

GAMBLING

Inquiry into the prevalence of interactive and
online gambling in Australia and gambling
advertising

Submission of

AUSTRALIAN RACING BOARD

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Executive Summary

The importance of public policy attention being given to interactive and on-line gambling has been recognised within Australia since at least 1999. While the advertising of gambling has a longer history of public policy attention recent developments make it necessary that fresh examination be undertaken in this area.

In summary:

- **Background**

The thoroughbred racing industry makes important economic and social contributions to Australia. Through direct and indirect effects, thoroughbred racing and wagering on that racing account for 0.58 percent of Gross Domestic Product, provides 48,680 full-time equivalent (FTE) jobs, and contributes over \$1.2 billion in State and Federal tax revenue (FY06). Racing is also an important part of Australia's culture and history, especially in provincial and country areas where racing is a corner stone of community life.

- **IGA**

The IGA is a valuable attempt to address important social issues. We believe that it should not be watered down. In particular, we do not believe that the ban on on-line poker should be relaxed.

- **TOR(a)**

Sports betting is growing exponentially. Changes in technology are only a partial explanation for this. An equally important influence on the future scale and nature of sports betting in Australia will be the public policy responses which are formulated and the regulatory frameworks established to give effect to those policies. A laissez-faire approach is not appropriate.

- **TOR(b)**

One of the most significant implications for public policy from the development of new technologies is the ingenuity of existing and emerging technology companies and remote operators to introduce more and more new products, to find ways of working around regulations, and to achieve high growth to drive their low-margin, high-volume business models.

- **TOR(c)**

In developing a regulatory framework for on-line gambling its most important feature is that it must be national. This is essential to avoid inconsistency, regulatory arbitrage and regulatory capture. A "race to the bottom" must be avoided.

- **TOR(d)**

We are opposed to practices which are likely to contribute to a higher incidence of problem gambling. The risks from inducements to bet on sporting events on-line should be assessed, and then a nationally consistent approach formulated.

- **TOR(e)**
Promoting and upholding integrity is one of the key functions of all sports governing bodies and event organisers. All sports must be given the regulatory support needed to address the risks of match-fixing.
- **TOR(f)**
The Australian thoroughbred racing industry has a two-pronged strategy for addressing the integrity risks associated with betting exchanges:
 - access to betting information; and
 - rules dealing with industry insiders “laying” horses.
- **TOR(g)**
A national framework should provide for the vetting of bet types to prevent betting place in circumstances where this is not in the public interest for any reason. Within these arrangements racing and other sports should have the capacity to determine whether contingencies related to them are appropriate subjects for wagering. Determinations on whether betting on political events should be permitted could also be given effect to within these vetting arrangements.
- **TOR(h)**
Regulation, including potentially codes of disclosure, is required to deal with persons betting on events in which they have some participation or special knowledge. Racing and other sports have already moved to put this in place. However, a significant deficiency exists because of the jurisdictional limitations of any investigations which a sporting organisation might wish to undertake relating to match fixing or other integrity breaches.
- **TOR(i)**
We support the approach adumbrated by the COAG Select Council on Gambling relating to the control and reduction of the promotion of live betting odds.

Additionally, we believe that the effectiveness of the IGA is compromised by the failure to invest the legislation with truly meaningful enforcement measures. Moreover, there are some weaknesses in the scope of the IGA which should be removed. The necessary reforms include:

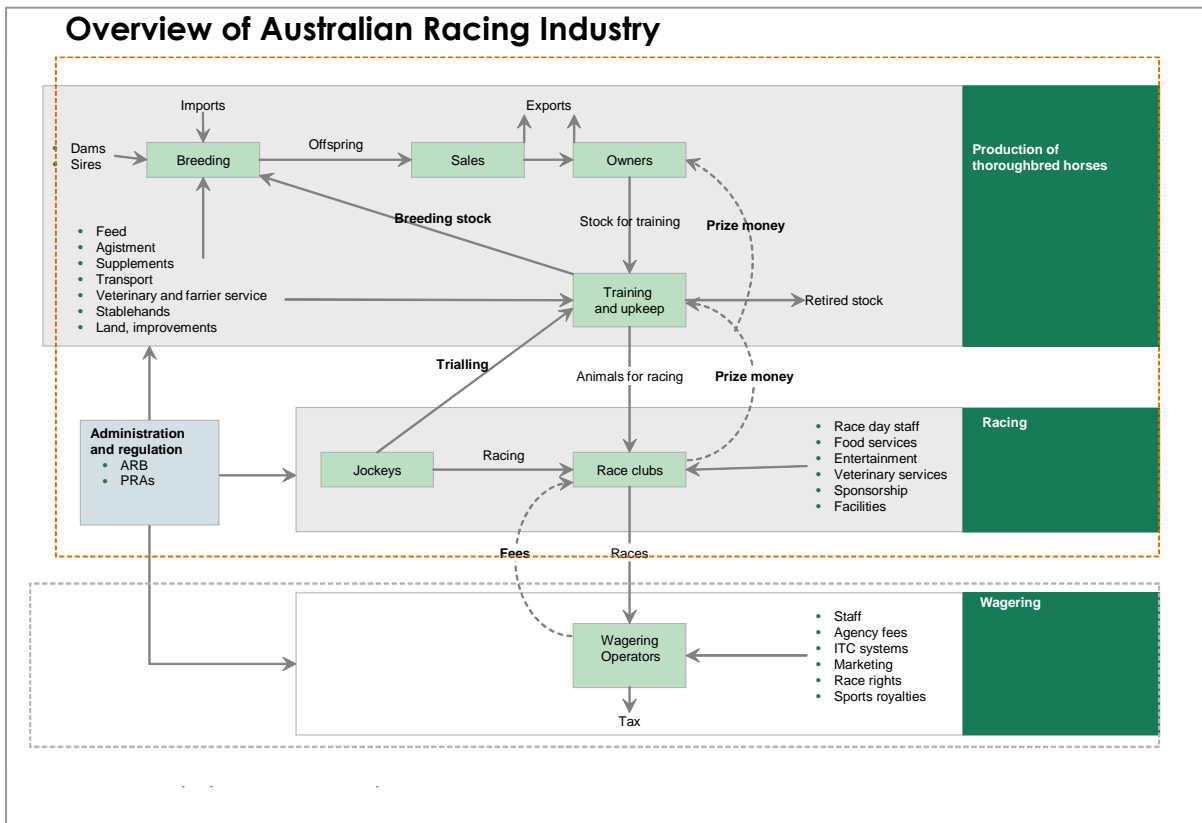
- a need for financial transaction controls to be introduced;
- a need for the enforcement authority to be given powers relating to ISP blocking; and
- a need for the current wagering exemption to be made conditional.

Finally, we believe that the existing State-based restrictions on retail betting should not be dismantled.

Introduction

This submission has been prepared by the Australian Racing Board Limited (**ARB**), a public company limited by guarantee, which is the national body formed by and representing the thoroughbred racing Controlling Bodies in each State and Territory of the Commonwealth (**Controlling Bodies**). The Controlling Bodies are all either established or recognised by State or Territory legislation, and each is responsible for doing all that is reasonably within its power to develop, encourage and manage the thoroughbred racing industry in its territory.

Exhibit 1: Industry overview



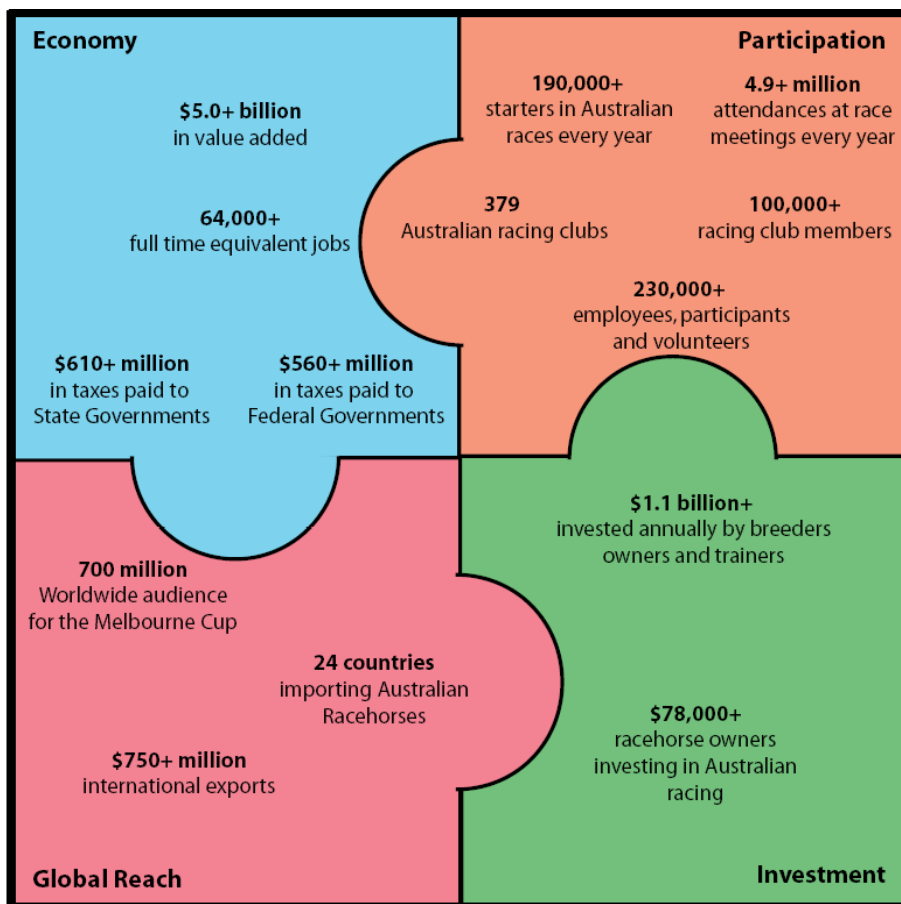
Note: Adapted from Australian Racing Board. 2003. Submission to the Review of Issues Related to Commonwealth Interactive Gambling Regulation.

