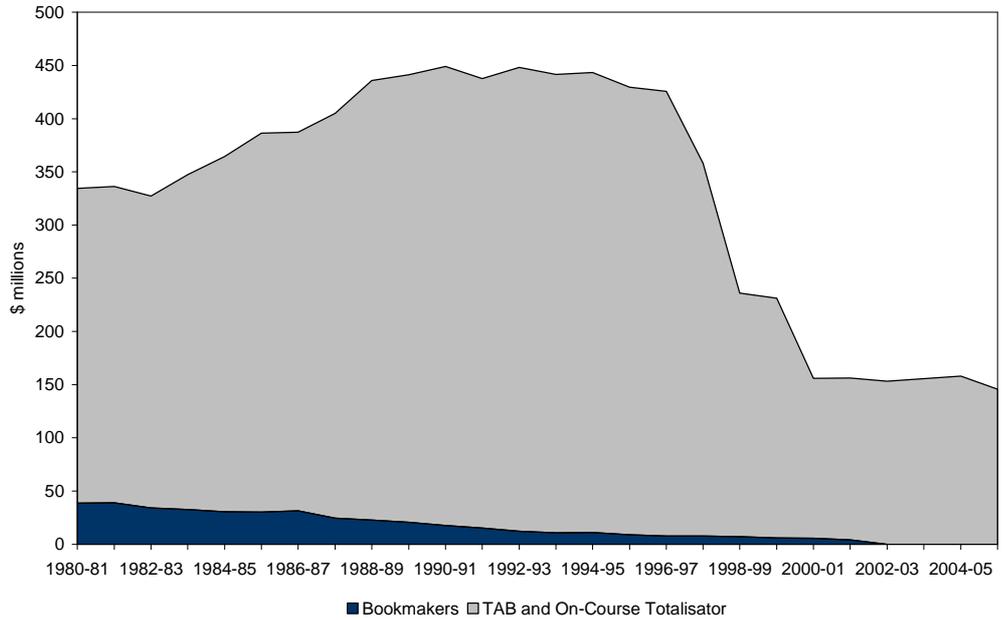
Figure 2: Structure of the NSW racing and wagering industry



Additionally, it is important to appreciate that the NSW Government is a direct beneficiary of the racing and wagering industries through its collection of taxes on racing-related wagering. However, racing taxes which in real terms are less than half of what they were a decade ago (see Figure 3), now only constitute about 1% of NSW tax revenue.¹⁴ It should be noted that racing tax revenue decreased significantly due to the reduction in racing tax rates when the NSW TAB was privatised in 1997, and again when the GST was introduced in 2000 (as it would otherwise have been double taxation). (Figure 3 also shows the steep decline in tax revenue, and ultimate removal of direct tax on, from bookmaking.)

¹⁴ ABS 2007, *Taxation Revenue, Australia, 2005-06*, cat. no. 5506.0

Figure 3: Real NSW tax revenue from racing wagering (\$2006)



Source: Queensland Government Treasury 2007 Australian Gambling Statistics 1980/81 to 2005/06

Given this background, the following sections report:

- a range of information which provides a sense as to the health of the racing industry
- on the NSW racing industry’s contribution to the NSW economy.

Selected features of the NSW racing industry

Racetracks and their use

Racing operations are dispersed throughout NSW, with a significant number of regional centres having had a racecourse at some time. Racecourses are mostly on Crown land which is also utilised for a variety of public, pastoral and agricultural purposes under the guidance of local trusts. Race meetings are conducted by race clubs which operate as community associations (i.e. non-profit and non-proprietary) and which are registered with the relevant controlling body of racing.

Table 1: Licensed racecourses in NSW (at 30 June)

	Thoroughbreds	Harness	Greyhounds	TOTAL
2003	129	39	41	209
2004	129	39	41	209
2005	125	39	42	206
2006	120	40	41	201
2007	123	40	37	200
2008	120	40	41	201
Total % change	▼ 7.0%	▲ 2.6%	0%	▼ 3.8%

Source: NSW OLGR

While the number of racetracks has fallen over the past five years in the thoroughbred code (see Table 1), the number of race meetings held has fallen by a greater percentage and across all three codes (see Table 2). This suggests that utilisation of racetracks has declined over the past five years.

Table 2: NSW Race meetings (year to 30 June)

Race meetings	Thoroughbreds	Harness	Greyhounds	TOTAL
2003	822	527	1,426	2,775
2004	807	532	1,424	2,761
2005	793	528	1,440	2,761
2006	800	528	1,437	2,765
2007	757	510	1,351	2,618
2008	532	319	1,384	2,235
Total % change	▼ 35.3%	▼ 39.5%	▼ 2.9%	▼ 19.5%

Source: NSW OLGR

The average number of races per racetrack provides a further indication of the utilisation of racetrack infrastructure. Table 3 shows that in thoroughbred racing NSW ranks second lowest relative to other Australia jurisdictions, with only Queensland ranking lower.¹⁵ This suggests there is room for improvement in terms of track utilisation.¹⁵

¹⁵ While care needs to be made in drawing conclusions from international comparisons (Windross, Submission 7), track utilisation is a transparent measure that is suitable to aid such cross-country comparisons. In comparison to NSW's annual 48 races per track, Hong Kong has an average of 363 races per track

Table 3: Average number of thoroughbred races per track (2005/06)

	Races	Race tracks	Average races per venue
NSW	5,420	112	48
Victoria	4,497	69	65
Western Australia	2,242	38	59
Queensland	4,835	117	41
South Australia	1,412	25	56
Tasmania	625	5	125
ACT	107	2	51
Northern Territory	407	6	68

Source: Australian Racing Board 2007, Australian Racing Factbook, Sydney

Possibly even more pronounced is the relative underutilisation of NSW greyhound tracks in comparison to utilisation in other Australian jurisdictions.

Table 4: Comparative greyhound track utilisation

	Venues	Meetings per venue	Races per venue	Participants per venue
NSW (Total)	35	37	390	282
NSW (TAB meetings only)		18	178	
Victoria	14	59	661	804
Western Australia	3	92	1122	427
Queensland	9	70	643	497
South Australia	10	34	318	201
Tasmania	3	52	515	202
ACT	1	45	451	165
Northern Territory	1	51	270	57

Source: GRNSW, Submission 30, p.16

Stakemoney

Stakemoney is often referred to as the lifeblood of the racing industry. High levels of stakemoney attract top trainers, horses and jockeys into the industry. Therefore, growth in stakemoney is an indicator of industry vibrancy and size.

Table 5 shows that stakemoney for all three codes declined marginally in real terms over the past four years. Overall, stakemoney across the three codes decreased at a real rate of approximately 0.5% per annum.

Table 5: Real NSW stakemoney (\$ millions, 2007) - KWN

	Thoroughbreds	Harness	Greyhounds	TOTAL
2003/04	104.5	21.3	15.8	141.6
2004/05	105.6	22.7	16.5	144.8
2005/06	105.0	21.6	15.8	142.5
2006/07	104	20.1	14.8	138.9
Total % change	▼ 0.5%	▼ 5.7%	▼ 6.2%	▼ 1.9%

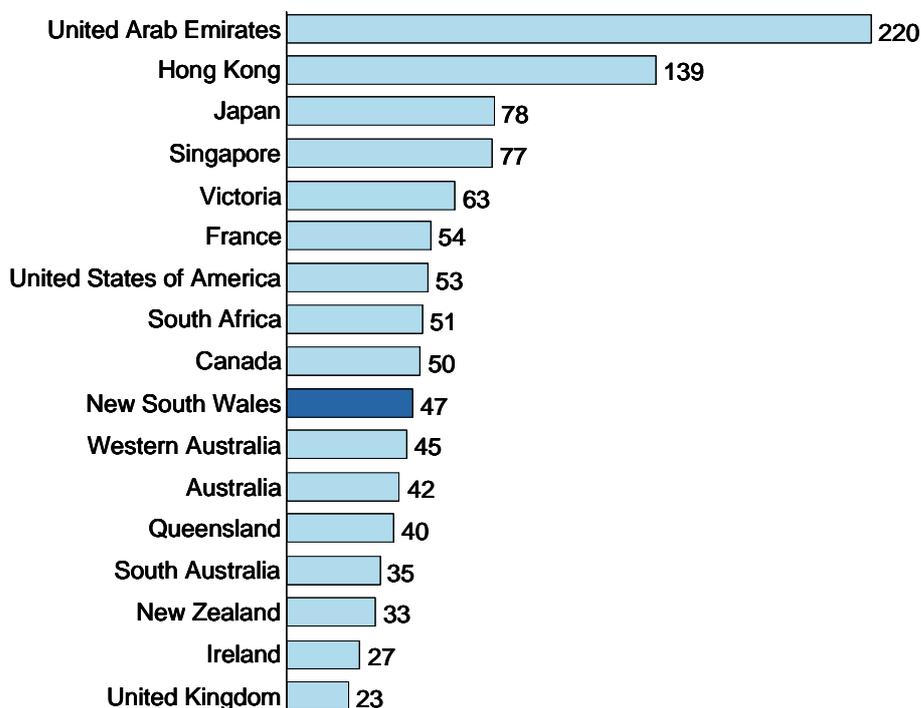
Source: NSW OLGR

A key indicator of owner profitability, which possibly drives perceptions of industry sustainability, is the average percentage of owner expenses covered by total stakemoney.¹⁶

In 2003, Racing Victoria reported (see Figure 4) that the thoroughbred industries with the highest returns to owners (as a percentage of owner expenses) were the United Arab Emirates (220% of owner expenses) and Hong Kong (139% of owner expenses). However, for most countries, owner expenses tend to outweigh stakemoney received (i.e. in aggregate, owners do not profit from owning a horse).

¹⁶ The International Federation of Horseracing Authorities uses this indicator to compare the performance of industries around the world

Figure 4: Returns to thoroughbred owners (percentage of ownership costs)



Source: *Racing Victoria 2003, Annual Report 2003, Melbourne*

Figure 4 shows that, using this measure, the NSW racing industry performed favourably compared to most of the other Australian industries, but fell well below many other countries. On average slightly less than half (i.e. 47%) of owner expenses are covered by stakemoney.¹⁷

Clearly many animal owners consider racing a hobby and gain entertainment and utility from the activity, without necessarily expecting a net monetary return. However, once the losses from owning an animal become greater than the utility received (allowing for the non-monetary utility gained), owners will begin to opt-out of the industry.

Consistent with this view, the registration of thoroughbreds in NSW has declined steadily, from 5,050 in 2000 to 4,608 in 2007. Over time, a decline in horse ownership can be expected to lessen the competition in the racing field and decrease the prestige and quality of racing product provided, which in turn reduces the attractiveness of the product to punters.

¹⁷ Windross notes that the return to thoroughbred owners was previously found to be 41% in 1974 and 31% in 1992 — Submission 7, p.3

Attendances

Despite the availability of racing broadcasts on both radio and television, racing remains a significant spectator sport (although concentrated in time and location).

Table 6 sets out the ABS's estimates of racing attendances (i.e. the number of people who attended one or more events during a year, not the number of times people attended in total) relative to other sporting events. The NSW racing industry (particularly thoroughbred racing) ranks favourably relative to other sports, ranking second only to rugby league. Consistent with wagering intensity, harness racing and greyhound racing events are less well patronised.

Table 6: Attendance at NSW sporting events (2002 and 2006)

Sport events	2002		2006	
	Attendance ('000)	% of NSW population	Attendance ('000)	% of NSW population
Rugby league	887.1	13.4%	899.8	13.3%
Thoroughbred racing	594.1	8.9%	686.9	10.1%
Motor sports	365.1	5.5%	376.8	5.6%
Rugby union	352.6	5.3%	334.5	4.9%
Soccer (outdoor)	354.3	5.3%	258.8	3.8%
Australian rules football	199.9	3.0%	249.7	3.7%
Cricket (outdoor)	239	3.6%	213.4	3.2%
Harness racing	162.6	2.4%	142.6	2.1%
Greyhound racing	60.2	0.9%	77.2	1.1%
Tennis	109.4	1.6%	67	1.0%
Netball	52.9	0.8%	58.7	0.9%
Basketball	104.4	1.6%	56.5	0.8%

Source: Based on data from the ABS (cat. no. 4156.0 and cat. no. 4174.0)

As set out in Table 7, in recent years, thoroughbred and greyhound racing has seen an increase in the number of people who have attended at least one event during a year, as a percentage of the NSW population, while harness racing has seen a decline.

Table 7: Attendance at NSW racing (2002 and 2006)

	Attendance 2002 ('000)	% of 2002 NSW population*	Attendance 2006 ('000)	% of 2006 NSW population*	% change in attendance (adjusted for population growth)
Greyhound	60.2	0.9%	77.2	1.1%	▲ 25.8%
Harness	162.6	2.4%	142.6	2.1%	▼ 14.0%
Thoroughbred	594.1	9.0%	686.9	10.1%	▲ 13.4%
Total	816.9	12.3%	906.7	13.3%	▲ 8.9%

Source: ABS 2007, *Sports Attendance, Australia 2005-06*, cat. no. 4174.0; ABS 2007, *Sport and Recreation: A Statistical Overview, Australia, 2003*, cat. no. 4156.0

The positive growth in attendance at greyhound meetings does not match the data supplied by Greyhound Racing NSW (GRNSW) which show a fall in attendances (see Table 8). This suggests that more individual people are attending greyhound races, but they are not attending as frequently.

Table 8: Attendance at NSW greyhound races (2003 to 2007)

	2003	2004	2005	2006	2007	Total % change
TAB	94,855	92,253	95,263	116,501	103,440	▲ 9.1%
Non-TAB	82,458	82,079	81,352	78,003	70,761	▼ 14.2%

Source: GRNSW Annual Report 2007

Employment

Employment in the NSW racing industry has declined over recent years.

In respect of thoroughbred racing, over the past 15 years (i.e. between 1992/03 and 2006/07):

- the number of thoroughbred trainers has declined 47.7% (from 2398 to 1252)
- the number of jockeys has declined 17.2% (from 349 to 289).¹⁸

Similarly, as shown in Table 9 and Table 10 respectively, over the past decade there has been a general decline in the number of people licensed to participate in the harness and greyhound racing codes.

¹⁸ Unless specified, data is from *RNSW Strategic Plan 2004* and *RNSW Annual Report 2007*

Table 9: Registrations related to NSW harness racing

	2001/02	2006/07	Total % change
Trainers	1,751	1,278	▼ 27.0%
Drivers	1,468	1,032	▼ 29.7%
Bookmakers	47	34	▼ 27.7%
Stable hands	280	425	▲ 51.8%

Source: GHRRRA NSW – Annual Report 2007

Table 10: Registrations related to NSW greyhound racing

	1999/01	2005/07	Total % change
Owner/trainers	5,253	4,534	▼ 13.7%
Owners	2,553	2,593	▲ 1.6%
Trainers	1,852	1,690	▼ 8.8%
Bookmakers	81	56	▼ 30.9%

Source: GHRRRA NSW – Annual Report 2007

Looking at the industry as a whole, the ABS's most recent survey of employment in the NSW racing industry is provided in Table 11. It shows that employment in the NSW racing industry is predominantly on a casual basis, reflecting the intermittent need for staff at race meetings.

Table 11: Characteristics of employment and volunteers in the NSW racing industry 2004/05

	Males		Females		Persons	
	no. ('000)	%	no. ('000)	%	no. ('000)	%
Working proprietors and partners of unincorporated businesses	*78	2.8	*68	4.0	*146	3.2
Employees						
Permanent full-time	804	28.4	^423	25.0	1,228	27.1
Permanent part-time	^145	5.1	84	5.0	^229	5.1
Casuals	*1,807	63.7	1,115	66.0	*2 922	64.6
Total	*2,756	97.2	1,623	96.0	^4,379	96.8

Source: Data available on request from ABS Survey of Sports and Physical Recreation Services, Australia, 2004–05

^ estimate has a relative standard error of 10% to less than 25% and should be used with caution

* estimate has a relative standard error of 25% to 50% and should be used with caution

While the ABS identified 1,021 volunteers assisting the racing industry during June 2005,¹⁹ GRNSW states that the number of volunteers in NSW greyhound racing clubs is approximately 570, which suggests that there are likely to be more than 1,021 volunteers across the three codes.²⁰ This observation was made a number of times during the Review.

Contribution to the NSW economy

The ABS provides an assessment of the NSW racing industry across all three codes. The ABS's analysis of the size of the racing industry includes all employing and significant non-employing businesses/organisations whose main activity is thoroughbred horse racing, such as racing boards, racing clubs and horse trainers (estimates are for the racing industry only and do not include wagering, taxation or consumer spending). The headline results are shown in Table 12.

Table 12: ABS estimates of the size of the NSW racing industry 2004/05 (\$ millions)

	Thoroughbred racing	Harness racing	Greyhound racing	Total
Wages and salaries	\$65.4	\$11.2	\$4.4	\$81
Total income	\$347.4	\$52.5	\$28.7	\$428.6
Value add	\$69.8	\$12.0	\$4.7	\$86.4
Value add as % of GSP	0.024%	0.004%	0.0016%	0.0296%
Income as % of NSW racing industry	81.1%	12.2%	6.7%	100%

Source: Data available on request from ABS Survey of Sports and Physical Recreation Services, Australia, 2004-05

Industry value added measures are technically appropriate because they do not include the value of production generated by sectors that are outside the boundaries of the industry in question.

¹⁹ Data available on request from ABS Survey of Sports and Physical Recreation Services, Australia, 2004-05

²⁰ Submission 30, p.12

Value added is the difference between a firm's sales and its immediate purchases of materials and services from other firms. It is equal to the contributions of capital and labour to the firm's sales as measured by the incomes that they receive.²¹

Based on the ABS approach and the results shown in Table 12, the total value add of the racing industry to the NSW gross state product (GSP) is around 0.03%.

Stakeholders have been critical of the estimates produced by the ABS, principally because of its focus solely on racing. For example, RNSW notes that earlier studies of the contribution of the thoroughbred segment of the industry (including direct and indirect impacts plus impacts associated with breeding and wagering) were in the order of 0.55% to 0.7% of GSP.²² These studies suggest that total racing, breeding and wagering activity may be in the order of 0.68% to 0.86% of NSW GSP. Whichever may be the more accurate analysis, the Review concludes that racing, despite its importance socially and culturally, is not a major contributor to the NSW economy.

Funding of the racing industry

Wagering has been the main source of revenue for racing since its inception. In this way racing is different from other sports which prosper as spectator events with wagering as a by-product; racing exists as a wagering product and as a result it is highly dependent on funding from wagering activity for its continued viability.²³ The primary source of this funding in NSW is the NSW TAB.

In order to provide for the continued funding of the racing industry post-privatisation of the NSW TAB, the RDA was entered into on 11 December 1997. The RDA is between Tab Ltd and the three codes of the NSW racing industry, represented by Racingcorp Pty Ltd (Racingcorp). The RDA signified a move away from the funding of the racing industry by the NSW Government.

The payments the racing industry receives under the RDA are set out in Table 13.

²¹ Importantly, the ABS uses Industry Value Added (IVA) measures for its national accounts — ABS, *Australian Industry*, cat. no. 8155.0. The ABS calculates IVA as sales and service income *plus* funding from federal, state and/or local government for operational costs *plus* capital work done for own use *plus* closing inventories *less* opening inventories *less* purchases of goods and materials *less* other intermediate input expenses

²² RNSW, Submission 32, p.7

²³ Boston Consulting Group 2008, op. cit., p.39

Table 13: Fees paid by Tab Ltd to the racing industry

Wagering category	Type of payment	Basis of payment
Totalizator race wagering	Product fee	21.9965% of net wagering revenue ²⁴
	Fixed product fee	\$12m payable in FY07 indexed at CPI thereafter
	Incentive fee	25% of notional wagering earnings of the NSW wagering business
Totalizator sports wagering	Product fee	21.9965% of net wagering revenue
	Incentive fee	25% of notional wagering earnings of the NSW wagering business
Fixed odds race wagering	Fixed odds product fee	21.9965% of fixed odds revenue ²⁵
	Incentive fee	25% of notional wagering earnings of the NSW wagering business
Fixed odds sports betting	Incentive fee	25% of notional wagering earnings of the NSW wagering business
Virtual racing games	Incentive fee	25% of notional wagering earnings of the NSW wagering business ²⁶

Source: Tabcorp

Under the RDA the TAB distributes approximately 4.7% of turnover to the NSW racing industry.²⁷ In 2006/07, Tab Ltd distributed \$220.8 million to the NSW racing industry.²⁸

The contributions that TAB makes under the RDA comprise the largest source of revenue for the NSW racing industry. Other sources of revenue

²⁴ 'Net wagering revenue' is the gross margin of totalizator bets (i.e. the proportion of the bet not returned to the dividend pool)

²⁵ 21.9965% on another basis or at a lower rate agreed in writing between Tab Limited and Racingcorp from time-to-time. No fixed odds product fees are payable on races on which Tab Limited conducted fixed odds betting in 2003

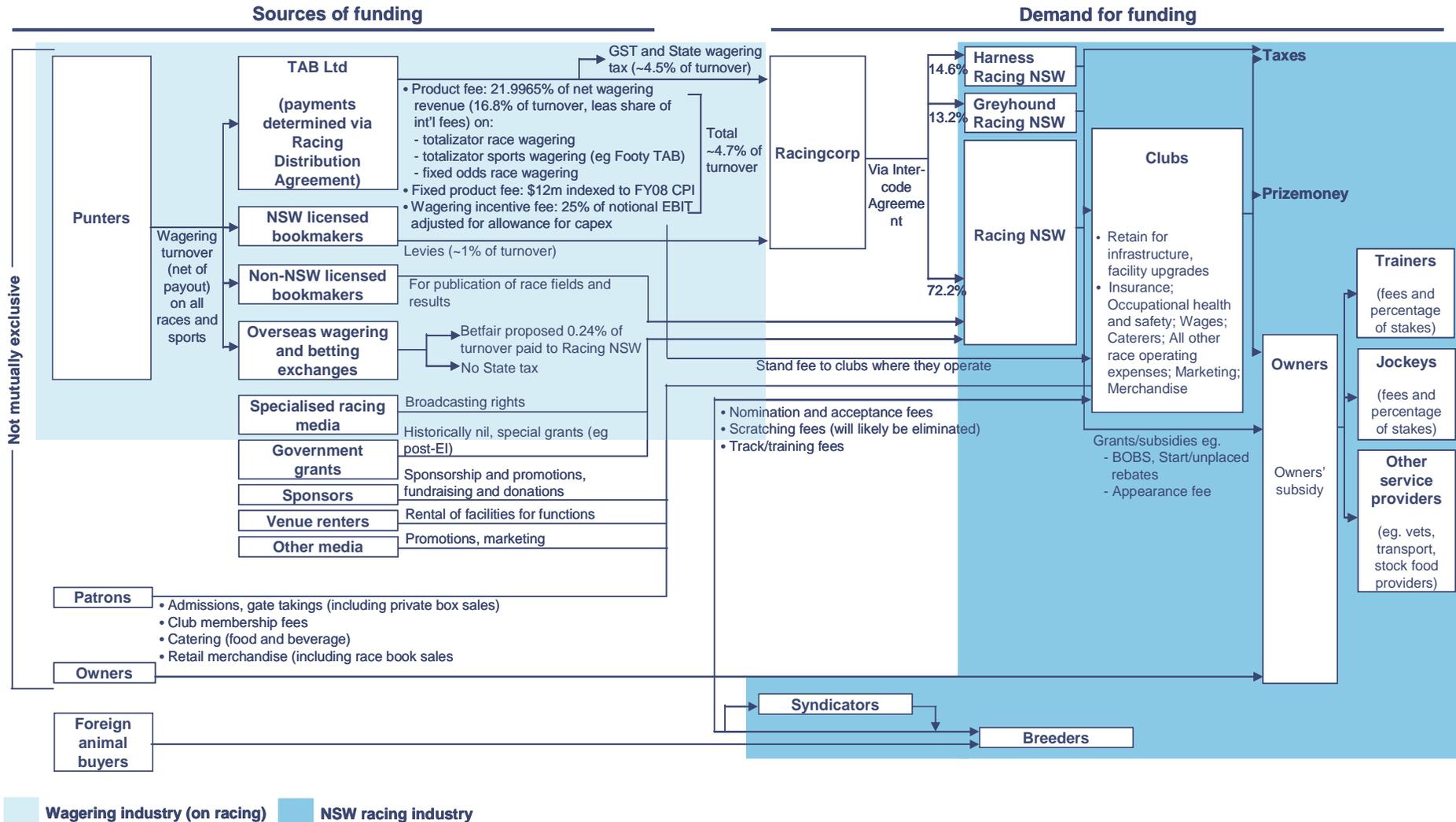
²⁶ Payable on virtual racing games located and operated in NSW pursuant to a specified wagering licence by Tab Limited or its related bodies corporate. No virtual racing games are currently licensed in NSW in this manner

²⁷ Boston Consulting Group 2008, op. cit., p.40

²⁸ Racing NSW (n.d), *NSW Bookmakers – Operating Conditions*

include sponsorships, broadcasting and other media, race attendance and entry fees paid by animal owners. These sources of funding and how they are distributed between the codes is summarised in Figure 5.

