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11 July 2006

Mr Liam Stewart
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Sir

**Agreements affecting competition
Application for authorization**

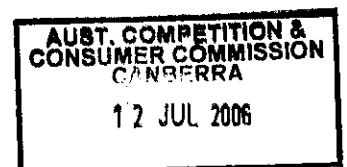
Please find enclosed, application for authorization filed on behalf of PGA Tour of Australasia Limited, Australian Rugby Union Limited, Lawn Tennis Association of Australia Limited, National Rugby League Limited, Football Federation Australia Limited and Cricket Australia.

If you have any queries or require further details, please contact Michael Rowe on 03 9914 4187.

Yours sincerely

Michael Rowe
GM Business & Legal

Encl.



Form B

A91007

Commonwealth of Australia
Trade Practices Act 1974 --- Sub-section 88(1)
**AGREEMENTS AFFECTING COMPETITION:
APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88(1) of the *Trade Practices Act 1974* for an authorisation under that sub-section to make a contact or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

1. (a) Name of Applicant(s)

PGA Tour of Australasia Limited (ACN 002 539 433)
Australian Rugby Union Limited (ACN 002 898 544)
Lawn Tennis Association of Australia Limited (ACN 006 281 125)
National Rugby League Limited (ACN 082 088 962)
Football Federation Australia Limited (ACN 106 478 068)
Cricket Australia (ACN 006 089 130)

(together "the Applicants")

- (b) Short description of business carried on by Applicants

The Applicants are not-for-profit sporting organisations charged with the responsibility (among other things) of conducting elite competitions within their respective sporting codes.

- (c) Address in Australia for service of documents on the applicant

*c/o Michael Rowe
Lawn Tennis Association of Australia Limited
Melbourne Park
Batman Avenue
Melbourne, Victoria, 3000*

2. (a) Brief description of contract, arrangement or understanding and, where already made, its date.

The conduct for which authorisation is sought is the negotiation by COMPS with sports betting operators of terms and conditions or arrangements under which such sports betting operators would be entitled to offer and accept wagers on events played under the auspices of the Applicants.

- (b) Names and addresses of other parties or proposed parties to contract, arrangement or understanding

Please refer Annexure A of accompanying Submissions in Support.

3. Names and addresses (where known) of parties and other persons on whose behalf application is made:

Not applicable.

4. (a) Grounds for grant of authorisation

The authorisation will allow for the realization of significant public benefits and will have either minimal or no effect on competition.

- (b) Facts and contentions relied upon in support of those grounds

As set out in the Submission in Support of this Application.

5. This application for authorisation may be expressed to be made also in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the above mentioned contract, arrangement or understanding.

- (a) Is this application to be so expressed?

Yes.

- (b) If so, the following information is to be furnished:

- (i) the names of the parties to each other contract, arrangement or understanding

Sports betting operators other than those listed in Annexure A (licensed both within Australia and internationally) who offer and accept wagers on events played under the auspices of the Applicants.

- (ii) the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application.

Not applicable.

(See Direction 5 and Notice 2 on the back of this Form)

6. (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

No.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable.

- (c) If so, by whom or on whose behalf are those other applications being made?

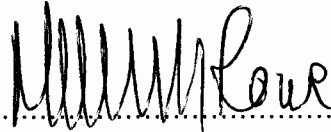
Not applicable.

7. Name and address of person authorised by the applicant to provide additional information in relation to this application

Michael Rowe, General Manager – Business & Legal, Lawn Tennis Association of Australia, Limited, Melbourne Park, Batman Avenue, Melbourne, Victoria, 3000, Ph: (03) 9914 4187.

Dated: 11th July 2006

Signed by/on behalf of the Applicants



.....
Michael John Rowe

Lawn Tennis Association of Australia Limited

DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Furnish with the application particulars of the contract, arrangement or understanding in respect of which the authorisation is sought. Those particulars shall be furnished ---
 - (a) in so far as the particulars or any of them have been reduced to writing --- by lodging a true copy of the writing; and
 - (b) in so far as the particulars or any of them not been reduced to writing --- by lodging a memorandum containing a full and correct statement of the particulars that have not been reduced to writing.
5. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the matter in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

NOTICES

1. In relation to item 4, your attention is drawn to sub-sections 90(6) and (7) of the *Trade Practices Act 1974* which provide as follows: -

“(6) The commission shall not make a determination granting an authorisation under sub-sections 88(1), (5) or (8) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a proposed contract, arrangement or understanding, in respect of a proposed covenant, or in respect of proposed conduct, unless it is satisfied in all the circumstances that the provision of the proposed contract, arrangement or understanding, the proposed covenant, or the proposed conduct, as the case may be, would result, or be likely to result, in a benefit to the public and that that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if

- (a) the proposed contract or arrangement were made, or the proposed understanding were arrived at, and the provision concerned were given effect to;
- (b) the proposed covenant were given, and were complied with; or
- (c) the proposed conduct were engaged in, as the case may be.

“(7) The Commission shall not make a determination granting an authorisation under sub-section 88(1) or (5) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a contract, arrangement or understanding, or, in respect of a covenant, unless it is satisfied in all the circumstances that the provision of the contract, arrangement or understanding, or the covenant, as the case may be, has resulted, or is likely to result, in a benefit to the public and that that benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision or complying with the covenant.”

2. If an authorisation is granted in respect of a proposed contract, arrangement or understanding the names of the parties to which are not known at the date of this application, the authorisation shall, by sub-section 88(14) of the *Trade Practices Act 1974*, be deemed to be expressed to be subject to a condition that any party to the contract, arrangement or understanding will, when so required by the Commission, furnish to the Commission the names of all the parties to the contract, arrangement or understanding.

**Submission by Australian Rugby
Union Limited, PGA Tour of
Australasia Limited, Lawn Tennis
Association of Australia Limited,
National Rugby League Limited,
Football Federation Australia
Limited and Cricket Australia in
Support of the Application for
Authorisation**

July 2006

SUBMISSION TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION SUPPORTING APPLICATION FOR AUTHORISATION

1. Introduction

- 1.1 This submission supports an application for authorisation and interim authorisation of collective bargaining lodged by Australian Rugby Union Limited, PGA Tour of Australasia Limited, Lawn Tennis Association of Australia Limited, National Rugby League Limited, Football Federation Australia Limited and Cricket Australia (together “**the Applicants**” or “**COMPS**”) with the Australian Competition and Consumer Commission (“**ACCC**”) in accordance with section 88 of the *Trade Practices Act 1974* (Cth) (“**TPA**”). This application is intended to be limited to current COMPS members.
- 1.2 The Applicants wish to collectively bargain with sports betting operators who offer and accept wagers on events played under the auspices of the respective Applicant (as listed at Annexure A) (“**the sports betting operators**”) with respect to the terms upon which the Applicants are prepared to approve the publication and use by such licenced operators of information relating to their sports, and subsequently approve wagering on their sports.
- 1.3 Involvement in the collective bargaining arrangements set out in this submission is voluntary for each Applicant. Each Applicant is entitled to opt out of collective negotiations at any time if they wish.
- 1.4 Each Applicant has appointed an employee as its nominee to: (a) represent COMPS’ informal collective negotiations with sports betting operators; and/or (b) liaise directly with other COMPS nominees to develop strategy and policy around such collective negotiations. All COMPS decisions are made by consensus with each Applicant nominee enjoying equal status (no chairperson).
- 1.5 This submission addresses the issue of whether any public benefit or detriment is likely to result from the conduct that is proposed to be authorised. It also provides information on the relevant products and markets affected by the conduct.
- 1.6 Authorisation is sought for five (5) years.