In addition to addressing the specific terms of reference of this Inquiry we set out our views on changes which should be made to the *Interactive Gambling Act 2001* (the **IGA**) and provide supporting material.

Scope and Contribution of Australian Thoroughbred Racing

The impact of the Australian thoroughbred racing industry extends far beyond ‘declaration of correct weight’. The racing industry fills an integral place in the sporting life, cultural traditions and everyday economy of Australia. From the first official race meeting staged by Governor Macquarie at Hyde Park Sydney in 1810, Australian Racing has grown to a scale that would have been difficult to imagine two centuries ago, and has few equals anywhere in the world. Today, Australian Racing spans both the calendar and continent: over 17,000 thoroughbred races are held each year, staged in almost every part of Australia. On any given day there are between 40 and 300 races run, which as George Johnston observed “*is a pretty deafening thunder of hooves by any standard*”¹. Here we provide a snapshot of the size and scope of the racing industry, illustrating the extent of its influence on Australia’s economic and social life.

Exhibit 2: An impact extending far beyond ‘declaration of correct weight’



Source: Australian Racing Fact Book; ABS attendance at sport

We provide further details on the scope and contribution of Australian thoroughbred racing in Appendix 1. However, it is manifest that the Australian racing industry makes significant contributions to the Australian economy through employment, valued added, and tax paid. A large part of the Australian population participates in thoroughbred racing, directly by producing and delivering the racing product, or indirectly by attending race meetings and wagering. Any decline in funding that led to a contraction in the size of the industry would have wide and adverse flow-on effects.

¹ George Johnston. The Australians

Interactive Gambling Act

The importance of public policy attention being given to interactive and online gambling has been recognised within Australia since 1999 when the then Treasurer, The Hon Peter Costello, identified it as a key term of reference for an inquiry into Australia's gambling industries. The enactment of the IGA by the Howard Government was the major outcome of that inquiry.

Shortly stated, the IGA was enacted in response to community concern about the social impacts of the proliferation of poker machines in the 1990s and the potential social costs of dramatically increasing gambling opportunities via online gambling.

The IGA is administered the Department of Broadband Communications and the Digital Economy.

A review of the operation of the IGA (published in 2004) concluded that the IGA had curtailed the development of the Australian interactive gambling industry and was associated with the minimal use of internet gaming services by Australians. It found that the IGA has proven largely successful in meeting its policy objectives of minimising the potential expansion of interactive gambling that may exacerbate problem gambling in Australia.

In our view the IGA is a valuable attempt to address important social issues. However, its effectiveness is compromised by the failure to freight the legislation with truly meaningful enforcement measures. Additionally there are some weaknesses in the scope of the IGA which should be removed. The necessary reforms are as follows:

- (i) Need for financial transactions controls.
- (ii) Need for ISP blocking.
- (iii) Need for the wagering exemption to be conditional.

We provide details on these matters in our submissions on TOR(i) below.

Response to Terms of Reference

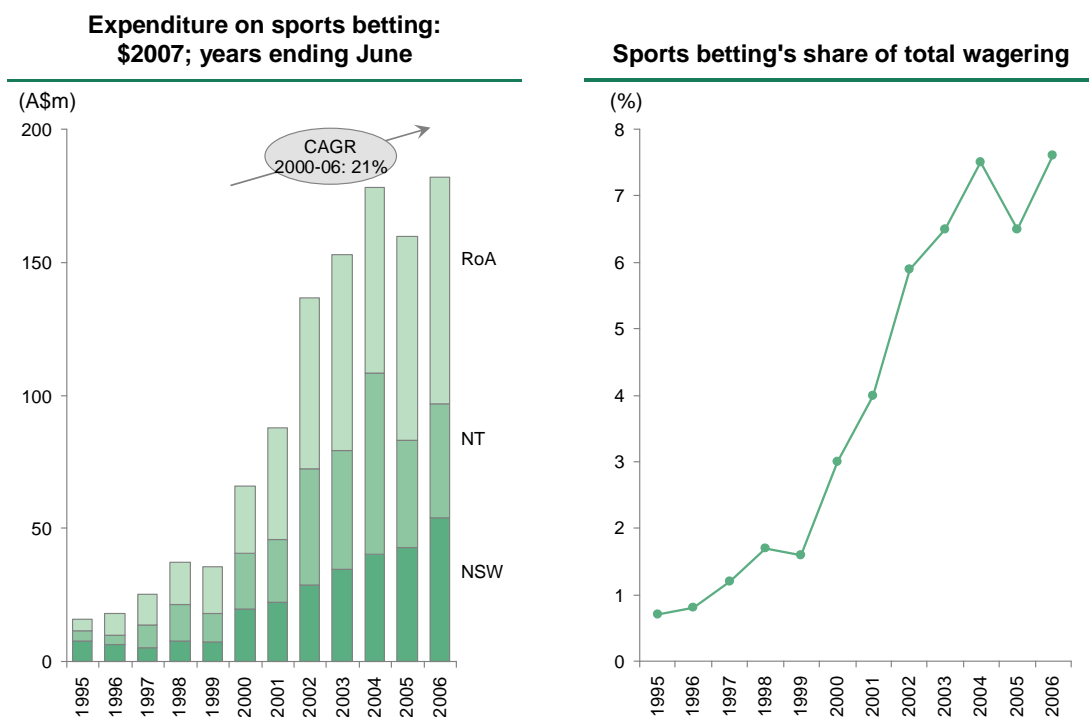
(a) The recent growth in interactive sports betting and the changes in online wagering due to new technologies

Sports betting has grown significantly since the mid-1990s.

Sports betting shares some common features with race wagering in that it is active, participatory, and benefits from prior knowledge. Probably the key difference is that betting is a secondary reason for people to follow sports, whereas in racing, wagering is typically the main reason. Also, many more people believe they have the know-how and insight to the outcome of sporting fixtures than horse races.

Sports betting is the fastest growing area of gambling in most western countries, including Australia. Since the year 2000, expenditure on sports betting has grown at an annual compound rate of 18 percent a year in real terms, though starting from a small base (Exhibit 3).

Exhibit 3: Sports Betting Expenditure



Source: Queensland Treasury, 2007. Australian Gambling Statistics 1980-81 to 2005-06; missing data estimated by BCG.

A report by the Boston Consulting Group in the course of the Cameron Inquiry into wagering in New South Wales identified that the key drivers of the rapid growth in sports betting include:

1. Its relative novelty, though obviously private betting on sports events is long-standing. Its growth is closely linked to the growth in sports coverage on pay TV.

2. The fastest-growing segment of the population, Generation Y, is keenest on sports betting. The average age of sports bettors is about ten years younger than that for race wagers.
3. The range of sports events is extremely broad and international. The past decade has seen the commercialisation of many sports codes and a rapid growth in the number of matches played or events staged.
4. The proliferation of sports betting sites which are often treated more leniently by regulators than online gaming (mainly casino games).

Where it is permitted by law, sports betting also offers a large variety of wagers, such as betting on the final result, the margin and events within a game such as the team leading at half-time or the first player to score.

Internationally increased levels of sports betting is also being assisted by the rapid growth in two types of wager: in-play betting and spread-betting. While both types of wager are available on horse racing, there is much greater scope for these in relation to sports events.

In-play betting (or betting-in-the-run for racing) occurs after an event has started. While it is offered on horse racing in some jurisdictions, it is more attractive for sports events that last longer than a few minutes. In-play betting is the fastest growing bet-type in the United Kingdom.

In Australia, the IGA limits in-play betting to phone and face-to-face bets and prohibits it via the internet. Northern Territory corporate bookmakers and Betfair both promote in-play betting heavily and Australian residents can still place in-play internet bets through UK bookmakers.