Figure 5: Sources of funding for NSW racing codes



Source: Based on material in a submission from Boston Consulting Group, edited by the review

3 Fundamental challenges facing the NSW wagering and racing industries

Key points

- Differences in regulation of the wagering industry between states and territories have provided the opportunity and incentive for non-traditional wagering operators to enter the market.
- These differences allow wagering operators to offer NSW punters a wider range of products in other jurisdictions.
- Technology has made the products offered by wagering operators outside NSW increasingly accessible for NSW residents.
- Increased availability of wagering products is attracting punters away from NSW TAB and bookmakers, reducing revenue for these operators.
- The NSW racing industry is reliant on distributions from NSW wagering operators, particularly the NSW TAB.
- Falling revenues for the NSW TAB will result in reduced distributions to the racing industry.

Emergence and growth of a national wagering market

Technology

As with most industries, the introduction of new technologies has led to significant changes and growth in the wagering industry. Technological advances have enabled wagering operators to improve their services and increase the entertainment experience for consumers. In particular, Internet and telephone betting permit wagering products to be accessed by a larger number of customers and for operators to be located anywhere in Australia (or overseas).

The use of phones to place bets (initially illegally prior to the TAB, and then lawfully when it was permitted to offer that facility) was the beginning of a move from an industry model whereby state-based operators provided services to customers within that state to one where wagering operators in any jurisdiction could provide services to customers across Australia. This shift only became stronger with the introduction of Internet betting, as it provided yet another avenue for wagering operators to provide services to customers.

Other technologies that have been widely accepted by the Australian public will provide further avenues for customers to access wagering products. For example the introduction of pay (subscription) TV has

provided a platform for the development of technologies such as Two Way, whereby consumers in Victoria are able to place bets from their homes. Mobile phones also provide for a range of opportunities for customers to access wagering products whether this be through access to the Internet via the phone, or products designed to utilise other aspects of mobile phones such as SMS services.

Technology has provided wagering customers with greater choice. It has also provided wagering operators with a range of different options in terms of how to service their customers. Technology has eliminated the need for operators and customers to be physically located within close proximity to each other and it also allows services to be available on an essentially continuous basis.

State and territory based regulation of wagering activity

While technology has facilitated the move to or establishment of wagering operations in jurisdictions other than NSW, it is not the *reason* why this has occurred. It is clear that the regulatory and taxation environment in NSW is not as favourable for wagering operators as it is in other jurisdictions.

Successive NSW Governments have introduced legislation and regulations that have resulted in a regulatory environment that is, essentially, protectionist. Rather than seeking to promote competition in the wagering market as new operators emerged and accommodate these changes governments have sought to restrict their operations in an effort to protect TAB market share. As a result few new wagering operators have chosen to establish their operations in NSW.

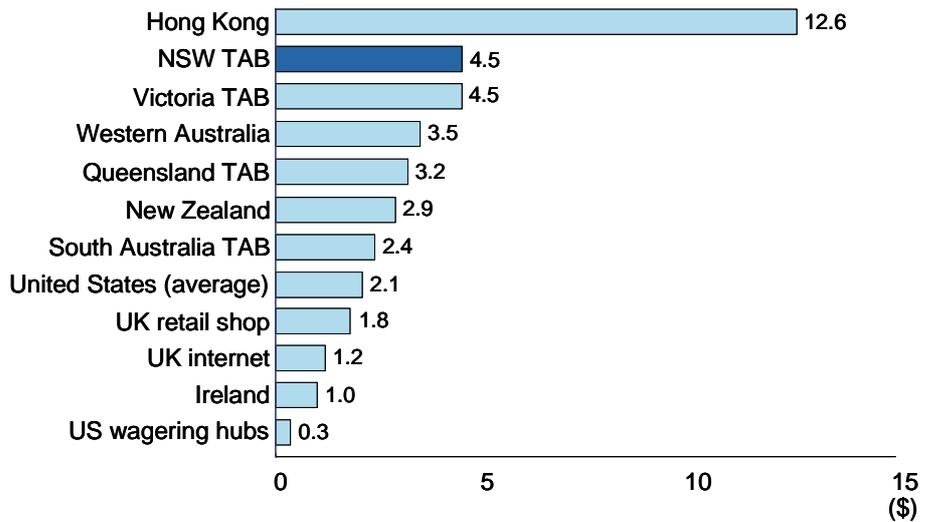
This approach may have proven successful had all states and territories been of a similar view in relation to new wagering operators and enforced a regulatory environment in-line with NSW. However, it has not been that case and the restrictive regulatory environment in NSW has simply resulted in operators locating in jurisdictions with more accommodating regulatory structures.

There is little that the NSW Government can do to restrict the activities of these interstate operators and protect the TAB from competition. The regulatory environment in NSW has failed to protect the market share of the TAB and the revenues that it pays to both the NSW Government and the NSW racing industry. Furthermore, NSW has forfeited revenues that may have been generated for both the government and the industry had wagering operators established (or remained) in NSW.

Taxation and racing industry fees and levies

As well as other jurisdictions having more favourable regulatory arrangements for wagering operators there are a number that have more favourable conditions in relation to other costs imposed on operators.

NSW eliminated its bookmaker betting tax in 2002 but levies and fees that are imposed by the racing industry are set at levels that exceed similar charges or government taxes in other jurisdictions.

Figure 6: Taxation (betting duty plus GST) per \$100 wagered

Note: There is no legal wagering in Hong Kong other than through the legislated monopoly provider. This prohibition is actively enforced

Source: Boston Consulting Group, Report to RNSW – Response to the Independent Review of Wagering in NSW, p.23

While it is reasonable for the racing industry in NSW to seek to benefit from the activities of the wagering operators that profit from providing products based on their events, these industry payments are higher than in other jurisdictions and discourage operators from establishing in NSW.

Complexity of regulation

NSW's regulatory environment has evolved over a number of years in a somewhat *ad hoc* fashion. Changes have been introduced in order to deal with specific issues and events. As a result not only is the NSW regulatory environment restrictive, it is also unnecessarily complex. This not only acts as a deterrent for those wishing to establish operations in NSW but also imposes costs on those already in operation. This further limits NSW wagering operators' ability to compete with those operating in other jurisdictions.

A certain level of regulation is required to ensure the integrity of the racing and wagering industries and to provide consumer protection (see Chapter 4). However, there are multiple layers of administration within the racing and wagering industries in NSW, each with a slightly different role. For example, the following bodies all play a role in the administration of the industry:

- NSW Office of Liquor, Gaming and Racing
- Racingcorp
- RNSW
- GRNSW
- Harness Racing NSW (HRNSW)

- GHRRA
- race clubs.

An example of the burden that this creates for the wagering industry is indicated by the process required by bookmakers who wish to operate in NSW. In order to operate a stand at a race meeting a bookmaker must:

- apply to the OLGR for a State Bookmakers Authority;
- apply for a bookmaking licence from RNSW, GRNSW or HRNSW, which must be renewed annually; and
- apply to the Race Club conducting the meeting for a position on-course.

Betfair pointedly notes that:

“The recent application by Tabcorp for a racing and sports wagering licence in the Northern Territory further suggests that the NSW regulatory regime is not supporting the growth of the NSW wagering industry.”²⁹

NSW’s regulatory environment restricts the activities of existing operators and limits their ability to innovate, improve their services and compete with interstate operators consistent with the view.

Reliance of the racing industry on a declining share of wagering revenue

Competition for the gambling dollar has intensified. Not only must traditional providers of wagering services such as the TAB and bookmakers compete with an increasing number of alternative wagering providers, they are also increasingly competing with other forms of gambling. This competition is only likely to increase further.

Ideally for the NSW racing industry and the TAB, this level of competition would result in an increase in the overall wagering market with the TAB’s share of this market either constant or growing. This would secure a revenue stream for the racing industry that was reflective of overall growth in the wagering industry. However, it would appear that instead, competition has eroded the TAB’s market share and accordingly revenues paid to the racing industry.

It could be argued that that the TAB is losing market share due to its inability, and to some extent unwillingness, to compete. The TAB’s ability to compete is somewhat limited by government and industry imposed restrictions.

²⁹ Submission 37, p.7

While a number of the regulatory restrictions on wagering activity that exist are aimed at protecting the TAB there are a number that limit the TAB's product offering and therefore its ability to compete directly with other wagering operators.

In comparison to other TABs, the tax rate applied to the NSW TAB is at the higher end of a wide range of tax rates. The tax rate applied to the TAB in relation to other non-TAB wagering operators, both in NSW and in other jurisdictions, is also high. As a result the NSW TAB faces a higher cost structure.

These costs also reflect the payments that the TAB makes to the racing industry under the RDA. This rate is also higher than that paid by other non-TAB operators both in NSW and interstate. However, both the TAB and the racing industry appear to be satisfied with the current arrangements under the RDA.

Declining TAB revenue is only one half of the problem. The other is the extreme reliance of the racing industry on this revenue source. It is of vital importance that the NSW racing industry identifies and maximises other sources of revenue.

The revenue sharing arrangements between the TAB and the racing industry, between the codes and within the codes, are also unnecessarily complex and rigid. It is true that these agreements are commercial and not necessarily the realm of government. However, it is not possible to address the future growth and sustainability of the NSW racing industry without considering these agreements.

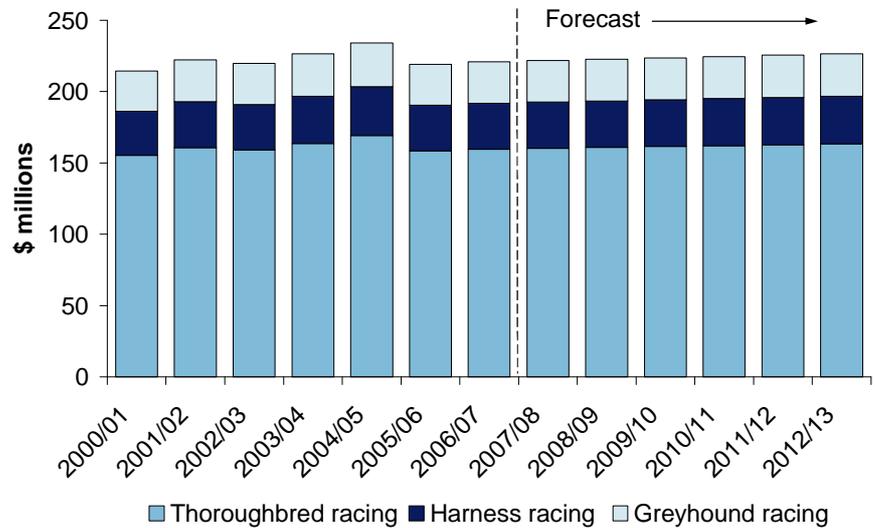
Of particular concern is the seeming inflexibility of the arrangements. For example, the RDA is for a term of 99 years (although there are triggers for renegotiation) while changes to the Inter-code Agreement require the agreement of all three codes.

These agreements remove most of the incentive for innovation and development within the codes or the efficient management and utilisation of infrastructure. As an example, in terms of track utilisation, Australia has one of the lowest number of races held per venue compared to other major racing countries. Yet if one racing code were to improve its efficient use of facilities and generate a greater share of revenue compared to the other codes but still receive a distribution as fixed under the Inter-code Agreement, it would not be rewarded for efficient management and utilisation of infrastructure.

Outlook for funding and the implications for racing

As highlighted in Figure 7 real distributions to the three racing codes from the TAB have increased only slightly, on average, by 0.4% each year since 2000/01 (from approximately \$214 million to approximately \$221 million in 2006/07).

Figure 7: Continued real movement in TAB distributions based on current trends (\$million)



The decline in the level of funding for the NSW racing industry since 2004/05 reflects the intersection of three very different forces, of which the first two are one-offs, while the third is considered the long term threat.

Firstly, there was a reduction in NSW wagering in 2005 caused in part by the 'split broadcast' that reduced the availability of live coverage of Sydney metropolitan race meetings. This was an industry self-inflicted impact that reduced NSW wagering turnover by more than \$180 million,³⁰ and more than \$8 million of funding for the NSW racing industry.

Secondly, the recent equine influenza outbreak reduced TAB wagering in NSW in 2007/08, and hence industry support. Tabcorp's NSW racing turnover fell by 16.9% during the period 25 August 2007 to 30 November 2007 in comparison to the same period the previous year.³¹

Thirdly, there has been an accelerated leakage of wagering dollars to (corporate) bookmakers licensed in the Northern Territory and betting exchanges (principally Betfair). This leakage is largely driven by a range of interconnected forces:

- Differences in the regulation of the wagering industry between Australian states and territories have provided the opportunity and incentive for non-traditional wagering operators to enter the market

³⁰ Chappell, T 2006, loc. cit.

³¹ Kupper, E 2008, loc. cit.

and provide their services to NSW residents (e.g. corporate bookmakers licensed in the Northern Territory, and Betfair operating from Tasmania)

- These regulatory differences have allowed these new wagering operators to offer a wider range of wagering products, and improved technological delivery (e.g. by phone and the Internet) has made the products increasingly accessible for NSW residents
- Lower tax regimes for Northern Territory-licensed bookmakers and Betfair (coupled with different operational models with lower takeouts) are attracting higher value punters away from NSW TAB and NSW bookmakers
- Falling revenues for the NSW TAB result in reduced distributions to the NSW racing industry

BCG estimates that if the racing wagers placed by NSW residents through Northern Territory-licensed bookmakers and Betfair were to pass through the NSW TAB, then:

- In 2006/07 there would have been an additional \$19 million of revenue for NSW racing (i.e. 8.6% of actual TAB monies paid³²) and an additional \$10 million of tax for the NSW Government; and
- In 2008/09 there would be an additional \$27 million of revenue for NSW racing and an additional \$14 million of tax for the NSW Government.³³

Similarly, the HRNSW-commissioned research by BIS Shrapnel indicates that “TAB Ltd could lose up to \$120M through leakage over the next 5 years which is of obvious concern to the racing industry”.³⁴

The BCG report concluded (with respect to thoroughbreds, but equally applicable across the three codes) that:

*In the absence of any initiatives to boost the racing’s industry funding from wagering, real wagering will stagnate over the next five years and will fail to recover from the funding decline experienced during FY05 to FY08.*³⁵

This pessimistic view of NSW’s growth prospects can be generally extended to the racing industry in Australia as a whole. Indeed, the

³² Actual funding to NSW racing by NSW TAB was \$220.8 million in 2006/07: Racing NSW (n.d), *NSW Bookmakers – Operating Conditions*

³³ Boston Consulting Group 2008, loc. cit.

³⁴ Submission 38, p.5

³⁵ Boston Consulting Group 2008, op. cit., p.44

'horse and greyhound racing industry' in Australia is ranked by market analyst IBISWorld as being the fifth worst performing Australian industry (out of a total of 477 industries) in terms of industry growth projected through to 2010.³⁶

In contrast, GRNSW's submission to this Review was more bullish than other stakeholders on the prospects for Tabcorp's NSW wagering revenue:

"NSW TAB's future revenue from off-course racing and sports betting is unlikely to resemble the pattern of recent years. Analysis conducted by BIS Shrapnel suggests that the negligible real growth of the previous decade is likely to be reversed in the future as it expects TAB revenue to gradually be on an upturn phase and break the \$1 billion threshold (in current prices) within the next five years. It suggests that the prospects for the NSW economy are strong. This will improve household disposable income which in turn will support gambling expenditure in the State.

BIS Shrapnel projects that NSW TAB's revenue will grow at an annual average of 1.8% per annum in real terms (i.e. after inflation) over the next five years."³⁷

Given recent economic events (e.g. the ongoing slow-down of the NSW economy and the global financial crisis), the BIS Shrapnel forecasts appear overly optimistic.

Newly proclaimed race fields legislation presents a potential new source of revenue for the racing industry³⁸ but there remains some uncertainty as to its ultimate success.

³⁶ IBISWorld 2008, custom data

³⁷ Submission 30, p.31

³⁸ Boston Consulting Group 2008, op. cit., p.57

Part B – Guiding Principles

4 Underlying principles for the regulation of wagering and racing

Key points

- Information asymmetry and negative externalities are the reasons why government would seek to regulate the racing and wagering industries:
 - Information asymmetries exist between both punters and participants in the racing industry and between the wagering and racing industries, primarily in relation to the condition of the animals racing.
 - Negative externalities related to wagering revolve around the impact that problem gambling can have on the families and friends of a problem gambler and the wider community.
- As a minimum, regulation of the wagering industry must seek to limit the incidence of and impact of problem gambling.
- Regulation of both the racing and wagering industries should ensure the integrity of both the racing and wagering industries.

In respect of the overall goals of gambling regulation, the Productivity Commission's seminal study stated:

The two objectives providing the strongest rationale for special gambling policies are to ensure probity and to reduce adverse social impacts ... The overarching goal should be to maximise the welfare of the community as a whole. Measures which can reduce the social harms of gambling while maintaining the benefits find particular favour under this approach.³⁹

In a similar vein, two broad goals have been at the forefront of considerations made in this Review:

- Is what is being done, and what is suggested to be done, ensuring the integrity of outcomes?
- Is what is being done, and what is suggested to be done, consistent with the principle of responsible wagering?

These issues are discussed in turn.

³⁹ Productivity Commission 1999, loc. cit.

Integrity of racing and wagering

Probity of the wagering and racing industries are inextricably linked to each other. Indeed, the fundamental structure of the NSW wagering industry reflects the findings of the 1963 Royal Commission (see Box 1) which recommended the move to establish the TAB partly to address concerns about SP bookmakers and criminal involvement.

Box 1: The importance of the Kinsella Royal Commission in shaping the structure of the NSW wagering industry

Prior to the 1960s, virtually all legal wagering on racing in NSW occurred within the boundaries of licensed racecourses. Off-course wagering in NSW was the domain of 'starting-price' bookmakers who operated illegal betting operations using telephones or in streets, lanes and open places as well as private houses and offices. It was roughly estimated that for every £1 invested with on-course bookmakers, £2.2 was bet with illegal bookmakers.

In 1963, a Royal Commission conducted by His Honour Justice Kinsella of the NSW Supreme Court recommended the legalisation of off-course betting by means of establishing a statutory body called the Totalizator Agency Board (TAB). In making his recommendation, His Honour took into account concerns expressed that legalisation would lead to increased gambling, increase crime and have a harmful effect on young people, but concluded that the advantages to the community of off-course betting being lawful under proper supervision and control, out-weighed the disadvantages.

The TAB in NSW was established in December 1964 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. Since then, some of these TABs have been privatised (e.g. NSW, Victoria, Queensland and the Northern Territory).

In 1994, changes were made to allow on-course bookmakers to accept bets by telephone from punters away from the course. Further changes were ushered in with the coming of the digital era so that bookmakers were able to operate off-course, and accept bets through the Internet and other electronic communication media.

Sources: Parliament of NSW 1963, Report of the Royal Commission of Inquiry into off-the course betting in NSW, Sydney; NSW Treasury 2007, Interstate comparison of taxes 2007/08, November; Cross-Border Betting Task Force 2002, Report to the Conference of Australasian Racing Ministers, 1 November, vol. 1, p.6

The health of the wagering and racing industries depends upon probity in both areas being ensured.⁴⁰ The Review has proceeded on the basis that any reform to the wagering and racing industries must not compromise the integrity of the two industries.

