

Pfitzner, Laura

From: Andrew Cox [arc@pointonpartners.com.au]
Sent: Tuesday, 2 October 2012 4:26 PM
To: Hartcher-O'Brien, Imogen; Tan, Jasmine
Subject: HRA Notification; Further information (public)
Attachments: HRA Submission to Productivity Commission Gambling Inquiry - April 2009.pdf; HRA Response to PC draft report - FINAL version.pdf; HRA to IGA review - FINAL - Oct 11.pdf; HRA submission to IGA review Interim Report - FINAL - June 2012.pdf; HRA to Joint Select Committee - Gambling Reform July 11 FINAL.PDF

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Imogene and Jasmine,

Further to your requests on behalf of the ACCC for further information from HRA I refer to the matters set out below.

The information set out below is not provided on a confidential basis and may be placed on the public register.

1. You asked about harness racing clubs or control bodies in the Northern Territory and Australian Capital Territory and whether they are members of HRA. The position is:

There are no harness racing clubs in the Northern Territory and no controlling body.

There is one harness racing club in the ACT: the Canberra Harness Racing Club. It is not a member of HRA but works with Harness Racing NSW, which is a member of HRA.

2. You asked whether there is supply of racing content for the other codes of racing to international acquirers. HRA is aware of the following supplies of international racing content:
 - (a) Cheval Francais, the peak harness racing body in France has acquired rights to broadcast Group 1 trotting content within France from Sky Channel;
 - (b) In Victoria and NSW rights to thoroughbred racing content have been assigned to ThoroughVision Pty Ltd (TVN) which negotiates with international acquirers. See the TVN website at:

<http://www.tvn.com.au/about-us/>

In the TVN press release of June 14 2012 announcing the above assignment Mr. Mitchell said:

"The decision to aggregate the NSW and Victorian rights is clearly a significant step taken by racing and it will underpin the future stability and growth of the sport. There are expanding opportunities for TVN's premium Australian racing product internationally, particularly in the Asian time-zone. The exploitation of these aggregated media rights will now ensure that the financial returns to thoroughbred racing are maximised. This was the reason TVN was created."

- (c) On 14 February 2012 Tasracing and Sky Racing announced the supply of international thoroughbred racing content for Launceston to France Galop:

http://www.tasracing.com.au/thoroughbreds/news/latest_news/12906482

The final paragraph of such release states:

“Tabcorp’s media and international business Sky Racing successfully exports Australian racing to up to 29 countries daily on behalf of the Australian racing industry. The racing industry receives export revenue from these activities, with \$9 million returned in FY11. The biggest export markets are New Zealand, Singapore, UK, USA and Sri Lanka.”

(d) New Zealand is a special case for acquisition of racing content. Generally speaking there is daily supply of content for all three codes to and from New Zealand.

3. You asked for further detail regarding the relationship between wagering and the harness racing industry generally.

Each State has its own laws or practices whereby a percentage of each wager, whether with a pari-mutuel licensee or with a bookmaker, is paid to the relevant State Controlling Body (SCB) for the racing code relating to the wager. Those payments are known in the industry as “product fees” and the mechanics for their payment and the purposes to which they can be put vary between the States. Product fee payments are in addition to and separate from State taxes on wagers, which are paid to consolidated revenue.

The product fee income is a very substantial part of the income of the SCBs and racing clubs. HRA estimates as much as 90% of the income of SCBs and racing clubs comprise direct or indirect payments sourced from product fees. The product fees fund:

- the administration costs of the SCBs;
- prize money for races;
- payments made by the SCBs to clubs towards the costs of racing meetings;
- integrity costs including drug testing, stewards wages and patrol film vision;
- breeding incentives (subject to State regulatory regimes).

The connection between wagering and the harness racing industry is dependent upon broadcasting. The experience of the notifying parties is that if a race is not broadcast then wagering is substantially reduced.

4. You requested a copy of the Standardbred Breeding Industry Panel reports after I noted they might contain further material by way of background. A description of the Standardbred breeding industry is set out in the Standardbred Breeding Panel reports provided to ACCC on 17 September 2012.

5. By way of providing further information regarding the connection between the harness racing industry and wagering I have attached further public documents prepared by HRA comprising:

- (a) Submission to Productivity Commission Gambling Inquiry, April 2009;
- (b) Response to Productivity Commission Draft Report, October 2009;
- (c) Submission to Review of the Interactive Gambling Act, October 2011;
- (d) Submission on Interactive Gambling Act Review Draft Report, June 2012;
- (e) Submission to Joint Select Committee on Gambling Reform, July 2011.

Yours faithfully,

Andrew Cox
Consultant



NEW OFFICE DETAILS @ 16 July 2012

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AUSTRALIAN GOVERNMENT

PRODUCTIVITY COMMISSION

PUBLIC INQUIRY INTO GAMBLING

**SUBMISSION OF
HARNESS RACING AUSTRALIA**

APRIL 2009

Author – Andrew Kelly



Harness Racing Australia (HRA) welcomes the opportunity to contribute to the Australian Government Productivity Commission public inquiry into gambling in Australia.

HRA recognise the Australian Racing Board (ARB) submission on behalf of the Australian Thoroughbred Racing Industry (ATRI) to the Commission's Inquiry, as many of the issues identified deeply affect each of the racing industry codes. But, rather than simply offer a letter in support of the ARB submission, the approach of this submission is to ensure that the Commission is acutely aware of the harness racing industry position on specific issues.

As the peak national body for the harness racing code of racing in Australia, this submission is made on behalf of HRA Members, consisting of harness racing Control Bodies and Principal Clubs in the States of New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia; each of whom operate within the various *Racing Acts* of their respective States to regulate, nurture, foster and promote harness racing at all levels within the industry.

Harness racing in Australia enjoys not only a rich heritage, but continues to provide significant cultural and economic contributions to the community on a daily basis. This is evidenced in the 2006/07 racing season where the harness racing industry's 114 Clubs conducted 1,921 race meetings and 15,588 races for 15,027 individual horses competing on behalf of 40,000 owners, 4,484 trainers and 3,173 drivers in search of \$90,252,834 in prizemoney.

The resultant economic contribution of the harness racing industry is further illustrated with a contribution of \$310,317,379 in State taxes during the same period, generated from \$1,950,218,567 of TAB wagering activity - the equivalent to 16% of the Australian racing wagering market.

This level of wagering activity also provided the harness racing industry with \$136,625,321 in product fees from TABs, accounting for 88% of Control Body revenue, highlighting the traditional dependence of Control Bodies on TABs as the financial cornerstone of the industry.

This long-established link between pari-mutuel operators and the harness racing industry has become increasingly exposed in recent years with the proliferation and competition of new wagering operators in the form of Corporate Bookmakers and Betting Exchanges operating in the same wagering space.

While the current wagering environment can be viewed as either a threat or an opportunity for the harness racing industry, there is considerable evidence that in some jurisdictions, over 30% of harness racing wagering activity has been diverted to alternate wagering operators, weakening control of industry owned intellectual property and intensifying pressures on racing industry revenue.

What started as a trickle of money from the TABs when the first corporate operators started in the Northern Territory has become a flood in recent times, as the services offered by them have become more accessible through new and emerging technologies across state borders. State based TABs have struggled to address this problem while state governments, already highlighted as major beneficiaries through wagering taxes for many decades, have been unable to stem the flow.

The only weapon used in this battle to date has been race fields legislation, introduced as an instrument intended to impose commercial and integrity requirements upon all wagering operators in return the authority to use Control Body racing product and publish race fields information.

Currently, while all States have introduced race fields legislation, the product fee formula and implementation options available to the respective racing Control Bodies varies from State to State.

This situation highlights the difficulties faced not only by racing Control Bodies, but also State based regulators looking for a local solution to what is increasingly a national wagering market through the provision of wagering services via internet, telephone, interactive television and the mobility of wireless handset technology.

In response to this issue, during a speech to the Australasian Racing Ministers Conference in December 2008, HRA Chairman, Mr Geoff Want, urged Australia's racing ministers to liaise on framing legislation in each State which will be effective in extracting the equivalent of a 1.5% turnover fee from corporate bookmakers and betting exchanges, but which does not cannibalise racing industry wagering revenue from the licensed off course operators (TABs) in each state.

The imposition of interstate product fees on TABs will lead to state racing Control Bodies who are net exporters of racing product benefiting financially from those states which are net importers, even though all contribute to the national good of the overall racing product.

