



Australian Racing Board

27 February 2014

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By mail and email: legcon.sen@aph.gov.au

Dear Committee Secretary

Legal and Constitutional Affairs References Committee
A Comprehensive Review of *Telecommunications (Interception and Access) Act 1979 (Cth)*
Submission of the Australian Racing Board

The Australian Racing Board Limited (**the ARB**) is comprised of the Principal Racing Authorities which govern thoroughbred racing in Australia.¹ The thoroughbred racing industry in Australia is conducted on a large scale. It employs over 200,000 people, with 389 race clubs and almost 20,000 races annually. In 2012/13, the total wagering turnover on thoroughbred racing exceeded \$14.4b. The industry contributes, both directly and indirectly, significant taxation to the States and Territories. On any analysis, thoroughbred racing is a strong and important industry which contributes on many levels to the Australian economy and society.

Amongst other things, the ARB represents the national thoroughbred racing industry on critical integrity-related matters which impact on the success and sustainability of the racing industry. Due to its scale and heavy reliance on wagering, racing is often presented with unique challenges, and has been proactive in addressing threats posed by criminal elements and related conduct. Amongst other issues, racing is required to address the threats posed by organised crime, money laundering, race fixing, and illicit human and equine drug use. To do so, racing has established itself as the leader in sports integrity, having developed highly sophisticated and well-resourced integrity departments. This focus on integrity has played a critical role in protecting the racing industry, and the revenue generated for government through taxation on wagering.

¹ The Principal Racing Authorities are: in New South Wales, Racing NSW; in Victoria, Racing Victoria Limited; in Queensland, Racing Queensland Limited; in South Australia, Thoroughbred Racing SA Limited; in Western Australia, Racing and Wagering Western Australia; in Tasmania, Tas Racing Pty Ltd; in the Northern Territory, Thoroughbred Racing NT; and in the Australian Capital Territory, Canberra Racing Club Inc.

However, racing's ability to properly protect itself into the future from integrity-related threats is, to a significant degree, dependent upon its capacity to receive information and intelligence from law enforcement authorities. Whilst Australian racing authorities have been working hard to improve the flow of critical integrity-related information from police and other government agencies, to identify risks and to take action against individuals who undermine the integrity the industry, it is clear that further steps are required.

As set out below, in recent times, racing authorities have been prescribed in accordance with the *Australian Crime Commission Act 2002* (Cth) (**ACC Act**) as bodies corporate, and may legally access ACC information under that Act. The provision of this information represents a significant step forward in facilitating the flow of information to racing authorities and we are confident that it will assist in protecting the integrity of racing. However, at present, it is unlawful for racing authorities to receive information from telecommunications intercepts obtained by law enforcement agencies under the *Telecommunications (Interception and Access) Act 1979* (Cth) (**the TI Act**). Such information, where it relates to the integrity of racing, is of critical importance.

The purpose of this submission is to propose two amendments to TI Act;

1. first, it is proposed that the Australian Principal Racing Authorities be specifically included within the definition of 'enforcement agency'; and
2. secondly, it is proposed that Australian racing authorities be granted access to intercepted information in much the same way as information may be obtained under the ACC Act. It is proposed that Australian racing authorities be approved to receive telephone intercept information on the basis that the information may not be used directly in the prosecution of a person for the imposition of a penalty in accordance with Rules of Racing, although may be used in a derivative manner.

Each of these matters is considered in turn below.

Amendment to definition of 'enforcement agency' to specifically include Principal Racing Authorities

Under the TI Act, a body defined as an 'enforcement agency' is able to access certain types of information. For example, an enforcement agency may apply for a stored communication warrant under section 110. The access by enforcement agencies of such material (which may include call charge records) may often be of benefit in conducting investigations. Of relevance, an enforcement agency is defined in section 5 of the TI Act as, amongst other things, any body whose functions include 'administering a law imposing a pecuniary penalty' or 'administering a law relating to the protection of the public revenue'.

The ARB is aware that Racing NSW and Racing Queensland have been accepted as "enforcement agencies" and that the former Commonwealth Attorney-General Mark Dreyfus QC MP expressed a view that Racing Victoria (the Principal Racing Authority in Victoria) is also an 'enforcement agency' for the purpose of the TI Act. However, whilst such a view provides Racing Victoria with some confidence in respect of the

interpretation of the TI Act, the ARB considers that there remains some uncertainty as to the possible interpretation of the definition of 'enforcement agency' set out at in section 5. This is particularly so where a racing authority administers the Rules of Racing which have the force of contract, rather than statutory force (such as in the case of Racing NSW and Racing Queensland).