2. Background Information on COMPS

- 2.1 In November 2003, the Applicants first convened a round table meeting to discuss the broad issue of wagering on their sports. Over the following 18 months this round table developed into a group called **COMPS**, or the Coalition of Major Professional Sports.
- 2.2 COMPS members are not-for-profit bodies each responsible for the organisation, promotion and development of their sports, both as a health and recreational pursuit and a means of entertainment.
- 2.3 Through continued consultation, COMPS determined that its broad objectives were:
- (a) to obtain a fair share of revenue wagered on their respective sports; and

- (b) to implement a more effective regulatory regime for the sports betting market.

(collectively **the COMPS Objectives**)

- 2.4 COMPS' is seeking a 'fair share' from wagers taken by licenced sports betting operators on their sports reflective of the use (and reliance) by participants in the gaming and wagering industry of the quality product the sports provide and promote. This principle is recognised not only within the Australian racing industry, but also within the broader sporting industry internationally, and has a sound commercial basis – that the creator or author of a product should be fairly remunerated for its usage.
- 2.5 After canvassing a variety of options, ultimately COMPS determined that the most appropriate and preferential means of achieving the COMPS Objectives was to lobby each State and Territory government for the implementation of a sports betting legislative or regulatory regime which adequately addresses the COMPS Objectives. As of the date of this proposal COMPS has taken substantial steps towards achieving this result.
- 2.6 On 5 March 2006 the Victorian Minister for Racing and Gaming released a Discussion Paper specifically dealing with the issue of sports betting and pursuit by COMPS of the Objectives. The Victorian Minister has indicated his desire to implement a new sports betting regulatory regime which addresses the Objectives on or before 1 July 2006. Likewise, many of the States and Territories approached by COMPS have indicated a general acceptance of the merit behind the Objectives, and have undertaken to further consider the method in which any regime addressing these Objectives might be implemented.
- 2.7 As a result of such State and Territory governmental review it is likely that, at least in the case of some jurisdictions, legislation or other regulation may be enacted requiring sports betting operators to obtain the approval of sports prior to accepting wagers on the relevant sports.
- 2.8 In parallel with and as an interim measure to such governmental lobbying and the introduction of any legislation in the area of sports betting, as well as following the introduction of any such legislation or regulation, COMPS seek to collectively bargain with the various sports betting operators to establish the terms upon which the Applicants may approve such wagering on their sports and the use of their information and/or data.

3. Proposed Conduct

- 3.1 COMPS propose to enter into a wide ranging dialogue with sports betting operators, both prior to, and following, the introduction of any State or Territory legislation or regulations dealing with sports betting and returns to sport. It is anticipated that any agreement stemming from such dialogue will outline the roles and responsibilities of each party with respect to (among other things):
 - (a) the payment of a "product fee" by licenced sports betting operators to the sports;

- (b) use of intellectual property;
 - (c) information sharing arrangements; and
 - (d) mandated consultation for contingency types offered by licenced operators.
- 3.2 Accordingly, the conduct for which authorisation is sought is the negotiation by COMPS with sports betting operators of terms and conditions or arrangements under which such sports betting operators would be entitled to offer and accept wagers on events played under the auspices of the Applicants.

4. Parties to the Proposed Arrangements

- 4.1 The parties to the proposed arrangements arising from the conduct described in 3.2 above are COMPS and those sports betting operators (or industry associations which represent them) set out at Annexure A (as at 7 July 2006), notwithstanding the possible application of paragraph 5 of Form B.
- 4.2 Attached at Annexure B is a Victorian discussion paper, "Sports Betting: a new regulatory framework" ("**the Victorian Discussion Paper**") which states that "*the Bracks Government supports the call by COMPS*" for sports to "*authorise and receive a benefit from sports betting*". The Paper is to assist the review of the regulatory framework governing sports betting in Victoria.

5. Interim Authorisation

- 5.1 Interim authorisation is required by COMPS to allow it to engage in meaningful commercial negotiations with all sports betting operators. These negotiations will subsequently allow smooth transitional arrangements for any introduced regulations around sports betting and approval regimes, and provide a streamlined infrastructure within which agreement may be reached in advance of any regulation (where appropriate), which provides an acceptable commercial result to both parties.
- 5.2 As detailed negotiations are yet to take place, authorisation will allow the parties to assess the commercial position, and hence the impact, of any agreement between the parties, and provide some financial certainty as soon as possible.
- 5.3 Each of the Applicants recognises that, if the ACCC subsequently declines to grant the authorisation, any arrangement negotiated with sports betting operators will need to be renegotiated by the individual sports and will not be binding on any of the parties. The parties will be returned to the current status quo. The Applicants therefore submit that granting an interim authorisation does not prevent the parties from returning to the current status quo in the event the ACCC subsequently declines to grant the authorisation.
- 5.4 The Applicants are keen to commence meaningful negotiations collectively with sports betting operators and are aware that the authorisation process is likely to take some months.
- 5.5 Accordingly the Applicants seek interim authorisation to immediately commence collective negotiations with the sports betting operators.

6. The Statutory Test for Authorisation

- 6.1 The test for authorisation is:
- (a) whether the proposed arrangement would result, or be likely to result in a benefit to the public; and
 - (b) whether the benefit or benefits would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result from the proposed arrangement.
- 6.2 The conduct sought to be authorised by the Applicant will provide significant public benefits and minimal or no competitive detriment.
- 6.3 The overarching benefit is that the proposed collective bargaining will assist in allowing each of the Applicants to realise fair value from licenced sports betting operators from use of their product, delivering to each of the sports an appropriate financial return to be reinvested into the sport, whilst also not significantly impacting upon the other financial and personnel resources of the sports which may be directed to pursuits aimed at furthering the public interest and enjoyment of the relevant sports.

7. Public Benefits

- 7.1 COMPS sees the following public benefits arising from the proposed collective bargaining arrangements:
- (a) Improved bargaining power of the Applicants leading to a more equitable distribution to sports of the amounts wagered on their product;
 - (b) Transaction costs and efficiency savings;
 - (c) Maintenance of a sound working relationship between the Applicants and appropriate sports betting operators;
 - (d) Promotion of competition stemming from the continued viability of sports betting operators through consistent commercial terms and arrangements with the sports;
 - (e) the establishment of a common and central dispute resolution mechanism, leading to greater efficiency and consistency;
 - (f) Benefits for the wider community, in recognition of the valuable community identity, health and lifestyle, and domestic and international media coverage benefits which stem from successfully and efficiently administered sports.
- 7.2 **Improved Bargaining Power**
- (a) Each of the licenced sports betting operators across Australia have been accepting wagers on the sports represented by the Applicants for several years. Whilst some sports betting operators have been involved in commercial sponsorship arrangements with the sports, no strict 'product fee' has been paid to the sports during this period.