If this cooperation is not achievable, then HRA encourage leadership from the Commonwealth Government to act collectively with State and Territory Governments to ensure a workable, harmonised race fields model.

HRA therefore supports ARB submission point 8.3A which proposes the national endorsement of, and if needed, supporting legislation directed to the following:

- Strong and enforceable race fields legislation that receives recognition and enforcement across State and Territory borders
- An appropriate licensing regime to promote integrity and probity of the wagering operator and to enable the Controlling Bodies of racing to access wagering data to fulfill industry integrity functions

Furthermore, HRA also requested at the 2008 Australasian Racing Ministers Conference that the ministers investigate, as a matter of urgency, approving the merging of all totalisator wagering pools throughout Australia.

It is HRA's firm view that this would not only result in an increase in wagering turnover with the TABs, providing the much needed knock on effect of increased Control Body revenue, but it would also effectively remove one of the greatest attractions of several corporate operators – best tote price.

Therefore, HRA also endorses ARB submission point 8.3D that totalisator odds betting should only be permitted to be undertaken by totalisators. The IGA (Interactive Gambling Act 2001) should be amended so that totalisator odds betting is only able to be conducted online or by phone by a totalisator licensed in one of the 6 Australian States, the ACT or the NT.

HRA also submits that all forms of wagering must ensure responsible gambling by their customers. HRA joins the ATRI in registering support for:

- Consistency among jurisdictions and channels relating to the provision of credit betting
- Nationally consistent limits on the offering of inducements and rebates
- A national set of advertising regulations

In light of the future funding burden and the dynamic wagering environment in which the racing industry now finds itself, the time and need for a national regulatory framework has arrived – through either harmonising the State and Territory approach, or by national supervision.

If the issues raised in this submission are not tackled and the trends reversed, it is inevitable that there will be a reduction in funding which will lead to considerable cuts to prizemoney and administrative overheads, Clubs will close and jobs will be lost, accelerating the demise of the racing industry and the resultant economic and social consequences this will bring – particularly to regional Australia.

SUBMISSION ENDS.

AUSTRALIAN GOVERNMENT
PRODUCTIVITY COMMISSION
DRAFT REPORT INTO GAMBLING
OCTOBER 2009

RESPONSE OF
HARNESS RACING AUSTRALIA
18 December 2009
Andrew Kelly
Chief Executive



Introduction & Executive Summary

Harness Racing Australia (HRA) acknowledges the extensive work undertaken by the Australian Government Productivity Commission (the Commission) to produce its draft report into Gambling, dated October 2009 (the Report). HRA wishes to respond to the findings and recommendations of Chapter 13, *Developments in the racing and wagering industries*. This response follows HRA's original submission (number 231) to the Commission.

HRA considers the chapter on the *Developments in the racing and wagering industries* to be of critical importance to the future of harness racing in Australia. As the peak national body representing more than 40,000 owners, over 7000 trainers and drivers, and the many thousands of people employed by the industry and ancillary industries reliant upon harness racing for their income, **HRA strongly supports the Commission's recommendation to develop a national funding model for the racing industry which is underpinned by national legislation.** Indeed, HRA also believe this will be in the best interest of tens of thousands of punters, who's interests are of paramount importance to HRA.

HRA supports the Commission's statement that in the absence of regulation, free-riding by wagering providers would undermine the racing industry and harm consumers of wagering and racing products.

HRA does not support a levy which is universally paid on a gross revenue basis. HRA supports a more flexible approach which allows each state racing authority to determine the type and amount of the levy it considers appropriate for the use of its racing product.

HRA is not persuaded by the Commission's reasons for preferring a gross revenue levy, over a turnover levy. Whilst HRA agrees with the Commission that the charge must be fair to all operators, it does not agree that consumer interests are better served by a gross revenue fee. Consumers will be best served by a racing industry which can provide quality, safe racing underpinned by the highest standards of integrity.

HRA does not support the establishment of an independent, three person racing and wagering tribunal to set and review the levy. As the producer of the racing product, the racing industry is best placed to determine the levy.

HRA disagrees with the Commission's finding that the arguments for renewing TAB retail exclusivity are not compelling. It is HRA's view that increased competition in the retail network would ultimately lead to poorer outcomes for consumers. The level of service and comfort currently enjoyed by Australians in TAB retail outlets would diminish as increased competition would lead to smaller pools, less incentive for consumers to wager on the totalisator and ultimately, less investment by the pari-mutuel operator in the retail network.

HRA does not consider a direct distribution model feasible, nor preferable. The direct distribution of funds to clubs based on wagering ignores the myriad of services which are required to be provided by the state racing authorities. These services enable

clubs to stage their race meetings and ensure the racing product is an attractive product for punters to bet on, and for owners to invest in.

HRA disagrees that tote-odds betting should not be prohibited.

In order for the Australian harness racing industry to thrive and provide a high quality harness racing product which is attractive to all consumers, it is imperative that the industry can charge a fair price for its racing product. The end result needs to balance the needs of punters (consumers) with increased returns for industry participants, more stakesmoney for owners and a more self-sufficient and productive industry capable of making an even greater contribution to the Australian economy.

Solutions need to strengthen, not weaken, the racing industry which the Commission agrees is facing increasing challenges from offshore wagering and competition for the entertainment dollar along with a changing economic and social environment.

The racing industry needs to be enabled to achieve their goals and secure a sustainable future for the tens of thousands of people employed in the industry. The future survival of the racing industry depends on its ability to get maximum benefit from its collective resources, to think strategically and to act decisively.

Preliminary Comments

There are three important observations HRA wishes to make about the Commission's report at the outset. The first relates to the use of the term **consumer**, the second relates to the definition of **racing product and the broader role of the racing industry within the community** and the third relates to the Commissions' observations on the **size of the racing industry**.

1. Use of the term Consumer

Whilst HRA acknowledges that the Commission is working within both the confines of its Terms of Reference specific to this inquiry and also as part of its general focus on ways to achieve a more productive economy, HRA notes the emphasis the Commission places on the punter as the ultimate consumer of the racing product. The Commission appears to define consumer as punter, that is, the person who wagers on the outcome of a race. HRA agrees that the punter is a vital contributor to the racing industry. However, the punter as consumer is not the only contributor to the racing industry and should not take precedence over other valuable participants in the industry in determining a national funding model or helping to shape racing industry policy.

HRA considers it fundamental to recognise within the definition of consumer the inclusion of owners, trainers, drivers, breeders, administrators, racing club volunteers, committee members, feed merchants, veterinarians... the list goes on, as vital contributors to the racing product. These parties play a special twin role – not only do they produce the racing product by breeding, purchasing, training and driving the horses to enable the race to take place, they are also consumers of the racing product. This may or may not involve them wagering on the racing product. Indeed, unlike most other forms of gambling such as poker machines and casino games, there is an actual industry with *real* people, *real* animals and *live* events which sits behind wagering. This places wagering in a unique position and means that in determining a national funding model for the racing industry, it is important that not only the punter – as consumer – is factored in, but also the stakeholders whose efforts result in the delivery of the racing product.

2. The racing product and the broader role of the racing industry within Australia

Consistent with the approach preferred by HRA in respect of the use of the term consumer, HRA supports a broad definition of racing product. The Commission notes that the racing industry relies "chiefly on the sale of intellectual property (essentially the outcome of a race), rather than on a physical product" (p13.2). This assertion appears to form the basis of the Commission's definition of racing product.

HRA considers more relevant a broader definition of racing product to encompass not only the sale of the IP in the outcome of a race, but to also recognise the racing product as: a form of entertainment, a source of employment and indeed, a vital contributor to the social, economic and cultural wellbeing of Australian communities, especially those in rural and regional areas.

In respect of its role as an employer, the harness racing industry, as with the other two codes, provides valuable employment opportunities to people who may not have other employment or be suited or trained for other employment. This is a relevant consideration of the codes when assessing the necessary funding required to support and to grow the industry. This should also be relevant to Governments and decision makers when considering the framework which is required for the industry to be adequately funded.