Responsible gambling

Problem gambling has always been a concern of the community and government. The establishment of the various state TABs during the 1960s was a step by the state governments to limit the ability of punters to access off-course bookmaking. Mr Justice Kinsella, whilst recommending the establishment of the TAB and legalising off-course betting, stated that problem gambling constitutes 'a serious social and economic wrong to the community'.⁴¹

The negative externalities associated with problem gambling felt within society include:

- family – costs of impoverishment, psychological problems including stress, loss of trust, depression, relationship breakdown or violence in the home;
- employer – costs of less productive effort and absenteeism;
- community – costs can include a changed nature or 'feel' to the community and local facilities; and
- government – costs of providing welfare, counselling services and measures to deal with and ameliorate the impacts of problem gambling.⁴²

The 2001 NCP review of NSW racing and betting legislation recommended that where the easing of restrictions on wagering operators would have resulted in an expansion of gambling, that restrictions be retained to minimise harm from problem gambling.⁴³ The Productivity Commission also identified probity, harm minimisation and consumer protection as acceptable rationales for restricting gambling activity.⁴⁴

⁴⁰ The recent Victorian review highlighted the need to be vigilant regarding the maintenance of integrity as an overwhelming goal of the regulatory regime — Lewis, G.D 2008, *A Report on Integrity Assurance in the Victorian Racing Industry*, Melbourne, August

⁴¹ Parliament of NSW 1963, *Report of the Royal Commission of Inquiry into off-the course betting in NSW*, Sydney, p.23

⁴² Productivity Commission 1999, op. cit., Chapter 4

⁴³ NSW Government 2001, loc. cit.

⁴⁴ Productivity Commission 1999, op. cit.

The Productivity Commission found that accessibility of the wagering product is one of the determinants of demand for gambling.⁴⁵ It is considered a key factor in gauging whether problem gambling related issues arise with use of betting products. Accessibility is not just about proximity, it is also about:

- the mass appeal and ease of use of a gambling form;
- any conditions on entering gambling venues; and
- the initial outlay required to gamble.

Accordingly regulating access has been one of the ways in which governments seek to reduce problem gambling.

A range of requirements are placed on the NSW TAB and other wagering operators to address this issue. The requirements are set out in the *Totalizator Act 1997* (Totalizator Act), the *Racing Administration Act 1998* (Racing Act) and their related regulations. Examples of restrictions and requirements that apply to the NSW TAB include:

- it may not provide credit betting;
- it may not provide services to a minor;
- it must provide information on problem gambling in each part of its premises on which totalizator betting is being conducted and they must be prominently displayed;
- it must ensure that each printed entry form and betting ticket in a totalizator contains information on how to contact the G-line counselling service;
- it must display a notice of reasonable size and prominence that contains contact information for the G-line;
- it must display information regarding how to contact the G-line in a prominent position on or adjacent to each automatic teller machine (ATM) and electronic funds transfer facility (EFT) located on the premises on which totalizator betting is being conducted;
- observe certain standards in the advertising of its services, including contact information for the G-line; and
- it must not offer or supply any free or discounted liquor as an inducement to participate, or to participate frequently, in any totalizator betting.

Similar provisions apply to race clubs and bookmakers such that the same information regarding problem gambling is accessible to those who are betting at a race course.

⁴⁵ Productivity Commission 1999, op. cit., pp.3.12-3.13

The Review notes that there is a high level of awareness within the community of the harm that can be caused by problem gambling. It is clear that the NSW Government, and indeed the racing and wagering industries, share this concern. Of all the issues that were raised in the many submissions to this Review, the one that was raised most consistently was the need for any changes to be consistent with responsible gambling principles.⁴⁶

The Review strongly recommends that adherence to the principles of responsible gambling should underlie any reform to the wagering or racing industry. This is necessary to ensure that gambling activities are conducted responsibly so that the harm associated with excessive gambling is minimised.

⁴⁶ For example, the following submissions raised responsible wagering as an issue: Submissions 23, 25, 28, 30, 32, 33, 34, 36, 37, 38, 39, 40 and 41

5 Principles for reform

Key points

- Reform options should seek to ensure that racing and wagering are undertaken with appropriate integrity arrangements and outcomes, and in a socially responsible manner.
- Reform of the NSW wagering and racing industries should be also be guided by the following additional principles:
 - 1 Wagering operators should provide recompense to the racing industry in recognition of their reliance on the racing product and the revenue that they earn from racing related products.
 - 2 Revenue received by each of the racing codes should bear some relationship to the controllable activities of each racing code.
 - 3 Funding arrangements should provide for the optimal use of facilities.
 - 4 Funding arrangements should be sustainable over time and as patterns of betting change.
 - 5 Like wagering products should be treated equally, regardless of technology used or organisation through which product is offered.
 - 6 Regulatory structures should not drive legitimate employment generating business and recreational activity (whether racing or wagering) out of NSW.
 - 7 Regulation should meet best practice principles in relation to the reduction of red tape.
 - 8 Where reforms require significant structural changes, transitional arrangements should be made.

In considering possible reform options for the wagering and racing industries the set of principles (above) was developed against which reform options have been assessed.

These principles should be read in conjunction with the general regulatory goals of ensuring that racing and wagering arrangements are undertaken with appropriate integrity outcomes and in a socially responsible manner (as discussed in Chapter 4).

- 1 Wagering operators should provide recompense to the racing industry in recognition of their reliance on the racing product and the revenue that they earn from racing related products.

An acknowledged objective of government intervention to support the racing industry is to address the 'free-rider' problem (i.e. where betting

operators use the racing betting platform without contributing to the cost of conducting racing).⁴⁷

- 2 Revenue received by each of the racing codes should bear some relationship to the controllable activities of each racing code.

The linking of revenue received to the controllable activities of each code provides an incentive to each code to operate in a manner that maximises their revenue and increases efficiency.

To the degree that revenue is not related to the activities of the individual codes, there will not be appropriate incentives for codes to provide the level and quality of racing that would otherwise be demanded by the wagering public.

- 3 Revenue sharing arrangements should provide for the optimal use of facilities.

Revenue sharing arrangements should not encourage the retention of underperforming assets or the inefficient use of existing assets. They should incentivise the racing industry to reduce costs to an efficient level.

- 4 Funding arrangements must be sustainable over time and as patterns of betting change.

Funding arrangements need to be sufficiently flexible so as to respond to the introduction of new wagering products, new distribution channels, new wagering providers, and changes in consumer tastes and wagering patterns.

- 5 Like wagering products should be treated equally, regardless of technology used or organisation through which product is offered.⁴⁸

The principles of regulatory neutrality and equity suggest that governments should regulate in a manner that focuses on the underlying market failure rather than the specific technologies or organisations generating the need for regulation.

- 6 Regulatory structures should not drive legitimate employment generating business and recreational activity (whether racing or wagering) out of NSW.

Care needs to be taken to ensure that regulatory and tax arrangements in NSW do not drive activity to jurisdictions with lower regulatory supervision or taxation arrangements. However, as will be seen, the

⁴⁷ NCP Review, p.49, available at <http://www.olgr.nsw.gov.au/pdfs/ncap_chapter4.pdf>

⁴⁸ It is noted that adherence to this principle may be limited by existing contracts that provide for the TAB's exclusivity over certain products or services

Review is not advocating the removal of sensible restrictions which ensure integrity and minimise the risk of harm from problem wagering.

7 Regulation should meet best practice principles in relation to regulatory design and the reduction of red tape.

Regulation is an important tool available to government. Well designed and properly targeted regulation helps deliver the community's economic, social and environmental goals. However, regulation can also impose administrative and compliance burdens on business, consumers, government and on the wider community. These burdens must be weighed against the benefits that the regulation generates.

In this regard, COAG has agreed that all governments will ensure that regulatory processes in their jurisdiction are consistent with the following principles:

1. establishing a case for action before addressing a problem;
2. a range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their benefits and costs assessed;
3. adopting the option that generates the greatest net benefit for the community;
4. in accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:-
 - a the benefits of the restrictions to the community as a whole outweigh the costs, and
 - b the objectives of the regulation can only be achieved by restricting competition;
5. providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear;
6. ensuring that regulation remains relevant and effective over time;
7. consulting effectively with affected key stakeholders at all stages of the regulatory cycle; and
8. government action should be effective and proportional to the issue being addressed.⁴⁹

The Review has had regard to National Competition Principles (NCP) generally. Indeed, a major consideration for the Review has been the desirability of a consistent national approach, and in its absence,

⁴⁹ Council of Australian Governments 2007, *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies*, October

whether any restrictions in NSW more onerous than those applying elsewhere, can be removed.

Furthermore, the NSW Government is committed to cutting red tape as a key part of its economic policy. The NSW Government has articulated what characterises good regulation and the minimisation of red tape through seven ‘better regulation principles’:

1. The need for government action should be established
2. The objective of government action should be clear
3. The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options
4. Government action should be effective and proportional
5. Consultation with business and the community should inform regulatory development
6. The simplification, repeal, reform or consolidation of existing regulation should be considered
7. Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness⁵⁰

8 Where reforms require significant structural changes, transitional arrangements should be made.

Industry participants should be provided with sufficient certainty as to any reform path so that they can make changes in an orderly manner. That said, the pace of transition will be affected by a range of factors involved, including:

- The need to consult with the community so that stakeholders understand the nature and scale of coming reforms
- The degree of capital investment that is not able to easily be deployed to other activities (i.e. sunk costs)
- The pace of change generated by commercial and regulatory activities outside NSW

A logical conclusion from these principles is that regulatory changes should not be ‘tacked on’ to existing regulation. That is, in this context, consideration should be given to a complete re-write of legislation and

⁵⁰ Better Regulation Office 2008, *Guide to Better Regulation*, Department of Premier and Cabinet, Sydney, p.6

regulations to establish a new framework for regulation of wagering and the funding of racing.

Part C – A National Approach

6 A coordinated national response

Key points

- Many of the issues confronting the wagering industry in NSW result from the transition of wagering from a state-based industry to a national industry.
- The NSW Government is limited in its ability to address these issues given their inability to influence the activities of operators outside NSW.
- A number of the issues being faced by NSW are also being dealt with by other State and Territory Governments to a certain degree.
- In order to eliminate the problems that result from a lack of consistency between the treatment of wagering operators across jurisdictions the long term solution should be for a national approach.
- There are a number of issues that are unlikely to be resolved without a national approach.

A number of the racing and wagering problems in NSW (see Chapter 3) appear to be as a result of an increasingly national wagering industry, such that the industry cannot be effectively regulated at state level.

Many of the existing regulatory and taxation arrangements were designed at a time when:

- legal wagering was conducted on track, and later off-track solely at TAB retail venues; and
- racing was consumed on track via attendance.

In effect, the practical difficulties of distance and limited technology prevented most punters from even knowing what events were going on elsewhere, thus limiting their interest in betting on them.

In the past decade there has been a pronounced move away from on track operations which has inevitably led to a more national (i.e. cross-border) industry as customers can, and do:

- watch interstate races;
- bet on interstate races; and
- bet with interstate wagering providers.

Thus, the ability of any individual state or territory to impose regulatory control or a level of taxation or industry levy above that which operates in the jurisdiction with the lowest standards is limited.

In particular, the NSW Government is limited in its power to address these issues given its inability to influence the activities of operators located outside NSW. Indeed, seeking to impose more stringent standards on NSW operators has encouraged some to move to jurisdictions with lower standards, and hence resulted in lower standards for NSW consumers.

In effect, inter-jurisdictional regulatory and taxation differences have encouraged industry participants to undertake jurisdictional arbitrage. There are strongly divergent approaches to the regulation of both corporate bookmakers and betting exchanges. The adoption of lower regulatory standards and rates of tax and levies than in NSW, has led to an outflow of operators and wagering services from NSW. For example, Teague notes that:

“Clearly, the effectiveness of any NSW law or policy will be materially affected by the actions of other States, especially Victoria and Northern Territory. What they do may over-ride any course adopted locally — i.e. cause a diversion of business — which is why we got into this mess in the first place.”⁵¹

Despite the increasingly borderless approach by industry participants and consumers, the current regulatory system in NSW is marked by differences which have no clear logic today other than an attempt to resist interstate competition.⁵²

It is important to note that a number of the issues being faced by NSW are also currently being dealt with by other state and territory governments,⁵³ or will need to be addressed in the next few years as legislative arrangements for TAB exclusivity come up for review. This occasion possibly provides scope for a more holistic national position to be developed to address common issues.

The challenges for the development of a national approach include:

- In the wagering context, the development of a mechanism that provides a sufficient incentive for Tasmania and the Northern Territory to operate in a manner more aligned with the majority of the states and territories
- In the racing context, dealing with state and territory racing organisations that may see a loss of power and/or prestige in the event that there is a true national reform agenda

⁵¹ Submission 19, p.2

⁵² The clearest example of this is the Western Australian Government’s attempt to regulate to stop betting exchanges (principally Betfair) taking bets from people resident in Western Australia

⁵³ As an example, see Bookmaking Reforms Working Party 2008, loc. cit.

Benefits of a coordinated national response

In the communiqué from a recent meeting of COAG it was noted that:

COAG acknowledged that Australia's overlapping and inconsistent regulations impede productivity growth. Without change Australia's future living standards would be compromised, the competitiveness of the economy reduced and our ability to meet the challenges posed by an ageing population diminished.

Many of the challenges facing the economy can only be addressed through more effective Commonwealth–State arrangements. By moving towards a seamless national economy through the reform of business and other regulation, COAG's reforms will make it easier for businesses and workers to operate across State and Territory (State) borders. These reforms will make life simpler for businesses and consumers, while continuing to provide the necessary protections and access for consumers and the community.⁵⁴

The logic of moving to a national framework for racing and wagering is consistent with these sentiments.

Although often differing in the nature of the suggested response, a number of submissions discussed the need for a national response to wagering and the funding of racing through wagering. For example, Clarkson recommends:

- 1 *A national framework to levy and equitably distribute product fees on bookmakers and betting exchanges ...*
- 2 *All aspects of Australian wagering (including sports betting) to be under the authority of a single government appointed organization⁵⁵*

Movement to a more co-ordinated national response to the regulation and funding of the racing industry has a range of potential benefits:

- A consistent framework for the development of the national industry — given that all states and territories have experienced the same underlying consumer and commercial trends, each has been investigating appropriate responses. Such consideration has often been undermined by a lack of appropriate sequencing and a lack of full see-through to understand possible changes in other jurisdictions (e.g. the study is being undertaken without full

⁵⁴ Council of Australian Governments 2008, *COAG Communiqué - 3 July 2008*, Sydney, p.1, available at <http://www.coag.gov.au/coag_meeting_outcomes/2008-07-03/index.cfm>

⁵⁵ Submission 15, pp.8-9

knowledge as to the future racing and wagering environment in Victoria, and *vice versa*, and hence options advanced may not work together in an optimal manner). The result has been a patchwork series of responses that could have been better coordinated at a national level;

- Reduced regulatory arbitrage — a more national approach reduces the ability of operators to pick off states and territories which are willing to trade off regulatory or tax standards in order to secure local investment or other economic activity. That is, the inconsistent regulatory environment across Australia means that operators can “pick off or play off governments and racing authorities one at a time and get away with it”,⁵⁶ and
- Lower chance of regulatory capture — there is the risk that some operators in particular jurisdictions may have significant sway over the relevant regulators and/or legislators because of their size in the particular state or territory market. However, in a national context, the power of individual operators is likely to be diminished such that the chance of regulatory capture is reduced.

It is for these reasons there is merit in considering how a national scheme could be developed.

Options for a national approach

For ease of understanding and reference, the options available to implement national schemes can be placed on a spectrum of uniformity, covering higher, moderate and lower levels of uniformity. The choice for policy-makers becomes a question of the level of uniformity and coordination which is:

- desired;
- appropriate; and
- achievable.

Three options provide for **high** levels of national consistency:

- Option 1: Unilateral exercise of power by the Commonwealth — the Commonwealth to legislate to provide for a regulatory regime that over-rides all such state and territory regimes. Clearly, an appropriate head of power would need to be found for such an approach. It is not clear that the Commonwealth currently has a head of power that would enable it to ‘cover the field’ with respect to wagering or racing (although a combination of the corporations and communications powers may come very close);

⁵⁶ Submission 19, p.2

- Option 2: Reference of power to the Commonwealth — subsection 51(37) of the Constitution envisages some or all of the states referring power to the Commonwealth from time to time, or adopting Commonwealth legislation on a reference of power. Once a ‘matter’ is referred to the Commonwealth (e.g. the Victorian industrial relation powers), the Commonwealth is able to legislate in the same way as any other head of Commonwealth power. This approach is considered highly unlikely to be applied in this instance given that:
 - the states have shown a general unwillingness to refer powers to the Commonwealth; and
 - unless all states refer power to the Commonwealth there will still be a non-standard approach to the regulation of wagering and/or racing;
- Option 3: Incorporation by reference — this scheme is also referred to as ‘template’, ‘co-operative’, ‘applied’, ‘adopted complementary’ and ‘application of laws’ legislation. One jurisdiction enacts legislation, which contains all the substantive provisions, and this legislation is adopted and applied in legislation enacted by the other jurisdictions in the scheme.

Option 1 may be feasible, but requires the Commonwealth to take strong independent action; it is not clear that the Australian Government has the motivation to act in this way.

Options 2 or 3 could be undertaken if there is sufficient co-operation between the states and the Commonwealth. The particular advantage of Option 2 is that, with the Commonwealth’s support, it would allow the states to override any legislative inconsistencies generated by territories.

While absolute uniformity has the benefit of reduced compliance costs, there is a possibility that it is at the cost of reduced appropriateness for each state and territory and less local context or involvement in administration. Furthermore, there is likely to be resistance by Treasuries if there is a risk of losing control over the taxation of wagering to the Commonwealth.

Moderate levels of uniformity can be achieved in one of three principal ways:

- Option 4: Complementary legislative schemes — this option relies on the Commonwealth and states working together to achieve legislative coverage of a particular policy area. A typical scenario prompting such a scheme would see the Commonwealth lacking complete control over a policy area, and so needing a state to pass complementary legislation to achieve the desired object. The Commonwealth and all participating states would pass separate, but totally consistent (although not necessarily identical) pieces of legislation. An intergovernmental agreement is likely to be used to set out the terms and understandings on which the scheme is based. The possibility for variation is obviously greater here;
- Option 5: ‘Alternative consistent’ legislative schemes — a variation of Option 3. In this version, rather than pass legislation which

applies template legislation enacted by a host jurisdiction, participating jurisdictions can pass their own legislation which can be identical to, but can also be less extensive than, the host legislation; and

- Option 6: Reciprocal legislative schemes —schemes which recognise other jurisdictions' legislation or undertake not to be inconsistent with them. Reciprocal schemes allow a jurisdiction to recognise, on a reciprocal basis, a status given by another jurisdiction. Their principal purpose is to extend national coverage rather than to achieve uniformity, although in practice they may prove to have a homogenising effect.

These options all require a high degree of cross-jurisdictional support at commencement and ongoing in order to be effective.

Conclusion

In some respects, the potential for a national approach looks somewhat bleak. Without a strongly motivated Commonwealth Government and/or inducements to facilitate cooperation the options may not be feasible because entrenched stakeholders would lose some of their privileges:

- the power of the dominant local operators to shape policy would be diminished;
- Treasuries would be concerned at a further centralisation of revenue sources within the Commonwealth (although it is the loss of such revenue to the States or some of them, which underlies this proposal); and
- Jurisdictions where local racing operations are small, and hence willing to make tradeoffs knowing that their local industry has little to lose, would be unlikely to give up their ability to undercut the larger jurisdictions.

In any case, the actual degree of uniformity achievable in many of the identified approaches is highly variable. In effect, while Options 4 to 6 may provide a more national perspective, even within some of these options there is scope for less than effective harmonisation.

Despite these concerns, the logic underpinning a more nationally consistent approach to the regulation of racing and wagering is undeniable.

This view was broadly supported by stakeholders, although specific views on the scale and scope of a national approach varied (it was not opposed by any stakeholder who dealt with the issue).

For example Tabcorp suggested that, in regards to race fields legislation, “If NSW state laws are proven to be ineffective, then a national scheme of uniform state legislation or federal laws should be considered”.⁵⁷

RNSW saw a national role for problem gambling related issues and licensing:

“Given constitutional limitations which impact on the effectiveness of an individual State’s legislation in the context of what is increasingly a national market for wagering service, effectively regulating some important issues in relation to wagering (e.g. limiting credit betting and inducements) requires a cooperative national approach and also ... the prevention of operators who do not hold an Australian wagering licence from targeting Australian customers.”⁵⁸

The Australian Internet Bookmakers’ Association (AIBA) also noted that “What is emerging is, for effective and sustainable policy changes, NSW cannot act unilaterally or in isolation”.⁵⁹ Consistent with this view, it recommended “a national funding mechanism that supports the racing industries of all States and Territories”.⁶⁰

While there is no industry consensus as to the nature and scope of the national scheme, the NSW Government should at least explore the potential appetite amongst other governments to move to a more nationally consistent model. Failing such agreement or as a short-term measure before agreement is reached, the reforms advocated in the rest of the paper should be pursued. They may bring some of the economic activity back to NSW and may cause other jurisdictions to reconsider the merits of a nationally consistent approach.

The Review accepts that the Commonwealth’s active participation may be crucial, and that no Commonwealth Government to date has shown much interest in these issues. Nevertheless, the deficiencies in the present approach are manifest, including heightened risks of problem wagering and a ‘race to the bottom’ in regulatory, tax and industry funding terms. This may not be the highest or most immediate priority, but it should be on the agenda.

Recommendation 1: That the NSW Government pursue in the medium to long term, a national coordinated approach to the regulation and taxation of the wagering industry.

⁵⁷ Submission 34, p.28

⁵⁸ Submission 32, p.4

⁵⁹ Submission 40, p.2

⁶⁰ Submission 40, p.3

Part D – Reform of the Wagering Industry

7 Responsible wagering

Key points

- NSW has a comprehensive system of requirements that seek to reduce problem gambling.
- A number of stakeholders are concerned to ensure that any reforms arising from this review do not promote problem gambling.
- Stakeholders are also concerned that responsible wagering principles are not at present replicated in the operations of some interstate bookmakers and betting exchanges.
- Reforms should seek to address key inequalities in the treatment of responsible wagering across wagering providers operating in NSW.
- Making the regulation of bookmakers simpler and more consistent with operational practices already accessible interstate will not undermine a commitment to ensuring that wagering services are provided in a responsible manner.