- (b) Whilst many of the sports betting operators accept or agree with the general principle that sports deserve a 'fair share' of the amounts wagered on their sports, there is significant disparity in what the sports and the sport betting operators determine to be fair. This is partially as a result of sports betting operators starting from a position where they have previously paid nothing for the same product the sports are looking to exact a fee from.
- (c) Accordingly, should any of the Applicants seek to bargain individually, it is unlikely that they will be able to obtain fair market value for their product (despite any regulation or governmental directive to make such payment) given they have not been able to do so over the preceding years, prior to the formation of COMPS. Should any individual sport be dissatisfied with a commercial negotiation, the only real alternative they presently have is to engage in legal action enforcing intellectual property rights, which is a lengthy, costly, and inherently ambiguous area.
- (d) Alternatively, the proposed collective bargaining dialogue will move the individual sports away from their inherently weak bargaining position, and is likely to result in more appropriate outcomes, including:
 - (i) greater flexibility in the terms and conditions of product fee payments;
 - (ii) greater disclosure with respect to sports betting information pertinent to maintaining the integrity of the sport, and enforcing internal regulations;
 - (iii) greater involvement as to the specific contingencies offered by sports betting operators on each relevant sport;
 - (iv) the potential for a more equitable share of revenue being distributed to the sports from amounts wagered on their product; and
 - (v) the potential for a greater share of revenue to be distributed back directly to the sports and away from administrative costs.
- (e) It is important to note that the proposed collective bargaining dialogue will not give the Applicants excessive bargaining power. To the contrary, the proposed collective bargaining dialogue introduces a degree of comparative parity giving the Applicants greater input into their relationship with the relevant sports betting operators. Ultimately, it is understood that the Applicants will be bargaining with either individual sports betting operators such as Tabcorp or Unitab, or collectives of sports betting operators such as those corporate bookmakers represented by the Association of Australian Bookmaking Companies (currently being considered for collective bargaining authorisation by the ACCC), who each retain a significant portion of the sports betting market. Accordingly, it is not possible for COMPS to dictate the terms of any approval or agreement.

7.3 Transaction Cost and Efficiency Savings

- (a) One of the significant benefits of the proposed collective bargaining dialogue relates to the significant costs savings which may be achieved through the pooling of resources of the sports. This has been evidenced thus far through the formation of a central committee by the Applicants which 'share the load' in lobbying government and discussing underlying issues with sports betting operators, as well as the central engagement by the Applicants of external consultants and advisors, leading to considerable cost savings. Moving forward, these improved processes and procedures will significantly reduce the time required to be devoted to the negotiation of commercial agreements and the resolution of grievances by each individual body with each individual sports betting operator. Accordingly, this translates into greater resources (and finances) of the Applicants being devoted to the promotion, development and conduct of the sports from grass roots to elite performance levels.
- (b) Furthermore, as the Applicants represent the major professional sports in Australia in terms of amounts wagered on sports, bargaining collectively will reduce, if not completely remove, contention around disparity in the amounts being paid to different sports in this region, and as a result potential disputes between sports betting operators and sports as to the amounts to be paid are less likely, leading to more efficient use of time and resources by the sports. It is the intention of the Applicants to negotiate a base product fee that is a percentage of profits generated by offering betting on events conducted under the auspices of the Applicants. Returns to each Applicant will vary as any fee will reflect the relative use of each Applicant's 'product' by sports betting operators.
- (c) Authorisation will allow COMPS to be the single point of contact for the sports betting operators, enabling sports betting operators to negotiate with COMPS on behalf of its members, which will enable discussions to be carried out more efficiently and equitably (when compared with individual negotiations) which will benefit the general public by allowing the limited funds and resources of these not-for-profit Applicants organisations to be concentrating on the development and promotion of sport.

7.4 **Sound Working Relationship**

- (a) Authorisation will allow COMPS members to pool their relevant industry experience, their concerns and issues with wagering on their product, and the benefits which they can offer the industry, which will enable full and frank discussions concerning the regulation of an efficient and competitive operation of the sports betting industry.
- (b) It is envisaged that authorisation will allow the Applicants to work more closely in maintaining the integrity of their product through a central resource moving forward, which will also lead to further efficiency gains in the sports betting industry, to be enjoyed by both the sports (in terms of resources and finances required) and by the operators (in terms of streamlining points of contact).

7.5 **Promotion of Competition**

- (a) It is in the consumer's best interests for there to be a variety of sports betting operators. A competitive and efficient wagering market which allows the long term viability of all operators will ensure this variety.
- (b) Authorisation will allow the Applicants to maintain a consistent approach across dealing with all operators, in terms of both commercially motivated 'product payments', as well as disclosure of information, implementation of integrity measures, and potential licencing of core 'product' necessary for the successful operation of a sports betting business.
- (c) Such consistency of approach will ensure the maintenance of a competitive offering by all operators, and will avoid the potential for individual sports to conclude vastly different commercial deals with different sports betting operators, leading to a competitive skew in the sports betting industry in terms of applicable cost base.

7.6 **Dispute Resolution Mechanism**

- (a) Currently, each of the Applicants is required to individually deal with each sports betting operator in the event a dispute arises as to wagers on their sport. Authorisation will allow a central resource on behalf of the Applicants to participate in any resolution mechanism in relation to disputes between COMPS members and sports betting operators. Equitable and consistent treatment of the Applicants in the event of a dispute will assist disputes to be resolved quickly, minimizing disruptions in the wagering services offered to consumers, and allowing resources and funds of sports to be committed to developing and promoting the sports.

7.7 **Benefits for the Wider Community**

- (a) Each of the sports the Applicants represent make up an important part of the Australian identity. Individually, they each constitute premier athletic pursuits in Australia, and successive Australian Governments, in recognition of this, have made ongoing financial commitments to the development of these sports. The Australian community takes great pride in the achievement of their relevant sporting "team" or "Aussie" sports representative, and key participants in each sport are household names.
- (b) Furthermore, aside from providing a valuable spectator pastime, each of the Applicants' contribute to the ongoing development of the game at a grass roots and amateur level, continuing to promote participation in the sport itself, which provide substantial health and community benefits.
- (c) Additionally, each of the Applicants' sports attract substantial media coverage in both Australia and overseas through the year. Year after year, events such as the Australian Open Tennis, the Ashes Test Series, the World Cup (Soccer) qualifiers and international fixtures, the Johnnie Walker Classic and MasterCard Masters golf tournaments, and the Wallabies and Kangaroos international fixtures, reach out to massive international audiences, and are among the most watched programming this country produces. Substantial public benefits flow from the publicity and

profile that such coverage generates, not the least of which includes increased interest and tourism to Australia.

- (d) The proposed bargaining dialogue will assist in producing quality, competitive sporting bodies that are focused on the ongoing promotion and development of their sports, and not on excessive administration, disputes or monetary concerns. This will assist in maximizing the coverage, both international and domestic, and the participation and development, of our sports.