3. Size of the racing industry

The Commission poses the question at page 13.10: is the Australian racing industry too big overall? In the commentary that follows, and noting that the Australian industry is one of the largest in the world, the Commission suggests the industry will contract if the "current protective arrangements are changed". It goes on to say:

"However, an industry ultimately exists to meet the demands of consumers and for the interests of the community generally, not for its own sake. The 'correct' industry size is that which most closely represents consumers' preferences for the number, frequency and quality of races, and the prices they are willing to pay for them (in terms of the odds they receive). Accordingly, if punters prefer better odds, (even at the expense of fewer domestic races), then a leaner racing industry that delivers this is preferable to a larger industry that does not." P13.13

Whilst HRA agrees with this statement generally, it reiterates its preference for the term consumer to include stakeholders, and for this reason, 'better odds' are not the only measure of the consumers' satisfaction of the industry. For example, a maiden race at a regional track may be more attractive than harness racing's premier event, the final of the Interdominion Championship, from the perspective of punter, breeder, owner, trainer and driver. The punter may find it easier to back the winner whilst the connections are simply thrilled their horse has won a race. Furthermore, the lesser quality races are important feeders to the higher quality races. Getting the mix right is a complicated task and one which state racing authorities and administrators are constantly refining to ensure the best outcomes for *all* consumers.

It is also important to note that racing is a unique industry in that it attracts investors who are fully aware that in most cases, they will not make a positive financial return from their investment. This awareness, however, does not deter them. It is the

excitement of winning and the hope of owning a champion that drives their interest. HRA respectfully submits that the Commission has not taken into consideration these aspects of the racing industry in delivering its findings and recommendations.

Draft Finding 13.1

In the absence of regulation, free-riding by wagering providers would undermine the racing industry and harm consumers of wagering and racing products. The current state-based race field legislation overcomes this problem, but poses significant risks for effective competition in wagering, potentially affecting the long-term future of racing and wagering and, more importantly, the punters who ultimately finance both of these industries.

HRA supports the Commission's statement that in the absence of regulation, free-riding by wagering providers would undermine the racing industry and harm consumers of wagering and racing products. In this sense, HRA reiterates the importance of considering the harmful effects of free-riding not only on the punter, but also on the other contributors of the racing product, that is, the trainers, owners and drivers (to name a few).

HRA agrees that state-based race field legislation was intended to overcome the problem of free-riding. One of the primary objectives of race field legislation was to "ensure that all wagering operators based outside (the jurisdiction) make a fair and reasonable economic contribution back to the racing industry on which their businesses are based".¹ Existing undecided legal challenges as to the quantum of fees set by racing authorities in New South Wales has to this point meant that race field legislation has not been effective in delivering appropriate usable revenue streams to the harness and thoroughbred racing codes.

This is why a national framework to validate the underlying principles of race field legislation is essential. If a national framework is not developed, HRA agrees with the Commission that there will be "*significant risks for effective competition in wagering, potentially affecting the long-term future of racing and wagering and, more importantly, the punters who ultimately finance both of these industries.*"(p13.23) HRA agrees that the punters play a pivotal role in helping to finance the racing and wagering industries, but reminds the Commission that the punter is one of a number of parties which finance the industries including most importantly, the owners.

Draft Recommendation 13.1

The Australian Government should work with state and territory governments to develop a national funding model for the racing industry. This model should be underpinned by national legislation and should replace state and territory based arrangements.

¹ Minister Tony Robinson, Minister for Gaming, Hansard Victorian State Parliament, 1 November 2007

HRA supports this recommendation insofar as the Australian Government should work with state and territory governments to enact laws which are beyond constitutional challenge and provide the racing industry with the required legal framework to charge wagering providers a fair and reasonable fee for the benefit of wagering on their racing product.

The key element of this model would be a single levy, universally paid on a gross revenue basis:

- ***The levy should replace all other product fees currently paid by the wagering industry, but need not affect other funding channels, such as sponsorship of race meetings.***
- ***The levy should be set and periodically reviewed by an independent national entity with the object of maximising long-term consumer interests.***
- ***In setting the levy, the entity should engaging in public consultation, and the bases for its decisions should be detailed in a public document.***

HRA does not support a levy which is universally paid on a gross revenue basis. HRA supports a more flexible approach which allows each state racing authority to determine the type and amount of the levy it considers appropriate for the use of its racing product. HRA also prefers a framework which would allow each state racing authority the ability to consider different price structures for different racing product. This could include, for example, the ability to charge a higher fee for premium racing product which by its very nature is more expensive to produce with higher marketing costs, higher stakesmoney, increased drug testing and security costs.

HRA is not persuaded by the Commission's reasons for preferring a gross revenue levy, over a turnover levy. Whilst HRA agrees with the Commission that the charge must be fair to all operators, it does not agree that consumer interests are better served by a gross revenue fee. Consumers will be best served by a racing industry which can provide quality, safe racing underpinned by the highest standards of integrity. This can only occur if the industry is adequately funded, at a level best determined by the industry.

Market forces will ensure a fair price is determined. It is not in the racing industry's interest to force wagering operators out of business. A balance is required between the needs of the industry, the consumer and the stakeholders.

A levy based on gross revenue was introduced in the United Kingdom in 2002 under the 41st Levy Scheme. The move from a turnover based levy to a gross profits levy in the UK was intended to benefit both the betting and horseracing industries but as the British Horseracing Board concluded in its submission to the Secretary of State as part of the determination of the 47th Levy Scheme:

“... the Schemes based on the 41st Scheme have operated in such a way so as to have conferred significantly more benefit on the betting industry than on racing. It is not fair or reasonable that this should be allowed to continue.”²

The BHB notes that when the gross profits based scheme was introduced, the return to racing was intended to yield between £90-£105M annually. The actual return has been around £80M and in the financial year to 30 June 2008, the return was 20% down on the previous year.³ This is not a path that HRA deems will be beneficial to the long term sustainability of the Australian harness racing industry.

It is also HRA's view that the racing industry's preferred funding model should not be dependent on the wagering operator's preferred business model. Whilst it may be trite to state, the wagering operator would not have a business if it did not have the racing product. It follows that it should not be the wagering operator which dictates to the racing industry the type of levy it wishes to pay. HRA also submits that in the case of betting exchanges, the type of fee charged needs to be reviewed having regard to the fact that each customer that has a bet matched via a betting exchange, is effectively acting as a bookmaker or wagering operator, and ought to pay a fair and reasonable fee for that privilege.

HRA also believes that funding to the racing industry should not be dependent on the outcome of each and every race, nor the competency of the wagering operator in running his or her business. This is the case if a gross revenue levy is adopted. The costs associated with producing a race are fixed and therefore the price of the fee charged for using that racing product should not be dependent on the success or otherwise of the wagering operator. HRA submits that it is fair and reasonable for the racing industry to prefer a levy which provides it with certainty.

HRA notes that tax has been collected by the states based on turnover for a number of years with great success and this method could easily be transposed to the industry.

HRA agrees the levy set by the particular industry should not affect other funding channels such as sponsorship of race meetings. Indeed, HRA notes that sponsorship of race meetings is generally the domain of racing clubs as distinct from state racing authorities and this should continue to be a separate stream of funding.

As earlier stated, the levy should be set and reviewed by the relevant racing industry. Accordingly, HRA does not support the establishment of an independent, three person racing and wagering tribunal to set and review the levy. As the producer of the racing product, the racing industry is best placed to determine the levy. Just as Ford and Holden set the prices for the sale of their motor vehicles to meet consumer demand, so too should the racing industry set the price for the sale of its racing product. To look at it from another perspective, if original works of music or fashion are stolen or copied, the offenders are subject to piracy and copyright laws and will be prosecuted if they do not

² British Horseracing Board, *Determination of the 47th Horserace Betting Levy Scheme, Submission of British Horseracing*, 27 November 2007, p55

³ *The Guardian, Levy income hit as high rollers retreat*, by Greg Wood, 16 July 2009

pay the relevant licensing fee. The same principle should apply for the use of race fields and the racing industry should be able to determine the price it wishes to charge for their use.

Draft Recommendation 13.2

The Australian Government should request that the Australian Competition and Consumer Commission examine any adverse implications for competition associated with the ownership arrangements for Sky Channel.

HRA notes that the Australian Competition and Consumer Commission (ACCC) looked at similar issues in 2007 in the context of the application for authorisation of a Memorandum of Understanding between Sky Channel, Tabcorp and TVN in respect of the sharing of thoroughbred racing content until December 2012.

At that time, the ACCC consulted HRA on these matters, along with other interested parties. HRA maintains its 2007 position and provides the Commission with a copy of its submission for information.