In spread betting, the returns or losses from a bet are calculated in proportion to the degree to which a bettor's prediction is right or wrong relative to the bookmaker's spread. The more skilled or knowledgeable the bettor is, the closer he or she is likely to be to the actual outcome. Because the potential loss or win can be exceptionally high, loss and win limits are placed on spread bets to protect the bettor.

Corporate bookmakers have a much higher profile in sports betting, in part because they have much more flexibility in the sports bids offered than do TABs. NT bookmakers account for approximately one quarter of total sports wagering expenditure.

As much as the recent growth in interactive sports betting has been enabled by new technologies it is important to also consider the influence of regulation.

As has been observed elsewhere any attempt to identify "natural" market outcomes for gambling industries needs to take into account that gambling is, and always has been, a creature of regulation.

Regulation, or absence of regulation, has been a major influence on the recent growth of sports betting, including through:

- the issuing of sports betting licences by State and Territory governments, and the latitude of activities allowed within these licences.
- The dismantling of State and Territory statutory advertising restrictions (spurred by the High Court's decision in *Betfair v Western Australia*).

Accordingly, the future scale and nature of sports betting will be a product not just of developments in technology, but also of the public policy responses which are formulated and the regulatory frameworks established to give effect to those policies.

Up until recently the attitude of regulatory authorities to sports betting has been very close to laissez-faire. This has been a major factor in its mushrooming.

(b) The development of new technologies, including mobile phones, smart phones and interactive television, that increases the risk and incidence of problem gambling

The growth of the internet as well as its increasing speed and number of users has made the growth in remote gambling possible. The impact of the internet is being extended now with the growth in wireless devices (principally 3G and newer mobile phones) and the customisation of wagering and gambling websites to them. Young people (e.g. 18 to 30 years old) usually lead the demand for mobile services but it remains to be seen if they will lead the uptake of mobile gambling. Wagering via interactive television has now entered Australia though currently only in Victoria.

(i) Internet

The internet and its rapid up-take has affected wagering in a number of ways:

- Bookmakers can locate in low cost, low regulation jurisdictions, remote from customers;
- New wagering operating models are possible such as betting exchanges;
- Information on, and coverage of, racing and sports events is packaged with interactive wagering (though pay-TV probably plays a bigger role still);
- Uncertainty exists about the scope and extent of any intellectual property rights which may affect gambling activities; and
- Comparing odds among TABs/bookmakers is much easier for bettors, with dedicated websites that identify the best odds on each race.

While phone betting is still twice the volume of internet betting, growth in the latter is strong. In 2006/07, betting via the internet accounted for 10 percent of wagering on thoroughbred racing through all Australian TABs, a three-fold increase over five years². The internet is much more important for sports betting than race wagering, and for corporate bookmakers and Betfair than the TABs, so the total amount of internet wagering overall figure is probably several percentage points higher, in the order of 13 percent, excluding online wagering on offshore sites.

The generally held view is that the share of gambling on the internet will continue to grow rapidly, for the reasons summarised in the European Union review of gambling³.

- An increasing proportion of the population have access to the relevant technologies;
- The technologies are becoming increasingly user-friendly;
- The technologies are becoming increasingly integrated and mobile;

² Australian Racing Fact Book

³ Swiss Institute of Comparative Law, *op. cit*

- These systems have automated and convenient electronic billing systems which make financial transactions increasingly easy;
- Adult populations in the years to come will increasingly consist of people who have grown up familiar with playing electronic games and utilising computers in their everyday lives; and
- Spending on leisure and on home-based entertainment is increasing.

Perhaps their most insightful observation for the purposes of this Inquiry is that:

“The ingenuity of existing and emerging technology companies and remote operators is ensuring that more and more games and other vehicles for gambling are available through the new technologies.”

In other words, the new entrants to gambling are forever looking for new products, ways of working around regulation, and high growth to drive their low-margin, high-volume business model.

(ii) Mobile phone gambling

Mobile gambling refers to gambling via the internet through a wireless device. While it can include PDAs and notebook computers, it mainly means 3G and newer phones that are capable of high bit rates and advanced features. A co-requisite is a network with high bandwidth connections and very high reliability. Loss of connection becomes a critical flaw when placing a wager or watching an event.

3G phone networks have only become widely available in the past few years and are driving the projected growth in mobile gambling over the next five years. The global gross win (revenue) from mobile gambling is forecast to increase from just over US\$100m in 2007 to US\$3.2b in 2012⁴. While significant, internet wagering via computer will still be much larger than via mobile devices.

Mobile gambling expects to tap three main groups. The first target group is young adults over 18 years of age, many of whom already interact with the world through mobile phones. This group has been pushing for the features and speed on mobile phones that also make the delivery of mobile gambling possible.

The second group is casual gamblers who want to ‘fill in dead time’. The third group is serious race and sports wagerers for whom accessing the latest odds and being able to watch an event live are major pluses. For these latter two groups, mobile wagering is more likely to be an alternative to existing wagering channels rather than a means of generating new customers, as in the first group.

Mobile technology is also further reducing some wagering operators’ control of their product. For example, a wagerer can visit a local TAB outlet for its atmosphere, ‘data’ and contacts, and use a mobile phone from there to wager with TAB competitors.

⁴ Holden, W. 2007. *Mobile Gambling – A Good Bet for the Future*. Juniper Research, Basingstoke, Hamps.

Australia has over 100 percent mobile penetration and all four mobile operators run 3G networks; the more advanced 3.5G debuted in 2007. This places Australia ahead of most countries in 3G deployment. In February Telstra announced the company's intention to introduce a 4G network (which for the time being would compliment rather than replace its 3G network). Mobile companies have made substantial investments in 3G technology, so new sources of revenue, such as mobile gambling, are key to their earning an adequate return.

This said, while more than 1/3 of Australian mobile phones are 3G, early reports were that there had been limited uptake of the new services they enable⁵. BCG suggested in 2009 that the growth forecast for mobile gambling might continue to slip over time.

In terms of providers, Betfair was the first to launch mobile gambling in Australia and Centrebet followed in November 2007. A number of wagering operators have also developed I-phone applications.

(iii) Interactive television (iTV)

Like 3G mobile phones, the economics of iTV (wagering through interactive television) in part depend on gambling uptake, with in-play sports betting seen as especially suited to the platform.

The United Kingdom, the United States, France, Italy and New Zealand have all offered iTV wagering on racing for some years. While iTV is available throughout Australia, interactive wagering has so far only been approved in Victoria.

(c) The relative regulatory frameworks of online and non-online gambling

Limiting our comments to wagering ie., not commenting on other forms of gambling such as poker machines, we believe that the regulatory framework which Australia has had in place for wagering other than on-line has been well suited to meeting all of the relevant policy objectives, including:

- harm minimisation;
- avoiding criminal activity (including money laundering);
- integrity;
- taxation; and
- funding.

The evolution of on-line wagering has unquestionably challenged the pre-existing regulatory framework. However the foremost issue which on-line wagering confronts policy makers with is that of how to achieve good regulatory outcomes within Australia's federal system of government. At present, with the exception of the IGA, the entire responsibility for regulating gambling rests with the State and Territories: This exposes the regulatory framework to the following risks:

- Inconsistency. New technologies which can be applied to gambling purposes present the same issues for all States and Territories and a consistent national framework should exist. Instead we have a patchwork series of responses to changes.

5 3G services largely unused." [Sydney Morning Herald](#), 9 May 2008.

- Regulatory arbitrage. Lack of a consistent national framework means that operators are able to pick of States and Territories willing to trade off regulatory or tax standards in order to secure local investment or other economic activity. The result is a “race to the bottom”.
- Regulatory capture. Some operators in particular jurisdictions may have significant sway over the relevant regulators and/or legislators because of their size in the particular States or Territory market.

We support the development of a consistent national framework for regulating gambling. So far as funding is concerned this framework should empower racing and other sports to themselves determine the fees required to be paid, and to do this in the manner best suited to their respective administrative structures.

(d) Inducements to bet on sporting events online

We are opposed to practices which are likely to contribute to a higher incidence of problem gambling. The risks from inducements to bet on sporting events on-line should be assessed, and then a nationally consistent approach formulated.

(e) The risk of match-fixing in sports as a result of the types of bets available online, and whether certain bets should be prohibited, such as spot-betting in sports which may expose sports to corruption

Promoting and upholding integrity is one of the key functions of all sports governing bodies and event organisers. The whole concept of sport is based on a fair competition between participants under agreed rules. It is a vital principle for any sport that all involved are competing to win, and are seen to be doing so.

Those who seek to influence the outcome or progress of sports events to secure rewards through betting undermine this principle. Any suspicion that this is happening can be deeply damaging.

The impact of gambling on the integrity of sports is something that horse racing has been dealing with virtually since it began, and the Australian thoroughbred racing industry has an internationally recognised reputation for the approach it has developed to managing the integrity risks associated with gambling on its events. Nevertheless, changes in the Australian wagering landscape have presented fresh challenges for the racing industry in this area. For other sports the potential for gambling to influence integrity is a newer problem and one that will increase hand in hand with the growth in scale of sports wagering.