8. Effects on Competition

- 8.1 It submitted that the proposed collective bargaining dialogue will have minimal to no effect on competition.
- 8.2 In order to assess possible impact on competition, it is necessary to first define the market.
- 8.3 In *Queensland Wire Industries Pty Ltd v Broken Hill Pty Co Ltd* (1989) 167 CLR 177 a “market” was understood to be:
- “an area of close competition between firms... Within the bounds of a market there is substitution – between one product and another, and between one source of supply and another, in response to changing prices. So a market is the field of actual and potential transactions between buyers and sellers amongst whom there can be strong substitution, at least in the long run, if given sufficient price incentive.”*
- 8.4 It is suggested that the correct market definition in the context of this application is the international sports market for supply of information, data and necessary authorisation to sports betting operators.
- 8.5 It is the submission of COMPS that there is significant substitution between the sports, both domestic and international, for use as betting product by sports betting operators. Whilst COMPS recognise that ideally, sports betting operators would like to offer wagers on all available sporting product, given sufficient price incentive sports betting operators would utilise one international sports product over a competing domestic product.
- 8.6 Should the ACCC determine that there is no such substitutability, and that there is sufficient incentive, regardless of price, to offer wagering markets on each Australian sports, then it is the submission that each of the Applicants would therefore enjoy a monopoly over that particular market, and therefore any collective dealing the subject of this authorisation would have no effect on competition within that market.
- 8.7 It is the submission of COMPS that given the prevalence of media coverage of international sporting events within Australia, and the ability through the internet to follow a variety (if not all) major international sporting event in real time, it would be inappropriate to construct a market on the basis of domestic Australian sports and their supply of product to sports betting operators, as such domestic sports are easily substitutable for international competitions. They do not form a separate market. Such a distinction is untenable in the present environment in the context of sports betting product.

- 8.8 Accordingly, collective bargaining in the present context will result in little, if any, effect on competition.
- 8.9 Additionally, there is no threat that the collective bargaining will result in higher retail prices, less choice, or lower quality of goods or services being delivered by sports betting operators to the Australian Public in general, however, it will result in sports being able to commit greater funds and resources to ensuring a better sporting product is provided by the sports to the general public.
- 8.10 Rivalry between the Applicants in respect of their dealings with the sports betting operators is not substantial (if existent at all). Any distortion caused by the conduct sought to be authorised would be minimal.
- 8.11 The proposed collective bargaining will not involve any form of exclusionary conduct.

9. Conclusion

- 9.1 The proposed collective bargaining will result in significant public benefits and will have minimal to no effect on competition. It should ensure that each of the sports represented by the Applicants continues to function efficiently, appropriately delegating limited resources and funding to the ongoing promotion and developments of the sports.

Annexure A: Sports Betting Operators

ACTTAB

Curtis, Tony

Full Name: Tony Curtis
Job Title: CEO
Company: ACTTAB
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Australia
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Bus Fax: 02 6245 6242
E-mail: tonyc@mail.acttab.com.au

Betfair Pty Limited

Twaits, Andrew

Full Name: Andrew Twaits
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Centrebet

Clark, Tony

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Bus Fax: 02 9310 5718
E-mail: tony.clark@centrebet.com

CentreRacing

Miller, Mike

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Bus Fax: 08 8955 5223
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Colin Tidy's Betchoice.com

Morrissey, Mark

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**International All Sports - Australia /
AusTOTE**

Edge, Robert.

Full Name: Robert. Edge
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Company: International All Sports - Australia / AusTOTE
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Mobile: 0438 530 530
Bus Fax: 03 9948 9848
E-mail: robert.edge@international-allsports.com.au

**Racing and Wagering Western Australia
Bennett, Ray**

Full Name: Ray Bennett
Job Title: CEO
Company: Racing and Wagering Western Australia
14 Hasler Road
Osborne Park, WA 6017
Australia
Bus: 08 9445 5544
Bus Fax: 08 9244 5914
E-mail: rbennett@rwwa.com.au

**Sportingbet Australia Pty Ltd
Sullivan, Michael**

Full Name: Michael Sullivan
Job Title: CEO
Company: Sportingbet Australia Pty Ltd
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E-mail: michaels@sportingbet.com.au

**Sports Acumen Pty Ltd
Chant, Stephen**

Full Name: Stephen Chant
Job Title: Company Secretary
Company: Sports Acumen Pty Ltd
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Bus Fax: 03 9690 9115
E-mail: schant@sportsacumen.com

Sportsbet Pty Ltd**Tyshing, Nick**

Full Name: Nick Tyshing
Job Title: Finance Director
Company: Sportsbet Pty Ltd
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Australia
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Bus Fax: 03 9824 2355
E-mail: nick@sportsbet.com.au

Tab Limited**Piggott, Michael**

Full Name: Michael Piggott
Job Title: Chief Executive Wagering
Company: Tab Limited
GPO Box 1943
Melbourne, VIC 3004
Australia
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Bus Fax: 03 9868 2726
E-mail: piggottm@tabcorp.com.au

Thoroughbred Racing SA Limited**McGregor, Steven**

Full Name: Steven McGregor
Job Title: Chief Operating Officer
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Annexure B: Victorian Government Sports Betting Discussion Paper

Sports Betting: A new regulatory framework?

Discussion Paper

March 2006

DEPARTMENT
OF JUSTICE

State Government
Victoria

Sports betting: a new regulatory framework?

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Sports betting: a new regulatory framework?

1. INTRODUCTION

This Discussion Paper is intended to form the basis for comment in relation to the future regulatory regime for sports betting in Victoria. It provides some background about the nature of the sports betting industry and outlines the current regime for the regulation of that industry. It also sets out, for discussion purposes, a broad framework for a new regulatory regime.

Submissions are being sought to assist in the development of advice to government on the future of sports betting regulation. Comment is invited on the issues raised in this Discussion Paper.

It should also be noted that the Government is undertaking a separate Review of the Electronic Gaming Machine, Club Keno and Wagering Licences and Funding Arrangements for the Racing Industry post-2012.

As part of this Review, an Issues Paper on the licensing structure, processes and arrangements for wagering and sports betting post-2012 will shortly be released. Any comments regarding the broad licensing and regulatory arrangements for sports betting after the current licences expire should be directed to the Review.

How to make a submission

Submissions should be received by 13 April 2006 and should be addressed to:

Ross Kennedy
Executive Director, Gaming and Racing
Department of Justice
PO Box 18055
Collins Street East
MELBOURNE VIC 8003

Email: sportsbettingreview@justice.vic.gov.au

All submissions will be treated as public documents unless otherwise requested.

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2. BACKGROUND

Leading up to the 2002 election, the Bracks Government made an election commitment to 'support an improved sports betting industry that:

- returns a proportion of revenue to the sports being bet on to increase participation and development in all sports betting;
- has minimum bets that do not exclude ordinary sports punters; and
- only allows betting on events where there is confidence in the integrity of the event.'¹

Sports betting² involves predicting sports results by making a wager on the outcome of a sporting event. In Victoria, both parimutuel and fixed odds betting exist. Bookmakers can only offer fixed odds betting, while the wagering licensee, TABCORP Limited (Tabcorp), can offer both fixed odds betting and parimutuel betting.

Official wagering on sporting competitions is relatively new in comparison to racing. The former state-owned TAB was authorised to begin conducting sports betting in 1985. Tabcorp was given an authorisation to accept wagers on approved sporting competitions when it was granted the wagering licence in 1994.