In brief, HRA does not object to the current ownership arrangements of Sky Channel. HRA's main interest is ensuring that:

- Harness racing continues, at a minimum, to receive the level of coverage on Sky Channel it currently enjoys;
- A 'wall to wall' channel which includes coverage of harness, thoroughbred and greyhound racing is maintained;
- There are no significant increased charges to commercial venues for the cost of racing vision; and
- There is not a return to the 'split vision' situation of 2005 and 2006, when Sydney and Victorian thoroughbred racing was on TVN and the balance of thoroughbred races, plus all harness and greyhound TAB meetings were broadcast on Sky. The damage which was done to the three codes of racing during that period from both a revenue and image perspective was devastating.

Draft Finding 13.2

There are grounds for state and territory governments to cooperate when setting taxes on wagering revenue, in order to avoid destructive tax competition. However, the increased capacity for competition from lowly-taxed offshore online suppliers will, in any case, increasingly limit the capacity to tax wagering activity.

HRA agrees there are strong grounds for state and territory governments to cooperate when setting wagering taxes in order to avoid destructive tax competition. History shows, however, that this is highly unlikely to be achieved in the absence of Commonwealth Government intervention. The smaller states and territories will

continue to undercut each other chasing short term benefits at the expense of the long term health and prosperity of the national racing industry.

The willingness of wagering operators to move their businesses off shore to chase lower taxes and avoid paying product fees, as noted by the Commission as being a likely scenario, undermines their purported support of the racing industry. For this reason, HRA believes the racing industry should be able to determine its levy at a level which it considers balances this risk, with the returns it can achieve from other wagering operators. In other words, the racing industry should not be beholden to the whims of entities which have little interest in contributing to the Australian racing industry.

The experience in the United Kingdom, where the betting levy payable to the British Horseracing Board is based on gross revenue and is currently set at 10 per cent (low by international standards) provides a valuable lesson to the Australian racing industry. Despite this low levy, a number of wagering operators including Ladbrokes and William Hill⁴ are still opting to relocate to places like Gibraltar to take advantage of negligible income tax rates and to avoid paying a levy to the UK racing industry.

Draft Finding 13.3

Tote-odds betting should not be prohibited as there are better ways of dealing with the risks it involves.

HRA notes the Commission's position that there are better ways of dealing with the risks associated with tote-odds betting by corporate bookmakers than by prohibiting it. HRA does not agree with this position and continues to believe that tote odds should only be permitted to be offered by totalisators.

HRA is pleased the Commission has acknowledged the benefits of larger TAB pools and the need for totalisator exclusivity arrangements to continue to ensure these exist. HRA is also pleased with the Commission's support for the co-mingling of TAB pools as a further remedy for combating the problems associated with corporate bookmakers offering tote odds. HRA will continue to encourage the co-mingling of the remaining Australian tote pools.

Draft Finding 13.4

Offering inducements to wager through discounted prices is not necessarily harmful, and may primarily serve to reduce switching costs between incumbent wagering operators and new entrants. The risks for problem gamblers should be

⁴ Racing Post, *Ladbrokes to set up shop in Gibraltar*, by Warwick Barr, 7 August 2009

assessed and, regardless of whether prohibition or managed liberalisation is the appropriate action, a nationally consistent approach would be warranted.

HRA opposes any practice which encourages problem gambling and supports a knowledge based policy to address the issue. Accordingly, HRA supports the Commission's recommendation that the risks associated with offering inducements for problem gamblers should be assessed, with the findings to underpin a nationally consistent approach.

Draft Finding 13.5

The arguments for renewing TAB retail exclusivity are not compelling.

HRA disagrees with the Commission's finding that the arguments for renewing TAB retail exclusivity are not compelling.

In particular, HRA is not persuaded that the exclusivity of retail TAB outlets has resulted in poor outcomes for consumers (punters). Indeed, HRA submits that TAB exclusivity in Australia has resulted in consumers having access to a high quality, retail network of wagering outlets. For many consumers, these retail outlets are a meeting place to socialise and therefore, provide a service far beyond that which is offered by internet and telephone based wagering operators. In recent years, TABs have invested significantly in upgrading the retail experience for their customers and it is unlikely this investment would have occurred if exclusive licences were not offered.

Given the high costs associated with operating and maintaining the retail network, particularly when compared with the costs of operating an internet or telephone based wagering service, it is important to retain retail exclusivity to ensure the investment continues. An exclusive retail network also provides the economies of scale necessary to make the investment viable as well as providing significant employment opportunities for those in the customer service industry.

Another significant reason to retain an exclusive retail network and consequently a single pari-mutuel licence, is to ensure the continuation of large pari-mutuel pools. As the Commission has recognised, large pools provide enormous benefit to the punter including continuing confidence in the wagering product. The removal of TAB retail exclusivity would result in a reduction in the size of the pari-mutuel pool which would ultimately disadvantage consumers.

HRA also has concerns about comparing the take-out rates of TABs with other wagering operators and then concluding that the higher take-out rates of TABs has resulted in poor outcomes for consumers. Take-out rates should not be confused with profit margins. The take-out rate for the Victorian and New South Wales totalisators averages 16% (with a maximum of 25% on any one pool). Of this 16%, the TABs pay a state wagering tax of approximately 19%, GST of 10%, return to the racing industry about 28% and retain the remaining approximately 43%. In dollar terms, for every \$100 wagered, \$4.50 is returned to the State and Federal Governments in taxes, \$4.50 is

returned to the racing industry and \$6.90 to the pari-mutuel operator. This is in stark contrast to corporate bookmakers who pay virtually nothing.

It is also important to note that TABs have in many States paid significant fees for the benefit of owning the wagering licence, something corporate bookmakers have not done. TABs also fund other aspects of the racing product including form guides and radio and television coverage. These services benefit consumers. In addition, TABs have contributed over a number of years to educating consumers about their products and increasing the awareness of consumers of the racing product and 'brand'. These investments have greatly benefited corporate bookmakers who have commenced operating in a highly informed market.

It is also worth noting that retail wagering outlets have retained their market share in recent times, despite increased competition from internet and telephone wagering operators, who have grown their market share significantly. The ability of the retail outlets to maintain market share in this environment suggests that they are providing a useful and valuable service to consumers. Furthermore, it is HRA's view that increased competition in the retail network would ultimately lead to poorer outcomes for consumers. The level of service and comfort currently enjoyed by Australians in TAB retail outlets would diminish as the increased competition would lead to smaller pools, less incentive for consumers to wager on the totalisator and ultimately, less investment by the pari-mutuel operator in the retail network.

The Commission seeks feedback on the feasibility of the direct distribution model, whereby a levy is paid by wagering operators directly to racing clubs, rather than through state racing authorities.

HRA does not consider a direct distribution model feasible nor preferable. The reasons touched upon by the Commission in the Report, in particular the complexities surrounding race scheduling and the prohibitive costs of direct distribution, are both powerful reasons to prefer the distribution of fees to state and territory racing authorities.

In addition, direct distribution of funds to clubs based on wagering also ignores the myriad of services which are required to be provided by the state racing authorities. These services enable clubs to stage their race meetings and ensure the racing product is an attractive product for punters to bet on, and for owners to invest in.

For example, most state racing authorities are responsible for providing the following:

- integrity staff and raceday officials including stewards, mobile drivers, starters, clerks of the course
- licensing and regulation of race clubs, industry personnel and horses
- capital works including track maintenance and training facilities
- education and training of participants and club personnel
- occupational health and safety measures
- race broadcasting and vision

- coordinated, whole of industry marketing
- animal welfare
- breeding, including management of the studbook, marketing and incentives
- race programming and the compilation of race fields
- drug testing and integrity controls
- insurance

In short, the clubs could simply not stage their race meetings without the assistance, financial or otherwise, and the shared services provided by the state racing authorities. To duplicate these activities would be expensive and inefficient.

In terms of maintaining an attractive product for punters to bet on, and owners to invest in, of primary importance is ensuring that the integrity of the racing product continues to be of the highest standard. Australian harness racing leads the world in its integrity practices and this is due to the significant investment in this area by the HRA and each state harness racing authority. It is highly likely this investment would be jeopardised if off-course wagering revenue was directly distributed to clubs. The flow-on negative effects would be devastating to the industry.

The Commission seeks further feedback on whether credit betting should be extended to other betting providers and, if so, whether the proposed restrictions are appropriate and what minimum credit threshold would strike the right balance.