Given the direct and indirect effects of gambling on the community, the various state and territory governments have legislated, but not in the same way or to the same extent, to minimise gambling harm and promote responsible gambling.

There are a number of differing views as to whether possible outcomes of this Review may or may not lead to more problem gambling. Some⁶¹ suggest that the issues raised in this Review will not raise major concerns from a responsible wagering perspective because:

- many of the issues affect the distribution of revenue between wagering providers in NSW, and those outside NSW, but do not appear likely to increase materially the overall pool of funds wagered;
- access to wagering is now almost universal (e.g. on track, in TAB agency outlets, over the telephone and over the Internet); and
- there is little reason to believe that any liberalisation of wagering-related products (e.g. Trackside) and channels (e.g. through subscription television providers) will have a material impact on problem gambling.

⁶¹ For example, Submissions 23 and 40

However, a contrary view⁶² is that the expansion of access to wagering choice further promotes the 'normalisation' of gambling and should be viewed cautiously from a responsible wagering perspective.

The Review concludes, on balance, that the arguments in favour of a level playing field carry sufficient weight to prevail, with two provisos.

First, the Review does not support more retail outlets in shopping centres and the like (see Recommendation 5).

Second, the Review considers that on the grounds of public policy, there should be a required level of responsible gambling practices adopted by wagering operators regardless of their classification (e.g. bookmaker, TAB or betting exchange) and the form of wagering channels used.

The major concerns expressed in submissions related to the operations of corporate bookmakers.⁶³ In particular, there are concerns that:

- corporate bookmakers can offer credit or free bets to punters. This has been raised repeatedly in correspondence to the Minister for Gaming and Racing;
- corporate bookmakers do not advertise the G-line service;
- there is general lack of regulatory oversight in the Northern Territory, which makes it relatively easier for minors to wager;
- the NSW TAB offers self-exclusion from its shopfront agencies and phone betting. Interstate bookmakers do not offer self-exclusion, although the Northern Territory has published a Code which suggests self-exclusion to be implemented by bookmakers.

The Responsible Gambling Fund Trustees recommend that:

- the Australian Jockey Club and Sydney Turf Club advertise the G-line service and develop a self-exclusion program to allow individuals to entirely self-exclude themselves from major racecourses;
- a self-exclusion scheme be mandatory for clubs, hotels and casinos;
- the TAB extend and advertise existing self-exclusion provisions;
- Betfair promote and provide contact details of providers of problem gambling services in Australia to customers:

It is imperative that promotion of and contact details for providers of problem gambling services in Australia should be made

⁶² For example, Submission 33

⁶³ See: Wesley Community Legal Service, Submission 16

available for Australian customers by Betfair. This has now been made much simpler through the adoption of a national telephone number for gambling help services (1800 858 858)⁶⁴

- betting exchanges contribute to the treatment of problem gamblers and undertake a detailed analysis of customer behaviour for consumer protection purposes;
- providers of mobile betting to NSW punters send an SMS with contact numbers of problem gambling services and the risks of excessive gambling; and
- online wagering providers conduct better age checks for new accounts and sign-ins to accounts.

In some respects, these reforms go beyond the scope of this Review's terms of reference. Further, while credit betting in the sense of borrowing from the wagering operator or running a credit account with that operator has obvious risks, those risks are much less when the punter is dealing with a bookmaker rather than a totalizator or a betting exchange and even less when the relationship is established over, say, three months, before any credit betting is permitted. The Review acknowledges that this leaves NSW-licensed bookmakers disadvantaged in comparison with, for example, Northern Territory-licensed bookmakers, but less so than at present.

Recommendation 2: That the NSW Government should prohibit all wagering operators licensed in NSW from providing credit betting and from publicly promoting their services by way of inducements such as free bets. The only exception to the ban on credit betting should be bookmakers dealing with established customers.

Recommendation 3: That the NSW Government should require G-line services to be advertised by all wagering providers providing services to NSW residents.

⁶⁴ Responsible Gambling Fund Trustees, Submission 33, p.8

8 Bookmaker structures and operating conditions

Key points

- There are a number of restrictions that remain on the activities of bookmakers and the NSW TAB.
- These restrictions limit the ability of NSW bookmakers (and the NSW TAB) to compete with interstate operators and generate revenue.
- The regulatory environment for bookmakers in NSW is unnecessarily complex, particularly in relation to licensing requirements.
- Most of these restrictions were considered in the context of the 1999 National Competition Policy review of racing and betting laws.
- Many restrictions were retained in many cases in the interest of reducing access to gambling products and thus reducing the incidence of problem gambling in NSW.
- Eliminating these regulatory restrictions should not represent a significant threat to problem gambling or the integrity of the wagering or racing industries.
- Removal of these restrictions would allow NSW wagering operators to compete more effectively and may even encourage new entrants to the NSW wagering market.
- Streamlining of the licensing process would reduce red tape for bookmakers.

Operating conditions

NSW regulations were designed for a wagering industry that consisted solely of off-course totalizators and on-course bookmakers. Attempts to accommodate changes to the wagering industry have resulted in regulations becoming overly complex without meeting the needs of an ever changing industry. This view was supported in the submission received by the NSW Bookmakers' Co-operative in response to the Issues Paper, which notes:

“Comments [in the Issues Paper] concerning ‘Corporatisation’ and evidence suggesting that current NSW regulations do not appear to accommodate recent industry changes, are fully supported.”⁶⁵

Despite the comparatively restrictive regulatory environment that exists for bookmakers in NSW, operating concessions have been introduced over the years. These have included the introduction of:

- telephone betting on racecourses during business hours;
- sports-betting offices on racecourses in which bets via the telephone or Internet are accepted;
- betting auditoria at racecourses which also offer betting services on non-racedays;
- sports betting;
- 24/7 Internet betting on sporting and future events;
- future race betting from racecourse offices via the Internet (up to 30 minutes before the first race of the relevant race day);
- call of the card betting;
- jockey challenge betting;
- overseas betting (subject to approval of the overseas jurisdiction); and
- corporatised bookmakers being permitted to operate at more than one race meeting at the same time provided that a director is present at each stand (an individual bookmaker cannot field at more than one racecourse on the same day).

Furthermore, they have included the abolition of the:

- minimum telephone bet limit; and
- 1% turnover tax.

However, there are still a number of areas for which NSW regulates more strictly than other jurisdictions such as the Northern Territory and the ACT. GRNSW notes that:

“The NT has embraced the changing environment from a regulatory perspective, providing corporate bookmakers with licensing arrangements, operating conditions, product availability and taxation arrangements considered more favourable than those that apply elsewhere in Australia.”⁶⁶

⁶⁵ Submission 23, p.10

⁶⁶ Submission 30, p.8

The critical areas identified by stakeholders as providing bookmakers in these other jurisdictions significant advantages over NSW bookmakers are set out below:

1 Internet and telephone betting on racing events on a largely unrestricted basis

NSW bookmakers are currently prevented from offering Internet and telephone race betting services to customers other than on feature racing events.⁶⁷ Betting on these events must cease 30 minutes prior to the commencement of the race meeting during which the feature race is to be held.

NSW Bookmakers' Co-operative⁶⁸ argues that Internet betting should be seen as a logical extension to phone betting, and that it provides advantages to punters. The Internet is fast, convenient and allows much more information to be disseminated quickly. Other submissions similarly contend that the current regulation over Internet betting should be liberalised.⁶⁹

Betfair notes that "punters should have access to a range of channels for delivery of products; it's what they want".⁷⁰

2 The ability for bookmakers to operate 24/7

Bookmakers in NSW are currently confined to conducting betting, both face to face and over the telephone, while fielding at a race meeting and are therefore restricted to the opening hours of a racecourse.⁷¹

The restriction prevents NSW bookmakers from being able to compete with interstate bookmakers. In the past when racing and wagering activities revolved around racing events on the east coast of Australia operating hours were not restrictive, however this has changed. As noted by the NSW Bookmakers' Co-operative in its submission:

"the betting day may now comprise an early morning start with New Zealand racing and certain morning greyhound meetings in Australia, through until late night harness and greyhound events in

⁶⁷ It should be noted that this restriction does not apply to the NSW TAB and its totalizator odds products

⁶⁸ Submission 23, p.14

⁶⁹ Submissions 24, 25, 30, 34 and 35

⁷⁰ Submission 37, p.7

⁷¹ The only exception is bookmakers authorised to operate on feature races in approved racecourse offices

*Western Australia as well as Hong Kong, United Kingdom and South African racing.*⁷²

As stated in the recent Victorian review, the inability of bookmakers to provide a continuous service places them at a distinct competitive disadvantage compared to other interstate and international jurisdictions.⁷³ Other submissions also provide support for 24/7 Internet and phone operations by bookmakers.⁷⁴

Some concern was expressed in the Victorian review that providing for 24/7 operations would provide a major disincentive for on-course bookmaking and the attraction that it provides. This may well be the case and there may be some concern that such a recommendation will have this outcome in NSW. However, if it is considered by the racing codes that the presence of bookmakers on course is desirable to attract patrons, methods other than regulations should be examined to achieve this outcome.

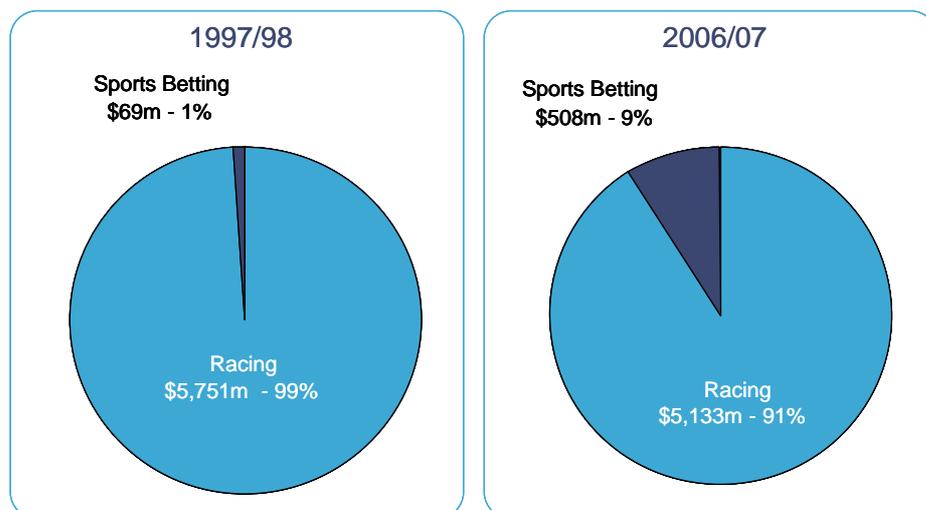
3 Bookmakers being permitted to offer betting services on a wide range of sporting and non-sporting events

NSW wagering operators can only offer sports betting on the list of 30 approved sporting events set out in the Schedule to the Racing Act. Any expansion of the list of selected approved sporting events must be requested from the Minister. The strict regulation in NSW over sports betting has come at a time when sports betting is rising in popularity, as demonstrated in Figure 8. Specifically, sports-betting in NSW has grown annually by 28% since 1997/98 whilst betting on racing has declined annually by 1% over the same period.

⁷² Submission 23, p.15

⁷³ Bookmaking Reforms Working Party 2008, op. cit., p.30

⁷⁴ Submissions 23, 24, 25, 28, 30, 34 and 35

Figure 8: Trend in NSW racing and sports betting

Source: Australian Gaming Council 2006/07, *A Database on Australia's Gambling Industry 2006/07*, January, Melbourne

Wagering is not permitted in NSW on non-sporting events such as the Federal Election and reality television shows. An amendment to the Racing Act would be required to allow this. In contrast, Northern Territory-licensed bookmakers provide odds on a diverse range of events, such as the Australian state and federal elections, the American election, the New Zealand election, World Series of Poker and television programs such as Australian Idol and Dancing with the Stars.

A number of stakeholders expressed a desire for there to be a wider range of betting events offered by bookmakers.⁷⁵ NSW Bookmakers' Co-operative states that:

*"NSW bookmakers and TAB are at a comparative disadvantage to wagering operators licensed in certain other Australian jurisdictions in respect of the approved product range for both sports and racing betting. In particular, there is no capability under current NSW legislation for operators to offer betting on non-sporting events such as elections, entertainment events (TV reality programs), beauty pageants etc."*⁷⁶

There is no strong opposition by stakeholders against the current NSW legislation with respect to betting events being changed. There were comments from some stakeholders (e.g. by Tabcorp, the Australian Punters' Association (APA) and RNSW) that those parties did not have

⁷⁵ Submissions 23, 24, 28 and 30

⁷⁶ Submission 23, p.16

an issue with the status quo. In regard to non-sports or race betting contingencies, the APA states that:

“Whilst we can see no harm in betting on e.g. a Federal election, we really don’t see the need for anyone to bet on reality TV, and doubt that any marginal income so foregone by an operator would be in any way substantial.”⁷⁷

The Review concludes that good regulatory practice would suggest that certain types of events should be identified and permitted by regulations, including political elections and reality television programs. The supervising authority should have a residual power to approve other events, but this should be the exception not the rule, and the authority should be expected to exercise judgement not to allow betting on events or happenings which would offend good taste or community expectations, such as outcomes of court cases or sporting tribunal hearings.

4 Bookmakers being permitted to operate off-course

NSW regulation also requires bookmakers to be physically present at a racecourse or racecourse betting auditorium during the conduct of a race meeting for the acceptance of telephone bets in racing events. Similarly sports bets and feature racing event futures bets may only be accepted by Internet at an approved racecourse office venue.

The APA and GRNSW support the removal of these requirements.⁷⁸ It is considered by the NSW Bookmakers’ Co-operative that:

“These requirements are costly to bookmakers, inconvenient to customers, and anachronistic given the modern day capabilities of telecommunications audit systems that are currently utilised by regulators, including NSW.”⁷⁹

The Review does not favour retail bookmaking outlets as noted elsewhere, but sees no compelling logic for requiring telephone or Internet bets to be accepted at racecourses.

5 Bookmakers being permitted to offer fixed odds betting up to the jump on every race

NSW TAB and bookmakers offering pre-post feature race betting can only offer fixed odds betting up to 30 minutes before the race jump. This places NSW TAB and bookmakers at a significant disadvantage in

⁷⁷ Submission 28, p.26

⁷⁸ Submission 28, p.25 and Submission 30, p.10

⁷⁹ Submission 23, p.15

attracting punters, and has the potential to further divert revenue away from NSW. A number of stakeholders support fixed odds betting being offered up to the race start.⁸⁰ NSW Bookmakers' Co-operative states that:

“Provision of this service by both bookmakers and the TAB is considered to be vital in restoring competitiveness and contributing to overall NSW wagering industry growth.”⁸¹

Recent changes announced in Victoria will also reduce operating restrictions for bookmakers in that state, which has potential impacts for the NSW wagering and racing industries. These changes in Victoria arose out of a review of bookmaker operating conditions.

Recommendations made in the Victorian review included:

- legislation be amended to allow betting at any time on “any horse race, harness race or greyhound race”;
- Tabcorp be allowed to offer its fixed odds betting service on any race subject to retaining the current condition that betting may only be held with the prior written approval of VicRacing Pty Ltd and Racing Products Victoria Pty Ltd;
- legislation be amended to allow bookmakers to operate from approved premises rather than approved racecourses; and
- betting be restricted to transactions using methods of communication approved under legislation (i.e. telephone and Internet).⁸²

In short, NSW bookmakers are inhibited in their ability to compete effectively with interstate bookmakers. This affects the products NSW bookmakers are able to offer, and their operating conditions and cost structures. RNSW opposed deregulation on the basis that funding to the racing industry may be reduced, but the Review considers on balance that there is scope for deregulation in these areas.

Accordingly, the following reforms are recommended.

Recommendation 4: That the NSW Government should revise out-dated restrictions on wagering operators as follows:

- a NSW bookmakers be permitted to accept bets using the Internet, telephone or other technology, on a 24/7 basis;

⁸⁰ Submissions 23, 24, 28, 30, 34 and 35

⁸¹ Submission 23, p.11

⁸² Bookmaking Reforms Working Party 2008, op. cit., pp.30–34

- b NSW bookmakers be permitted to maintain back office, support and administration offices off-course, at locations notified to the supervising authorities and open to inspection by them, but not to receive bets in person at those locations;
- c all wagering operators be permitted to offer fixed odds betting products up to the start of an event; and
- d the type of events on which wagering is permitted should be set out in regulations, and should include political elections and reality television programs.

Retail bookmaking outlets

There were submissions from bookmakers supporting the introduction of retail bookmaking outlets.⁸³

In its report on Australia's gambling industry the Productivity Commission found that the determinants of demand for gambling are:

- the price of the product;
- the odds of winning;
- the size of the prize;
- the extent to which odds can be changed by skill;
- accessibility of the product;
- the experiences associated with the venue;
- social acceptability of the activity; and
- the reliability of the activity.⁸⁴

In relation to access this was considered a key factor in gauging whether problem gambling related issues may arise with use of those products.

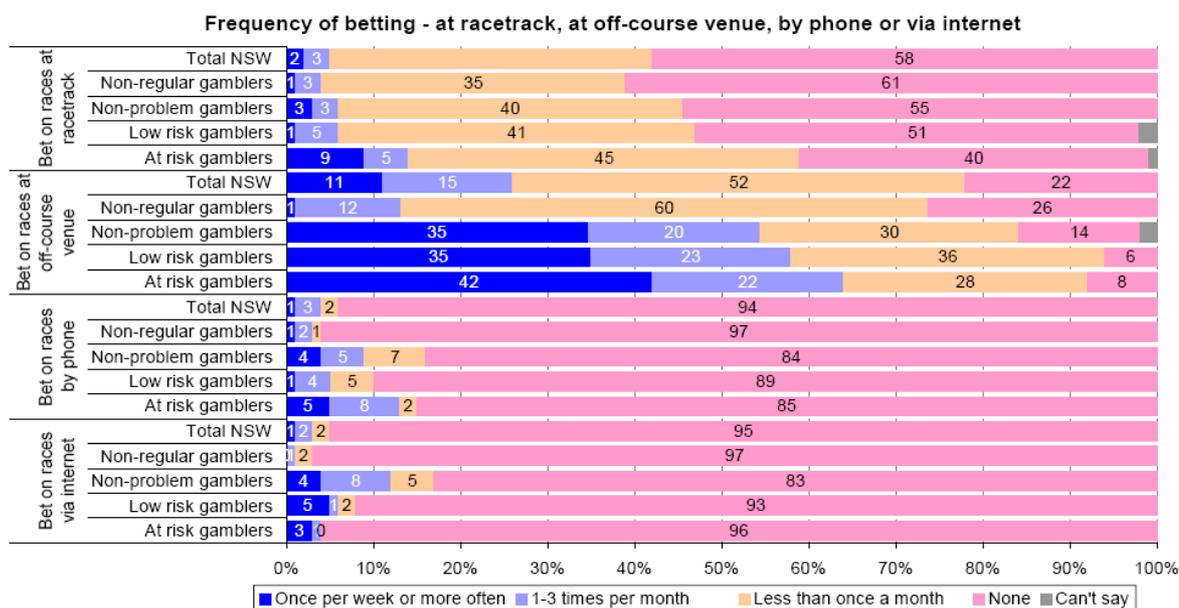
It is debatable whether the introduction of retail bookmaker outlets would actually represent an increase in access to wagering services and products, particularly given the ability to access most of these products by phone or using the Internet.

However, ACNielsen's survey of gambling and problem gambling in NSW showed that 'at risk' gamblers overwhelmingly prefer betting on races at off-course venues (refer Figure 9).

⁸³ Submissions 23 and 24

⁸⁴ Productivity Commission 1999, op. cit.

Figure 9: Thoroughbred wagering turnover



Base: NSW residents who bet on horse/dog races in last 12 months - Total NSW (n=433), Non-regular gamblers (n=190), Non-problem gamblers (n=113), Low risk gamblers (n=64), At risk gamblers (n=66)

Source: ACNielsen 2007, *Prevalence of gambling and problem gambling in NSW – a community survey 2006, 27 March*

Therefore, allowing retail bookmaker outlets would increase access to the form of betting most preferred by gamblers who are considered to be ‘at risk’. For this reason this Review does not recommend the introduction of retail bookmaking kiosks or other retail outlets off track.

Recommendation 5: Retail bookmaking kiosks and other retail outlets off-track should not be permitted in NSW.

Licensing and corporatisation

A number of representatives raised the issue of licensing more generally as an area in which NSW bookmakers are at a disadvantage to their counterparts in other jurisdictions.⁸⁵ For example, the NSW Bookmakers’ Co-operative noted that:

“NSW bookmakers and potential wagering industry entrants are at a significant disadvantage in respect of the approved types of licenses that are available in this state.

Whereas a number of other Australian jurisdictions have embraced a range of licensing options such as normal partnerships, corporate and public company type structures, NSW firmly restricts

⁸⁵ Submissions 23, 24 and 30

licensees to “sole trader” or “limited partnership” arrangements only.

... The restrictions not only limit the potential pool of applicants for NSW bookmaking licences, but have flow on consequences for wagering customers in terms of service levels that are available via bookmakers within the state.”⁸⁶

Legislation was introduced in 2002 to allow bookmakers to corporatise in NSW. Bookmakers have been slow to adopt the corporate structure for their bookmaking activities in NSW. This is likely due to the onerous requirements that are required for a bookmaker to be corporatised.

Waterhouse states that:

“Corporatisation does not really exist for NSW bookmakers. They and their families can form a company under very strict constraints which act like a partnership, but as for taking in outside capital (the primary purpose of companies) or hiring independent experienced managers to manage, it is out of the question.”⁸⁷

As an indication of the complexity, the requirements include:

- between one and four directors are allowed, and each must hold a minimum stake in the company of 5%, and collectively a minimum stake of 51%. Up to 12 additional shareholders are allowed, but they must be a close family member of a director (i.e. spouse, partner parent, child or sibling);
- each director over 18 years of age and be a licensed bookmaker in NSW;
- all shareholders and persons involved in the management of the company who are not directors are over 18 years of age and be considered by RNSW and GHRRRA as ‘fit and proper’ to be licensed as a bookmaker in NSW, but not be licensed bookmakers;
- the directors, shareholders or persons concerned with management of the company are not involved in, or have a licence to operate, or hold a financial interest in, any other NSW bookmaking activities or international wagering or gaming operations; and
- no person other than a shareholder has an interest in the shares or assets of the company.