Since 1994 there has been significant growth in the sports betting market, with increasing public awareness of the wagering products and the increased availability of products through integration with Tabcorp's traditional agencies and PubTABS.

The Government is committed to protecting the integrity of contingencies on which betting is conducted. To this end, the Government recently passed the *Racing and Gambling Acts (Amendment) Act 2005* to prevent a wagering service provider from publishing or otherwise making available a race field without the approval of the appropriate 'controlling body'.

In relation to sport, the Coalition of Major Professional Sports (COMPS)³ has recently approached the Government seeking similar legislative protection for major sports. Currently there is no legislative requirement that Tabcorp or bookmakers be authorised by the controlling bodies of sport or that they return any revenue from the betting that takes place on sporting competitions to the sporting organisations.

It should also be noted that in the racing industry a levy is paid by bookmakers to Racing Victoria Limited and a joint venture exists between Tabcorp and VicRacing Pty Ltd (which consists of representatives of Harness Racing Victoria, Greyhound

¹ 'Listens then Acts' – Labor's Policy Platform, 19 October 2002, ch. 11.42, p108.

² Note that 'betting' and 'wagering' are used interchangeably.

³ COMPS is a coalition of peak national sporting organisations which are not-for-profit comprising of Cricket Australia, the Football Federation of Australia, National Rugby League, PGA Tour of Australasia, Australian Rugby Union and Tennis Australia.

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Racing Victoria, RVL and the Country Racing Victoria) that provides for a product fee to be paid by Tabcorp and requires that part of the revenue made from bets on racing is returned to the industry.

In contrast, there is no comparable agreement in the sports betting arena.

The COMPS proposal combines the New Zealand framework as established by the *Racing Act 2003* (NZ) and the amendments made to the race fields provisions in the *Gambling Regulation Act 2003* (GRA) by the *Racing and Gambling Acts (Amendment) Act 2005*. Under the New Zealand scheme, sports betting on an event cannot occur without the written agreement of the appropriate national sporting organisation.

Essentially, the COMPS proposal would provide the appropriate national sporting organisation with control over sports betting or the publication of sports data such as fixtures, statistics, individuals or teams by ensuring that a written agreement is in place between the sporting organisation and the wagering service provider. Such an agreement would deal with enhanced cooperative integrity mechanisms (including exchange of information and consultation over which contingencies are authorised for betting) and provide for payment to the sporting organisation in relation to sports betting on its product.

The Bracks Government supports the call by COMPS and is taking this opportunity to review the regulatory framework governing sports betting in Victoria. The Government will consider involving the Victorian Commission for Gambling Regulation (the VCGR) in the regulation of sports betting and in the identification of sporting organisations which would authorise and receive a benefit from sports betting.

This Discussion Paper is intended as a starting point for discussion about how the sports betting industry can be better regulated in order to:

- empower sports controlling bodies to determine what, if any, aspects of their competitions can be used for betting purposes;
- assure confidence in the integrity of the sporting events on which betting takes place; and
- return a proportion of revenue from all sports betting to the sports being bet on to increase participation and development in those sports.

3. NATURE OF THE SPORTS BETTING INDUSTRY

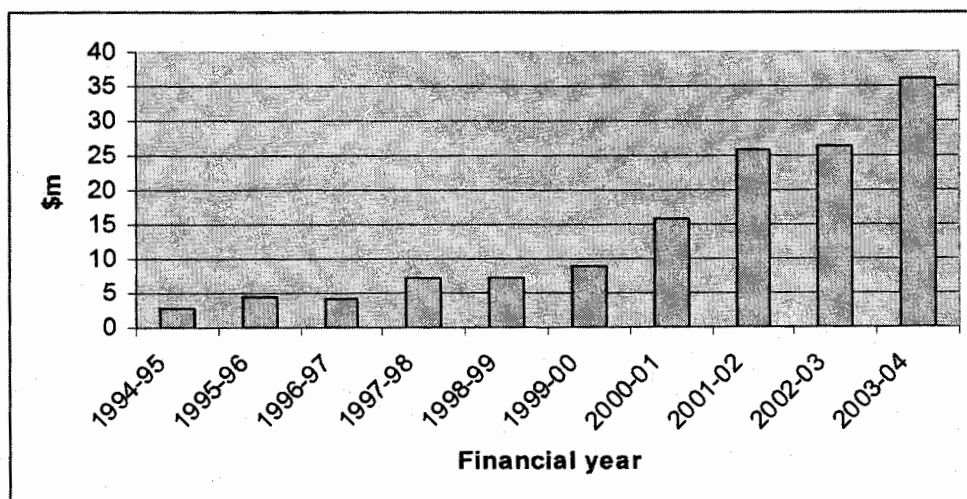
Expenditure Trends

Although currently representing only a small percentage of Tabcorp's revenue, there has been a steady growth in the amount wagered on sporting events in Australia. According to Tabcorp's Annual Report for 2005, sports betting revenue in Victoria grew by 17%, compared to NSW's growth of 9.6%⁴. There are also a significant number of wagers placed with registered bookmakers.

In Victoria, the real expenditure on sports betting has increased from \$2.8 million in 1994-95 to \$36.2 million in 2003-04. This appears to have been driven by a growing awareness of sports betting in the market and the increasing range of betting options available. The growth in expenditure on sports betting does not appear to have been affected by the growth in electronic gaming machine expenditure (EGMs), as sports betting was introduced at approximately the same time that EGMs were introduced.

Chart 1: Total Real Expenditure on Sports Betting in Victoria from 1994-95 to 2003-04

(Source: *Australian Gambling Statistics 2005*, Office of Economic and Statistical Research, Queensland Treasury, 2005)



Real expenditure on sports betting has also been increasing in the other states and territories, with the Northern Territory recording the highest expenditure figures. Real expenditure in the Northern Territory has grown from \$3.4 million in 1994-95 to \$62.7 million in 2003-04. The residency of several large corporate bookmakers that have pioneered sports betting is the most likely explanation for the significant growth.

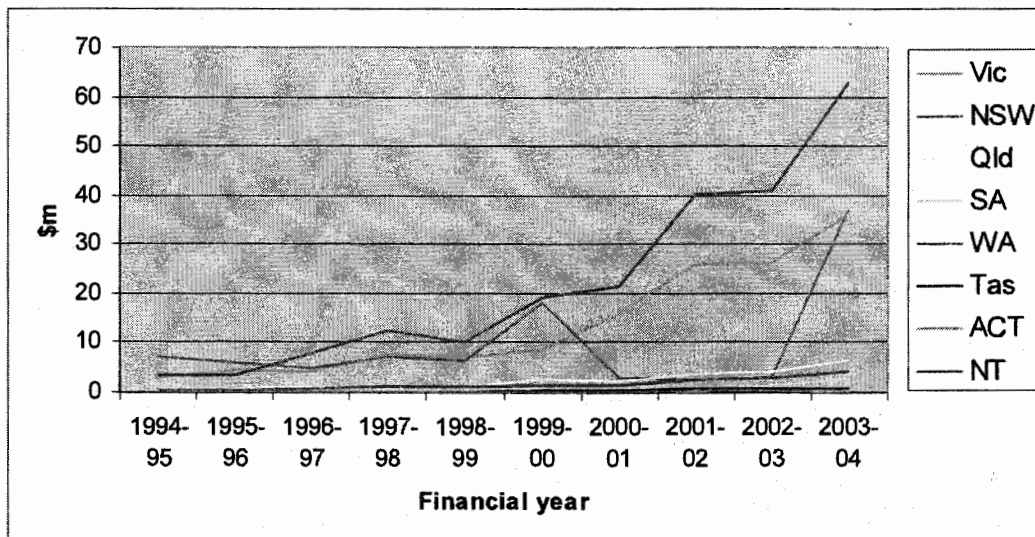
⁴ Tabcorp Concise Annual Report 2005, page 10.