Consistent with HRA's position on the offering of inducements, HRA opposes any practice which encourages problem gambling and supports a knowledge based policy to address the issue.

If credit betting is to be allowed, all wagering providers should be able to offer it. Subject to further research, HRA supports credit being limited to established and professional punters.

HRA also wishes to provide a brief response to Recommendation 12.1.

The Australian Government should repeal the Interactive Gambling Act, and in consultation with state and territory governments, should initiate a process for the managed liberalization of online gaming. The regime would mandate:

- ***strict probity standards, as for online wagering and venue-based gambling***
- ***high standards of harm minimization, including:***

- *prominently displayed information on account activity, as well as information on problem gambling and links to problem gambling resources*
- *the ability to pre-commit to a certain level of gambling expenditure, with default settings applied to new accounts, and the ability to opt-out, with periodic checking of a gambler's preference to do so*
- *the ability to self-exclude*
- *automated warnings of potentially harmful patterns of play.*

The Australian Government should evaluate the effectiveness of these harm minimisation measures, as well as the regulator overseeing the national regulatory regime, on an ongoing basis.

HRA does not support the repeal of the Interactive Gambling Act. HRA believes the current prohibition on the provision of online gambling services including casino games, online versions of electronic gaming machines and bingo, to customers in Australia is appropriate. HRA supports wagering being exempt from this prohibition but supports the retention of the ban on 'in the run' betting.

SUBMISSION ENDS

SUBMISSION TO THE

AUSTRALIAN GOVERNMENT
DEPARTMENT OF BROADBAND,
COMMUNICATIONS AND THE DIGITAL
ECONOMY

REVIEW OF THE
INTERACTIVE GAMBLING ACT 2001

SUBMISSION OF
HARNESS RACING AUSTRALIA
21 October 2011
Andrew Kelly
Chief Executive



Introduction

Harness Racing Australia (HRA) welcomes the opportunity to provide a submission to the review of the *Interactive Gambling Act 2001* being undertaken by the Australian Government Department of Broadband, Communications and the Digital Economy.

HRA is the peak national body for the sport and business of harness racing in Australia. HRA represents more than 40,000 owners, over 7000 trainers and drivers and the many thousands of people employed by the industry and ancillary industries.

Over 90% of the revenue generated by the harness racing industry comes from wagering. Indeed, the link between the racing industry and wagering is unique and distinguishes it from other sports. Racing is directly dependent on wagering and exists to provide product for punters to wager on. Whilst an AFL game or cricket match can go ahead without betting, and its participants are no worse off, the racing industry would not exist without wagering.

The racing industry's unique relationship with wagering means that the views of HRA on the issues being explored by this review are predicated on ensuring its business is sustainable and continues to provide meaningful employment for the tens of thousands of Australians who depend on the industry for their livelihoods.

This submission complements previous submissions by HRA made to both the Productivity Commission Inquiry into Gambling (2010) and the Joint Select Committee on Gambling Reform inquiry into interactive and on-line gambling advertising and focuses on the following issues:

1. Integrity is paramount in the racing industry – other sports must lift their standards
2. A national regulatory regime for gambling is supported
3. Wagering must continue to be exempt from the Interactive Gambling Act 2001
4. Racing must not be disadvantaged vis a vis the other sports given its strong integrity standards, particularly in respect of 'in the run' or 'spot' betting
5. Gambling advertising and pricing/odds updates on sports should be limited to dedicated channels or programs where strict integrity measures can be enforced

HRA encourages the Department to keep in mind the unique position of the racing industry when considering Interactive Gambling Act 2001 (IGA) reforms.

1. Integrity is paramount in the racing industry – other sports must lift their standards

Fundamental to the size, growth and ongoing sustainability of the racing industry is its ability to demand the highest standards of integrity. The racing industry understands it is imperative that significant resources are devoted to integrity measures in order to ensure consumers continue to have confidence in its product.

For this reason, the three codes of racing devote substantial financial and human resources to their integrity departments. Stewards have long been the custodians of integrity in racing. Over a number of decades, Stewards have been vested with strong powers over participants to ensure they have the ability to address integrity breaches and to ensure the punter is confident that races are run fairly and free from corruption or malfeasance.

There have been many attempts over the years to argue that Stewards' powers are too strong or infringe on civil rights. Legal challenges going all the way to the High Court of Australia, however, have repeatedly failed, with the powers vested in Stewards by the racing controlling bodies upheld by the courts.

The racing industry has been successful in justifying the powers vested in Stewards on the basis that public confidence in the racing product is paramount. State legislatures have also repeatedly supported the racing controlling bodies in their quest to ensure the highest standards of integrity are upheld.

In 2009, the Victorian Parliament legislated to create Australia's first Racing Integrity Commissioner. This position acknowledges not only the importance of ensuring that the public has confidence in the racing product, but also provides an endorsement of the importance of the racing industry to the State of Victoria generally. As was stated during

the second reading speech to introduce the bill to create the Racing Integrity Commissioner:

Implementing these measures will enhance integrity assurance provisions in Victorian racing. This will have the effect of bolstering the perception of integrity among all participants and will increase the value of the Victorian racing product.¹

The growth of betting on sports (other than racing) over the past decade has occurred without the same emphasis on integrity. The reasons for this include the fact that the growth has largely been driven by sports betting providers, rather than the sports themselves. In fact, many sports have had little or no influence over the betting which has been offered by the sports betting providers on their sports.

The original growth in sports betting came from the emergence of bookmakers operating in the Northern Territory, who were granted licenses to bet on sports without any requirement to enter into satisfactory financial or integrity arrangements with the sports themselves.

The lack of financial return from sports betting means a serious investment in integrity has not been prioritised by most sports. In cases where there have been suspect betting transactions concerning a particular sport, too often the controlling body has been ill equipped to investigate and ultimately address the incident. In some instances, the sport has had to rely on the police and the criminal law to investigate and prosecute the matter. This has often been a costly and protracted exercise which damages the sport, its participants, the punters and the betting product.

Another area of sports betting which requires urgent reform, relates to the disclosure of critical information to punters. HRA submits that it ought to be mandatory for sports to disclose performance related information, such as team selection changes, differing match day tactics or batting line-ups to punters.

¹ Racing Legislation Amendment (Racing Integrity Assurance) Bill 2009 (VIC), Second Reading Speech, 29 July 2009
HRA submission to the
Department of Broadband, Communications and the Digital Economy
Review of the *Interactive Gambling Act 2001*

The racing industry, as part of its commitment to integrity, ensures that full disclosure of performance related information such as injuries, form reversal, and 'tanking' (deliberately losing for a favourable longer term outcome) is investigated by Stewards, while changes to gear, training or race tactics must be conveyed to Stewards by participants. The Stewards then ensure the information is passed on to the public. This assures punters that they are fully informed and can place their bets with confidence. If Stewards are not satisfied that participants have been forthcoming with the necessary disclosures, they will take action against the participants and if appropriate, impose penalties.

Further, there is complete transparency in the racing industry integrity activities. Swab samples and results are available to the public, while positive tests to banned substances, associated inquiries and penalties are also made public.

For sports to ignore this basic requirement highlights the naivety with which many have treated sports betting and again emphasises the need for standards to be lifted significantly.

HRA believes that betting on sports should only be permitted if strict integrity measures are enforced by an appropriately empowered and competent regulatory body. If the controlling body cannot demonstrate this ability, betting on its product should not be allowed.

2. A national regulatory regime is supported

The regulation of wagering on racing has traditionally been the domain of the states and territories. For over one hundred years, this proved successful, particularly when each State Government owned and controlled its own TAB, with bookmakers permitted to operate only when situated on a racecourse and arrangements existed between states regarding betting on each other's racing product.

The privatisation of TABs, the emergence of telephone, online and smart phone betting and the changes associated with globalisation, has irrevocably altered the wagering

landscape. No longer are state and territory borders relevant and the protectionist policies of past decades have gone, replaced with an emphasis on competition and free trade. The result is inconsistent regulation being imposed by states and territories, including different taxation rates. For the racing controlling bodies, the prevalence of ‘free-riding’ bookmakers, located in small jurisdictions, paying little or no tax to the local government and providing minimal or no return to the racing controlling bodies, has had a detrimental effect.

A national regime would not only rectify the ‘free-riding’ problem but also allow the Government to mandate a consistent approach to issues such as problem gambling, money laundering and taxation – the very issues of particular interest which go to the heart of this review.