⁸⁶ Submission 23, p.17

⁸⁷ Submission 25, p.14

Notably, changes have been recommended in Victoria that could result in corporate bookmaking operations becoming legal in that state. These recommendations are that:

- non-bookmakers should be permitted to invest in an established bookmakers operations and should be referred to the Bookmakers and Bookmakers' Clerks Registration Committee (BBCRC) for consideration and advice;
- legislation should be amended to expand the definition of company to include a public company:
 - with respect to funding from private sources, the Working Party supports the model of 'equity partnerships'. Under this proposal, a non-bookmaker would be permitted to invest in an established bookmaker's operations. This proposition would require consideration by the BBCRC and would need to be subject to strict probity and regulatory controls; and
 - the Working Party also supports a broader reform to allow Victorian bookmakers to seek finance through the formation of public companies similar to the structures in place in the Northern Territory and overseas.⁸⁸

NSW continues to have more stringent requirements that bookmakers must meet in order to possess a bookmaker licence or corporatise as a bookmaker in the state. Critically, those states that offer a more flexible licensing regime are the same states that offer more favourable and flexible operating conditions for bookmakers. As a result, bookmakers in other jurisdictions are able to attract NSW punters by offering incentive payments, better odds and other such inducements.

Tabcorp recently obtained a Northern Territory bookmaker licence to launch its Northern Territory-based business, Luxbet.com.⁸⁹ The move may represent an attempt by Tabcorp to win back business that has been lost to Northern Territory-licensed bookmakers. Certainly, whilst NSW has been experiencing declining wagering turnover, jurisdictions like the Northern Territory are experiencing increasing wagering turnover. It would be reasonable to conclude that NSW wagering revenue which would have otherwise accrued to state wagering operators is being diverted to jurisdictions such as the Northern Territory

⁸⁸ Bookmaking Reforms Working Party 2008, op. cit., pp. 32–34

⁸⁹ As well as paying product and race fields fees set by the racing industry, Luxbet.com currently intends to provide a discretionary payment to each of the NSW and Victorian racing industries of 12.5% of profits from Luxbet.com. Refer <http://www.tabcorp.com.au/news_mediareel_detail_print.aspx?view=373>

and ACT, as a consequence of the stricter regulatory environment currently existing in NSW.⁹⁰

GRNSW submits that NSW bookmakers should be allowed to have “proper corporate structures that drive investment, enable funding and the like”.⁹¹

Recommendation 6: That the NSW Government remove existing restrictions on the corporate model that may be adopted by a bookmaker while retaining provisions relating to fitness and propriety.

Oversight of bookmakers and other industry participants

The manner in which the racing industry is structured for regulatory purposes has been the subject of three recent reports in 2008 addressing the issue:

- the Scott Report into the effectiveness and efficiency of the regulatory oversight of the three codes in NSW;⁹²
- the Statutory Five Year Review of the *Greyhound Racing Act 2002* and the *Harness Racing Act 2002* Report;⁹³ and
- the Lewis Report into the integrity of the Victorian racing industry.⁹⁴

The principal difference between these reviews was that the Victorian review focussed on the racing industry’s regulation from the perspective of wagering, whereas the NSW reviews took a more racing-centric perspective.

At present there are multiple bookmakers authorisations/licences required to operate in NSW:⁹⁵

⁹⁰ Part of the ‘diversion’ of NSW revenue results from former state bookmakers taking their pre-existing customer with them to the Northern Territory. Refer Submission 18 from Centrebet

⁹¹ Submission 30, p.50

⁹² Scott, M 2008, *2008 Independent Review of the Regulatory Oversight of the NSW Racing Industry: Report*, Sydney, June

⁹³ NSW OLGR 2008, *Section 63 Review: Greyhound Racing Act 2002, Section 66 Review: Harness Racing Act 2002: Report — Whether the Policy and Objectives of the Acts Remain Valid and Whether the Terms of the Acts Remain Appropriate for Securing Those Objectives*, Sydney, June

⁹⁴ Lewis, G.D 2008, op. cit.

- permission from the applicable race club for a position on-course;
- a bookmaker's licence from RNSW; and
- a State Bookmakers Authority from the NSW OLGR.

There is scope to simplify the licensing process, not only for bookmakers but for all wagering operators. This could be achieved through the introduction of a single wagering licence, common across codes. This would result in reduced compliance costs and the opportunity for greater probity concerns to be monitored and enforced in a consistent manner.

RNSW contends that:

“although a case could be made for consolidating certain of the licensing/approval functions, all other things being equal, there is no compelling case for change.”⁹⁶

However, there is a presumption under the NCP that restrictions on competition, which the duplicated and inconsistent licensing regimes currently are, are a barrier to competition and should not be retained unless it is in the public interest to do so. No such public interest justification has been provided to this Review.

Recommendation 7: That the NSW Government introduces a single wagering operator licence with harmonised probity requirements to address all wagering related operating models.

It is suggested that the unified wagering licence become the responsibility of the Casino, Liquor & Gaming Control Authority (CLGCA), to be renamed the Gambling and Liquor Control Authority (GLCA). The CLGCA is currently responsible for casino, liquor and gaming machine regulatory and other decision-making functions on behalf of government, and also has similar responsibilities for registered clubs.⁹⁷ The extension of responsibilities would be a logical complement, although whether it would be the GLCA, or some other agency, is a matter for government.

Recommendation 8: The powers of the Casino, Liquor & Gaming Control Authority (CLGCA) should be extended to include the licensing of wagering providers in NSW. The CLGCA should be renamed the Gambling and Liquor Control Authority (GLCA).

⁹⁵ Refer section 26A of the Racing Act

⁹⁶ Submission 32, p.23

⁹⁷ The NSW OLGR in the Department of the Arts, Sport and Recreation supports the CLGCA in its day-to-day operations

The issuance of a wagering licence should enable any licensed operator to provide wagering services on-course, without additional approval of the club or any other party.

Recommendation 9: Once licensed, a wagering provider should not require any additional approvals to operate on NSW racetracks.

For consistency of oversight it would also be appropriate to develop a standardised integrity framework across the three codes for key racing industry personnel. This would take licensing from being the responsibility of the three peak bodies and place it with an independent public body. Of course, this would not preclude the formal input from racing bodies and the industry more generally into the approvals process for licensing.

This principle could be extended to other individuals involved in racing that are required to be licensed.

An advantage of a harmonised licensing/registration process for all key personnel is that it would assist in ensuring the integrity of racing and also the wagering market.

Recommendation 10: That the GLCA should be responsible for a single licensing framework with harmonised probity requirements for all key racing industry participants (e.g. owners, jockeys, trainers, vets, strappers).

Further, the Review notes that the Minister licenses racecourses under the present legislation. Consideration could also be given to that role moving to the GLCA.

9 Bookmaker taxation and levies

Key points

- NSW bookmakers are not subject to state betting taxes but are required to pay product levies to the racing codes.
- These levies are higher than similar levies and/or betting taxes in other jurisdictions, creating a higher cost environment for bookmakers in NSW and a disincentive to enter the NSW market.
- A consistent approach to taxation of bookmakers and/or the imposition of product fees should also be pursued to ensure that NSW bookmakers are not at a competitive disadvantage.

It was claimed in several submissions to the Review that one of the advantages of jurisdictions such as the Northern Territory is that they offer more favourable taxation regimes for bookmakers.⁹⁸ Technically, this is not the case as there is in fact no betting tax for bookmakers in NSW.

As shown in the following table, while NSW has no bookmaker betting tax, the combined levies and fees that are imposed by either racing control bodies or race clubs in NSW are higher than the combination of similar type charges and government taxation in other jurisdictions.

⁹⁸ Submissions 15, 23 and 30

Table 14: Cross-jurisdictional bookmaker taxes and levies

State / territory	Details of tax / levy
NSW	<p>Nil betting tax.</p> <p>For futures betting:</p> <ul style="list-style-type: none"> Levy of 0.75% of turnover payable to the applicable controlling body Levy of up to 0.25% of turnover payable to the race club <p>Product fees payable to the applicable race clubs for the following:</p> <ul style="list-style-type: none"> for metropolitan thoroughbred meetings - around 1.0% of turnover for provincial and country thoroughbred meetings - 0.5% of turnover for harness meetings - 0.5% of turnover for greyhound meetings - 0% of turnover <p>A fee is payable by bookmakers fielding at other thoroughbred meetings, and harness and greyhound meetings.</p>
VIC	<p>Nil betting tax.</p> <p>Levy of 1% of turnover payable to the applicable controlling body, of which 10% is repatriated back to the Fund for the Advancement of Bookmaking.</p>
NT	<p>For racing events: Tax of 0.33% of turnover.</p> <p>For sporting events: Tax of 0.25% of turnover from international clients and nil from Australian clients.</p> <p>Nil product fees.</p>
QLD	<p>Nil betting tax.</p> <p>Some clubs impose a levy e.g. 0.33% of turnover.</p>
WA	<p>Nil betting tax.</p> <p>For racing betting: Levy of 2% of turnover less GST rebate to the applicable race club.</p> <p>For sports betting: Levy of 0.5% of turnover less GST rebate to the applicable race club.</p>
SA	<p>Nil betting tax.</p> <p>Levy of 0.9% of turnover payable to the industry.</p>
TAS	<p>Betting tax of 1% of turnover less a GST offset.</p> <p>For horse and greyhound racing: Levy of 1% to the applicable race club.</p> <p>For sports betting in Australia and NZ: Levy of 0.5% to the applicable race club.</p> <p>For sports betting outside of Australia and NZ: Levy of 0.25% to the applicable race club.</p>
ACT	<p>Nil betting tax.</p> <p>Levy of 1% less GST rebate to the applicable controlling body.</p>

Source: Victorian Department of Justice, Centrebet (Submission 18) and OLGR

The other jurisdictions do have an advantage for bookmakers in relation to the combined taxation and fees and charges imposed by racing bodies.

While taxation alone is not driving bookmakers to operate from the Northern Territory (i.e. it is a combination of factors such as the corporate model, the products that can be offered, and the flexibility in offering access), the level of taxation is undoubtedly a factor in the decision to operate outside NSW.

The rapidly changing commercial environment and regulatory regimes make formulating a precise course of action difficult. The actions that may need to be taken will depend to some extent on the actions of others. The Review therefore suggests guiding principles rather than a specific course of action that should be taken. Any action that is taken should aim to ensure that economic activity is not driven out of the state and that, so far as possible, the racing codes jointly are in the same financial position following any changes.

Recommendation 11: The NSW racing codes and the NSW Government should collaborate to ensure that NSW adopts a combination of turnover levies and taxes that is competitive with other jurisdictions and provides racing codes jointly, so far as possible, with the same level of revenue as they presently enjoy.

10 Betting exchanges

Key points

- There has been a high level of concern surrounding the entry of betting exchanges into the Australian wagering market.
- These concerns revolve around the perceived risks to the integrity of racing.
- If the racing industry was convinced that these risks to integrity were being adequately managed there appears to be few other objections to betting exchanges being allowed to operate.
- A further condition on betting exchanges being able to operate in NSW is that they be required to make a contribution to racing industry similar to those made by other wagering operators.
- There is agreement on both sides that betting exchanges should make a contribution to racing but disagreement over on what basis this payment should be made (turnover or gross profit).
- Given the ability for NSW punters to access betting exchanges once they are licensed in another Australian jurisdiction there are few reasons to continue to disallow operation in NSW.

A betting exchange is a means by which parties stake money on the mutually exclusive outcomes of a future event. As opposed to the bookmaker who sets fixed odds and directly accepts bets from punters, parties to the transaction agree on the odds and the betting exchange operator is merely the intermediary who charges a relatively low commission on net winnings.

Betfair is the only betting exchange currently licensed to operate in an Australian jurisdiction. It received a licence from the Tasmanian Government to operate a betting exchange on all racing and sporting events in Australia and New Zealand until 7 February 2011.⁹⁹ The licence ensures that the Tasmanian Government is paid 15% tax on every dollar made worldwide on Australian horse racing and sporting events, and

⁹⁹ The Tasmanian Government granted the Tasmanian Gaming Licence to Betfair on 10 January 2006. On 25 May 2007 Betfair surrendered that Tasmanian Gaming Licence and the Tasmanian Government simultaneously granted a new Tasmanian Gaming Licence which amended the list of approved premises. On 3 April 2008, the Tasmanian Government granted a replacement Tasmanian Gaming Licence to Betfair

20% product fee on every dollar made from worldwide customers betting on Australian racing.¹⁰⁰

In the current environment there is very little that the NSW Government can do to prevent NSW residents from accessing the services provided by a betting exchange that is licensed in another Australian jurisdiction. To date, the government has relied on advertising restrictions and an inability for betting exchanges to be licensed in NSW to limit access to these services.

However, it seems unlikely that the existing advertising restrictions will stand any legal challenge given the outcome of the recent High Court case involving Betfair and the WA Government. Indeed, the NSW Government has communicated to the industry that it will not seek to enforce current restrictions, effectively further legitimising the operations of Betfair in the public mind.

Tabcorp requests that where the Government considers licensing betting exchanges in NSW, it should also consider the impact on the TAB's exclusive off-course wagering licence.¹⁰¹ The Review does not consider licensing betting exchanges in NSW to be inconsistent with the legislative intention behind the exclusive off-course totalizator licence to the TAB. The TAB was given exclusivity over this domain as a means of preventing illegal starting price bookmaking from operating. Betting exchanges do not operate retail betting kiosks, but accept Internet bets off-course. The TAB's exclusivity with respect to *places* off track where wagering can take place would be preserved where a betting exchange is permitted to operate in NSW by telephone or the Internet.

Submissions to this Review revealed wide but conditional support for betting exchanges.¹⁰² Waterhouse comments that:

“Betfair is my competitor and I would be expected to be campaigning against it. But I know it is a valuable product for punters and for racing.”¹⁰³

Teague states that the focus should be on punters leaving the domestic wagering industry altogether, rather than punters going to betting exchanges.¹⁰⁴

¹⁰⁰ Refer Betfair Submission 37, and Betfair (n.d), Betfair, viewed 20 May 2008, <<http://www.betfaircorporate.com.au/faq.asp>>

¹⁰¹ Submission 24, p.27

¹⁰² Submissions 11, 12, 15, 25, 28, 30, 37, 39, 40 and 41

¹⁰³ Submission 25, p.16

¹⁰⁴ Submission 11, p.5

The Review is aware of the two key concerns regarding betting exchanges, which should be resolved before licensing a betting exchange in NSW. These are:

- any integrity concerns should be resolved; and
- the appropriate fees to racing should be paid.

Risk to integrity

Currently only licensed bookmakers are the only parties allowed to make lay bets, as the licensing requirement provides a sufficient integrity check and audit trail.

It is said that, using a betting exchange, any party may place bets against a contestant including the owner/trainer/jockey on their own horse. Given the layers of anonymity on betting exchanges, it may be difficult to track down or prove race fixing because the culprit may be acting as the agent for another. Furthermore, there is the problem of accessing betting exchange information in a real time fashion.

In these ways, betting exchanges are said to have the potential to contaminate the perceived integrity of racing events. If betting customers perceive that a particular race or event is corruptly conducted, it will ultimately spill over to the wagering industry through declines in betting. A fall in wagering may then have further flow-on effects on the racing industry because product fees based on TAB turnover will fall.

Further concerns about the integrity of betting exchanges include:¹⁰⁵

- the identity of layers (who will sometimes be bookmakers) is likely to become available only after a race is run. This may be contrasted to the betting ring, where the identity of bookmakers is easily ascertainable in real time, prior to a race;
- a participant can lay a horse directly without the need for a bookmaker. Presently, a rogue insider seeking to 'lay' their own horse would need to conspire with a bookmaker; and
- it may be difficult for regulators to have access to relevant records in the case of a betting exchange that has taken bets from all over the world. For traditional bookmakers, licensing providers ample access to records.

It should be noted that a recent news article¹⁰⁶ announced that a review of 45 tennis matches is intended to be undertaken following irregular

¹⁰⁵ NSW Department of Gaming and Racing 2004, *Public Benefit Assessment of Restrictions on Advertising by Betting Operators Not Licensed in NSW*, report prepared by NECG, p.68

betting patterns detected by Betfair. This provides some support for the argument that the monitoring activities of Betfair can actually improve the integrity of the wagering industry.

Some submissions agree that integrity is not an issue with betting exchanges:

- Teague states that every dollar of Betfair Australia's business is traceable to the punter. In comparison, local bookmakers can take anonymous cash.¹⁰⁷
- Waterhouse states that lay bets could be placed with bookmakers until a few years ago, and argues that a betting exchange has less anonymity than the TAB.¹⁰⁸

Betfair presently imposes the following procedures in its operations based in Tasmania:

- anti-money laundering procedures such as the rules requiring customer identification and refusing to accept cash;
- monitoring betting activity for any suspicious transfers between accounts;
- continually monitoring all transactions that take place on the exchange to ensure that any improper activity, whether betting related or not, can be quickly identified and prevented; and
- not permitting any betting exchange employees to bet on the exchange.¹⁰⁹

Needless to say, some of the participants in the racing industry would cause integrity concerns if they were to use betting exchanges (i.e. owners, trainers, jockeys, etc who may seek to bet against their own animal using inside knowledge).

The GLCA should be tasked with identifying the range of industry participants most likely to have direct knowledge that may be exploited through betting exchanges and, if not already licensed, consider whether

¹⁰⁶ Drape, J 2008, 'Gambling Leaves Sport in a Fix', *The Australian Financial Review*, 26 May, p.15

¹⁰⁷ Submission 11, p.3

¹⁰⁸ Submission 25, p.17

¹⁰⁹ NSW Department of Gaming and Racing 2004, loc. cit.

to require registration¹¹⁰ of such parties to assist betting exchanges to exclude participation by such parties.

Recommendation 12: The Government may authorise betting exchanges to operate from NSW as long as each exchange takes steps reasonably required by the GLCA to address integrity and responsible wagering concerns.

Recommendation 13: The GLCA should determine the range of parties that should be prohibited from using betting exchanges to bet against their animals, and all such parties should be licensed or registered.

Recommendation 14: Betting exchanges operating in the NSW wagering market should be required to not accept wagers against 'events' from licensed or registered participants and their associates, and where such a party seeks to place such a wager the betting exchange should be required to report this to the GLCA.

There remains the risk that prescribed parties may indirectly use their inside knowledge to place bets against the animals for which they have some responsibility (e.g. by using another party to lay the bet against their animal). This should also not be permitted, and should be contrary at least to the rules of racing.

Recommendation 15: There should be 'rules of racing' sanctions for licensed or registered parties and their associates who seek to place a wager against an event on a betting exchange.

Contribution to the racing industry

The recent announcement by the NSW Government¹¹¹ that the prohibition on interstate advertising would be removed means that a betting exchange already licensed in another Australian jurisdiction may operate in NSW without a NSW wagering licence.¹¹²

The NSW racing industry is likely to prefer such a betting exchange to formally apply for a NSW wagering licence on the basis that this would require the betting exchange to make contributions to the local racing industry.

¹¹⁰ Registration is different to licensing in that it requires notification to the GLCA that a person is intending to undertake a prescribed role, but there is no barrier to their acting in that role (i.e. there are no requirements other than notification that need to be met)

¹¹¹ Hamilton, A 2008, 'Betting giants free to spruik', *Herald Sun*, 11 October, available at <<http://www.news.com.au/heraldsun/story/0,21985,24478058-5017793,00.html>>

¹¹² This is because NSW advertising restrictions are currently used as a means of prohibiting betting exchanges from operating in the State. This issue is discussed in Chapter 12

However, the Review is aware that a betting exchange's operating model does not require it to have a physical presence in other states and territories, given its reliance on the Internet and telephone. Furthermore, for a betting exchange currently operating interstate duplicating its systems and processes in NSW may not be commercially viable.

The Review sees no value in attempting to predict how and where betting exchanges will operate in future, or the terms and conditions under which they will operate. However, some guidance may emerge from litigation currently underway in the Federal Court of Australia between Betfair and RNSW and HRNSW regarding the appropriateness of the level of the race fields fee.

11 New technology

Key points

- Technology has played a large role in the transition of the wagering industry from a localised industry contained by state and country borders to a national, and an increasing extent, international industry.
- Reforms to the regulation of wagering will need to be flexible enough to allow for changes that are driven by new technologies.
- Regulations promoting responsible gambling and support integrity should provide for the natural development of the industry while maintaining consumer protection.
- New products may seem attractive where they offer new sources of revenue for wagering operators and potentially the racing industry. However, their introduction should be subject to provisions reflecting the principles of responsible gambling and integrity.

The digital era has provided another means by which wagering operators can provide greater access to and information on their wagering products. Technology has also enabled cost reductions to take place. Tabcorp states that “many wagering customers are increasingly tech-savvy and want the delivery of wagering products to respond to the latest technological advances”.¹¹³

However, as the NSW Bookmakers’ Co-operative points out, the NSW regulatory environment has not allowed many of these capabilities to be deployed by licensees in this State.¹¹⁴

The trend in thoroughbred wagering turnover earned by NSW TAB and bookmakers, according to the distribution channels used is shown in Table 15.

¹¹³ Submission 34, p.17

¹¹⁴ Submission 23, p.12

Table 15: NSW thoroughbred wagering, the TAB compared to bookmakers¹¹⁵

Operator	Wagering form	2002/03* (\$m)	2006/07 (\$m)	% Change
TAB	On-course	230	277	21
	Agency	2,348	2,348	0 [#]
	Phone	385	274	-29
	Internet	157	342	118
NSW bookmakers	On-course	405	518	28
	Phone	180	235 [^]	30
	Internet	0.6	4	545

Source: Australian Racing Board Ltd 2006/07, Australian Racing Factbook, Sydney

* The 2002/03 is used for comparative purposes as it is the first year in which complete data on distribution channels is available

[#] There have been minor fluctuations in the TAB agency turnover in the intervening years between 2002/03 and 2006/07

[^] This number has been provided by the OLGR

Whilst the table sets out changes in technology take-up by the TAB and NSW bookmakers, we note that meaningful comparisons between these operators may not be possible. Centrebet¹¹⁶ and the NSW Bookmakers' Co-operative¹¹⁷ submit that the underlying numbers are based on different types of products. For example, TAB numbers almost exclusively relate to tote odds betting whilst bookmaker turnover comprises fixed odds betting on a very limited number of feature racing events.