On 10th March 2010 the European Parliament adopted (on a vote of 544 votes to 36) the Schadelmose Report, which called for strong coordinated action to fight the increasing threat of corruption and match-fixing in European sport.

An equally important issue is the equitable entitlement of sports to share in the revenues of gambling that is conducted on their events. In this regard the Schadelmose Report recognised that *“sports bets are a form of commercial exploitation of sporting competitions”* and lent to support the notion that sports receive rights fees from gambling.

Some international example of gambling’s potential to influence the integrity of sport, either by proven corruption or damaging speculation include:

International Cricket

- **1980** – Pakistan vs. India – Heavy betting on whether Pakistan would cross India's total of 331. Pakistan declared at 331
- **1994** – India vs. Pakistan – Rain washed the game out, but it was alleged Manoj Prabhakar was offered Rs 2.5 Million by a team mate to play below par.
- **1994** – Australia vs. Pakistan – Shane Warne and Tim May allege Pakistan Captain offered money for them to perform below par.
- **1995** – India vs. New Zealand – India lost by 4 wickets. It was later claimed that a prominent bookmaker had been in telephone contact with Indian players and officials before and during the game.
- **1996** – India vs. Australia – A report by the Central Bureau of Investigation said Ram Adhard had received 50,000 rupees for under preparing the wicket for a test against Australia
- **2000** – Delhi police intercept a phone conversation between a blacklisted bookie and Hanse Cronje and discover that Cronje accepted money to throw matches.

Soccer

- **1999** – Malaysian based betting syndicate caught attempting to install a remote control to sabotage floodlights in the English Premier League. If match was abandoned after half time, match bets would have stood.
- **2004** – In South Africa, 33 people, including officials and referees arrested on match fixing charges.
- **2005** – German Football Association and German prosecutors launched probes into charges that referee Robert Hoyzer bet on and fixed several matches he officiated.
- **2005** – Italian side Genoa was placed last in their division and facing relegation. It was revealed that they bribed their opponents of their last match and won 3-2 to avoid relegation.
- **2005** – A Brazilian magazine revealed that two referees had accepted bribes to fix matches.
- **2006** – Italian police uncover match fixing scandal between powerhouses Juventus and AC Milan.
- **2008** – Allegations that an Asian gambling syndicate fixed matches in the 2006 World Cup between Ghana vs. Italy, Ghana vs. Brazil and Italy vs. Ukraine.
- **2008** – A Spanish judge uncovers information alleging that Russian Mafia figures attempted to fix the UEFA Cup Semi-final between Zenit St. Petersburg and Bayern Munich.

Racing

- **2004** – Kieran Fallon beaten on the line, while easing up after being 10 lengths clear on Ballinger Ridge.

Tennis

- **2005** – 10 players admit to being contacted to influence results at Wimbledon 2005. One player claimed to be offered \$140,000 to throw first round game.
- **2007** – International Authorities investigate 140 suspect matches over the past 4 years, including matches at the Australian and Adelaide Open.

Basketball

- **2007** – It is revealed that a NBA referee gambled on 10 – 15 games, some of which he officiated.

In the UK concerns about the impact of sports betting on integrity saw an All Parliamentary Group on Betting and Gaming publish the *Report of Inquiry into the effects of betting on sport* in February 2005. This report provided a set of 15 recommendations for Government policy on sports betting. Chief amongst those was the recommendation that the UK government proceed with its plans to establish a Gambling Commission, and that the Gambling Commission take steps to improve the integrity of sports betting through such means as:

- Developing an approach to insider dealing in sports betting;
- Creating a definition of “cheating” in sport;
- Giving sports involvement in determining the types of bets that may be facilitated on their events; and
- The establishment of arrangements for the disclosure of information by wagering operators to sporting bodies.

In 2007, in response to an issues paper published by the Gambling Commission *Integrity in Sports Betting*, 10 of the governing bodies that oversee the governance of major sports in Great Britain (including cricket, football, racing, tennis, rugby union and rugby league) made a joint submission to the Gambling Commission. Their motivation was explained as follows:

“The growth of betting services means sports must remain vigilant against the negative impact it can create. The Gambling Commission will be familiar with historical and recent occurrences where people have tried to corrupt sport for financial gain through betting. Sports governing bodies, the Government and the Gambling Commission must remain alert to these dangers, and treat corruption connected with betting with the same intensity of action as that taken to ensure sports remain free from doping.

Recent years have seen huge growth in sports betting. This has been fuelled by the internet, new media and the popularity of in-game betting. At the same time the Government has introduced a new licensing regime that gives greater freedoms to how betting companies can operate and market their products.

A proportionate and necessary response to these developments is the introduction of a specific licensing regime to protect the integrity of sport. We welcome the Government’s introduction of the Gambling Act 2005 that has enabled such an approach; and further welcome the decision of the Gambling Commission to introduce statutory arrangements for information sharing between operators and sports governing bodies.”

The 10 sporting bodies said that they wished to be proactive in addressing the issues raised by betting, not reactive in the light of specific damaging events. In this regard they identified the following additional claims on their resources attributable to gambling on their events:

- Carrying out research
- Maintaining intelligence systems
- Real-time monitoring of betting activity
- Legal and compliance functions, including investigative activity
- Disciplinary arrangements and procedures
- Education and training
- Rulebook amendments

- Media and Government liaison
- Gambling Commission compliance

It may be noted at this point that these types of endeavours are in large part a replication of the strategies that have been developed by the ATRI over the course of its almost 200 years as a gambling industry.

The submission concluded by calling for a new statutory sports betting relationship using the model established by Victorian legislation as a template.

Victorian Sports Betting Act

The Victorian legislation held up by the UK major sports as a model to be emulated was introduced in 2007, the *Gambling and Racing Legislation Amendment (Sports Betting) Act (the Sports Betting Act)*.

The second reading speech explains the rationale for the *Sports Betting Act*:

“This bill contains measure that will make important and groundbreaking improvements to the way sports betting is regulated in this State.

The measures have been designed to strengthen public confidence in the integrity of sports events and the betting that takes place on those events.

In addition, the measures will enable sporting bodies to receive their fair share of the revenues from betting that takes place on their sports. This recognises that the sporting product itself is a valuable input into the betting product from which betting providers ultimately benefit. It also recognises the integrity-related costs that sporting bodies incur as a result of bets being wagered on their sports.

The Bracks Government recognises the important contribution that sport makes to the social and cultural fabric of the Victorian community and economy. It is vitally important that Australia’s favourite sports are not compromised by the betting that takes place on them. This bill is an attempt to reduce that risk. Indeed, the bill provides sports with an opportunity to benefit from the growing sports betting market, by providing them with an additional revenue stream that can be ploughed back into the development of their sports at the grassroots level.”

The key elements of the Sports Betting Act may be summarised as follows:

- The transfer of responsibility for approving sporting and other non-racing events, for betting purposes, from the Ministers for Gaming and Racing to the Victorian Gambling Commission for Gambling Regulation (VCGR)
- The creation of a new offence that prohibits betting on specific contingencies that have been prohibited by the VCGR.
- The creation of a mechanism that enables the VCGR to approve a sporting body as a sports Controlling Body for betting purposes.
- The creation of a new offence that prohibits a sports betting provider, based either in Australia or overseas, from offering bets on Victorian events without either the written agreement of the sports Controlling Body or else a binding determination of the VCGR.

- The creation of a dispute-resolution mechanism for circumstances in which a betting provider and a sports Controlling Body are unable to reach an agreement.

In terms of the VCGR's power to approve sporting events for betting purposes, the legislation specifies criteria that it must have regard to in making its decision, which have been designed to ensure that betting is only conducted on events that can be adequately managed from an integrity perspective.

Transferring this responsibility to Victoria's independent gambling regulator was seen by the Government as a means of ensuring that the process for approving these events was entirely independent and transparent, and enhancing the public confidence that approvals were based squarely on integrity related considerations.

The second reading speech explains the rationale for creating a new offence relating to bets on prohibited contingencies.

“Existing gambling legislation is clear on which sporting events are approved for betting purposes. However, the legislation is silent on the specific types of contingencies that can bet on. For example, while cricket is approved for betting purposes, the legislation is silent on which types of bets can be placed on cricket, such as the winning team, the winning margin or the highest individual score.

Certain types of contingencies are more vulnerable to manipulation and fixing than others. Again using the example of cricket, betting on how many runs a particular player scores or on how many wides are bowled in the first over of a match may raise bigger integrity concerns than betting on the winning team. Sporting bodies have stressed the risks to the integrity of their sports caused by betting on particular types of contingencies.

As a response to these concerns, the bill empowers the commission to prohibit specific types of contingencies, in relation to events held in Victoria that it considers inappropriate for betting purposes. The bill specifies integrity-related criteria that the commission must have regard to in making this decision.