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In New South Wales, real expenditure has increased from \$7.1 million in 1994-95 to \$37.1 million in 2003-04. In Queensland, real expenditure has increased from \$0.8 million in 1995-96 to \$6.5 million in 2003-04 and in Western Australia, it has increased from \$0.5 million in 1994-95 to \$4.2 million in 2003-04.

Chart 2: Total Real Expenditure on Sports Betting from 1994-95 to 2003-04

(Source: *Australian Gambling Statistics 2005*, Office of Economic and Statistical Research, Queensland Treasury, 2005)



(Note: figures for New South Wales from 2000-01 to 2002-03 do not include TAB figures and are therefore lower than actual figures for those years. It is however reasonable to assume that the expenditure in those years grew or remained steady due to the 2003-04 figures).

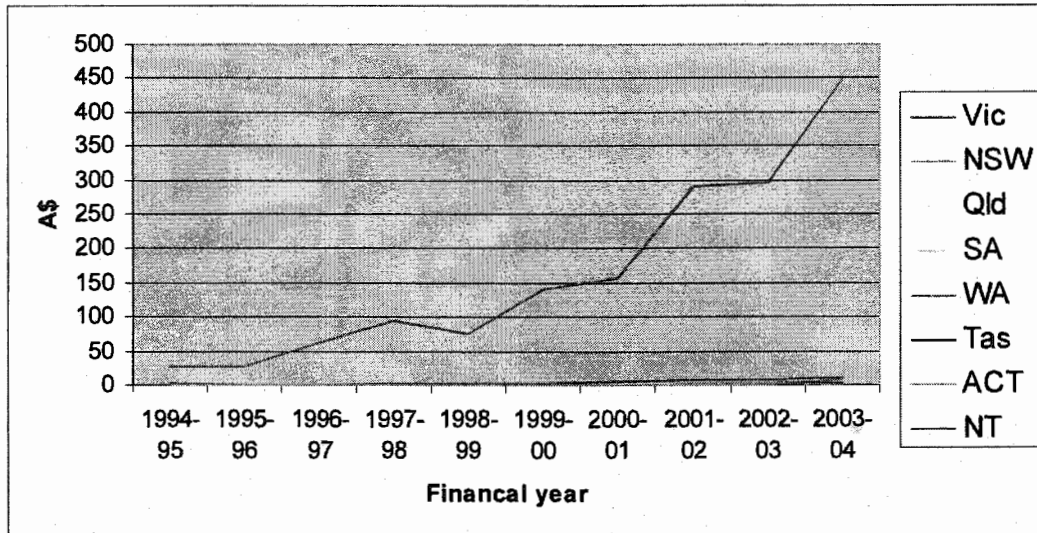
Real per capita spending in Victoria, and the other states and territories, is dwarfed by that of the Northern Territory. In Victoria, the real per capita expenditure on sports betting increased from \$0.84 in 1994-95 to \$9.56 in 2003-04, in New South Wales it increased from \$1.56 in 1994-95 to \$7.26 in 2003-04, in Queensland it increased from \$0.35 in 1995-96 to \$2.25 in 2003-04 and in Western Australia it increased from \$0.40 in 1994-95 to \$2.84 in 2003-04.

However, in the Northern Territory, real per capita expenditure on sports betting increased from \$28.14 in 1994-95 to \$448.25 in 2003-04. Given the relatively small population and per capita income, such a high figure can only be explained by a significant amount of real expenditure originating from outside the jurisdiction by way of internet and telephone wagers with bookmakers.

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Chart 3: Real Per Capita Expenditure on Sports Betting from 1994-95 to 2003-04

(Source: *Australian Gambling Statistics 2005*, Office of Economic and Statistical Research, Queensland Treasury, 2005)



From the figures outlined in the charts above, it is evident that the market is currently dominated by the Northern Territory, Victoria and New South Wales and is a growth area in terms of gambling expenditure.

It is reasonable to assume that Victoria, with a significant amount of sports activity, would be a net exporter of sporting products to be wagered on, particularly to the Northern Territory. It would also be reasonable to assume the same for New South Wales. Both are home to the dominant sporting codes, Australian Rules football in Victoria and rugby league in New South Wales, and both are home to the majority of the Australian population.

4. REGULATION OF THE SPORTS BETTING INDUSTRY

Currently the wagering licensee and bookmakers offer sports betting services pursuant to the *Gambling Regulation Act 2003* (GRA) and the *Racing Act 1958* (the Racing Act) respectively.

Authorisation under the Gambling Regulation Act 2003 (the GRA)

Section 4.3.1 of the GRA enables Tabcorp, as the current wagering licensee, to operate approved betting competitions. This primarily consists of bets on a range of sporting events, at both fixed and parimutuel odds, through its TAB and Sportsbet agencies. Betting can only be offered on sporting events or contingencies that have been approved by the Minister for Gaming.

To date, the following sports have been approved by the Minister, under the former *Gaming and Betting Act 1994*⁵: American football, Athletics, Australian Rules Football, Baseball, Basketball, Boxing, Cricket, Cycling, Golf, Ironman, Motor Sport, Netball, Olympic and Commonwealth Games, Rugby Union, Rugby League, Soccer, Surfing, Tennis, Triathlon, Yachting as well as thoroughbred racing, harness racing and greyhound racing. It should be noted that under 'other contingencies' the American Academy Awards has been approved as an 'approved betting competition'.

Section 4.5.1(2) of the GRA states that the approval must specify whether the betting competition is to be fixed odds or to be conducted on a totalisator. There is no limit on the number of events the Minister can approve, but parimutuel sports betting can only be conducted by Tabcorp, the sole wagering licensee. Thus there is an indirect restriction in the Act on the number of sports betting authorisations that can be issued.

Sports betting is predominately conducted at fixed odds, particularly where the sports are competitions between two contestants (whether they are teams or individual players). However, parimutuel products are offered on some of the larger sports which have a number of games in a weekend, such as the various football codes, where multiple outcome bets, such as pick 8, can be offered.

Under section 4.2.6 of the GRA, the VCGR may disallow a betting rule made by the holder of the wagering licence. In effect, this means that Tabcorp's sports betting operations come under the regulation of the VCGR. For example, the TAB has recently issued new Sportsbet rules⁶ which have been approved by the VCGR.

There is no legislative requirement that either Tabcorp or bookmakers provide a return of revenue to sporting organisations from wagering on their product, or to negotiate an agreement for the use of the sporting organisation's product for sports betting.