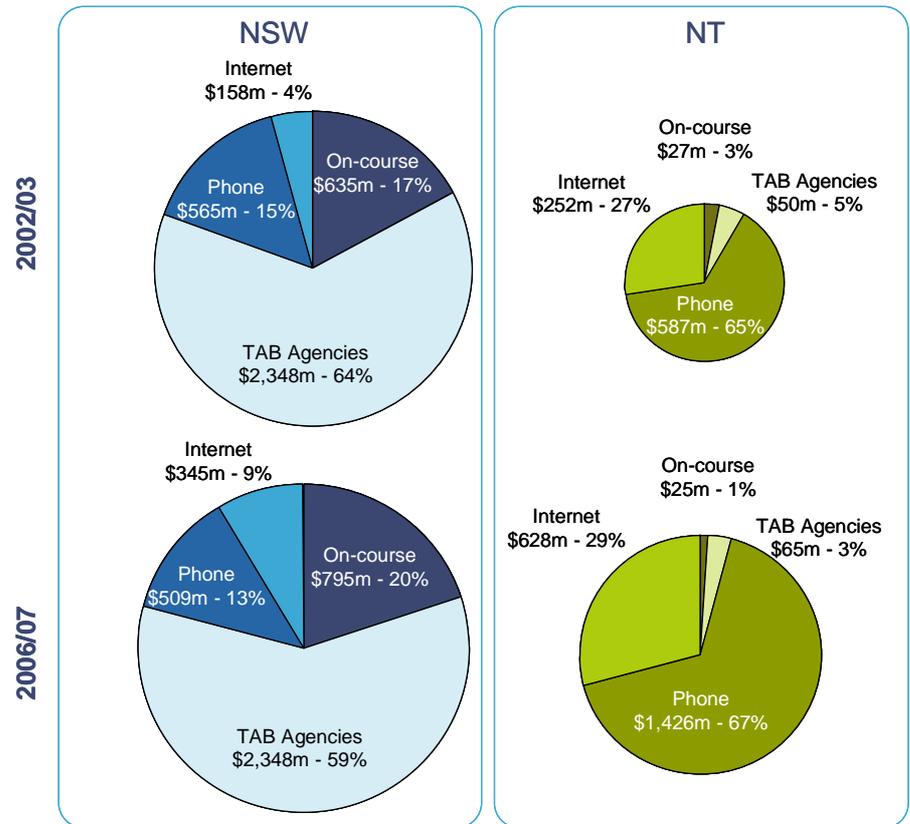
Even so, the use of technology by corporate bookmakers is even more substantial. A comparison between NSW-licensed and Northern Territory-licensed thoroughbred wagering operators in Figure 10 discloses that the Northern Territory dominates phone and Internet betting. Figure 10 is drawn to scale to show the relative sizes of the thoroughbred wagering turnover earned in NSW and the Northern Territory in 2002/03 and 2006/07.

¹¹⁵ For wagering forms for which no data is available in 2001/02, the base year has been moved from 2001/02 to the year in which the data is first available

¹¹⁶ Submission 18

¹¹⁷ Submission 23, p.12

Figure 10: NSW and Northern Territory thoroughbred wagering forms



Data source: Australian Racing Board Ltd 2006/07, Australian Racing Factbook, Sydney

Many of the products offered by non-NSW wagering operators are reliant on the Internet for their use. For example:

- bookmakers licensed in the Northern Territory and ACT accept bets on current racing events over the Internet, and the provision of these services involves the display of bookmaker fixed odds on the Internet; and
- Betfair’s business model is built around the use of the Internet as a means of accessing the wagering product.

Stakeholders show a general support for wagering operators to be able to utilise new technology for their products.¹¹⁸ For example, HRNSW states that it is not supportive of “attempts to restrict access to wagering products and services that utilise new technologies which have the

¹¹⁸ Submissions 22, 30, 34, 37, 38 and 41

potential to reduce the operating costs of providing these products and services".¹¹⁹

In the past six months, a wagering service called Two Way has been offered in Victoria through the interactive capabilities of Foxtel's digital pay television service. In effect, this service mimics the ability to bet over the telephone or Internet, but accessed through the television's remote control. This service is not yet approved for operations in NSW.

It could be argued that the availability of such a service undermines responsible wagering principles. However as Two Way points out, Pay TV has relatively low market penetration in Australia.¹²⁰ Also given the availability of wagering products using the Internet and over the phone, it is not considered that Two Way would present a substantial increase in the availability of wagering products and would not be a cause for concern from a problem gambling perspective if subject to a requirement to provide responsible wagering advice and so forth.

Recommendation 16: That the NSW Government permits the introduction of wagering services provided on subscription television, subject to appropriate protections.

In addition to affecting distribution channels, new technology is challenging the underlying product on which wagering may occur. For example, an animated virtual horse racing game (i.e. Trackside), was released by Tabcorp nationally and internationally.

In all Australian jurisdictions, except Victoria and Tasmania, Trackside is currently considered a gaming product and its use has been generally restricted to casino venues.¹²¹

Tabcorp has argued that it should be able to offer the game as a wagering product in TAB locations, as a supplement to wagering on real animals. Windross¹²² and the Australian Hotels' Association (NSW) (AHA)¹²³ also support the introduction of Trackside as a wagering product.

¹¹⁹ Submission 38, p.8

¹²⁰ Submission 36, p.4

¹²¹ WA Department of Premier and Government 2004, *No Trackside for TAB*, media release, Department of Premier and Government, viewed 23 May 2008, <<http://www.mediastatements.wa.gov.au/Pages/GallopLaborGovernmentSearch.aspx?ItemId=120417&minister=Griffiths&admin=Gallop>>

¹²² Submission 7, p.17

¹²³ Submission 39, p.9

It is understood that this may be an attractive option for introducing an additional revenue stream, which would benefit racing. Trackside is not based on live races. It is an electronic, gaming product not a wagering product. The only basis for regulating Trackside as a wagering product would be to enable the racing industry to derive added revenue; if that were to be permitted for Trackside, it is difficult to see where the line between gaming and wagering would be drawn in future. For that reason, the Review is unable to recommend positively that Trackside (and similar products, whatever that may cover) be approved, but suggests that the NSW Government may do so if persuaded that the revenue brought to racing outweighs the technical objections.

Recommendation 17: The Government may treat electronic gaming devices not linked to racing, as a wagering activity rather than gaming.

12 Promotion of wagering services

Key points

- Advertising restrictions on interstate operators have been used in NSW as a means of limiting access to certain wagering products.
- Recent events indicate that these restrictions are unconstitutional and will be difficult, if not impossible, for the NSW Government to retain.
- There is little benefit in retaining these advertising restrictions and they should be removed.
- Publication of on-course betting odds off-course is currently illegal in NSW.
- The basis for the restriction is the prevention of illegal gambling.
- The inconsistency of these restrictions with regulations in other states and territories renders them useless, with betting odds available on a number of wagering Internet sites.

Advertising

Whilst it is lawful for Australian bookmakers and wagering operators to accept bets from customers in all states and territories, it is illegal to advertise these services beyond the boundaries of their own state. Part 4 of the Racing Act contains provisions restricting advertising into NSW by non-NSW licensed betting operators.¹²⁴

Section 30(3) of the Racing Act extends the prohibition against interstate advertising by introducing parallel electronic betting prohibitions. This provision prevents a person from providing by telephone or Internet, subscription TV or other online communications system:

- access to gambling operations other than those provided by NSW TAB or authorised NSW licensed bookmakers, and
- access to information relating to such non-NSW licensed gambling operations, including Internet banner headline advertising and hypertext links.

¹²⁴ Specifically, there is a prohibition against publishing, by print and traditional media, certain betting information or advertising the availability of such bookmaker services from another jurisdiction

These restrictions are now being challenged as a result of the High Court's *Betfair* decision.¹²⁵ In January 2007, the WA Government introduced legislation banning the placement of bets through a betting exchange and refusing permission for Betfair to make available WA race field information on its website. This legislation was challenged by Betfair and the High Court ultimately decided that the WA legislation was unconstitutional and found in favour of Betfair.

The decision in the *Betfair* case means that interstate advertising laws may also be invalid, which has wider implications as the states have traditionally used it as a way of curbing the activity of corporate bookmakers and betting exchanges. The government has tacitly supported this conclusion in announcing to the wagering industry that it will not enforce the advertising restrictions.

Stakeholder submissions revealed wide support for the removal of this prohibition on advertising.¹²⁶ For example, Waterhouse states that:

*"I do not see how NSW should or can stop interstate TABs, bookmakers or exchanges advertising. Nor should they be stopped. It could be a powerful way to subsidise racing."*¹²⁷

From a responsible gambling perspective it should be noted that the Racing Act includes restrictions on how wagering products can be advertised. There is no suggestion that these restrictions are unlawful.

The Review recommends that the NSW Government remove the prohibition on interstate wagering operators advertising in NSW, and notes that the Government has indicated that it intends to repeal this ban independently of the Review.¹²⁸

Publication of betting odds

NSW permits the TAB and authorised bookmakers to publish betting odds on the Internet with respect to futures betting on feature racing events. However, the off-course dissemination of on-course fixed odds for 'current' racing events is prohibited.

The basis for the restriction is the prevention of illegal gambling. A person with the right finance and infrastructure and access to the betting

¹²⁵ *Betfair Pty Limited v State of WA* [2008] HCA 11, available at <<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/2008/11.html>>. A discussion of the issue of betting exchanges is dealt with in Chapter 10

¹²⁶ Submissions 2, 15, 23, 25, 28, 30 and 37

¹²⁷ Submission 25, p.8

¹²⁸ Hamilton, A 2008, loc. cit.

odds could establish themselves as an unregistered and unregulated bookmaker.¹²⁹ However, the NSW Bookmakers' Co-operative argues that betting odds are freely available on various Internet sites, rendering the prohibition an unnecessary and meaningless restraint of trade.¹³⁰ Similarly, Teague states that with today's availability of mobile phones or even a powerful pair of binoculars, the basis for the restriction is no longer valid.¹³¹

Furthermore, publishing betting odds is not illegal in the Northern Territory and these bookmakers have used the Internet to display betting odds on current racing events. This feature has become another means of attracting business away from NSW wagering operators.

All stakeholders dealing with this issue recognised the difficulty of enforcing such legislation in today's technological era. HRNSW submits that:

“As it is becoming increasingly difficult to police the dissemination of information over the multiplicity of communication channels, review and clarification of the restrictions in place under current regulations is warranted to ascertain the value and enforceability of their retention.”¹³²

Stakeholders gave wide support for the removal of the prohibition on publishing betting odds.¹³³ For example, the NSW Bookmakers' Co-operative expresses that:

“The inability of NSW bookmakers to convey comprehensive betting odds to off-course clients is in our view an unnecessary and (now) meaningless restraint of trade.”¹³⁴

Recommendation 18: That the NSW Government remove restrictions on the publication of betting odds.

¹²⁹ NSW Department of Gaming and Racing 2004, op. cit., p.43

¹³⁰ Submission 23, p.12

¹³¹ Submission 11, p.3

¹³² Submission 38, p.6

¹³³ Submissions 2, 11, 23, 24, 28 and 30

¹³⁴ Submission 23, p.18

13 Totalizator odds betting

Key points

- Bookmakers allowing bets based on TAB odds is currently illegal in NSW. This is not the case in a number of other Australian jurisdictions.
- There are a number of arguments as to why this practice should remain illegal, including that it:
 - allows free riding by other wagering operators;
 - increases the ability/likelihood that wagering operators can/will manipulate the pool;
 - undermines the financial viability of the pool;
 - disadvantages individual punters either betting directly into the pool or through another wagering operator; and
 - is in contradiction of the TAB exclusivity arrangements.
- A number of submissions question the validity of the above arguments.
- In relation to the TAB exclusivity arrangement, the TAB only has exclusivity in offering an off-course totalizator. It is not clear that basing payouts on TAB odds is equivalent to operating a totalizator.
- Inconsistency between jurisdictions provides yet another argument for a national approach to wagering regulation.
- On balance, the prohibition against totalizator odds betting by parties other than the TAB should be rescinded.

A number of jurisdictions, including Victoria, Queensland, South Australia, Northern Territory and the ACT allow bookmakers and other wagering to base payouts on totalizator odds. In fact, bookmakers licensed in the Northern Territory and ACT are conducting totalizator odds betting on a significant scale.¹³⁵

The NSW Bookmakers' Co-operative states that:

¹³⁵ NSW Department of Gaming and Racing 2004, op. cit., p.48

“the current availability of tote odds betting via interstate bookmaking operators makes the NSW prohibition largely ineffective, to the detriment of local bookmakers.”¹³⁶

The Review sets out and analyses the reasons for the opposition to tote odds betting below.

Free rider problem

By offering totalizator odds corporate bookmakers are ‘free riding’. They bear none of the costs associated with determining the odds but are able to capture the benefits. However, the NSW Bookmakers’ Co-operative claims that it is more appropriate to consider the TAB as free riding on the fixed odds pricing by bookmakers, which ultimately drives additional tote betting turnover. The AIBA provides a similar comment.¹³⁷ Teague asserts that “since day one”, Northern Territory-licensed bookmakers offered to pay fees to the government and/or racing, and that this free rider problem is a situation caused by the “establishment refusing to talk” to these bookmakers.¹³⁸

There is an argument that a possible benefit of totalizator odds betting through corporate bookmakers is the influx of ‘new money’ which may come from Australians who do not currently bet on racing becoming racing punters, existing Australian punters betting more and more overseas punters betting on Australian racing with Australian wagering operators. In this regard, the NSW Bookmakers’ Co-operative states that a significant amount of tote bets placed with corporate bookmakers is re-invested into the totalizator pool.¹³⁹

In response, it is contended that most or all of this money would remain with the corporate bookmakers and therefore there is no benefit to totalizators. Further, that the benefit of the portion which is ‘bet back’ into TAB pools is questionable given that placing a successful bet back into the pool will reduce the odds on offer for punters.

There are strengths on both sides of this debate. Arguably, the main beneficiary of a larger pool is the winning punter on the totalizator and not necessarily corporate or other bookmakers.

¹³⁶ Submission 23, p.12

¹³⁷ Submission 40, p.14

¹³⁸ Submission 4, p.10

¹³⁹ Submission 23, p.12

Loss of economies of scale benefits

It is said that, by diverting revenue from the NSW TAB, totalizator odds betting by corporate bookmakers undermines the financial viability of the very product upon which its activity is dependent.

Punters benefit from bigger totalizator pools and the reduced volatility of returns that come with a larger pool. Conversely, the smaller the betting pool, the greater the volatility of dividends. As dividends become more volatile the more punters are likely to move from TAB products to other wagering products.

In response to the loss of economies of scale argument, Waterhouse submits that punters generally benefit from more competitive products.¹⁴⁰

Manipulation of TAB odds betting

The community benefits from the transparency and integrity associated with the TAB product. Without integrity of the wagering and racing industry, punters would not have the confidence to bet.

Corporate bookmakers betting money received from successful punters back into the totalizator pool before the pool closes, are said to have the effect of manipulating the odds on the TAB,¹⁴¹ and reducing the returns punters can expect to get out of their own bets. Punters who have placed bets with the TAB directly are also said to lose from reduced odds.

If that is true, and if punters perceive this as manipulation, this could lead to a fall in the popularity of the TAB, TAB revenue, and ultimately the returns to racing.

A number of submissions dispute the above arguments:

- Windross states that it would be naïve for a punter to think that they could avoid the crush if the bet is placed with a corporate bookmaker rather than the TAB, or that a corporate bookmaker would not bet back.¹⁴²
- Teague argues that punters and traditional bookmakers bet back into totalizator pools as well.¹⁴³

¹⁴⁰ Submission 25, p.15

¹⁴¹ For example, IASBet advertises on its website that it will accept certain bets until four minutes (for telephone betting) or one minute (for Internet betting) before the race starts

¹⁴² Submission 7, p.10

¹⁴³ Submission 11, p.2

- The NSW Bookmakers' Co-operative argues that the nature of pari-mutuel betting does not enable any punter the certainty of exact time of betting closure, the exact return receivable or any guaranteed insight into the ultimate race outcome.¹⁴⁴
- Waterhouse submits that bet backs do not reduce the odds for punters, and dividend crushing only occurs when a “foolish punter has a successful, large all-up” going in the pool and the bet swamps the pool.¹⁴⁵
- The AIBA states that:
 - there are commercial limits on how much can be bet back because bookmakers would not buy back their own money; and
 - if bookmakers did not service this part of the wagering market, the business would be lost; punters would either not bet or would go to offshore providers or betting exchanges.¹⁴⁶

Information asymmetry

The minimum standards of probity and conduct imposed by the government are motivated by the degree of information asymmetry existing in transactions between providers and consumers of gambling services. Asymmetric information means that the suppliers of gambling information have an information advantage in any transaction because they know the designs of their products better than the consumers. The provider of the racing product is also better placed than the operator and punter regarding the details of the race, how fair it is to all contestants and so on.

For transactions with corporate bookmakers, information asymmetry arises when the bookmaker bets back into the TAB pool. In this case the corporate bookmaker has the advantage of knowing that a relatively large bet has been placed into a certain TAB pool before that pool closes. Other customers who bet directly into the TAB pool are relatively disadvantaged, as are the punters who placed bets with the corporate bookmaker. If the problem becomes severe enough, there could develop widespread suspicion that the TAB pool is being manipulated, leading to a fall in TAB revenue.

In response to these arguments, Waterhouse claims that the TAB is not transparent as bigger punters receive secret rebates and the TAB

¹⁴⁴ Submission 23, p.12

¹⁴⁵ Submission 25, p.15

¹⁴⁶ Submission 40, p.19

declares its own deduction on fixed odds betting.¹⁴⁷ AIBA¹⁴⁸ points out that all bookmaker betting records are provided to NSW racing authorities as part of the product fee conditions. NSW racing authorities are able to satisfy themselves whether a bookmaker is making a legitimate bet back or is attempting to manipulate the pool.

Exclusivity

There is some concern that allowing other wagering operators to offer totalizator odds could be in breach on the TAB's exclusivity agreement. It must be recognised that the NSW TAB has exclusivity *only* to conduct an off-course totalizator in respect of betting on racing (domestic and international) and any approved sporting event. It is questionable whether basing payouts on totalizator odds is equivalent to conducting an off-course totalizator.

Conclusion

The fact is that wagering operators outside NSW can and do offer tote odds betting, and NSW punters can access that facility. Ideally, there would be a nationally consistent approach (see Recommendation 1). This would eliminate the incentive for bets to be placed with operators in other jurisdictions in order to access these products.

In the meantime, and should a national approach not be possible, it is considered that there is little advantage in preventing wagering operators in NSW from offering totalizator odds. Little is achieved by this restriction, other than limiting the products that NSW operators can offer and their ability to compete.

Recommendation 19: In the absence of a national approach to totalizator odds betting, the NSW Government should permit wagering operators other than the TAB to offer totalizator odds.

¹⁴⁷ Submission 25, p.15

¹⁴⁸ Submission 40, p.19

14 Pooling

Key points

- Larger pools provide punters with larger jackpots and more consistent odds.
- The NSW Government has been reticent to allow the NSW pool to merge with other pools for fear of losing revenue in the event that punters access the merged pool through jurisdictions that offer rebates.
- Pooling should be supported, but with conditions on participation with states which permit inducements to punters.

The NSW TAB totalizator pool operates separately from other pools in Australia. Other states and territories, and at times international totalizators, have merged their pools. By increasing the size of a pool this minimises the fluctuation of odds caused by significant bets. This offers more stable odds and can improve potential returns for punters betting large amounts.

Previously there have been proposals to integrate the NSW TAB and SuperTAB (Victorian, Tasmania, WA and ACT TABs) pools but they have continued to remain separate. The NSW Government decided not to approve merged pools on the basis that there was no guarantee there would be a benefit to the racing industry and the people of NSW. However it is still an issue for discussion between the TABs, the State Governments and the racing industries.

The comingling of the NSW totalizator pool with other Australian jurisdictions would bring benefits such as:¹⁴⁹

- increased liquidity resulting in reduced volatility of dividends. In larger pools, larger bets (including from bookmakers betting back into the pools) have less effect on the final odds and dividends; and
- larger jackpots (and thus dividends). The Productivity Commission's report suggested that the appeal of gambling depends on both the price of a bet and also the maximum potential prize.¹⁵⁰

¹⁴⁹ NSW Department of Gaming and Racing 2004, op. cit., p.39

¹⁵⁰ Productivity Commission 1999, op. cit., p.3.12

However, with interstate pooling there is the issue of inducements. Punters may choose to access a national or combined pool through wagering organisations in other jurisdictions that are able to offer discounted commission or incentive payments due to more favourable tax structures. This lost revenue may outweigh the benefits associated with a larger pool.

The SuperTAB is an example of a larger pool which co-mingles the pools of Victoria, Tasmania, Western Australia, the ACT, New Zealand and South Africa on certain events. It has been claimed by some stakeholders that punters are currently able to access the SuperTAB pool at a lower cost through TABs in 'discount' jurisdictions.

NSW currently is not part of a national pool and to access the NSW pool a punter must place their bet with NSW TAB. There have been proposals to integrate the NSW TAB and the SuperTAB (Victorian, Tasmania, WA and ACT TABs) pool but they continue to remain separate.

Tab Ltd believes that pooling will attract punters and thus improve turnover and revenues from wagering. It will also enable TAB to better compete with corporate bookmakers that offer TAB-odds with no threat of significant bets affecting these odds.

The NSW Government previously decided not to approve merged pools on the basis that there was no guarantee there would be a benefit to the racing industry and the people of NSW.¹⁵¹ However, continuing to keep the NSW totalizator pool isolated is not preferred by punters or the NSW TAB, and is also inconsistent with the trend towards a national wagering market.

Windross in his submission opposes comingling on the basis that the average, non-professional punter would be the "loser" because larger pools attract major betting syndicates and the net winners will be these syndicates.¹⁵² The Review considers that the benefits to punters from comingling (e.g. greater choice and greater price stability) outweigh this potential cost.