In addition, the bill makes it an offence for a sports betting provider to offer or place bets on contingency that has been prohibited by the commission.

This new offence is an importance plank in the suite of measures designed to protect sporting and other non-racing events from match-fixing scandals and other inappropriate betting. As a result, betting providers, sports bodies and the general public can have greater confidence that every outcome within a match is determined in the spirit of the game and free of manipulation.”

An important element of the legislation is the creation of a mechanism for the VCGR to approve a sporting body as a sports Controlling Body for betting purposes:

“Existing sports betting regulation does not encourage sporting bodies to put in place adequate systems to strengthen the integrity of their sports in a betting context. This bill seeks to fill that gap.

A sporting body will be able to apply to the commission to be approved as a sports Controlling Body of an approved sporting event. In making its decision, the commission must have regard to criteria that relate to the capacity of sporting body to adequately manage the integrity of the sporting event.

As I shall explain, Controlling Body status will provide a sporting body with the legal right to negotiate fees and information sharing arrangements with the betting providers. This provides a strong incentive for sporting bodies to invest time and resources into developing appropriate integrity systems, including codes of conduct, monitoring and enforcement mechanisms, and policies on the provision of information that may be relevant to the betting market.”

This legal right to negotiate fees and information sharing arrangements is established by creating a new offence that prohibits a betting provider from offering bets without either the written agreement of the sports Controlling Body or else a binding determination of the VCGR. This offence applies to sporting events held in Victoria.

Notably, the details of the betting agreement, including the type and level of fee, is to be determined by the parties to the agreement, the rationale for this being that the parties themselves, rather than the government, are in the best position to establish an efficient fee that reflects commercial realities. If a betting provider and Controlling Body are unable to negotiate a betting agreement, then the betting provider may apply to the VCGR for dispute resolution. The VCGR is able to make a binding determination on the outstanding issues, having regard to specified criteria.

“This new sports betting regime does not, and indeed cannot, guarantee that Australian sports will remain entirely free from match-fixing scandals. No regime on earth can completely protect sports from the risk of betting-related corruption.

What the regime aims to do is strengthen the capacity of sporting bodies to recognise and manage these integrity risks.

Precisely how sporting bodies spend these additional revenues is ultimately a commercial matter for the sporting bodies themselves. However, it is intended that some of the money will be invested in improved integrity systems that will further strengthen the integrity of sporting events in the context of a growing sports betting market. In addition, it is hoped that some of the money will be invested in the development and promotion of sport at the grassroots level. Sporting bodies will find it easier to maintain public support for their involvement in sports betting if there are demonstrable benefits flowing to grassroots sport.”

More recently the New South Wales Law Reform Commission has released a consultation paper “*Cheating at gambling*”.

New integrity challenges for Australian racing industry

The Australian racing industry has an internationally recognised reputation for maintaining high standard of integrity. The integrity systems that have been developed by the racing industry continue to hold it in good stead, but the current change in the wagering landscape have implications for integrity just as they have commercial implications.

Wagering on racing, as with all other wagering where there are winners and losers, is prone to integrity issues. Any decline in racing's integrity (real or perceived) could have a dramatic impact on wagering levels.

A single incidence of abuse in a major event could be a tipping point in some wagerers' assessment of the continued fairness of racing. On the other hand, the continued pursuit of integrity by racing stewards and advances in tracking individual bets are in place to prevent major scandals. Integrity remains key to wagering and gaming markets and is one of the main reasons for their regulation.

Key to the ability of the Controlling Bodies to properly discharge their statutory responsibilities for the integrity of racing is access to betting data and associated information.

Historically, when betting on racing was conducted primarily with locally licensed wagering operators, access to wagering data and associated information was addressed through State-based licensing conditions. In most cases the TAB's totalisator licence specifically requires betting information to be provided for integrity purposes and also requires the TAB to provide the Government with live on-line access to monitor its betting system and betting activity. Similarly the Rules of Racing and the terms of all bookmakers licences issued by the Controlling Bodies require all bookmakers to make available to the stewards on request the records of all bets they made.

However with the growth of telephone and internet betting, the amount of wagering on racing events which is conducted with wagering operators licensed in other States has increased significantly. Prior to race fields legislation the Controlling Bodies had no right of access to wagering data and betting information from many of the interstate wagering operators to assist in the performance their of integrity functions (eg. Stewards investigations) notwithstanding the potential for betting with such wagering operators to be associated with the integrity issues.

Some interstate wagering operators have readily agreed to provide access to wagering and betting data and to assist the Controlling Bodies in relation to inquiries and investigations regarding racing integrity issues. However, given the potential for integrity related issues, the provision of such information needs to be mandatory.

(f) The impact of betting exchanges, including the ability to bet on losing outcomes

The Australian racing industry has developed a two-pronged approach to addressing the integrity risks that are associated with the ability to "lay" horses:

- access to betting information;
- rules dealing with industry insiders "laying" horses.

These are described in (h) below.

(g) The implications of betting on political events, particularly election outcomes

We do not believe that we have any particular qualifications to speak on the value judgements that might be made on such matters as the implications of betting on political events for public attitudes towards the political process or Australian democracy.

Beyond value judgements we think the Federal and State Electoral Commissions are best placed to assess if there are any risks to the electoral system from betting on political events.

So far as betting on political events by persons with inside information is concerned, our comments in (h) below relate.

A broader issue is that of what controls might be put in place to control inappropriate betting contingencies. That is to say, there are some events which for reasons of integrity of the sport, privacy, or offensiveness should not be allowed to form the basis of wagering. Each of these might be seen as aspects of what the public interest might require so far as some bet types are concerned.

For example, in the case of racing the practice has recently emerged of bets being taken on the margin by which a horse will win a race. The Stewards who police the Australian Rules of Racing believe that regulating the integrity of racing events will be made more difficult if margin betting is allowed to occur. Accordingly, we believe that racing, and other sports, should have the capacity to determine whether contingencies related to them are appropriate subjects for wagering.

In the same vein there should be some framework for vetting bet types to prevent betting taking place in circumstances where this is not in the public interest for any reason.

Individual State and Territory Governments have the capacity to do this now through the licensing framework, but consistent with our comments in (c) above we believe this should be dealt with under a consistent national framework.

(h) Appropriate regulation, including codes of disclosure, for prior betting on events over which they have some participation or special knowledge, including match fixing of sporting events

The approach taken by the racing industry to addressing these matters is two-pronged:

- access to betting information; and
- rules dealing with “layers” of horses.

The relevant Rules of Racing are set out below.

AR.175B. (1) A trainer must not lay any horse that is either under his care, control or supervision or has been in the preceding 21 days.

(2) Any person employed by a trainer in connection with the training or care of racehorses must not lay a horse under the control of the trainer for whom he is or was employed, while so employed and for a period of 21 days after ceasing to be so.

(3) A nominator must not lay any horse that is or may be entered by him or on his behalf, provided that a bookmaker may lay a horse in accordance with his licence.

(4) A riders agent must not lay any horse to be ridden by a rider for whom he is agent.

(5) Any person who has provided a service or services connected with the keeping, training or racing of a horse must not, within 21 days of having last done so, lay such horse.

(6) It is an offence for any person to offer an inducement to a participant in racing with the intention of profiting from a horse not participating in the event to the best of its ability.

(7) For the purposes of this rule 'lay' means the offering or placing of a bet on a horse:

- (a) to lose a race; or
- (b) to be beaten by any other runner or runners; or
- (c) to be beaten by any margin or range of margins; or
- (d) that a horse will not be placed in a race in accordance with the provisions of AR.157.

[rule replaced 19.10.06][subrule (7) added 15.2.07][subrule replaced 1.10.07]

AR.175C. In circumstances where it is an offence for a person to lay a horse under AR.175B it shall also be an offence for that person to:

- (a) have a horse laid on his behalf; or
- (b) receive any moneys or other valuable consideration in any way connected with the laying of the horse by another person.

[paragraph added 19.10.06]

The residual difficulty that confronts us in racing, and will equally be an issue for integrity in other sports, is the limited scope we have to carry out investigations which extend beyond those persons explicitly subject to our jurisdiction.

Using racing as an example, while the position differs from State to State according to the legislation in place, in some jurisdictions the power to investigate persons for suspected integrity breaches is contractually based. Only those persons who have explicitly consented to be bound by the rules of the racing of the racing Controlling Body can be required to provide information for the purposes of an integrity investigation. Moreover, only those persons who have explicitly consented to be bound by the rules of racing of the racing Controlling Body are able to be disciplined where it has been established that an integrity breach has taken place.

Self-evidently this is a substantial weakness in the capacity of the racing Controlling Body to effectively uphold integrity. The same holds for every sport.