HRA would support the establishment of a national gambling regulator. Its powers could include:

- licensing of betting providers including adherence to strict integrity, advertising, problem gambling, harm minimisation and financial measures
- reviewing a sports capability (and this includes racing), particularly with respect to integrity standards, to enter into arrangements with betting providers
- banning unscrupulous operators including international betting operators who do not adhere to integrity or financial standards

HRA believes, however, that even in a national regulatory system, the producer of the product – albeit the racing or sports controlling bodies – must retain the right to determine:

- which betting providers are permitted to bet on their product
- which bet types they offer
- what product fee they pay the industry in return.

On the issue of whether a turnover or gross revenue fee is best, HRA strongly believes it ought to be up to the industry to determine. The role of the Government should be to ensure the controlling body has the necessary legal powers to determine the conditions

on which its product is bet on, rather than to determine the type or quantum of fee to charge.

The Interactive gambling Act 2001 review ought to consider the benefits of a national approach to achieve meaningful social and economic reforms.

3. Wagering must continue to be exempt from the Interactive Gambling Act 2001

When it was enacted in 2001, wagering was specifically exempted from the Interactive Gambling Act (IGA). HRA supports this continuing exemption, but only on the basis it cannot be exploited by internationally “footloose”² wagering providers. This term was used by the Productivity Commission in its 2010 report to describe the practice of bookmakers relocating their businesses away from established jurisdictions to avoid paying tax or contributing to the controlling body on whose product they are wagering.

It is essential that all betting providers which seek to profit on Australian racing or sporting events, regardless of where they are located, comply with strict integrity and financial standards. In this regard, the IGA should be strengthened to allow the blocking of ISP’s from internationally “footloose” wagering providers.

HRA also recommends the IGA be amended to prohibit financial institutions from processing transactions from non-approved online gambling sites. Whilst the IGA currently provides a mechanism for regulations to be made relating to financial agreements involving illegal gambling services, to date there have not been any regulations made.

The United States Federal Government has led the way in this area, with the *Unlawful Internet Gambling Enforcement Act 2006*. The incorporation of similar provisions in the IGA would enhance Australia’s ability to ensure that punters deal with betting providers who have been approved by the appropriate regulatory body. This would ensure punters are dealing with betting providers who meet minimum integrity, harm minimisation and problem gambling standards.

² Productivity Commission 2010, *Gambling*, Report no.50, Canberra, p15.1
HRA submission to the
Department of Broadband, Communications and the Digital Economy
Review of the *Interactive Gambling Act 2001*

4. Racing must not be disadvantaged vis a vis the other sports given its strong integrity standards, particularly in respect of 'in the run' or 'spot' betting

HRA believes that the racing industry, with its strong record in integrity, is the best placed of all product providers to manage 'in the run' or 'spot' betting. An unfair anomaly currently exists which allows this type of betting to be offered on sports, but does not allow it to be offered on racing.

Unless a sport has the ability and the resources to enforce the highest of integrity standards, as discussed above, 'in the run' or 'spot' betting should not be permitted. HRA submits that on the current evidence, the racing industry is well placed to manage this type of betting.

If a national regulator was in place, that body could determine the appropriateness of a particular sports controlling body to allow 'in the run' or 'spot' betting on its product.

5. Gambling advertising on sports should be limited to dedicated gambling channels where strict integrity measures can be enforced

HRA notes this reviews interest in gambling advertising including the level of gambling advertising; the display of betting odds at venues and during match broadcasts; commentators referring to the odds and the general impact of gambling on sport.

As stated earlier, racing's commitment to integrity and its direct link to wagering, places it in a different position to other sports and this applies in respect of the use of advertising and its impact on the sport.

The broadcast of wagering betting odds, the analysis of weather, gear and track conditions, movements in betting odds and commentary by racing experts about a horse's prospects in a race, are all part of the delivery of the racing product. As a result, advertising of wagering odds and information related to wagering, is strictly regulated by the Stewards. If misinformation is broadcast or suspicious comments made during a

race broadcast from licensed racing participants, the Stewards will take action. The overriding concern is to ensure that the public is fully informed about a horse's chance in a race and that those connected to the horse do not gain an unfair advantage over the general public. The Stewards have even introduced rules to ensure that social media forums such as twitter cannot be used to convey misleading information.

Furthermore, when people switch on a race meeting on television, whether it be a free to air broadcast or a dedicated pay television racing channel, or a dedicated racing radio station, they do so fully aware that they will have betting odds and updates provided to them. This is a conscious decision on the part of the racing enthusiast. The same cannot be said for viewers – often families – watching a cricket, AFL, rugby or Brownlow Medal broadcast.

The broadcast of betting odds during a sporting event appears to be no more than a revenue raising exercise for the television or radio station or the individual commentators. Of particular concern is the lack of self-regulation by the wagering operators, sporting codes or broadcasters as to the nature of the advertising and information which is communicated to the viewer, and when it is conveyed.

A vulnerable and spontaneous punting public who are motivated by the design of such information are then met with special deals on their computer or mobile handsets – including matched bets or bet bonuses, particularly when setting up new accounts.

Of course corporate bookmakers rely on losers to make their profit, rejecting the bets of a customer who becomes too successful.

When considering this issue, thought should be given as to the demographic of the audience. The advertising of betting during sports coverage for example has an entirely different demographic to that of racing coverage. No doubt a significant proportion of under 18's watch sporting events and to have betting odds provided by their "heroes" or commentators sends a message which can quite conceivably assist in the development of the next generation of problem gamblers.

Also of increasing concern is the lack of regulation over the types of bets which sports betting providers can offer and advertise, and the absence of formal approvals being required from the sporting body. An example of this was from global online gambling operator, Sportsbet³, which offered a promotion on the Round 17, AFL Carlton v Collingwood match (17 July 2011). The offer provided that any losing bet placed on the match by a punter would be refunded in full if the Carlton captain and dual Brownlow medallist, Chris Judd, obtained the most possessions in the match.

It is difficult to see how this promotion could possibly be in the best interests of the AFL or indeed the player concerned. In such a situation, should the player's performance be of below par standard, or if he is subjected to an unusual occurrence during the match, or injury, questions could potentially be raised about the integrity of the match, or even the player concerned.

HRA submits that advertising on any type of gambling should be limited to dedicated television or radio programs, where the viewer or listener is aware there will be betting odds and gambling related information broadcast.

This would enable information to be strictly regulated by a robust integrity regime. In addition, sports betting providers should only be allowed to offer and advertise bets which have been approved by a competent sport controlling body.

³ www.sportsbet.com.au "Massive Judd Refund"
HRA submission to the
Department of Broadband, Communications and the Digital Economy
Review of the *Interactive Gambling Act 2001*

Conclusion

Unlike other sports, the racing industry is dependent on wagering. As a result, the industry demands and commands the highest standards of integrity. It achieves this by devoting substantial resources to integrity and by providing broad powers to Stewards.

Given the increase in gambling on sports (other than racing) in recent years, it is imperative that the high standards of integrity expected and achieved in the racing industry are replicated in the other sports. If sports are to benefit from gambling, they must increase their commitment to integrity. If they cannot do this, betting or gambling advertising, should not be allowed on their sports.

The creation of a national gambling regulator could ensure that minimum standards are met by both the sporting controlling bodies and by the betting operators.

A national regulatory body would also allow the Government to promote measures to best address any concerns arising from the social and economic impacts of gambling.

HRA encourages the Department of Broadband, Communications and the Digital Economy to use this review of the IGA to implement these important reforms.

**SUBMISSION ON THE DRAFT
REPORT OF THE REVIEW OF
INTERACTIVE GAMBLING ACT 2001
JUNE 2012**

**SUBMISSION OF
HARNESS RACING AUSTRALIA
June 2012
Andrew Kelly
Chief Executive**



Introduction

Harness Racing Australia (HRA) welcomes the opportunity to comment on the draft report of the review of the *Interactive Gambling Act 2001* (the IGA) by the Department of Broadband, Communications and the Digital Economy.

HRA is the peak national body for the sport and business of harness racing in Australia. HRA represents more than 40,000 owners, over 7000 trainers and drivers and the many thousands of people employed by the industry and ancillary industries.

This submission complements HRA's previous submission to the Department dated 21 October 2011 and also follows HRA's input into the recent Productivity Commission Inquiry into Gambling (2010) and the inquiry by the Joint Select Committee on Gambling Reform into interactive and online gambling advertising (2011).

