



NSW GOVERNMENT SUBMISSION

TO

JOINT SELECT COMMITTEE ON GAMBLING REFORM

INQUIRY INTO INTERACTIVE AND ONLINE GAMBLING
AND GAMBLING ADVERTISING

JULY 2011

Introduction

The regulation of racing and associated wagering, and other forms of gambling, has been subject to traditional controls under NSW laws. The intention of this submission is to inform the Committee about the operation of these traditional controls and to suggest a cooperative and complementary approach in respect of the powers available to the Commonwealth through the *Interactive Gambling Act* (IGA).

Successive NSW Government's have recognised the importance of the racing industry to the State's economy, the significant social enjoyment it provides to the community, and also the proud independent traditions of racing industry participants and their desire for self determination in the management of their industry.

The racing industry provides full and part time employment opportunities for approximately 50,000 persons across the State, and directly contributes in the order of \$1 billion annually to the economy including approximately \$160 million annually in State wagering taxes.

The broad aims of the Government's policy are to:

- Encourage the ongoing viability and the future economic development of the racing industry; and
- Ensure that wagering on racing and sports betting is conducted in accordance with the law.

This is achieved through a combination of:

- Industry management by the three controlling bodies of racing (i.e. Racing NSW, Harness Racing NSW and Greyhound Racing NSW) which independently of Government administer the day to day business and strategic policy of their respective codes of racing; and
- The provision of a legislative framework by Government which:
 - Establishes a controlling body structure that promotes ongoing viability and future economic development;
 - Promotes public confidence in the integrity of the conduct of racing and associated wagering; and
 - Establishes a race fields scheme that is aimed at all wagering operators making a fair payment to the racing industry for the use of race fields information.

A summary of the principal pieces of NSW legislation in this regard include the following.

1. Unlawful Gambling Act 1998

This is the principal criminal statute dealing with gambling offences. Essentially, all forms of gambling are unlawful unless there is an express authorisation to conduct a particular form of gambling (s7).

2. Racing Administration Act 1998

This Act provides for the licensing of racecourses, the race fields information use approval scheme and Ministerial permits for telephone, electronic and sports betting conducted by NSW licensed bookmakers.

3. Totalizator Act 1997

This Act provides for the licensing and conduct of the NSW TAB in relation to totalisator betting, and other forms of betting.

4. Racing Controlling Body legislation

There are three traditional 'codes' of racing (thoroughbred, harness and greyhound) and each is self-regulated by a controlling body.

Racing NSW is established by the *Thoroughbred Racing Act 1996*. Harness Racing NSW is established by the *Harness Racing Act 2009*. Greyhound Racing NSW is established by the *Greyhound Racing Act 2009*. Each controlling body is responsible for industry business and strategic development functions (e.g. programming allocation and race date allocation); and also for integrity functions (e.g. registration of race clubs, licensed persons and the responsibility for Rules of Racing which are enforced by race day stewards employed by the controlling body).

NSW legislation governing the conduct of wagering is complemented by the *Interactive Gambling Act 2001* (IGA) which includes a 'carve out' in section 8A of the Act that results in the NSW laws not being in conflict with the Act. The NSW Government supports the continuation of this exclusion in relation to traditional wagering, and also lotteries (s8D IGA).

Regulatory Issues

The regulation of online wagering

The provision of wagering services on racing, sporting and other events may only be conducted in NSW by bookmakers, who are licensed by a NSW racing controlling body, and a totalizator licensee (relevant legislation – *Racing Administration Act 1998*, *Unlawful Gambling Act 1998* and *Totalizator Act 1997*). Bookmakers are separately required to obtain an authority from the Minister responsible for racing to conduct telephone or electronic (online) betting. NSW wagering operators also require separate approvals by the Minister to conduct betting on sporting and other non-racing events, e.g. entertainment awards. The sporting and other events upon which betting may take place must be declared by the Minister, along with the approved forms of betting on those events.

Bookmakers and the totalizator licensee, TAB Limited (TAB), conduct sports betting in accordance with rules approved by the Minister. Both the bookmakers' and TAB rules contain provisions that authorise the wagering operator to make available betting information to a recognised governing body of a sport upon request.

With regard to betting on elections, section 154 of the NSW *Parliamentary Electorates and Elections Act 1912* prohibits this activity. Elections are not an approved betting event.

A package of wagering reforms was passed by the NSW Parliament in the 2010 Spring Session. These included bringing NSW into line with wagering operators in other Australian jurisdictions by lifting restrictions that previously allowed betting on racing and sporting events only, to enable betting on other events approved by the Minister. The package also removed the requirement that bookmakers could only accept bets while located at a licensed racecourse to enable Internet and telephone bets (but not cash bets) to be accepted at premises not on a racecourse approved by a NSW controlling body of racing.