Waterhouse in his submission opposes comingling on the basis that NSW wagering turnover would decrease as a result of rebates and inducements being offered by the TABs in other jurisdictions.¹⁵³ Other

¹⁵¹ McBride, G 2006, Speech addressing the *Totalizator Legislation Amendment — Inter-jurisdictional Processing of Bets Bill*, NSW Parliament, 2 May

¹⁵² Submission 7, p.6

¹⁵³ Submission 25, p.16

submissions also expressed a concern with the issue of rebates and inducements.¹⁵⁴

Aside from those two submissions, there is wide support for the comingling of the NSW pool with other Australian pools.¹⁵⁵ HRNSW submits that a national pool is vital for the growth and development of the (smaller) harness and greyhound racing codes.¹⁵⁶

HRNSW noted that support for pooling could be conditional on addressing the leakage posed by incentives offered in other jurisdictions with which the NSW pool is joined:

“Negotiated changes to regulatory and/or taxation regimes in other jurisdictions could be put forward as a condition of entry to a combined NSW-Victoria pool to address current Tabcorp and NSW Government concerns regarding the impact of commissions, incentives and taxation structures in other States.”¹⁵⁷

There is already in place a mechanism by which such conditions can be imposed.

Clause 14 of Tab Ltd’s Totalizator Licence requires Tab Ltd to gain the approval of the Minister before combining totalizator pools with other operators. One approach to facilitate effective cross-jurisdictional pooling (i.e. to discourage other pool participants from offering incentives that undermined contributions to the NSW racing industry) would be to rely upon the ability to impose conditions under section 71(2)(a) of the Totalizator Act. In effect, section 71 ensures that there is not double taxation of wagers for ‘participating jurisdictions’.

It would be possible for the NSW Government to issue approvals to other jurisdictions under s.71 on the basis that participating jurisdictions do not pay incentives to customers. If incentives are paid then the wager would be taxed twice, making the incentive uneconomic.

Recommendation 20: That the NSW Government permit the NSW TAB to enter into pooling arrangements with other Australian totalizators.

¹⁵⁴ The following submissions acknowledge or raise the issue of rebates/inducements: 25, 28, 34, 35 and 38

¹⁵⁵ The following stakeholders support comingling: 2, 4, 15, 26, 28, 27, 31, 34, 35, 38 and 39

¹⁵⁶ Submission 38, p.7

¹⁵⁷ Submission 38, p.7

Part E –
Reform to the
Funding of the
Racing Industry

15 Is there a viable alternative funding structure?

Key points

- It is reasonable that the wagering industry should contribute to the ongoing operations of the NSW racing industry.
- This does not mean that the present funding model, is the only way to support racing. Other options include a 'property rights' model and a 'levy model'. To be successful both these models require greater cross-jurisdictional co-operation and a more unified industry.
- The new race fields legislation is a partial form of a levy model, but its effectiveness is uncertain at this time.
- It is difficult to see broad alternative funding models becoming sufficiently robust to supplant the racing industry's ongoing reliance on the current funding model.

The arrangements for the funding of the NSW racing industry by wagering providers (i.e. Tab Ltd, and to a lesser extent bookmakers) reflect a combination of commercial and political agreements that were driven by the privatisation of the NSW TAB.

As illustrated earlier, there are multiple sources of income for the NSW racing industry. However, none is even close to being as significant as the distributions received from NSW TAB. It is considered that all three racing codes should seek to maximise other sources of revenue but that none of these have the potential to meet the funding needs of racing should TAB distributions continue to decline.

Submissions to this Review confirm that there are few, if any, options for improving racing industry revenue outside its ability to extract funding from wagering operators. The vast majority focused on reforms to the wagering industry, with the implication that this is the solution. Few submissions looked beyond the wagering industry to identify other feasible revenue options.

In its review of Australia's gambling industries the Productivity Commission acknowledged the logic behind the racing industry generating revenue directly from the wagering industry:

The conditions governing the exclusive licences for the TABs (whether government-owned or private) include the requirement that they contribute funds to the thoroughbred, harness and greyhound industries.

This requirement reflects the fact that, unlike sports betting on football matches or car races, wagering is the major reason for horse racing to take place. If those providing wagering services

were not to contribute to the racing industry, the industry itself would decline. As the Australian Racing Board noted:

The Australian Thoroughbred Racing Industry is a gambling industry in the sense that off-course and on-course wagering on racing outcomes is the major revenue source for the Industry (sub. 48, p.1).

Without some form of policy response, 'free riding' might lead to the racing industry providing too few races:

The nature of racing events is such that it is difficult to exclude parties from utilising the primary product of the event - the outcome or result of a race. As such, it is possible that betting service providers could 'free ride' on the racing industry, taking bets on races without contributing to the costs of running them. Such a situation could lead to there being too few race meetings and a smaller racing industry (CIE 1998, p. 36).

Exclusively licensing a single TAB in each jurisdiction, heavily restricting the competition it faces, and requiring it to direct some of its revenues to the racing industry are the means by which this problem is currently addressed.¹⁵⁸

Despite this acknowledgement of the relationship between the two industries, the Productivity Commission presciently highlighted a number of problems with the existing funding relationship, principally that there is no guarantee that the funding arrangements:

- result in the 'right' amount of funding for the racing industry;
- lead to the running of the 'right' number of races. Indeed, the Productivity Commission acknowledged that there are arguments that the regulatory arrangements have led to an excess of lower quality races; and
- are sustainable given technological developments and the increasing accessibility of non-TAB wagering alternatives.¹⁵⁹

Given these limitations the Productivity Commission canvassed alternative ways of achieving appropriate funding for the racing industry (see Box 2, next page).

Without being definitive, the Productivity Commission suggested that 'it may be optimal for gambling suppliers to bind each other to pay a levy to the racing industry ... although any such development would need some

¹⁵⁸ Productivity Commission 1999, op. cit., pp.14.23-14.24

¹⁵⁹ Productivity Commission 1999, op. cit., p.14.24

form of inter-jurisdictional agreement to work'.¹⁶⁰ The introduction of the NSW race fields legislation is a state-specific attempt to move towards partial reliance upon a levy approach.¹⁶¹

¹⁶⁰ Productivity Commission 1999, op. cit., pp.12.11 and 14.24

¹⁶¹ With respect to the property rights approach, to be effective it would require greater coordination across jurisdictions within the racing industry in order to maximise the value of the rights

Box 2: Alternative approaches to funding the racing industry

A 'property rights' approach?

At one extreme might be a world in which the exclusive arrangements for TABs and many of the restrictions on bookmakers were removed, and each was free to take bets on a wide variety of sports and events. In time, their activities would evolve towards a preferred balance of totalizator and fixed odds bets on a wide range of sports and other activities. Specialisation might occur.

In such a world, 'free riding' could be solved by establishing legally enforceable rights to gambling on racing events and allowing any betting agency to negotiate fee arrangements with the holder of those rights (e.g. racing clubs).

(Arrangements would subsequently develop for cross licensing, as with rights to televise sporting events.)

But a key question would concern who would control any such rights. Resolving this would require a review of the regulatory structures that underpin the racing industry. An indication of the difficulties involved comes from the Queensland Government, which noted that:

The issue of ownership of the racing product to broadcast through pay television has caused controversy within the ... racing community. The interrelationship between ownership of television rights to racing and income from racing has raised many questions for which there are currently no definitive answers in the current rapid technological developments (sub. 128, p. 51).

Such arrangements would need to be quarantined to those cases where the incentive to operate races came essentially from the wagering, with the likelihood that the game would be undermined in the absence of such a mechanism. This rationale would not apply to sporting events (such as football) undertaken for other reasons.

A levy approach?

Another approach would be to levy all wagering on racing, whether undertaken through TABs and racing or sports bookmakers, and pay a proportion to the racing industry.

The size of any such levy on gambling revenues could be determined by all industry members (including, for example bookmakers), with the role of government limited to seeing that the levy is agreed to and enforced. In this way, the industry as a whole could decide how much ought to be collected and how it might be used. And were such decisions to be made at the national level, this might help overcome some of the inefficiencies of the current state-focused arrangements."

Source: Productivity Commission 1999, *Australia's Gambling Industries, Report No. 10, AusInfo, Canberra, p.14.27*

Given the potential challenges to the race fields legislation, the immediate funding of the NSW racing industry is likely to remain inextricably linked to the performance of the NSW TAB and the continuance of the funding arrangements between the TAB and the racing codes. Indeed Tabcorp believes:

"that the funding model that will optimise the growth and sustainability of the NSW Racing Industry is based on totalizator funding being the primary source of funding, with contributions

from NSW fixed odds wagering operators and interstate fixed odds wagering operators who bet on NSW races.

This funding model is internationally proven to be the best model to maximise Racing Industry revenue. The four leading thoroughbred racing countries in the world as rated by the International Federation of Horseracing Authorities in terms of prizemoney paid (USA, Japan, Australia and France), all adopt this funding model.”¹⁶²

One possibility is that the existing legal uncertainty will be clarified, either by legal challenge or industry acceptance, and the Gentleman’s Agreement will be replaced by a series of state-based levies that apply to each TAB in recognition of the turnover generated by wagering on events in other jurisdictions. Any such change to the existing arrangements could reduce NSW TAB revenue and result in racing in NSW receiving less revenue.

The NSW Greyhound Breeders, Owners and Trainers’ Association (GBOTA) explicitly addresses this criticism that such a change would harm NSW racing in noting that:

“Some commentators have been quick to criticize the NSW approach on the basis that, as a ‘net importer’, the NSW industry may be negatively affected ... However, this would only represent a continuation of the current protectionist mind set. The product from each State should live or die on its appeal. This reality will lead to increased focus on customer needs and free market where the most appealing product will generate the greatest customer support.”¹⁶³

It is hoped that the reforms recommended for the wagering industry in Part D will provide for an environment in which NSW wagering operators are able to compete to maximise revenue. Furthermore, these recommendations should allow for the racing industry to benefit, as it is considered a fundamental requirement that all wagering operators should be required to provide funding to the racing industry in recognition of their reliance on the product provided by the racing industry.

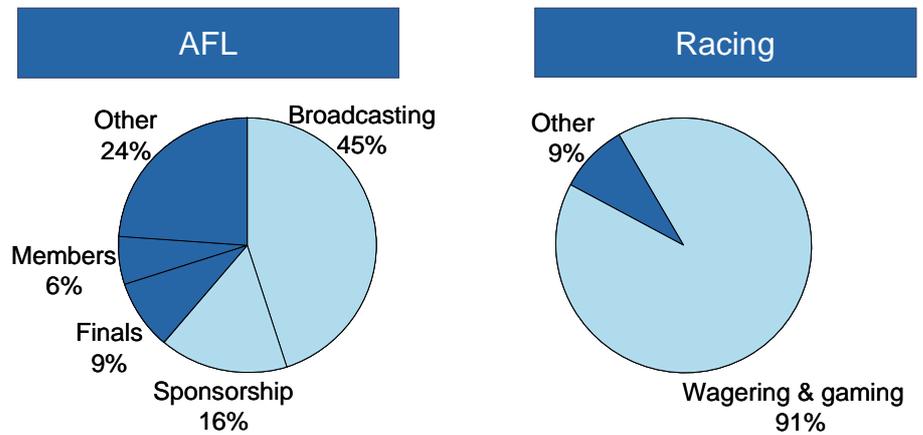
In the longer run, however, the racing industry possibly needs to move to an operational model with significantly higher professionalism (i.e. where management of the industry is run free of actual or perceived conflicts of interest) and the funding base is significantly diversified. In this regard, a useful comparator, and possibly the only useful Australian comparator given the size of the racing industry, is the Australian Football League, which has an truly independent national overarching governance model

¹⁶² Submission 34, p.4

¹⁶³ Submission 35, pp.5-6

(i.e. through the Commission) and a significantly diversified funding model (interestingly, as recently also noted by the CEO of Tabcorp — see Figure 11).

Figure 11: Funding sources for the racing industry and the Australian Football League (AFL)



Note: Funding is for peak body only, in 2007
Source: Racing Victoria Limited, AFL

Source: Kupper, E 2008, *The Future of Racing in Australia*, presentation at the Australia-Israel Chamber of Commerce, 27 August, p.10

16 Distribution of available revenue

Key points

- Current arrangements share TAB distributions between the three codes using a formula that provides a disincentive for growth and is inequitable in the way it rewards the value generated by the codes.

Tab Ltd's contribution to racing funding

Tab Ltd is a wholly owned subsidiary of Tabcorp Holdings Ltd and holds the exclusive rights to operate totalizator wagering in NSW.

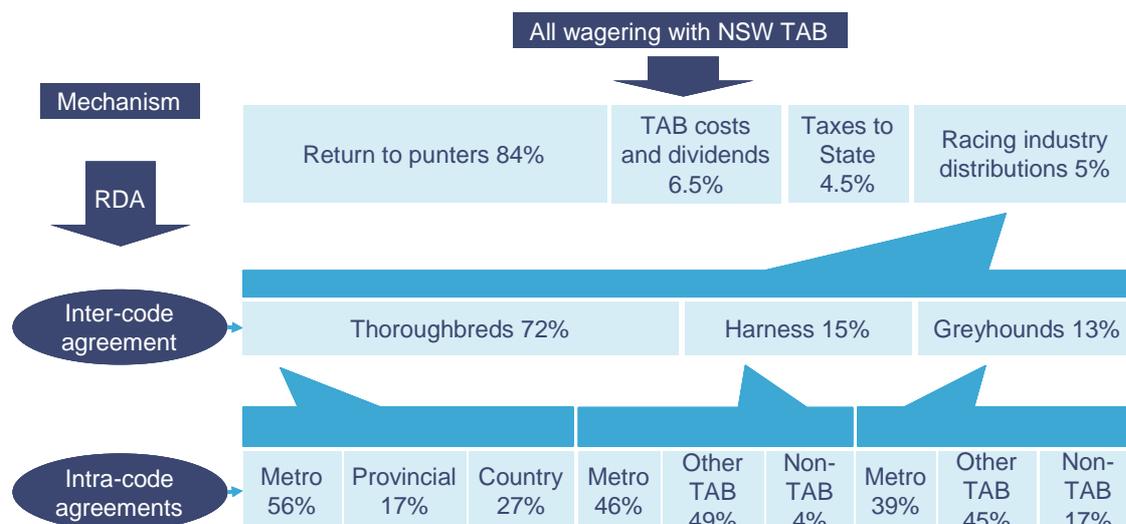
Tab Ltd, under its NSW wagering licence, pays distributions to the NSW racing industry calculated as a portion of its wagering turnover and revenue. This wagering includes sports betting along with totalizator and fixed-odd race wagering from NSW, interstate and overseas race meetings.

The distribution payments are made in accordance with a commercial agreement known as the RDA between Tab Ltd and the NSW racing industry. The RDA outlines the contractual relationship between Tab Ltd and the three codes of the NSW racing industry, represented by Racingcorp. The RDA sets out how the fees payable to all codes of the racing industry by Tab Ltd are to be calculated. The term of the RDA is for a period of 99 years (expiring in 2097) and the signatories to the Agreement are Tab Ltd (Tabcorp), Racingcorp, RNSW, GRNSW, and HRNSW. Amendment of the RDA requires the agreement of all signatories.

The arrangements by which funding is provided by the NSW TAB to the various codes is represented in a stylised manner in Figure 12.¹⁶⁴

¹⁶⁴ On course bookmakers may be required to pay a levy directly to the racing club where they operate. For metropolitan thoroughbred race meetings the levy is capped at 1% of turnover, but at other venues it may only be a stand fee. These fees are generally paid directly to the racing clubs. Bookmakers and other wagering operators located outside NSW are not required to make any funding contribution to the racing industry in NSW

Figure 12: Flow of funding from NSW TAB to the NSW racing codes



Of the three codes greyhound racing is more dependant on NSW TAB distributions for its funding than the other two codes.

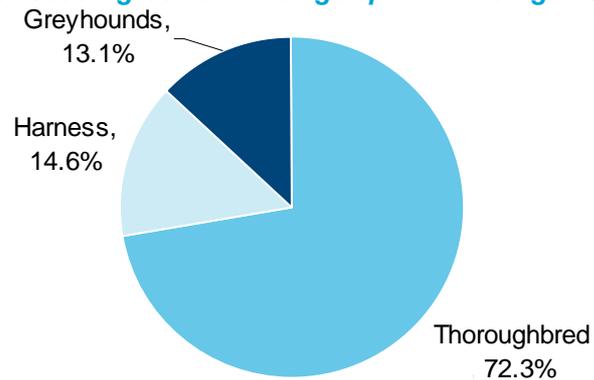
Distributions paid to the NSW racing industry by Tab Ltd are calculated as a portion of its wagering turnover and revenue. Wagering activities include sports betting as well as totalizator and fixed-odd race wagering from NSW, interstate and overseas race meetings.

As noted earlier, there currently exists a ‘Gentleman’s Agreement’ between the various TABs and racing bodies that allows for the wagering turnover received by a TAB for an event occurring in another jurisdiction to be considered the turnover of the TAB accepting the bet for the purpose of calculating racing industry distributions. The Agreement assumes that wagering at local TABs on races outside each jurisdiction will generally cancel each other out. While the Agreement is not a contractual arrangement, the complexity involved in making alternative arrangements may continue to act as a deterrent to change.

The Inter-code Agreement

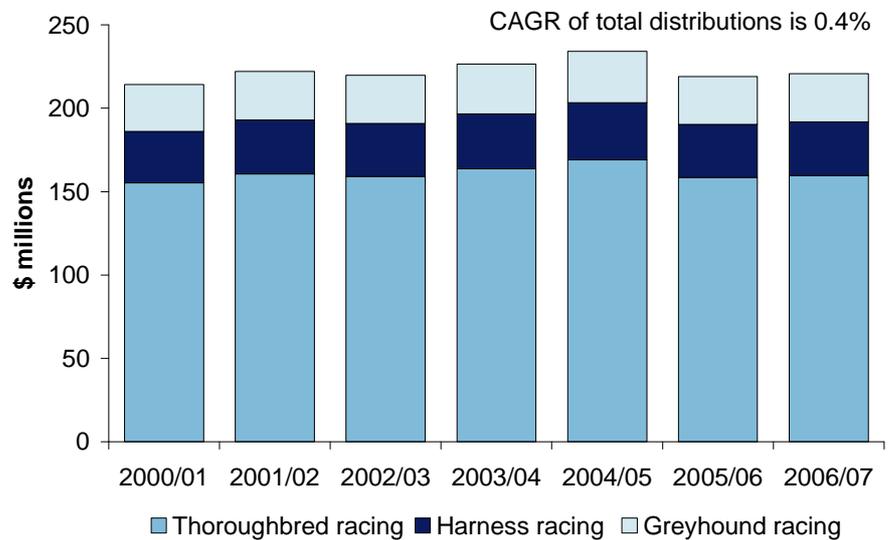
The Inter-code Agreement is an agreement between the thoroughbred, harness and greyhound racing codes. It determines the basis upon which funds received by Racingcorp from Tab Ltd are distributed between the codes. It also outlines the terms under which Racingcorp is operated, controlled and funded. The funds are allocated primarily on fixed portions. The average split of the funding between the codes from 2000 to 2007 is set out in Figure 13.

Figure 13: Inter-code Agreement average split of funding - 2000 to 2007



Source: NSW OLGR

Figure 14: Real TAB funding per year by code



The current inter-code funding arrangements might be thought not to promote sustainability in the NSW racing industry as the fixed payout ratios for each code break the link between funding received and share of turnover generated (income and productivity).

The fragmented nature of the racing industry (i.e. with power decentralised to the codes and then down to individual clubs) means that there is little ability or incentive to make decisions for the good of the industry as opposed to sectoral interests. This has been demonstrated time and again in the industry (e.g. the disputes regarding broadcast rights and proposed racetrack rationalisations).

The result is that the NSW racing industry is ill-equipped to address the evolving market forces identified in Chapter 3.¹⁶⁵ Specifically, the entrenched nature of the RDA (i.e. no changes to existing funding arrangements for 99 years unless there is unanimous agreement between the three codes) and the Inter-code Agreement means that changes in the relative positions of the codes will not occur as any code that will 'lose' from changes will decline to support such changes.

If the NSW racing industry is to become sustainable there is a need to ensure that it is operating in a manner that maximises long-term financial returns. This means, in essence, producing the quantum and quality of racing product that will maximise revenue jointly attributable to broadcast rights, returns derived from wagering turnover (i.e. TAB contributions, and revenue from race fields legislation) and income from on-course attendances.

This can be addressed in part by ensuring that the incentives facing the three codes are aligned with ensuring the optimal generation of racing product. This can be achieved by the amendment of the Inter-code Agreement to ensure that returns to each code from the TAB contribution are in proportion to the percentage of wagering generated by each code.

HRNSW supports the current arrangements as the scheme:

“provides an incentive for all three codes to grow turnover as any shrinkage in turnover by one code without a corresponding increase by another ultimately results in less overall revenue to the three codes.”¹⁶⁶

It also believes that the arrangements provide “sufficient latitude for codes to manage their own affairs”.¹⁶⁷

This may only be partially true. For example, if harness racing puts forward a less attractive product offering that attracts \$100 million less in turnover for TAB, then the TAB distribution to the NSW racing industry will decline by approximately \$5 million, which the Inter-code Agreement then results in a decrease in revenue of \$3.6 million to the thoroughbreds, \$0.75 million to harness racing and \$0.65 million to the greyhounds. In effect, the RDA would mask underperformance by harness racing as it would bear only 15% of the cost.