Submissions

1. Horse racing should be exempted from prohibitions contained in the IGA

HRA welcomed the Interim report recommendation to continue to exempt horse and greyhound racing (the racing industry) from the prohibitions contained in the IGA with respect to online wagering.

As previously stated, the racing industry and wagering are inter-related. The primary purpose of staging racing events is for the purposes of wagering. This has been the case since the industry began operating in Australia in the early 19th century. As a result, the racing industry is uniquely equipped to monitor and regulate betting on its racing product and to ensure the highest standards of integrity are upheld.

The integrity departments and disciplinary structures of racing controlling bodies are mature (having been operating since the industry commenced), sophisticated (there is a long history of rules and precedents regulating the industry) and well resourced (dedicated and experienced integrity departments with extremely strong powers and substantial funding).

Income from wagering is the primary source of funding for the racing industry and so ensuring the highest integrity standards are maintained is crucial.

Accordingly, racing should be permitted to offer all bet types including 'in the run' betting, whether online, over the telephone or in person. Of all the sports industries, the racing industry is best placed to determine if it is in the industry's interest to offer this type of betting.

The integrity principles and dedicated resources are unique to the racing industry and do not exist to the same standards in other sports, where betting is a relatively new phenomenon. HRA submits that it is appropriate, therefore, for the racing industry to be exempted from any additional prohibitions regarding 'in the run' betting.

2. Sporting controlling bodies to approve bet types

HRA supports Interim Report recommendation 27 and the requirement for all bet types to be approved by a national controlling body or regulator, prior to being offered by a wagering operator.

However, HRA encourages the Department to consider strengthening this requirement to ensure national controlling bodies and regulators have established appropriate rules and disciplinary structures, as well as adequate resources to oversight these rules, so as to deal effectively with integrity issues when they arise.

HRA also considers dovetailing the approval requirements with the changes proposed relating to match fixing is a positive starting point.

3. Government to take all measures to restrict access to illegal, overseas based gambling operators

HRA supports Interim Report recommendations 9, 10 and 11 relating to measures the Australian Government can take to prohibit overseas based wagering operators accessing Australian customers.

While acknowledging there are significant challenges, including those relating to jurisdiction and enforcement of penalties, in using financial payment

blocking mechanisms to prohibit illegal gambling providers accessing Australian customers, HRA strongly supports the Department of Treasury continuing to monitor overseas developments in this area.

HRA also specifically endorses amending the IGA to provide a safe harbour for financial institutions that block transactions between Australian consumers and unlicensed gambling service providers (recommendation 9).

Conclusion

HRA wishes to emphasise the unique position of the racing industry, particularly when viewed and assessed against other sporting bodies. Racing is an industry predicated on wagering and as a result, relies on maintaining strict integrity rules and regulations. For this reason, racing should not be subject to the same restrictions on bet types and mechanisms as other sporting industries that do not rely on wagering as a primary source of income.

**SUBMISSION TO THE
JOINT SELECT COMMITTEE
ON GAMBLING REFORM**

**SUBMISSION OF
HARNESS RACING AUSTRALIA
JULY 2011
Andrew Kelly
Chief Executive**



Introduction

Harness Racing Australia (HRA) welcomes the opportunity to comment on the issues being reviewed by the Joint Select Committee on Gambling Reform.

HRA is the peak national body for the sport and business of harness racing in Australia. HRA represents more than 40,000 owners, over 7000 trainers and drivers and the many thousands of people employed by the industry and ancillary industries.

Over 90% of the revenue generated by the harness racing industry comes from wagering. Indeed, the link between the racing industry and wagering is unique and distinguishes it from other sports. Racing is directly dependent on wagering and exists to provide product for punters to wager on. Whilst an AFL game or cricket match can go ahead without betting, and its participants are no worse off, the racing industry would not exist without wagering.

The racing industry's unique relationship with wagering means that the views of HRA on the issues being explored by the Joint Select Committee on Gambling Reform are predicated on ensuring its business is sustainable and continues to provide meaningful employment for the tens of thousands of Australians who depend on the industry for their livelihoods.

In this submission, HRA wishes to focus the Joint Select Committee's attention on the following issues:

1. Integrity is paramount in the racing industry – other sports must lift their standards
2. A national regulatory regime for gambling is supported
3. Wagering must continue to be exempt from the Interactive Gambling Act 2001
4. Racing must not be disadvantaged vis a vis the other sports given its strong integrity standards, particularly in respect of 'in the run' or 'spot' betting
5. Gambling advertising and pricing/odds updates on sports should be limited to dedicated channels where strict integrity measures can be enforced

HRA encourages the Joint Select Committee on Gambling Reform to keep in mind the unique position of the racing industry when considering Interactive Gambling Act 2001

(IGA) reforms.

1. Integrity is paramount in the racing industry – other sports must lift their standards

Fundamental to the size, growth and ongoing sustainability of the racing industry is its ability to demand the highest standards of integrity. The racing industry understands it is imperative that significant resources are devoted to integrity measures in order to ensure consumers continue to have confidence in its product.

For this reason, the three codes of racing devote substantial financial and human resources to their integrity departments. Stewards have long been the custodians of integrity in racing. Over a number of decades, Stewards have been vested with strong powers over participants to ensure they have the ability to address integrity breaches and to ensure the punter is confident that races are run fairly and free from corruption or malfeasance.

There have been many attempts over the years to argue that Stewards' powers are too strong or infringe on civil rights. Legal challenges going all the way to the High Court of Australia, however, have repeatedly failed, with the powers vested in Stewards by the racing controlling bodies upheld by the courts.

The racing industry has been successful in justifying the powers vested in Stewards on the basis that public confidence in the racing product is paramount. State legislatures have also repeatedly supported the racing controlling bodies in their quest to ensure the highest standards of integrity are upheld.

In 2009, the Victorian Parliament legislated to create Australia's first Racing Integrity Commissioner. This position acknowledges not only the importance of ensuring that the public has confidence in the racing product, but also provides an endorsement of the importance of the racing industry to the State of Victoria generally. As was stated during the second reading speech to introduce the bill to create the Racing Integrity Commissioner:

Implementing these measures will enhance integrity assurance provisions in Victorian racing. This will have the effect of bolstering the perception of integrity among all

participants and will increase the value of the Victorian racing product.¹

The growth of betting on sports (other than racing) over the past decade has occurred without the same emphasis on integrity. The reasons for this include the fact that the growth has largely been driven by sports betting providers, rather than the sports themselves. In fact, many sports have had little or no influence over the betting which has been offered by the sports betting providers on their sports.

The original growth in sports betting came from the emergence of bookmakers operating in the Northern Territory, who were granted licenses to bet on sports without any requirement to enter into satisfactory financial or integrity arrangements with the sports themselves.

The lack of financial return from sports betting means a serious investment in integrity has not been prioritised by most sports. In cases where there have been suspect betting transactions concerning a particular sport, too often the controlling body has been ill equipped to investigate and ultimately address the incident. In some instances, the sport has had to rely on the police and the criminal law to investigate and prosecute the matter. This has often been a costly and protracted exercise which damages the sport, its participants, the punters and the betting product.

Another area of sports betting which requires urgent reform, relates to the disclosure of critical information to punters. HRA submits that it ought to be mandatory for sports to disclose performance related information, such as team selection changes, differing match day tactics or batting line-ups to punters.

The racing industry, as part of its commitment to integrity, ensures that full disclosure of performance related information such as injuries, form reversal, and 'tanking' (deliberately losing for a favourable longer term outcome) such as is investigated by Stewards, while changes to gear, training or race tactics must be conveyed to Stewards by participants. The Stewards then ensure the information is passed on to the public. This assures punters that they are fully informed and can place their bets with confidence. If Stewards are not satisfied that participants have been forthcoming with

¹ Racing Legislation Amendment (Racing Integrity Assurance) Bill 2009 (VIC), Second Reading Speech, 29 July 2009
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the necessary disclosures, they will take action against the participants and if appropriate, impose penalties.

Further, here is complete transparency in the racing industry integrity activities. Swab samples and results are available to the public, while positive tests to banned substances, associated inquiries and penalties are also made public.

For sports to ignore this basic requirement highlights the naivety with which many have treated sports betting and again emphasises the need for standards to be lifted significantly.