Notwithstanding these NSW regulations, non-NSW wagering operators may by virtue of section 92 of the Constitution conduct wagering with customers in NSW. The conduct of such wagering by non-NSW operators is often inconsistent with NSW standards (e.g. bet

types and the offering of inducements). In such circumstances the NSW customer must approach an interstate regulator if there is an issue or complaint.

It is recognised that the wagering laws across Australia are fragmented. Any national approach to wagering regulation should not adopt the lowest common denominator - for example, some jurisdictions have virtually no limitations as to the events on which betting may be conducted by their licensed wagering operators, and the forms of betting on those events. Adopting this approach would lower wagering regulation standards across Australia.

'Race Fields' legislation

Another example of fragmentation is the system adopted for the payment of fees by wagering operators who bet on Australian racing events, known as the race fields scheme. Each jurisdiction has its own regulatory framework and fee structure. While a national system would be desirable, again there would be a concern if a national approach were to result in fees being determined at the lower end of the scale or in a manner which created less revenue certainty for the racing industry. The NSW race fields scheme is currently the subject of two challenges in the High Court, with hearings set down for 3 days from 30 August to 1 September 2011. The outcome of these cases will have a significant bearing on future race field schemes across all jurisdictions.

Wagering advertising and inducements

There are similar concerns over the absence of a national approach to wagering advertising, particularly on sporting events, or the offering of inducements to open a gambling account. This is a relatively recent phenomenon, resulting from a relaxation of advertising laws, and improvements in communication technology, which have prompted the use of forceful advertising techniques at the expense of vulnerable gamblers.

The NSW regulations (clause 12 of the Racing Administration Regulation and clause 13 of the Totalizator Regulation) prohibit the publishing of gambling advertising:

- (a) that encourages a breach of the law, or
- (b) that depicts children gambling, or
- (c) that is false, misleading or deceptive, or
- (d) that suggests that winning will be a definite outcome, or
- (e) that suggests that participation in gambling activities is likely to improve a person's financial prospects, or
- (f) that promotes the consumption of alcohol while engaging in gambling activities, or
- (g) that is not published in accordance with decency, dignity and good taste and (in the case of a television commercial) in accordance with the Commercial Television Industry Code of Practice as in force at the time the gambling advertising is published, or
- (h) that offers any credit, voucher or reward as an inducement to participate, or to participate frequently, in any gambling activity (including as an inducement to open a betting account).

At the April 2010 Australasian Racing Ministers' Conference it was resolved that a working party comprising Government racing officials report back at the next Conference on a national approach to wagering advertising regulation, focusing on harm minimisation measures in the light of increasing internet, radio, television and print advertising and the growth of electronic messaging (e.g. SMS).

There is clearly in-principle support for a national approach to wagering advertising, which includes the advertising of inducements to wager. This matter will be progressed at the next meeting of Australasian Racing Ministers scheduled for late September.

The promotion of live betting odds by sporting commentators

Another issue of concern for the NSW Government relates to the promotion of live betting odds by commentators during sporting broadcasts. This is another issue which the Commonwealth Government, following urging by NSW and other States and Territories, has recently agreed to address. Similarly, the NSW Government welcomes this commitment, and is concerned to ensure that action in this area is progressed appropriately, effectively, and in a timely manner.

The NSW Government shared research findings with the COAG Select Council on Gambling Reform confirming the potential harmful effects of this form of advertising, particularly for young people significantly influenced by advertising associated with their favourite media/sporting personalities. The use of commentators and sporting role models to promote gambling and discuss betting odds can normalise gambling and influence vulnerable and young people in an adverse manner. This approach is at odds with broadcasting codes of practice in relation to alcohol and tobacco advertising aimed at protecting children from exposure to adult activities.

Match-fixing in sport

Match-fixing in sport is often motivated by the opportunity for significant financial or personal gain through the manipulation of the result. Sports betting agencies provide opportunity for high sums to be gambled on sporting events with the prospect of high returns. These potentially high returns can provide strong incentives to influence the results of sporting fixtures. This is particularly the case with a variety of "exotic" type bets now offered by some betting agencies.

The racing industry has recognised this issue since wagering on racing began in Australia and over time has built up integrity and disciplinary systems which it enforces. The sports industry has often used racing stewards to investigate its wagering issues.