⁵ Note that the approvals made under the *Gaming and Betting Act 1994* continued to be in force under the *Gambling Regulation Act 2003*: Schedule 7, clause 4.5 of the *Gambling Regulation Act 2003*.

⁶ TAB Sportsbet rules, effective from 8 January 2006.

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Authorisation under the Racing Act 1958

Bookmakers are defined in section 84 of the *Racing Act 1958* (the Racing Act) as any person who carries on the business of a bookmaker and any person who endeavours to gain a livelihood wholly or partly by betting or making wagers.

Bookmakers are currently registered under the Racing Act. There is no specific provision relating to sports bookmakers in either the Racing Act or the GRA.

Under section 4(1) (a) (ii) of the Racing Act, bookmakers may accept bets on 'betting contingencies' as approved by the Minister. Betting contingencies are defined in section 3 as including 'any event or contingency'. Under this authorisation, a registered bookmaker can accept wagers on sporting competitions as long as the bookmaker is at a race course (outside of meetings, a room is provided at Flemington race course for approved bookmakers to accept wagers). Sports betting is also available on course with a number of bookmakers who operate a casual service (i.e. for a one-off sports event in addition to their race wagering business).

The list of events that can be wagered on is currently the same as those approved by the Minister under section 4.5.1 of the GRA as 'approved betting competitions'.

Bookmakers must first be registered in Victoria by the Bookmakers and Bookmakers' Clerks Registration Committee and then apply for a sports licence to operate as sports bookmakers from the controlling body, in this case Racing Victoria Limited (RVL). This licence allows bookmakers to operate a 24 hour internet and telephone service.

In 1998, the Victoria Racing Club, the then controlling body for racing, issued four licences to bookmakers who established themselves at the Flemington auditorium. At this time, a moratorium was put in place, so that only the four sports licences were issued. This moratorium continued until 2005.

In 2005, RVL, the current controlling body, decided to expand the sports licensing regime and advertised six new licences. RVL ultimately issued nine licences – four of which were to the existing bookmakers, and four of which were to Victorian race bookmakers (and lifted the condition that you could not offer both racing and sports services). These licences are for 3 years from 1 January 2006.

In 2006, RVL made an application on behalf of these bookies to have two new venues approved (Caulfield and Moonee Valley racecourses) and this was supported by those clubs. These venues have also been approved by the Minister for racing as required by the Racing Act. RVL is responsible for the Bookmakers Sports Betting Rules 2001 which bookmakers must abide by when operating in Victoria.

In Victoria, there is no legislative prohibition on a person residing in Victoria placing a bet by phone or via the internet with a bookmaker outside of Victoria. As detailed under 'Expenditure Trends' on page 3 of this Discussion Paper, the Northern Territory has a huge sports betting market. One major distinction between Victoria and the Northern Territory is that bookmakers are able to be corporate entities in the Northern Territory.

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Product fees and other payments

There is currently no legislative provision that requires Tabcorp or bookmakers to negotiate with relevant sporting organisations or enter into agreements regarding revenue.

This is in contrast to the joint venture structure that is in place between Tabcorp and Vic Racing Pty Ltd, where there is a 75/25 split of the revenue from wagering on racing.

At this point in time, only the Australian Football League (AFL) is known to have negotiated an agreement with a betting service provider for sponsorship, product fees and other payments based on the level of wagering on its competition.

Significantly, on 15 November 2005, after approximately two (2) years of informal discussions, the heads of Cricket Australia, the National Rugby League, Australian Rugby Union, the Football Federation of Australia, Tennis Australia and the PGA Tour of Australasia announced the formation of the Coalition of Major Professional Sports (COMPS).

COMPS seeks a regulatory regime in all states and territories that enables the sporting organisations to further protect the integrity of their product and that provides the appropriate sporting organisation with a fair share of the revenue made from sports betting.

The AFL has also negotiated an agreement with Betfair (the UK-based betting exchange that recently was granted a licence to operate onshore by the Tasmanian Government) regarding the use of the AFL's information and certain intellectual property. This agreement is the first to be negotiated by any sporting body with Betfair in Australia and was struck prior to Betfair gaining approval from the Tasmanian Government. It is unknown whether any other sporting bodies are planning on striking similar wagering agreements with Betfair.

5. NEW ZEALAND: A CASE STUDY

The sports betting regime in New Zealand provides a useful comparative example of a jurisdiction that has committed to providing sporting organisations with revenue from wagering on their products.

In New Zealand, the Totalisator Agency Board and the Racing Industry Board amalgamated on 1 August 2003 to form a new body, the New Zealand Racing Board. The Racing Board runs the TAB and sports betting and also is the industry's main policy body.

The *Racing Act 2003* (NZ) sets out in section 55 of the Act that sports betting may not be conducted without the written agreement of the appropriate national sporting organisation. It should be noted that this agreement is between the Racing Board, which is a corporation, and the national sporting organisations.

The Act specifies that each agreement must be on terms and conditions agreed between the Board and the national sporting organisation concerned, including payment of revenue derived from sports betting on the event or events to which the agreement relates. Section 57 of the Act provides for the following percentage of turnover to be returned to the sporting organisations:

- not less than 5% of totalisator sports betting turnover; and
- not less than 1% of fixed-odds sports betting turnover and 5% of gross profit (being gross revenue minus dividends paid, but not less than zero) from fixed-odds sports betting.

In 2004/05, \$1.8 million was paid by the Racing Board to national sporting bodies as a levy⁷. The total betting turnover for sports betting in 2005 was almost \$100 million⁸. According to the Racing Board, this brings the total amount paid to sporting bodies since sports betting was introduced in New Zealand, to \$13 million.

SPORTING BODIES' LEVIES 2004/05⁹ (\$'000)

Rugby Union	570
Soccer	228
Tennis	94
Baseball	84
Australian Rules	15
Rugby League	442
Golf	41
Basketball	176
American Football	34
Cricket	66
Other	24

⁷ New Zealand Racing Board Annual Report 2005, page 12.

⁸ Ibid page 26. The total sports betting turnover was \$99,896,000. \$ 97,376,000 of this was from fixed odds, and \$2,520,000 was totalisator turnover.

⁹ Ibid, page 13.

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The Act defines a 'New Zealand national sporting organisation' as an organisation that meets the criteria set out by Sport and Recreation New Zealand for receiving financial support from that body, whether or not the sporting organisation is actually receiving the support.

6. A NEW REGULATORY REGIME?

The Bracks Government supports the principle that sports betting should only occur where the integrity of the sport is not unduly compromised and that sports should receive a percentage of the revenue made from betting on their product.

To this end, the Government is proposing an overhaul of the regulatory regime that currently applies to sports betting. In considering what form the regulation of sports betting should take, the Government's overriding concerns are to:

- ensure that sports betting products are fair and that the highest levels of integrity in the conduct of the sporting event is maintained;
- ensure that gambling on sports is conducted honestly; and
- foster responsible gambling and to minimise the harm associated with problem gambling.

The Government is also conscious of the need to provide for a regulatory regime that intervenes in the market only to the extent necessary to achieve the Government's overriding policy objectives.