¹⁶⁵ In an analogous counter-example, the move from struggling parochial state-based competition (the Victorian Football League) to become the dominant national sporting competition (the Australian Football League) was only really enabled by the centralisation of power in a Commission independent of club and state allegiances

¹⁶⁶ Submission 38, p.11

¹⁶⁷ Submission 38, p.3

GRNSW argues that as a consequence “over the past 11 years the greyhound industry has subsidised thoroughbred and harness racing in NSW by some \$92 million”.¹⁶⁸

RNSW also strongly opposed consideration of changing the Inter-code Agreement, noting:

“The RDA and the Inter-Code Deed are extremely complex contracts entered into between independent parties on an arms-length basis following extensive negotiations — with extensive “trade-offs” and inter-linkages between various aspects of those contracts which make it impossible to accurately or fairly encapsulate the relationship between the parties by reference to a simple or simplistic formula. It would be totally inappropriate and impractical for these commercial agreements to be amended otherwise than by agreement of all the parties and any attempt to do so would raise serious and fundamental concerns regarding “sovereign risk” and the certainty of any commercial contracts in NSW. Accordingly the RDA and Inter-Code Deed are not matters in which it is appropriate for the NSW Government to seek to become involved and should not be considered within the scope of this current review.”¹⁶⁹

In contrast, GRNSW submits that the arrangements:

“do not satisfy the objective set by Treasury in the sale of the TAB, namely to place the NSW racing industry on a financial basis that would give it a sustainable long term future.”¹⁷⁰

Indeed, GRNSW is a vocal advocate of the view that:

“The Inter-Code does not take into account the changing landscape of the industry, nor provide any incentive or reward for efficiency, innovation or growth, and as a result, the racing industry is currently locked into inappropriate and anachronistic distribution arrangements as between the codes for a period of 99 years.”¹⁷¹

GRNSW made reference to a number of statements attributed to Tabcorp staff in recent years, including:

¹⁶⁸ Submission 30, p.7

¹⁶⁹ Submission 32, p.5

¹⁷⁰ Submission 30, p.38

¹⁷¹ Submission 30, p.7

“Gary Pemberton in 2000, as the then Chairman of TAB Limited, commenting that the “distribution formula does not adequately reward clubs for delivering or growing the wagering revenue which funds the industry”. This remains the case in 2008 and was recognised by Elmer Funke Kupper in 2007, Managing Director and Chief Executive Office of Tabcorp Holdings Limited commenting that the NSW racing industry “is held back by an outdated economic model, and outdated regulations that limit the financial contribution that Tabcorp can make to the racing industry.”¹⁷²

Tabcorp’s submission is to the same effect, noting that “The underlying economic incentive is for each code and race club to reduce their scale of operation to the minimum number of race meetings required under the Racing Distribution Agreement”¹⁷³.

Furthermore, Tabcorp believes that:

“the fixed percentage structure of the inter-code deed does not promote sustainability in the NSW racing industry or provide incentive to the codes to improve the scale or quality of their operations... The underlying economic incentive is for each code and race club to reduce their scale of operation to the minimum number of race meetings required under the RDA.”¹⁷⁴

GBOTA states that:

“The NSW racing industry cannot seriously suggest wagering reform without addressing the completely non-competitive and therefore protectionist inter-code arrangements in place... The arrangements have been in place since 1998 and, since this time, market share performance has changed dramatically... The unemotive and rational assessment of the fixed distribution model must be that it is outdated and fails to encourage and reward innovation, creativity and discourages growth strategies.”¹⁷⁵

The current arrangements penalise the greyhound industry even though the nature of its product (i.e. a low marginal cost per race that serves as a nice ‘filler’ between broadcasts) is in demand by TAB, and are overly generous to the harness industry.

¹⁷² Submission 30, p.37

¹⁷³ Submission 34, p.29

¹⁷⁴ Submission 34, p.29

¹⁷⁵ Submission 35, p.8

GRNSW¹⁷⁶ observes that greyhound racing has increased its share of the racing market to the extent that it has a greater share of the market than the 13% allocation that it receives. However, despite this growth, the distribution arrangements have not been amended to reflect the same. GRNSW proposed an amendment of the Inter-code Agreement, so that the market share of each code reflects the contribution made by each code, which would reward performance.

HRNSW noted that:

“Any proposed move to a market share funding basis for part of the annual revenue from TAB Ltd would need to take into consideration the different costs of production between the codes, investment in infrastructure and recognition of relative efficiencies achieved under the current scheme.”¹⁷⁷

The Review suggests that this view overlooks the fact that the ultimate value produced by the product is the wagering generated. A sharing arrangement based on costs would embed (and possibly encourage) inefficiencies, and would not be in the longer term interests of the industry.

Tabcorp offered a middle ground for reform, suggesting that:

- *The relative cost of putting on race events and administering each code of racing should be reflected in a fixed distribution to each code, with a proportion of Tab Limited wagering revenue allocated between codes and race clubs on the basis of totalizator sales conducted on their race meetings; or,*
- *Each code should undertake wagering funding arrangements directly with Tab Limited.”¹⁷⁸*

The need to ensure that there is not a ‘hold-up problem’ between codes is appreciated,¹⁷⁹ but the cost of the protection provided by the requirement for unanimous support by the three codes to change the TAB distribution formula is considered to be outweighed by the cost of the inefficiencies generated for the industry as a whole.

Recommendation 21: That the three racing codes should agree to amend the Inter-code Agreement so that returns to each code from TAB

¹⁷⁶ Submission 30, p.36

¹⁷⁷ Submission 38, p.11

¹⁷⁸ Submission 34, p.29

¹⁷⁹ Racing NSW: Submission 32, p.16

distributions are in proportion to the percentage of wagering generated by each code; in the absence of such agreement, that the Government should over-ride the Inter-code Agreement and the RDA such that the distributions from the TAB are made directly to each code and in proportion to the percentage of wagering generated by each code.

Given the challenge in obtaining voluntary change of the Inter-code Agreement or the RDA, there may be a need for the government to consider legislating to enable such a change. GRNSW submits that there is a mechanism for the Government to intervene in this regard, as demonstrated by its actions with the thoroughbred Intra-Code Agreement (ICA).

OLGR advises that the NSW Government has passed legislation¹⁸⁰ which has not yet commenced that provides a mechanism to enable amendments to the ICA if the signatories cannot reach unanimous agreement to the changes.

Given that this change will have financial consequences for the harness and thoroughbred codes it is reasonable to consider that there would need to be some transition phase.¹⁸¹

Furthermore, the Review suggests that the government consider assisting the industry in a limited way for a short time, to aid the adjustment of the industry to a more sustainable operational model.¹⁸² This assistance need not be monetary.

This suggestion is not a proposal for 'compensation' for the industry as a result of regulatory change suggested in this Review, nor a direct response to the declining prospects of the industry.¹⁸³ Rather, the goal is to provide assistance to encourage the industry to adopt the changes necessary to prepare for a future with lower TAB distributions.

While such assistance may be seen as a transfer from the general NSW taxpayers to the NSW racing industry, it is intended as an investment to reduce the inevitable decline in income that the NSW Government directly and indirectly receives from activity associated with the NSW racing industry.

¹⁸⁰ *Thoroughbred Racing Amendment Act 2008*

¹⁸¹ GRNSW, Submission 30, p.8

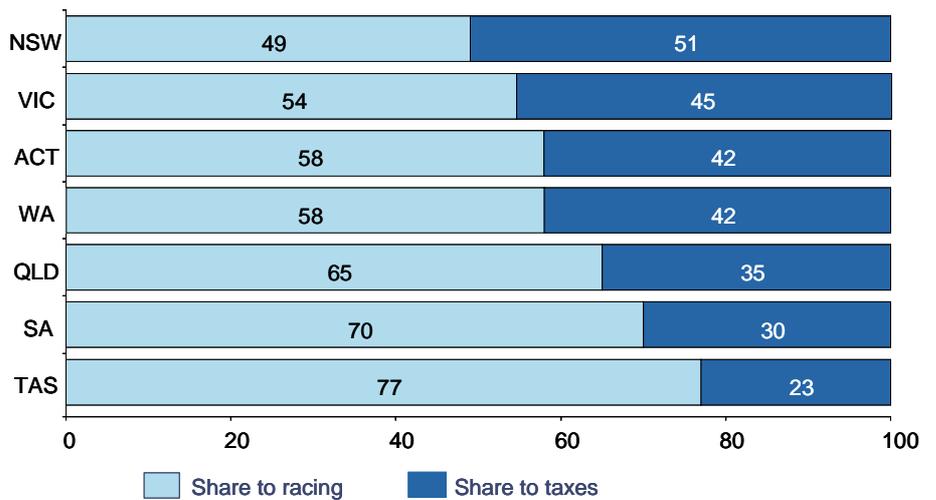
¹⁸² Gray, M 1999, 'Policy Issues in Structural Adjustment' in Productivity Commission 1999 *Structural Adjustment — Exploring the Policy Issues*, Workshop Proceedings, AusInfo, Canberra, 18 August, pp.93-124, pp.114-115

¹⁸³ See Productivity Commission 2001, *Structural Adjustment — Key Policy Issues*, Commission Research Paper, AusInfo, Canberra

Furthermore, the case can be made that the State Government’s taxation of TAB activities has been and is higher than it should otherwise be relative to other Australian jurisdictions (see Figure 15). Indeed, bringing the relative split between taxes and industry support into line with:

- Victoria would result in an additional \$22.5 million returned to the NSW racing industry; and
- the national average would result in an additional \$56.6 million returned to the NSW racing industry.¹⁸⁴

Figure 15: Estimate split of TAB revenue between the racing industry and taxes



Source: Boston Consulting Group, Report to RNSW – Response to the Independent Review of Wagering in NSW, p.23

Changes that government can facilitate may include changes such as the rationalisation of tracks so that facilities are of a higher standard and are better utilised.¹⁸⁵

The racing industry’s transition to a more sustainable operating structure will in any event need more than financial support. Structural change has sometimes been strongly opposed by members of Parliament with respect to facilities in their electorates even though such change may have been in the interests of the State and the industry as a whole.

¹⁸⁴ Based on NSW TAB’s distribution of \$220.8 million to the NSW racing industry in 2006/07

¹⁸⁵ GRNSW suggests, for example, that if there is a desire by governments to maintain tracks for other than commercial reasons then this should be funded by the NSW and/or local governments — Submission 30, p.9

To the extent that support may need to be financial, such structural adjustment assistance should not represent a 'blank cheque' provided to the industry; as Malcolm Gray has stated:

"If it has been determined that politically driven special compensation may be desirable, the issue becomes the method of delivery. It should achieve its primary objective of removing the political blockage to the implementation of reform. The mechanism to effect the reform needs to deny the blocking group any further opportunities to make demands. Desirably, the compensation should be made available in a way, perhaps by attaching conditions such as the achievement of certain benchmarks. That gives the blocking group an interest in seeing the reform proceed."¹⁸⁶

In the case of the racing industry, assistance for the industry should not proceed unless:

- the RDA is amended as per Recommendation 21; and
- the assistance is provided on the basis of a transparent business cases (or series of business cases) with clear deliverables.

Recommendation 22: That assistance, extending if necessary to short term financial assistance, should be provided to the racing industry in order to assist with this transition, but only when the provision of such funding is supported by a clear business case.¹⁸⁷

¹⁸⁶ Gray, M 1999, op. cit., pp.93-124, pp.108-109

¹⁸⁷ For instance, the assistance may involve abolishing current bookmaker levies and replacing them with a level of bookmaker taxation equivalent to the rate in the Northern Territory (i.e. 0.33% of turnover). In order for there to be revenue neutral implications, this requires NSW to attract in the order of 60-65% of the turnover of Northern Territory-licensed bookmakers. Whilst the extent of the switch-over may be unlikely to be achieved, the budgetary impact on the NSW Government is considered to be slight

17 Race fields legislation

Key points

- Race fields legislation provides the potential for a new revenue source for the three racing codes.
- There continues to be some uncertainty regarding the legality of the legislation.
- There is a fear amongst bookmakers and Betfair that the fee has been set to make them uncompetitive, and the TAB is provided preferential treatment in its bookmaker function.

The *Racing Administration Amendment (Publication of Race Fields) Regulation 2008* (race fields regulations) came into effect on 1 July 2008. These regulations provide for the controlling bodies of the three codes to grant approvals and set fees for the use of NSW race fields by wagering operators.

This legislation:

- prohibits the publication of race fields without approval from the relevant controlling body (RNSW, HRNSW or GRNSW);
- allows controlling bodies to set certain conditions for approval including a fee of up to 1.5% of the approval holder's wagering turnover that relates to the race (or class of races) covered by the approval;
- sets criteria that controlling bodies must take into account when assessing an application for approval to publish race fields;
- requires controlling bodies to provide written reasons for their decision to approve or reject an application;
- enables aggrieved applicants to have a decision reviewed by the Minister; and
- allows the decision of the Minister to be reviewed by the Administrative Decisions Tribunal.

The purpose of these regulations is mainly to address the issue of wagering operators 'free-riding' on NSW racing events. It provides a mechanism for the racing codes to charge a fee that will apply to wagering operators that do not currently contribute to the cost of staging racing events but do use them as a platform for their gambling services.

This mechanism is said to provide the racing industry in NSW with a new revenue stream that could provide them with up to \$45 million in additional revenue in FY2013.¹⁸⁸

It is possible that revenue generated from the introduction of race fields legislation could provide the racing codes with a sizeable, and relatively reliable, revenue stream. However, it is too early to determine whether this will be the outcome. Indeed, there has been speculation that:

- it may be difficult for race fields to be enforced;
- it may bring about the end of the Gentleman's Agreement between the TABs. Fiorino claims that this outcome would place all Australian states and territories in direct opposition with each other.¹⁸⁹ The implications of the Victorian and NSW race fields legislation are that RNSW will receive proceeds from both the Victorian and NSW TAB under NSW race fields legislation but Vic Racing will only receive proceeds from the Victorian TAB. Given that NSW is a significant importer of wagering content there is the potential for this anomaly to result in a breakdown of the present agreement; and
- increased costs for bookmakers (i.e. and hence reduced competitiveness) may not benefit the TAB (and hence the racing industry) because many of the bookmakers have a different clientele to the TAB. For example, Credit Suisse recently noted that the estimated price elasticities of the wagering market meant that:

“corporate bookmakers are actually tapping into a market that only exists at the low take-out rates of 4-6% and would not exist at the ~16% take-out pricing of totalizators. Therefore, Tabcorp’s strategy of promoting legislation that increases bookmaker cost will actually shrink market volume dramatically. Volume will not migrate to Tabcorp’s totalizator pools, in our view.”¹⁹⁰

This legislation was passed by the NSW Government in late 2006 but has only come into effect as of 1 July 2008. In that period, the High Court delivered its decision on the Betfair case. That decision appears to mean that any cross-border restriction on the conduct of business activities over the Internet which protects local operators may not be enforceable. This risk is enhanced if the relevant restrictions are discriminatory and are not reasonably appropriate to the issues being addressed.

¹⁸⁸ Under the scenario where the current restricted environment is maintained. Refer Boston Consulting Group 2008, op. cit., p.56

¹⁸⁹ Submission 21

¹⁹⁰ Credit Suisse 2008, *Tabcorp Holdings*, 11 September, p.1

The Regulations have been framed such that they treat all wagering operators equally in terms of *turnover*, wherever they are licensed in Australia. They explicit state that a racing control body cannot take into account whether the applicant is licensed in NSW or not when assessing its application.¹⁹¹

However, in terms of *gross profits* the race fields levy may impact each type of wagering operator differently:

- NSW TAB: A race fields levy of 1.5% on the TAB which has a take-out rate of 16% will mean that the TAB is required to pay a fee representing **9.375% of its gross revenue**.
- Bookmakers: Based on a win rate for bookmakers of 3% to 6%, a race fields levy of 1.5% represents **25% to 50% of their gross revenue**.
- Betfair (as the only betting exchange currently operating in Australia): Based on Betfair's gross revenues on thoroughbred racing in 2007/08, the race fields levy of 1.5% would have represented **60.73% of its gross revenue**.¹⁹²

Stakeholder consultation has suggested that the margins associated with bookmakers are so low that the 1.5% product fee poses a significant shock to the bookmaker model. Indeed, Betfair queried why Tabcorp is supportive of the race fields arrangement given its move to become licensed in the Northern Territory as a bookmaker:

"In the absence of wider liberalisation of the NSW wagering market, the proposed race field fee of 1.5 per cent of wagering turnover will adversely affect the financial viability of wagering providers operating in NSW. For example, it has been estimated that NT-based bookmakers would see their margins reduced by approximately 30 per cent as a result of the race field fee (Wheen 2008). Assuming TAB continues to fix its prices at the cap set by government, the 1.5 per cent product fee would erode approximately 75 per cent of its profit margin on NSW racing. The potential outcome makes it difficult to understand how the holding company [i.e. Tabcorp] could applaud the decision made by the racing industry to charge all local and interstate operators

¹⁹¹ Nettleton, J 2008, *Race Fields Legislation – Will the New South Wales Legislation Withstand a Constitutional Challenge?*, viewed 10 July 2008, <<http://www.addisonslawyers.com.au/focuspaper/73>>

¹⁹² Based on Betfair's gross profits of \$3,225,085 in 2007/08 in relation to thoroughbred racing (figure supplied by Betfair)

*an additional 1.5 per cent product fee when there is no right to offset for payments made in the home jurisdiction.*¹⁹³

While there is no 'right' to offset, it appears that there is an understanding that TAB will be provided the opportunity to offset payments.

Similarly, Betfair contends that it cannot profitably offer services on thoroughbred racing and harness racing events under the race fields levy proposed to be imposed by RNSW and HRNSW. This may be contrasted with the arrangements for Victorian race fields. Under the current terms of approval granted by Racing Victoria Ltd (RVL), Betfair is required to pay a financial contribution of 20% of its *gross profits* less credits for payments made to the benefit of the Tasmanian racing industry and other credits as provided by RVL's policy. As a result of the application of these credits, the fee required by to be paid by Betfair is nil. The approval by RVL has been renewed each year since 2006.

While the racing industry is pleased with the introduction of this legislation RNSW has noted that there are areas in which it could be strengthened. In particular:

- Controlling bodies have no right to take enforcement action against those who publish race fields without authorisation, this is the responsibility of the Government.
- Applicable fines for breaches will not necessarily be related to the amount of funding lost to racing nor does it compensate the racing industry for revenue lost. To be an effective deterrent, applicable fines for breaches of race fields legislation should exceed the amount that should have been paid to the racing industry.

The Review notes that there should be a distinction between enforcement action, for penalties for failing to register or for registering and then failing to pay; and recovery action to recover unpaid levies from registered persons.

Recommendation 23: That the NSW Government should, if necessary, amend race fields legislation to allow a controlling body to recover unpaid levies under the legislation.

Recommendation 24: That the NSW Government should, if necessary, amend race fields legislation such that the penalty imposed on a wagering operator found to be breaching the legislation is greater than the amount of unpaid levies.

¹⁹³ Submission 37, p.36

Box 3: Victorian experience with race fields legislation

Race fields regulations were introduced in Victoria in 2006, with some distinct differences to the NSW legislation. In particular, the legislation:

- charges non-Victorian bookmakers 1% of assessable turnover on Victorian thoroughbred racing, 3% for pari-mutuel operators and 1% for betting exchanges;
- no additional economic contribution is sought from pari-mutuel operators as these licensed totalizators are primary sources of funding to the thoroughbred racing industries that they service;
- no fee payable if wagering operator's turnover is less than \$1 million per annum; and
- TAB NSW is exempt from the 3% contribution on the premise that it is already supporting the NSW racing industry.

This legislation is already the subject of a legal challenge from Sportsbet, a corporate bookmaker licensed in the Northern Territory. It is challenging whether the legislation is constitutional. There are reports that Racing Victoria may concede to requested changes and allow corporate bookmakers and betting exchanges pay fees based on gross profits rather than turnover. Such a move has the potential to weaken the NSW legislation and increase the likelihood that NSW would end up in a similar legal battle.¹⁹⁴

Source: Nettleton, J 2008, Race Fields Legislation – Will the New South Wales Legislation Withstand a Constitutional Challenge?, viewed 10 July 2008, <<http://www.addisonslawyers.com.au/focuspaper/73>>

¹⁹⁴ Saunders, B 2008, 'NSW Race Fields Falls at the First Fence', Virtual Form Guide, viewed 12 September 2008, <<http://www.virtualformguide.com/cgi-bin/tvf/displaynewsitem.pl?20080826falls.txt>>

Appendix

Submissions received

The Review has considered all comments and submissions provided by stakeholders before and during the review process. Those submissions and comments provided directly in response to the Review have been listed below. General correspondence to the Minister for Gaming and Racing prior to the Review commencing have also been considered.

Table A1: Public submissions

Submission no.	Person / organisation	Date received (2008)
S1	Mr John Tracey	11 April
S2	Mr Peter Mair	30 April
S3	Racing NSW	30 April
S4	Mr Bruce Teague	30 April
S5	Mr Bruce Teague	4 May
S6	Mr Bruce Teague	5 May
S7	Mr Allen Windross	19 May
S8	Mr James Fiorino	21 May
S9	Mr Bruce Teague	26 May
S10	Mr Peter Mair	6 June
S11	Mr Bruce Teague	9 June
S12	Betfair Australia	11 June
S13	Mr Bruce Teague	13 June
S14	Mr John Tracey	13 June
S15	Mr David Clarkson	13 June
S16	Wesley Community Legal Service	17 June
S17	Mr Bruce Teague	20 June
S18	Centrebet	23 June
S19	Mr Bruce Teague	29 June
S20	Clubs NSW	30 June
S21	Mr James Fiorino	11 July
S22	Mr John Tracey	15 July
S23	NSW Bookmakers' Co-operative	18 July
S24	Mr Con Kafataris	18 July
S25	Mr Robbie Waterhouse	21 July
S26	Mr John Davis	22 July
S27	Confidential submission	29 July

Submission no.	Person / organisation	Date received (2008)
S28	Australian Punters' Association	30 July
S29	Confidential submission	31 July
S30	Greyhound Racing NSW	31 July
S31	Absalom Family	31 July
S32	Racing NSW	31 July
S33	NSW Responsible Gambling Fund	31 July
S34	Tabcorp	31 July
S35	Greyhound Breeders, Owners and Trainers Association	31 July
S36	Two Way	31 July
S37	Betfair Australia	31 July
S38	Harness Racing NSW	July
S39	Australian Hotels Association (NSW)	1 August
S40	Australian Internet Bookmakers' Association	1 August
S41	Minister for Racing, Tasmania	4 August
S42	Harness Racing Australia	4 August
S43	Mr Bruce Teague	10 August

Disclaimer

This Report has been prepared by the author at the request of the NSW Office of Liquor, Gaming and Racing (OLGR) in accordance with the Terms of Reference for the review of the NSW wagering and racing industries.

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