In recognition of the impact of this issue on the integrity of sport, Sport and Recreation Ministers agreed in February 2011 to undertaking work on the development of a national policy to address match-fixing in sport. It was agreed that this work would be based on the following principles:

- a nationally-consistent approach to legislation relating to the criminality of match-fixing;
- information sharing and the development of better arrangements between governments, major sports, betting operators and law enforcers;
- a consistent national code of conduct for sport; and
- international efforts to combat corruption in sport including the establishment of an international code of conduct and an international body similar to the World Anti-Doping Authority.

Recognising the growing concern from the general public, betting agencies and sporting industry in regard to the prevalence and potential growth of match-fixing and illegal betting activities, the Sport and Recreation Ministers Council (SRMC) met on 10 June 2011 and agreed to a National Policy on Match-Fixing in Sport (the National Policy).

The National Policy commits governments to pursue nationally consistent legislation to regulate arrangements between sporting organisations and betting agencies. This includes the requirement for a sporting organisation to register as a Sport Controlling Body with the relevant state-based gambling regulator in order to deal with betting agencies licensed in any state or territory on behalf of their sport. The Sport Controlling Body would be required to

register all events subject to betting with the regulator. The Victorian *Gambling and Racing Legislation Amendment (Sports Betting) Act 2007*, which is currently under review, provides a guide for this model.

The provisions to be included as part of this regulatory approach are set out in the National Policy and include the requirement for betting agencies to obtain agreement from the sporting organisation on all bet types to be offered, with sports having the ability to veto certain types; and arrangements for financial return to the sport based on betting turnover on that particular sport.

As part of the National Policy, sporting organisations will be required to agree to adopt anti-match-fixing and anti-corruption practices that create consistent standards and prohibitions across sporting codes; apply a disciplinary framework including sanctions and investigative processes; provide education programs for players, support personnel and officials; and enter into national integrity agreements with betting organisations in relation to betting and information sharing. The National Policy recognises that smaller sporting organisations may have limited capacity to establish self governing arrangements and will need assistance to adjust their policies and practices to meet the national provisions.

Sporting organisations will be required to reach specific integrity benchmarks to gain approval to be part of a sports betting regime. The National Policy also requires all governments to agree to make new and ongoing funding conditional on sporting organisations developing and implementing anti-match-fixing and anti-corruption policies and practices.

As part of the National Policy, betting agencies will be required to agree an industry standard for information exchange; enter into national integrity agreements with sporting organisations; collaborate with sports to limit bet types to those agreed with sporting organisations; collaborate with the regulator and law enforcement agencies on the provision of information to assist detection and investigation of suspicious activity; and provide a share of revenue to implement this policy, including to sports.

The NSW Government has publicly supported moves to develop a national approach to addressing match-fixing in sport, particularly given the capacity for cross-border betting and the need to maintain the integrity of sport.

A model 'match fixing' offence

The NSW Law Reform Commission (LRC) is currently conducting an Inquiry into cheating at gambling. A consultation paper has been released which identifies a number of offences in NSW that might possibly be invoked to respond to cheating, including in all forms of gambling. This includes the common law offences of cheating and conspiracy to defraud, the statutory offence of cheating under s18 of the *Unlawful Gambling Act 1998*, the statutory offence of fraud by deception under s192E of the *Crimes Act 1900*, and the statutory secret commissions offence under s 249B of the *Crimes Act 1900*.

The LRC consultation paper notes that preliminary submissions are supportive of the introduction of a sports and event gambling specific offence, that would strengthen existing anti-cheating laws, that would be clear and easy to understand and apply, and that would carry an appropriate criminal sanction. The paper does highlight, however, a range of issues that would need to be addressed in relation to the creation of a specific offence. For example, the kinds of conduct it should capture and how it can be formulated so as to catch every person who is knowingly engaged in any co-ordinated cheating activity. The LRC is yet to release its final report, and it is considered appropriate that any decisions on a national model offence should take the LRC's final recommendations into account.

Problem Gambling

The NSW Government is committed to striking the right balance between allowing members of the community the freedom to enjoy a bet if they choose and minimising the harm that can result from problem gambling. The Government is also committed to reducing the prevalence of problem gambling by developing targeted, effective and evidence-based measures. NSW policies and legislation provide an integrated and wide-ranging approach to gambling harm minimisation, involving education, counselling services, research, venue and staff training, licence approval processes, and regulation.

To this end, frontline problem gambling counselling and support services will receive a record \$10.2 million this financial year from the NSW Government. This funding supports around 150,000 counselling hours annually, delivered by 44 face to face services operating from more than 200 separate locations throughout the State. In addition to this funding, \$780,000 has been allocated this financial year towards the 24-hour-a-day, seven-day-a-week *Gambling Helpline (1800 858 858)* and \$218,000 towards the national *Gambling Help Online* service which provides live online and email counselling 24-hours-a-day, seven-days-a-week.