In the ARB's view, it is important for the uncertainty on this issue to be resolved. Accordingly, we submit that the Principal Racing Authorities be specifically prescribed within the definition of 'enforcement agency' at section 5 of the TI Act.

Access by Australian Racing Authorities to telecommunications interception information and data

Chapter 4 of the TI Act regulates access to telecommunications data. Of particular relevance, subsection 177(2) allows information or documents to be disclosed to an enforcement agency 'if the disclosure is reasonably necessary for the enforcement of a law imposing a pecuniary penalty.' Further, section 182(2)(c) allows the secondary disclosure/use of information or documents again 'if the disclosure is reasonably necessary for the enforcement of a law imposing a pecuniary penalty'.

For the integrity reasons set out above, the ARB submits that it is critical that Australian racing authorities be granted access to telecommunications information obtained pursuant to the TI Act by interception agencies. However, the ARB is cognisant of the important privacy considerations which apply to the disclosure and use of such information, and notes that racing authorities would receive and use telephone intercept information for civil penalty purposes. Accordingly, the ARB considers that appropriate amendments may be made to the TI Act to balance the disclosure and use by racing authorities with the important individual privacy considerations. Further, the ARB considers that the disclosure provisions found in the ACC Act provide an appropriate and proven structure pursuant to which telephone intercept information and documents may be disclosed to racing authorities.

The ACC Act (and the *Australian Crime Commission Regulations 2002* (Cth)) provide for the establishment of the Australian Crime Commission, and empowers the ACC to, amongst other things:

- a. to collect, collate, analyse and disseminate criminal information and intelligence;
- b. to investigate matters relating to relevant criminal activity.²

Division 2 of the ACC Act provides strong powers in respect of the examination of a person, including a power to compel individuals to produce documents and give evidence irrespective of whether the documents or evidence may tend to incriminate that individual. However, where an individual claims that an answer to a question or the production of a document may incriminate them (or make them liable to a penalty), the ACC Act provides a use immunity such that the document or answer is inadmissible against that person in, amongst other things, a criminal proceeding or a proceeding for

² See section 7A of the ACC Act.

the imposition of a penalty.³ Whilst evidence given or documents produced may not themselves be used against a person as described, it is possible for that evidence to be lawfully used in a *derivative* manner for the purpose of a criminal proceeding or a proceeding for the imposition of a penalty.

The ACC Act also provides for an examiner to direct that, amongst other things, any evidence given before the examiner or any information that might enable a person who has given evidence to be identified, not be published, or not be published in a specific manner and to such persons as specified by the examiner.⁴ It is noted that is an offence for a person to make a publication in contravention of such a direction made by an examiner.

Pursuant to section 59AA, the ACC Act provides that, in certain circumstances, information in the ACC's possession may be disclosed to a body of the Commonwealth, a State or a Territory.⁵ Further, pursuant to section 59AB, the ACC may disclose, in certain (and limited) circumstances, information in its possession to private sector bodies which have been prescribed. For completeness, the ARB notes that certain Principal Racing Authorities may be defined as a 'body' of a State or Territory for the purpose of section 59AA. Further, the following thoroughbred-related bodies have been prescribed for the purpose of section 59AB as bodies corporate and are listed in Part 1 of Schedule 7 of the *ACC Regulations*: the ARB itself, the Canberra Racing Club Inc., Racing Queensland Limited, Racing Victoria Limited, Tasracing Pty Ltd, and Thoroughbred Racing S.A. Limited.

Accordingly, the ARB considers that the ACC Act and structure provides a clear example of a regime which facilitates the disclosure, and potential use (at least in a derivative manner), of sensitive information derived from an ACC examination to Australian racing authorities. Such information may include transcripts of examinations, documents and other material obtained during compulsory examination. Accordingly, it is the ARB's submission to this Review that access may be provided to telephone intercept material on a similar basis.

Please do not hesitate to contact me should you require any further information.

Yours sincerely

Peter McGauran
Chief Executive

³ See section 30(5) of the ACC Act.

⁴ See section 25A(9) of the ACC Act.

⁵ A body defined at section 59AA(3) as including a body however described and a body established for a public purpose by or under a law of the Commonwealth, a State or a Territory.