What needs to be understood here is that rarely, if ever, will the person who places the bets which are intended to profit from match fixing, be the player or players taking part in the match itself. And yet establishing to the requisite standard of proof that match fixing has taken place will most often depend on drawing a link between the betting activity which has taken place and the player or players. This means drawing a link between the person or persons who made the bets and the player(s). Whereas the players will be required to co-operate with the investigation as a condition of their participation in the sport there is no capacity to investigate the person(s) who placed the bets.

One solution to this is to rely on criminal prosecutions for cheating. However, the police have historically not been trained or have the necessary resources to do this.

(i) **Any other related matters**

(1) **Level of gambling advertising the display of betting odds at venues and during match broadcasts; commentators referring to the odds; and the general impact of gambling advertising on sport**

We note that the COAG Select Council on Gambling announced on 27th May 2011 that all Ministers had agreed that:

- The promotion of live betting odds should be controlled and reduced.
- The broadcasting industry should be given 12 months to achieve this by self-regulation.
- If the broadcasting industry is unwilling or unable to achieve this then legislation will be introduced with effect from 27th May 2011.
- The racing industry should not be included in these new controls because of its essential connection with wagering.

We support the approach which the COAG has decided upon.

(2) **The need for the IGA to be strengthened**

The IGA is a valuable attempt to address a very important social issue. However, its effectiveness is compromised by the failure to invest the legislation with truly meaningful enforcement measures. Additionally there are some weaknesses in the scope of the IGA which should be removed. The necessary reforms are as follows:

- A. Need for financial transactions controls
- B. Need for ISP blocking.
- C. Need for wagering exemption to be conditional

A. Need for financial transactions controls

Section 69A of the IGA provides the Minister with the capacity to develop regulations relating to financial agreements involving illegal interactive gambling services. The regulations may provide:

- that an agreement has no effect to the extent to which it provides for the payment of money for the supply of an illegal interactive gambling service; and
- that civil proceedings do not lie against a person to recover money alleged to have been won from, or paid in connection with, an illegal gambling service.

To date no such regulations exist.

The US Federal government has moved to control interactive gambling through financial regulation. The *Unlawful Internet Gambling Enforcement Act 2006 (the UIGEA)* restricts US banks and credit card companies from processing transactions for any internet gambling sites. The UIGEA also makes it illegal for internet gambling providers to accept money transfers from potential US online gamblers.

The Act makes it a felony for a person engaged in the business of betting or wagering to knowingly accept money in connection with unlawful gambling. The crime is punishable by up to five years in prison. Furthermore, federal regulators are required to draft regulations designed to compel financial institutions to identify and block restricted gambling transactions. Non-compliant financial institutions are subject to civil penalties.

The introduction of the UIGEA had an instant impact on the share prices of publicly listed interactive gambling firms, with valuations falling significantly. Shares of PartyGaming, the world's biggest Web poker company, fell 58 per cent in one day, while 888 Holdings, a specialist in online casino and card games, lost more than a quarter of its value. Sports betting site Sportingbet, which gets 50 per cent of its unique visitors from the US, fell 64 per cent (BusinessWeek 2006).

Evidence suggests that, prior to the introduction of the UIGEA, US patrons comprised a significant proportion of global interactive gambling participation. An example in the literature is of the Gibraltar-based online company PartyGaming PLC, which reported a reduction in daily revenues from \$3.6 million to around \$872,000 after it decided to terminate customer relationships with US patrons (Morse 2007, p.447).

Efforts by the Justice Department and State Attorneys General have been aggressive in pursuing executives from companies suspected on being in violation of the Act and of State-based legislation, which appears to be placing a significant deterrent on non-compliance.

The IGA should be amended to adopt the US example.

B. Need for ISP blocking

France moved in 2010 to legislate in respect of online gambling. Importantly its legislative framework makes provision for ISPs to block access to illegal gambling sites.

The IGA should be amended to require the regulator to block the ISPs of online firms who do not comply with the required form minimisation responsibilities, probity measures and funding obligations or breach restrictions on advertising. Details of the French Law are set out in Appendix 2.

C. Need for wagering exemption to be conditional

After extensive consultation the Howard Government exempted wagering from the IGA ban on interactive gambling on the basis of the lower relative risk of problem gambling from wagering.

The recent experience of the UK points to a weakness in the IGA exemption that is likely to be exploited by multinational gambling operators. The experience in the UK is that the major bookmaking companies and betting exchange operators have relocated their online businesses to tax havens such as Gibraltar and Malta.

Ensuring payment of industry fees and taxation amongst internationally footloose wagering providers is one of the fundamental challenges thrown up by online gambling.

Accordingly, the IGA should be amended so that compliance with Australian legal requirements (including access to betting records for integrity purposes, compliance with harm minimisation measures and payment of industry fees) are a condition precedent of the IGA wagering exemption. Additionally, the federal regulator proposed by the Productivity Commission should be created and given power to block the ISPs of online firms who do not comply with the required harm minimisation and probity measures, and which do not comply with the requirement to pay product fees.

(3) Retail betting

While the focus of this Inquiry is on interactive and online gambling, another issue of substantial importance is that of retail betting. To this point retail betting can only be offered by a TAB licensed by the respective State or Territory Government. This has been the position in Australia for almost 50 years.

In recent times there has been some policy debate about these arrangements. A legal challenge is also currently underway.

We submit that the existing arrangements relating to retail betting should not be dismantled.

Appendix 1

Scope and Contribution of Australian Thoroughbred Racing Industry

The most recent and complete assessment of the Australian thoroughbred racing industry was undertaken by IER for the ARB⁶ and covers the 2005-06 year. Including the direct and indirect impacts of thoroughbred racing together with their multiplier effects, the ATRI provided approximately \$5.04 billion in value added to the national economy. This represented 0.58% of Gross Domestic Product.

Employment

IER's assessment found that the set of activities associated with Australian thoroughbred racing, breeding, training, racing and wagering, directly accounted for an estimated 48,680 full-time equivalent (FTE) jobs in 2005-06. An estimated 9,900 breeders employed 17,990 staff, 80 percent of who were based in non-metropolitan areas. An estimated 1,280 trainers (from a total of 4,700 trainers Australia-wide) and their 3,100 staff were also concentrated in non-metropolitan Australia. 1,500 full-time staff, 12,000 part-time staff and 1,000 jockeys were employed in delivering the race day product. Bookmakers totalled 700 and they employed an additional 1,400 people. TAB wagering staff totalled an estimated 4,700. IER's study found that racing and breeding also help to sustain employment in other areas of the economy, such as feed merchants, veterinarians, farriers, transport companies, caterers, hoteliers, and the fashion industry.

Participation

People participate in the ATRI in three main ways: producing and delivering the 'racing product'; attending race meetings; and wagering on horse racing.

The total number of people involved in producing the race product is much larger than the 48,680 FTE employees recorded above because of the considerable extent of part-time, casual and unpaid work. In fact, closer to 230,000 people are involved in the ATRI, two-thirds of whom are tied to provincial and country racing.

Horse racing is one of Australia's oldest and most popular sports. The first organized thoroughbred race meeting in this country was held in Hyde Park, Sydney, in 1810, with Governor Macquarie in attendance. Today, about 2 million Australians attend a thoroughbred race meeting at least once per year, ranking it second only to AFL in terms of attendance⁷. While racing's best known event, the Melbourne Cup, is now an international spectacle viewed by 700 million people, at the same time racing continues largely unchanged in picnic meetings run throughout country Australia where almost every place big enough to be called a town – as well as in some that are not – has its own racetrack. For many rural communities, their Cup race day remains one of the social highlights of the year.

⁶ IER 2007 *Economic Impact of Australian Racing*. Melbourne, VIC.