HRA believes that betting on sports should only be permitted if strict integrity measures are enforced by an appropriately empowered and competent regulatory body. If the controlling body cannot demonstrate this ability, betting on its product should not be allowed.

2. A national regulatory regime is supported

The regulation of wagering on racing has traditionally been the domain of the states and territories. For over one hundred years, this proved successful, particularly when each State Government owned and controlled its own TAB, bookmakers were permitted to operate only when situated on a racecourse and arrangements existed between states regarding betting on each other's racing product.

The privatisation of TABs, the emergence of telephone and online betting and the changes associated with globalisation, has irrevocably altered the wagering landscape. No longer are state and territory borders relevant and the protectionist policies of past decades have gone, replaced with an emphasis on competition and free trade. The result is inconsistent regulation being imposed by states and territories, including different taxation rates. For the racing controlling bodies, the prevalence of 'free-riding' bookmakers, located in small jurisdictions, paying little or no tax to the local government and providing minimal or no return to the racing controlling bodies, has had a detrimental effect.

A national regime would not only rectify the ‘free-riding’ problem but also allow the Government to mandate a consistent approach to issues such as problem gambling, money laundering and taxation – the very issues of particular interest to the Joint Select Committee on Gambling Reform.

HRA would support the establishment of a national gambling regulator. Its powers could include:

- licensing of betting providers including adherence to strict integrity, problem gambling, harm minimisation and financial measures
- reviewing a sports capability, particularly with respect to integrity standards, to enter into arrangements with betting providers
- banning unscrupulous operators including international betting operators who do not adhere to integrity or financial standards

HRA believes, however, that even in a national regulatory system, the producer of the product – albeit the racing or sports controlling bodies – must retain the right to determine which betting providers are permitted to bet on their product and what product fee they pay the industry in return.

On the issue of whether a turnover or gross revenue fee is best, HRA strongly believes it ought to be up to the industry to determine. The role of the Government should be to ensure the controlling body has the necessary legal powers to determine the conditions on which its product is bet on, rather than to determine the type or quantum of fee to charge.

The Joint Select Committee on Gambling Reform ought to consider the benefits of a national approach to implement its social and economic reforms.

3. Wagering must continue to be exempt from the Interactive Gambling Act 2001

When it was enacted in 2001, wagering was specifically exempted from the Interactive Gambling Act (IGA). HRA supports this continuing exemption, but only on the basis it

cannot be exploited by internationally “footloose”² wagering providers. This term was used by the Productivity Commission in its 2010 report to describe the practice of bookmakers relocating their businesses away from established jurisdictions to avoid paying tax or contributing to the controlling body on whose product they are wagering.

It is essential that all betting providers which seek to profit on Australian racing or sporting events, regardless of where they are located, comply with strict integrity and financial standards. In this regard, the IGA should be strengthened to allow the blocking of ISPs from internationally “footloose” wagering providers.

HRA also recommends the IGA be amended to prohibit financial institutions from processing transactions from non-approved online gambling sites. Whilst the IGA currently provides a mechanism for regulations to be made relating to financial agreements involving illegal gambling services, to date there have not been any regulations made.

The United States Federal Government has led the way in this area, with the *Unlawful Internet Gambling Enforcement Act 2006*. The incorporation of similar provisions in the IGA would enhance Australia’s ability to ensure that punters deal with betting providers who have been approved by the appropriate regulatory body. This would ensure punters are dealing with betting providers who meet minimum integrity, harm minimisation and problem gambling standards.

4. Racing must not be disadvantaged vis a vis the other sports given its strong integrity standards, particularly in respect of ‘in the run’ or ‘spot’ betting

HRA believes that the racing industry, with its strong record in integrity, is the best placed of all product providers to manage ‘in the run’ or ‘spot’ betting. An unfair anomaly currently exists which allows this type of betting to be offered on sports, but does not allow it to be offered on racing.

Unless a sport has the ability and the resources to enforce the highest of integrity standards, as discussed above, ‘in the run’ or ‘spot’ betting should not be permitted.

² Productivity Commission 2010, *Gambling*, Report no.50, Canberra, p15.1

HRA submits that on the current evidence, the racing industry is well placed to manage this type of betting.

If a national regulator was in place, that body could determine the appropriateness of a particular sports controlling body to allow 'in the run' or 'spot' betting on its product.

5. Gambling advertising on sports should be limited to dedicated gambling channels where strict integrity measures can be enforced

HRA notes the Joint Select Committee's interest in gambling advertising including the level of gambling advertising; the display of betting odds at venues and during match broadcasts; commentators referring to the odds and the general impact of gambling on sport.

As stated earlier, racing's commitment to integrity and its direct link to wagering, places it in a different position to other sports and this applies in respect of the use of advertising and its impact on the sport.

The broadcast of wagering betting odds, the analysis of weather, gear and track conditions, movements in betting odds and commentary by racing experts about a horse's prospects in a race, are all part of the delivery of the racing product. As a result, advertising of wagering odds and information related to wagering, is strictly regulated by the Stewards. If misinformation is broadcast or suspicious comments made during a race broadcast from licensed racing participants, the Stewards will take action. The overriding concern is to ensure that the public is fully informed about a horse's chance in a race and that those connected to the horse do not gain an unfair advantage over the general public. The Stewards have even introduced rules to ensure that social media forums such as twitter cannot be used to convey misleading information.

Furthermore, when people switch on a race meeting on television, whether it be a free to air broadcast or a dedicated pay television racing channel, or a dedicated racing radio station, they do so fully aware that they will have betting odds and updates provided to them. This is a conscious decision on the part of the racing enthusiast. The same cannot be said for viewers – often families – watching a cricket, AFL, rugby or Brownlow Medal

broadcast.

The broadcast of betting odds during a sporting event appears to be no more than a revenue raising exercise for the television or radio station or the individual commentators. Of particular concern is the lack of regulation by the sport as to the nature of the information which is communicated to the viewer, and when it is conveyed.

A vulnerable and spontaneous punting public who are motivated by the design of such information are then met with special deals such as matched bets or bet bonuses, particularly when setting up new accounts.

Of course corporate bookmakers rely on losers to make their profit, rejecting the bets of a customer who becomes too successful.

When considering this issue, thought should be given as to the demographic of the audience. The advertising of betting during sports coverage for example has an entirely different demographic to that of racing coverage. No doubt a significant proportion of under 18's watch sporting events and to have betting odds provided by their "heroes" or commentators sends a message which can quite conceivably assist in the development of the next generation of problem gamblers.

Also of increasing concern is the lack of regulation over the types of bets which sports betting providers can offer and advertise, and the absence of formal approvals being required from the sporting body. A recent example of this was from global online gambling operator, Sportsbet³, which offered a promotion on the Round 17, AFL Carlton v Collingwood match (17 July 2011). The offer provided that any losing bet placed on the match by a punter would be refunded in full if the Carlton captain and dual Brownlow medallist, Chris Judd, obtained the most possessions in the match.

It is difficult to see how this promotion could possibly be in the best interests of the AFL or indeed the player concerned. In such a situation, should the player's performance be of below par standard, or if he is subjected to an unusual occurrence during the match,

³ www.sportsbet.com.au "Massive Judd Refund"

or injury, questions could potentially be raised about the integrity of the match, or even the player concerned.

HRA submits that advertising on any type of gambling should be limited to dedicated television or radio programs, where the viewer or listener is aware there will be betting odds and gambling related information broadcast.

This would enable information to be strictly regulated by a robust integrity regime. In addition, sports betting providers should only be allowed to offer and advertise bets which have been approved by a competent sport controlling body.

Conclusion

Unlike other sports, the racing industry is dependent on wagering. As a result, the industry demands and commands the highest standards of integrity. It achieves this by devoting substantial resources to integrity and by providing broad powers to Stewards.

Given the increase in gambling on sports (other than racing) in recent years, it is imperative that the high standards of integrity expected and achieved in the racing industry are replicated in the other sports. If sports are to benefit from gambling, they must increase their commitment to integrity. If they cannot do this, betting or gambling advertising, should not be allowed on their sports.

The creation of a national gambling regulator could ensure that minimum standards are met by both the sporting controlling bodies and by the betting operators.

A national regulatory body would also allow the Government to promote measures to best address any concerns arising from the social and economic impacts of gambling.

HRA encourages the Joint Select Committee on Gambling Reforms to use its current review of the IGA to implement these important reforms.