A new model

As outlined in Part 4 of this Discussion Paper, the regulatory regime that currently applies to sports betting in Victoria does not provide sports with any role in determining how betting takes place nor provide for any return to the sports on which sports betting is conducted. There is also a view that the regime is cumbersome and too reliant on approval at the Ministerial level.

The Government is, therefore, considering a new regulatory model that would:

- enable the VCGR to approve a particular event or contingency, or class of events or contingencies, following consultation with the relevant sport, as an approved betting competition and to approve the contingencies on which racecourse bookmakers may conduct betting (this power currently rests with the Minister);
- prohibit a person from conducting wagering on any sporting competition without the approval of the relevant 'controlling body';
- enable a sporting body to apply to the VCGR for recognition as a controlling body in relation to the sporting competitions it conducts in Australia or competitions conducted overseas under the auspices of an international body with which it is affiliated; and

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- enable the VCGR to grant controlling body status to a sporting body if it is satisfied that the sporting body is capable of ensuring the integrity of the sporting competitions on which betting takes place.

Under this proposed model, it is envisaged that the sporting organisations, once recognised by the VCGR as a 'controlling body', would have the capacity to negotiate an agreement with wagering service providers. Such an agreement would also include a financial return to the sporting body from betting on its products.

A similar model is found in Queensland's *Racing Act 2002* (the QLD Act). This provides for 'eligible corporations' to be approved by the Minister as the 'control body' to manage a code of racing. Unlike the proposed model outlined above, the Queensland regime allows a control body to declare a sporting contingency to be a declared sporting contingency on which racing bookmakers licensed by the control body may conduct sports betting. The Government may consider a similar model as an alternative to the proposal that approved betting competitions are approved by the VCGR.

Questions for consideration

1. What integrity structures do controlling bodies have to develop?
2. Is it appropriate that sporting organisations have the power to determine the conditions under which betting takes place on their sports?
3. Is it appropriate that sporting organisations receive a financial benefit from the betting that takes place on their sports both in Australia and elsewhere?
4. Is it appropriate that the VCGR 'recognise' sporting organisations as the controlling body for the purposes of sports betting?
5. Should the VCGR be required to seek the views of the Minister administering the *Sport and Recreation Act 1972*?
6. Is it appropriate that the power to approve sporting competitions for betting purposes be devolved to the VCGR?

Which sports?

All of the sports represented by COMPS (Cricket Australia, the Football Federation of Australia, National Rugby League, PGA Tour of Australasia, Australian Rugby Union and Tennis Australia) are currently approved for the purposes of betting.

There are, however, a number of other professional sports on which betting is conducted and these need to be considered in determining which sporting organisations could be given legislative protection. For example, the current list of 'approved betting competitions' includes the following sports:

- American football
- Athletics
- Australian Rules Football

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- Baseball
- Basketball
- Boxing
- Cricket
- Cycling
- Golf
- Ironman
- Motor Sport
- Netball
- Olympic and Commonwealth Games
- Rugby Union
- Rugby League
- Soccer
- Surfing
- Tennis
- Triathlon
- Yachting

Consideration will need to be given to other sports that are not currently considered 'approved betting competitions' under the GRA or the Racing Act, where betting is not currently allowed, but could be considered¹⁰, and also to state-based sports¹¹.

Consideration will also need to be given to events which are currently 'approved betting competitions' but which are not sporting events (for example, the American Academy Awards).

Question for consideration

7. Should any legislative protection be limited to protecting the rights of only those sporting organisations that are currently 'approved betting competitions'?
8. What criteria might be considered in determining whether additional sporting competitions should be approved for betting?
9. How should a new regulatory regime deal with overseas or non-sporting events?

Returns to sports

The Government supports revenue from sports betting being returned to the relevant sports.

¹⁰ The Australian Sports Commission provides a complete list of nationally recognised sports:
<http://www.ausport.gov.au/sportdirectory/ascstatus.asp>

¹¹ Currently, most of the 'approved betting competitions' must be 'events controlled and regulated by national or international authorities'.

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A new regulatory regime for Victoria could either specify an amount to be returned to the sports or it could leave the amount to be determined by mutual agreement between the controlling body and the wagering service providers.

For example, the New Zealand model provides for:

- not less than 5% of totalisator sports betting turnover; and
- not less than 1% of fixed-odds sports betting turnover and 5% of gross profit (being gross revenue minus dividends paid, but not less than zero) from fixed-odds sports betting.

The COMPS proposal advocates for a similar percentage to be returned to the appropriate sporting body, subject to any alternative negotiated agreement.

The New Zealand approach, and similarly that proposed by COMPS, prescribes the minimum percentage amount to be returned to each sporting organisation based on the uptake of wagering on their respective sport. Such an approach may be overly prescriptive and unnecessarily interventionist. However, the COMPS proposal contends that if return is expressed as a percentage, then market value will be reflected by overall revenue and profit generated by each sport and that a prescribed 'minimum return' approach provides a protective mechanism for smaller sports (in terms of a sports betting market). Further, it will simplify the conclusion of commercial arrangements with multiple operators.

As an alternative to a prescribed minimum return, the new regulatory regime could simply require that the VCGR be satisfied that a mutually satisfactory agreement is in place between a controlling body and a wagering service provider before authorising the wagering service provider to conduct any betting on that sport. A further alternative would be that the new regulatory regime takes an even more minimalist approach by only requiring the VCGR to approve a sporting organisation as a controlling body but leaving the content of the required agreement between the controlling body and a wagering service provider to be determined by the parties to such an agreement, without the need for any scrutiny of that agreement by the VCGR.

Question for consideration

10. Should legislative provisions regarding sports betting specify the minimum amount to be paid to the appropriate sporting organisation for wagering on its product? If so, what would be the appropriate minimum amount?
11. Alternatively, is it appropriate that the amount to be returned to a sporting organisation be wholly determined by agreement between a sporting organisation and a wagering service provider? If so, should the VCGR have a role in scrutinising such an agreement?

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Returns to racing

The racing industry already has legislative protection from the unauthorised use of its product for wagering. The racing industry receives a financial return from Tabcorp wagering by way of product fees and profit share and also receives a 1% levy paid by racecourse bookmakers.

In considering any proposal for a new regulatory regime for sports betting, consideration must be given to how these existing arrangements regarding payments to the racing industry would sit with new arrangements regarding returns to sporting organisations generally.

Questions for consideration

12. How would any new arrangements that result in a financial return to sporting organisations apply to sports betting conducted by Tabcorp and racecourse bookmakers?
13. Would any amount that racecourse bookmakers may be required to pay to sporting organisations be in addition to the levy paid to RVL or would a portion of the levy be redirected to the sporting organisations?

7. A NATIONAL APPROACH?

The Bracks Government recognises that sports betting takes place across jurisdictional boundaries and that, to be truly effective, any regulatory regime should be part of a national approach that provides for consistency between the states and territories.

To this end, the Minister for Gaming has written to his State and Territory counterparts seeking their cooperation in developing a national response to some of the issues raised in this Discussion Paper. At the time of writing, a number of states have indicated a willingness to participate in the development of a national approach and Victoria will continue to work with all interested States and Territories towards this goal.