⁷ ABS *Attendance of Sport*

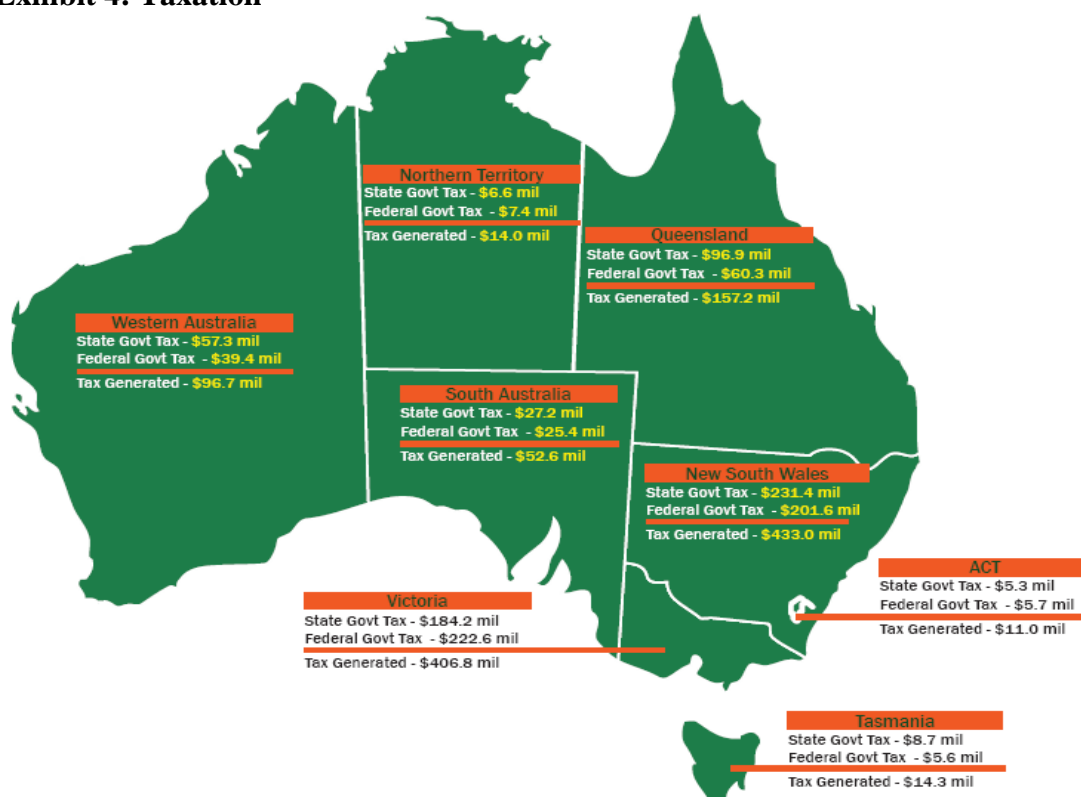
Racing also has a cultural significance that poker machines and casinos cannot begin to imitate, with our champions, such as Phar Lap and Bart Cummings, part of the national identity, and writers from Banjo Paterson, C J Denis and Breaker Morant through to Frank Hardy, George Johnston, Gerald Murnane, Peter Temple, Les Carlyon and David Williamson mining its rich lode of characters and stories or documenting its place in the national psyche.

Indeed, it can be said that Australia has three truly national days: ANZAC Day; Australia Day; and Melbourne Cup Day.

Taxation revenue

IER's assessment found that the ATRI generated nearly \$1.2 billion in taxes each year. Taxes on wagering comprised almost half of this amount, with GST the next largest component.

Exhibit 4: Taxation



Source IER.

International significance of Australian Thoroughbred Racing

There are 379 thoroughbred race clubs in Australia, which is more than any other country in the world.

On a per capita basis Australia has arguably the strongest racing industry in the world. Even in aggregate terms the ATRI ranks in the top three racing industries in the world on all industry indicators notwithstanding its much smaller population and economy *vis a vis* competitors such as the USA, Japan, Great Britain and France.

Exhibit 5: Australian thoroughbred racing on a world stage

Rank	Starts	Black type races	Prize money	Foals born
1	USA	USA	USA	USA
2	Japan	Australia	Japan	Australia
3	Australia	Great Britain	Australia	Ireland
4	Great Britain	France	France	Japan
5	France	Argentina	Great Britain	Argentina
6	Chile	Japan	Korea	Great Britain
7	Argentina	South Africa	Turkey	France
8	Italy	Brazil	Hong Kong	New Zealand
9	South Africa	New Zealand	Ireland	Brazil
10	New Zealand	Ireland	Italy	Canada

Source: ARB Australian Racing Fact Book

Appendix 2

French Online Gambling Law

Overview

On 13th October, 2009, the French National Assembly voted in favour of the government's proposal for a new online gaming law. The amended version will now pass to the Senate, which is expected to vote on it by the end of 2009.

Previously only two operators have been able to lawfully offer online gambling – the PMU (French tote monopoly) and the FDJ (French lottery and sports betting monopoly).

Under the new legislation non-exclusive licences will be issued to any operator (French –based or foreign) wishing to offer permitted online gambling services. It is intended that in spring 2010, a new Regulatory Authority for Online Games (ARJEL) will start issuing these 5-year licences.

Permitted online gambling services are:

- Horse racing wagering
- Sports wagering
- Online poker

Casino games continue to be prohibited, as well as exchange and spread betting and “betting in the run”.

Purpose

The objects of the legislation as set out in Article 1 are to open France to regulated online gambling consistent with the following key elements of State policy:

- Preventing gambling addiction and protecting minors;
- Ensuring the integrity, reliability and transparency of gambling activities;
- Preventing fraudulent or criminal activities undermining the ethics of sports competitions and preventing money laundering;
- Ensuring equitable and balanced development of different types of gambling to avoid destabilization of the economic sectors concerned.

Licensing

ARJEL will report to the Minister of Budget, Public Accounts and Civil Service. Jean-François Vilotte, currently CEO of the French Tennis Federation, has been named as the head of the authority.

To obtain a licence, applicants must satisfy a number of criteria, including a requirement that they have sophisticated systems for identifying players at risk of addiction and protecting them. Operators wishing to conduct sports betting must also sign trade agreements with the organizers of sporting events, to respect the right of ownership of these.

The legislation also provides ARJEL with a set of measures to deal with operators that operate without a French licence. The organisation of unlicensed internet gambling will be punished by three years of imprisonment and a € 45,000 fine for each individual offence. The connection to these sites, as well as financial transactions between the illegal operators and players, will be blocked. Advertising of sites of unlicensed operators will be penalised.

Taxes & Levies

Licensed operators will be subject to a tax rate of 7.5% of turnover for sports and horseracing wagering and 2% of bets for poker. A portion of these revenues will be used to finance anti-problem gambling measures.

In addition to these taxes licensed operators are to pay a product fee to French racing of 8% of turnover and a 1% contribution to the funding of amateur sport.

IP Rights of Sports Competitions

A key feature of the legislation is that the Finance Committee of the National Assembly introduced a property right "for the organizer of the sports event itself. This measure is intended to "preserve the integrity of sport ". "With this law, the organizer of the sporting event is recognized as the owner of the commercial exploitation that can be carried around the event." If websites want to organize bets, they must sign a contract with him". (Government source quoted in Le Point 9/9/2009).

Appendix 3

UK Experience

If online wagering operators are able to relocate offshore then the purposes of the existing wagering exemption under the IGA are open to being defeated. The United Kingdom's experience is an apposite one in this regard.

The arrangements for the taxation of wagering operators and the payment of product fees to the racing industry that currently applies in the UK came into effect in 2001-2002. The events that led to their introduction were described by one of the principal players, Sir Tristram Ricketts, a former Chief Executive of the Levy Board and of the British Horseracing Authority, as follows:

“Betting Tax was first introduced, in the modern era, in 1966, six years after the British Government legalised off-track cash betting, allowing betting offices to open up in the High Streets of our towns and cities. The tax was introduced at a rate of 2½% of betting turnover and was to remain a turnover tax for the next 35 years.

The rate of tax, of course, did change over the years, as Governments saw gambling as an increasingly lucrative source of revenue. The off-track tax rate, applied to both cash and telephone betting, rose inexorably to a high of 8%. A modest reduction, to 7.75%, was made in 1992, and a further reduction was made, to 6.75%, in 1996, not long after the introduction in the UK of a National Lottery. It remained at that level until the time of the change which I shall be describing in a moment.

Betting Tax, the proceeds of which go direct to the Government as part of the general tax revenues utilised to fund public expenditure, should not be confused with the Horserace Betting Levy, which has been payable by bookmakers to Racing since 1961, very shortly after off-track cash betting was legalised. At the time of the recent tax change, the levy too was turnover based, the differential charges amounting to an average of about 1.25% of horserace betting turnover.

The turnover-based tax and levy, in the years prior to the change, therefore accounted for an average total charge of some 8%, although this figure was greater for the large bookmaking companies who paid a higher than average rate of levy. This combined tax and levy charge led bookmakers generally to impose a 9% “deduction” on punters to cover their tax and levy liabilities.

Then in May 1999, an event occurred which was ultimately to lead to the radical tax change I shall be describing shortly. For it was in May 1999 that Victor Chandler International, operating from a base in Gibraltar, outside the jurisdiction of the British tax authorities, started offering “tax-free” telephone bets to UK customers, charging a “deduction” of 3%. This of course compared very favourably with the 9% “deduction” charged by British-based operators.

Once Victor Chandler had broken ranks by ceasing to operate the “gentleman's agreement” that off-shore operators would not target UK customers, other bookmakers, in the face of such competition, moved their operations off-shore. The three largest companies moved to Gibraltar or Antigua, while other operators relocated to places

such as Alderney in the Channel Islands and Malta. Typically, these bookmakers offered nil “deductions” over the Internet and 3% over the telephone.

The impact was immediate. Telephone and Internet turnover in the UK began to decline markedly, with those bookmakers who did remain in the UK losing customers to the off-shore operators. One of these, our own Totalisator Board, reported that telephone betting turnover in the year immediately following the exodus off-shore was some 15% lower than anticipated. Government revenue was being hit; bookmakers’ profits suffered; and growth in Racing’s revenue via the turnover-based horserace betting levy was also damaged.