In terms of regulation, there is a range of gambling harm minimisation measures in place, including the mandatory provision of self-exclusion schemes to support people at risk of problem gambling. There is also provision for a mandatory six-hour daily shutdown of gaming machines in all hotels and clubs, a ban on credit card cash withdrawals from ATMs in gaming venues, regulation mandating ATMs be placed away from gaming areas of venues, and a prohibition on gaming machine advertising.

In addition, there are requirements for Gambling Help line information to be placed on every gaming machine, gaming venues to install accurate clocks, and all people working in gaming venues to be trained in the Responsible Conduct of Gambling.

It should be noted that the level of problem gambling in NSW currently sits at 0.4% of the adult population – this rate is the lowest in Australia.

For vulnerable individuals who are not meeting the needs of their children, or who are at risk of homelessness due to rental arrears because of gambling or another problem, direct and targeted measures such as income management may complement a range of gambling harm minimisation measures in place in NSW. Income management earmarks a proportion of income for household basics and the needs of children and aims to assist families and children at the 'grass roots' level to access appropriate supports (e.g. daily living necessities) and services (e.g. counselling).

NSW is participating in a trial, from 1 July 2012, through which compulsory income management will apply to vulnerable families and individuals in Bankstown referred by state and territory child protection authorities and people assessed by Centrelink as being vulnerable to financial crisis, including people referred by public housing authorities because they are considered to be at risk of homelessness due to rental arrears.

The adequacy of the Commonwealth's *Interactive Gambling Act 2001* in effectively regulating online gambling

The NSW Government is significantly concerned about the adequacy of the regulatory restrictions provided by the Commonwealth's *Interactive Gambling Act 2001*. With no prosecutions having been conducted under the Act to date, the Act's ability to effectively prevent Australians from accessing overseas online gaming sites would appear to be minimal. Concerns over the lack of effectiveness of the Act in this regard are accentuated by the potential for further growth in the industry, and reports of increasing participation by Australian consumers in overseas online gaming sites.

Despite the prohibitions in place by the Act, leading researchers have estimated that Australians have ready access to more than 2,176 internet gaming sites and were expected to have spent over AUD\$968 million in 2010 on illegal online casino, poker and bingo sites.² These sites are devoid of harm minimisation controls and operate in an unregulated environment. The potential for gamblers to fall victim to a variety of scams and unscrupulous tactics is high in this environment.

The NSW Government does not support the Productivity Commission's recommendation to liberalise the regulation of online gambling. Rather, the NSW Government is supportive of pursuing measures to tighten the regulatory framework provided for by the *Interactive Gambling Act 2001*.

State and Territory Governments have been advocating for more effective regulation of online gambling by the Commonwealth Government for some time. Through the COAG Select Council on Gambling Reform, the Commonwealth Government has recently acknowledged concerns initiated by NSW, and supported by other States and Territories, and agreed to review the operation of the *Interactive Gambling Act 2001*. While this commitment is welcomed by the NSW Government, it is important that meaningful consideration is given to overseas regulatory approaches as part of this process.

Examples of these approaches include those currently in operation in the United States, preventing banks and credit card companies from processing transactions in relation to illegal internet gambling sites. It is understood that the NSW Department of Gaming and Racing (as it was then known) advocated for active consideration of these approaches as far back as 2004 during the course of a review of the *Interactive Gambling Act* conducted by the Commonwealth Department of Communications, Information Technology and the Arts. Section 8(3) of the Unlawful Gambling Act is also an example of a state-based approach which could be adopted nationally.

The NSW Government would also support the consideration of the application of measures of this nature in respect of wagering operators not holding a relevant race fields authorisation. However, it is noted that there may be some implementation issues associated with such measures.

The Committee's related inquiry into the *Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011*

It is noted that this Private Member's Bill was introduced by Senator Nick Xenophon on 20 June 2011 and referred to the Joint Select Committee on Gambling Reform on the same day.

The measures in the Bill would appear to duplicate and cut across work currently being progressed at a national level.

² Gainsbury, S & Blaszczyński, A (2010), Submission to the (former) Australian Senate Community Affairs Committee Inquiry into the Prevalence of Interactive and Online Gambling in Australia.

This work, which includes addressing live odds promotion during sporting broadcasts, the consideration of measures to strengthen the regulation of online gambling, the advertising of inducements to gamble, and initiatives to address match fixing and strengthen the integrity of sport, is being progressed through various forums on a co-operative basis by State, Territory and Commonwealth Governments. It is considered that these collaborative forums are the most appropriate means through which to progress these important issues.