Tax changes of all kinds in the UK are principally made in the Chancellor of the Exchequer’s Annual Budget which is traditionally delivered in March. The first Budget after the mass exodus off-shore was due in March 2000 and, in the annual Budget representations from the Racing and Betting Industries, the message to Government was clear: change the tax regime to encourage off-shore operators to repatriate their business into the UK or Government, along with Racing and Betting Industry, will continue to suffer.

On 21 March 2000, the Chancellor’s announcement that he did not propose to make any changes to betting tax was greeted with widespread disappointment. But it was not all bad news. For, on the same day, the Government announced that it was going to consult widely on reforming betting tax to, and I quote, “enable the gambling and racing industries to flourish in the Internet age”.

The resultant Government Consultation Document, appropriately titled “Our Stake in the Future”, defined the objectives more precisely, and again I quote:

“The challenge of the fast-developing e-commerce environment requires a robust tax regime which creates:

- a fair basis for UK bookmakers to compete internationally
- a fair opportunity for horseracing to secure financial support and
- a fair contribution from the betting industry towards general tax revenues”.

The Consultation Document invited comment on two key options:

- First, a Place of Consumption Tax, providing for tax to be based on where the punter is located when the bet is placed.
- Secondly, a Gross Profits Tax, which, as the name clearly implies, means basing the tax charge on the gross profits of bookmakers, not their turnover.

Option 1 was dismissed as unworkable, as the Document summarising the responses to the Consultation Document later recorded, and again I quote: “All agreed that it would be open to abuse with Government unable to exercise any control over non-compliant overseas based bookmakers. Given the pace of development of communications technology, this option was felt to be impractical and inappropriate”.

Option 2, the Gross Profits Tax (or GPT as I shall refer to it from now on) attracted widespread support from the Betting Industry who, along with others, had canvassed it, as an alternative to the turnover tax, some years previously. Once it was satisfied that a GPT could be properly policed, the Racing Industry too gave it its endorsement. The Betting Industry produced lengthy papers demonstrating how, if a GPT was introduced at a sensible rate, their profitability would improve, enabling them to make a greater contribution to Racing, while Government revenues could be expected to recover, over a period of perhaps five years, to previous levels. If no change was made, even more businesses would migrate off-shore with consequent negative impact on tax revenues.

Budget Day 7 March 2001 was as much a cause to celebrate as Budget Day a year earlier had been a cause for disappointment. In the course of his Budget speech, the Chancellor of the Exchequer announced that the 35-year old tax on betting turnover would be replaced by a new tax on bookmakers' gross profits. The intensive lobbying had paid off. The case for change had been accepted.

Racing and Betting breathed a sigh of relief and rushed to congratulate the Government on a bold and radical initiative which, in the words of the responsible Minister, and I quote: "provides a better deal for punters and helps UK bookmakers to compete internationally, while continuing to make their fair contribution to Racing and to Government revenues. The reforms are fair to punters, bookmakers, Racing and the taxpayer and will provide the UK with a betting tax system and competitive environment for bookmakers for the 21st Century".

So, in March 2001 Government signalled its intention to replace, as soon as the necessary administrative arrangements could be made, a 6.75% betting turnover tax with a 15% tax on bookmakers' gross profits, defined as the difference between the stakes laid with them and the winnings they pay out. The reformed tax structure made it possible for bookmakers to absorb the tax, levy and administrative charges, and to end the 9% "deduction" charged to punters, a crucial Government pre-condition of the introduction of GPT.

The major bookmaking companies immediately repatriated their businesses to the UK, as they had undertaken to do if GPT at a sensible rate was introduced. Our Totalisator Board, who had been considering relocating off-shore in the face of the ever increasing competition, announced that they would keep their telephone and internet betting businesses in the UK. Some bookmakers declined to relocate and remain off-shore, including the man who started it all, Victor Chandler. But the vast bulk of the horserace betting turnover is back on-shore, resulting in the creation of some 3000 new jobs.(emphasis added)

Total horserace betting turnover in 2002/03 is estimated to be some £7.5bn, as compared with some £5bn in 2000/01, the last full pre-GPT year.

The introduction of GPT in October 2001 was followed six months later in April 2002, by a change in the basis of the horserace betting levy from turnover to gross profits. Bookmakers are now contributing 10% of their gross profits on their British horserace betting business to the levy for the benefit of Racing.

In the last full year before the introduction of GPT, 2000/01, the horserace betting levy amounted to some £59m. In 2001/02, with the benefit of a half year of GPT, the yield was some £73m. In the current year 2002/03, with the benefit of a full year's GPT, it is expected to yield some £92m, and next year, 2003/04, some £101m. As you can see, significant increases.

As of course was expected and accepted, Government's revenues, already under pressure from the exodus off-shore, fell sharply following the introduction of GPT. In Calendar 2000, the last full year of turnover tax, total revenue amounted to some £488m. The provisional figure for Calendar 2002 is some £290m.

*But, as I implied earlier, Government never expected to recover all the lost ground in the short term. **It is however secure in the knowledge that the incentives to relocate off-shore and to bet illegally have been removed**, that there has been significant job creation, which itself adds to Government revenues, that the British betting industry is well placed to attract increasing international business and the Racing Industry is better funded. Furthermore, British Gambling generally is about to benefit from a significant measure of de-regulation, which will further boost tax revenues. (Emphasis added) “*

It is against this background that one must read the 2009 statement made by former Levy Board Chairman Robert Hughes which is quoted at page 13.29 of the Commission's draft report:

“The irony is that the most significant increase in Levy income (one could argue that it has been the only one) was achieved when.....the basis of General Betting Duty was changed from turnover to gross profits, which was mirrored in the Levy. This eventually led to Levy income increasing by two thirds, with little effort on the part of either racing or the Levy Board (Horserace Betting Levy Board 2009).”

It is clear that while the “most significant increase in Levy income” was achieved when the basis of betting duty was changed from turnover to gross profits, the cause and effect of the increase in Levy income had nothing to do with allowing signals of consumer preferences to be transmitted through both wagering and racing. The increase in Levy income was achieved in major part because the largest bookmakers brought their remote betting businesses back onshore, their promise of repatriating their offshore businesses to the UK being the lever they had employed to persuade the Government to reduce the applicable rates of tax.

However, to gain a complete understanding of the experience in the UK it is also necessary to look at more recent developments. In 2009, less than a decade after the taxation compact between the UK Government and the bookmakers, the two largest bookmaking companies, William Hill and Ladbrokes, announced that they would move their online betting facilities offshore. A parliamentary debate on the taxation of gambling held in November, 2009 offers this explanation for the move:

They have a duty to their shareholders and it has become totally unsustainable for them to keep their business here. For every £100 profit they make online, they will pay £1 or £2 in tax offshore, whereas they would pay £36 in the UK in a combination of GPT, VAT, corporation tax and horse racing levy. Clearly, it is an absolute no-brainer for them. Indeed, we should probably be grateful and surprised that William Hill and Ladbrokes have kept their online business onshore for so long....

*Therefore, may I suggest that the Minister speaks with bookmakers at the earliest opportunity to find a rate of tax that the Government could introduce to bring business back onshore? I suggest that would need to be around the 2 to 3 percent mark.*⁸

The Government's response to the move is encapsulated in this statement by the Parliamentary Secretary, Treasury:

*We are disappointed by the commercial decisions of a number of major UK bookmakers earlier this year to move their internet betting operations offshore for tax purposes. However, it would be self-defeating to engage in a race to the bottom in tax rates with low-tax jurisdictions.*⁹

Understandably the British Horseracing Authority is extremely concerned by this development. As seen from the table below, by 2008 the Levy income had dropped 17% from the point referred to by Mr Hughes in the above quote as "*the most significant increase in Levy income*". Given that something more than 20% of UK bookmakers' total gross win is accounted for by remote betting¹⁰ the relocation offshore of the online businesses of William Hills and Ladbrokes could potentially mean that the level of Levy income will drop to 2001/02 levels in one step.

The Government has commissioned the Department of Culture, Media and Sport to propose measures to remedy this situation.

⁸ House of Commons debate, 5th November 2009 (1098, Philip Davies conservative MP)

⁹ House of Commons debate, 5th November 2009 (Sarah McCarthy-Fry, Labor MP)

¹⁰ In 2007 the Remote Gambling Association estimated that approximately 20% of UK bookmakers' total gross win was accounted for by remote betting. Precision was not possible because not all bookmakers accounted for remote betting in the same way.

Great Britain

Levy Yield (£Million)

2010/11*	64.8
2009/10	75.4
2008/09	91.6
2007/08	115.3
2006/07	99.2
2005/06	99.3
2004/05	105.6
2003/04	110.7
2002/03	79.9
2001/02	72.9
2000/01	60.3
1999/00	59.4
1998/99	56.0

Yield is inclusive of Tote contribution Source: HBLB
The 2007/08 annual report states that the 17% increase in the levy yield was a windfall "one off" telephone credit betting income.

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