

GAMBLING

PRODUCTIVITY COMMISSION INQUIRY

Submission of

AUSTRALIAN RACING BOARD

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i Introduction and approach

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

This response considers each of the following topics from within the Terms of Reference established by the Assistant Treasurer:

- The nature and definition of gambling and the range of activities incorporated within this definition; (TOR 1)
- The economic impacts of the gambling industries, including industry size , growth, employment, organisation and interrelationships with other industries, such as tourism, leisure, other entertainment and retailing; (TOR 3)
- The social impacts of the gambling industries, the incidence of gambling abuse, the cost and nature of welfare support services of government and non-government organisations necessary to address it; (TOR 4)
- The contribution of gambling revenue on community development activity and employment; (TOR 5)
- The effects of regulatory structures – including licensing arrangements, entry and advertising restrictions, application of the mutuality principle and differing taxation arrangements – governing the gambling industries, including the implications of differing approaches for industry development and consumers; (TOR 6)
- The implications of new technologies (such as the internet), including the effect on traditional government controls on the gambling industries; (TOR 7)
- The impact of gambling on Commonwealth, State and Territory Budgets; (TOR 8)
- The impact that the introduction of harm minimisation measures at gambling venues has had on the prevalence of problem gambling and on those at risk; (TOR 9)
- Evaluate the effectiveness and success of these harm minimisation measures used by the State and Territory Governments. (TOR 10).

The ARB welcomes the opportunity to contribute to the Commission’s Inquiry into gambling in Australia. Our approach responds to the topics raised by the Terms of Reference, but goes into most detail on the changing wagering landscape and consequential challenges to the future of the racing sector. We first address the scope and current contribution of the Australian Thoroughbred Racing Industry (ATRI), using a broad industry definition. We then analyse the forces shaping the wagering market today, both internal and external. We analyse the most significant factors that could affect the future of the ATRI and point to several attempts that have been made to measure their

probable impact. Finally we propose several policies concerning Australia's gambling industries and their influence on the future growth and sustainability of the ATRI.

Our submission is made on behalf of the ATRI because the ARB is the industry body for that racing code, though most of the issues also affect the harness and greyhound racing codes.

ii Executive Summary

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

Australian Racing and the Australian wagering market are financially interdependent, interrelated, and structurally linked. Today wagering inflows account for 65 to 70 percent of total Australian thoroughbred racing funding. The future sustainability of racing therefore requires continued strong inflows from wagering, and any changes to the wagering market are likely to affect racing's sustainability.

The wagering landscape in Australia is currently undergoing seismic change. In particular, the rapid growth of new types of Australian wagering operators – corporate bookmakers and betting exchanges has rendered the market virtually unrecognisable from the market which existed when the Productivity Commission carried out its 1999 Inquiry. These changes pose both opportunities and threats for the Australian Thoroughbred Racing Industry.

An issue that had emerged when the 1999 Inquiry was conducted and has subsequently grown exponentially in scale is that of wagering providers 'free riding' on the resources, time, effort and money invested to conduct and promote racing events.

Telephone and later online wagering made free riding physically possible and differences in regulatory requirements, taxes and racing industry payments across jurisdictions facilitated its growth. The emergence of new technologies for the distribution of wagering products—most obviously the rapid advances in the internet, the impact of which is now being extended with the growth in wireless services, have weakened each jurisdiction's control over wagering within its borders.

Given the future funding demands on the thoroughbred racing industry and the evolution of the wagering market toward what is observed internationally (such as the growing popularity of online wagering), it is expected funding for racing will remain under pressure. While racing industry payments from wagering experienced a relatively steady period of nominal growth from 1999 to 2005, future growth is projected to at best stagnate in real dollars in the absence of positive changes to wagering's current competitive and regulatory environment, and in the worst case decline.

The race fields model has been developed as a response to free riding requiring all wagering operators to provide a fair and reasonable payment back to the racing industry for the use of its product. A race fields regime is also important for integrity reasons to guarantee the Controlling Bodies of racing timely access to betting information which may be required to fulfil their responsibilities for the integrity of racing. To succeed, however, the new race fields legislation must allow the jurisdiction's Controlling Body to independently determine the structure and levels of fees with the wagering providers and take action to promote full compliance and enforcement action by the relevant government regulator.

Responsible gambling issues that are raised by the current changes in the wagering market include the proliferation of inducements and rebates.

It is submitted that a regulatory '*laissez faire*' approach to the current changes is not in the public interest. Gambling markets are, and have always been, a creature of regulation. The current scale and nature of the ATRI is not accidental: it is the product of a set of regulatory arrangements that have existed for some 40 years. It being accepted that a viable Australian Thoroughbred Racing Industry delivers a net public benefit, then the future regulatory framework for the wagering market must be such that enables not only the consumer benefits from competition between operators but also industry sustainability to be achieved.

This regulatory framework must also be national in nature, whether that takes the form of cohesive, complementary regulation by States or Territories working together collectively, or a nationally-administered framework. The current changes represent an irreversible disintegration of the capacity of State and Territory governments to individually regulate wagering.

The elements of a national policy approach should include:

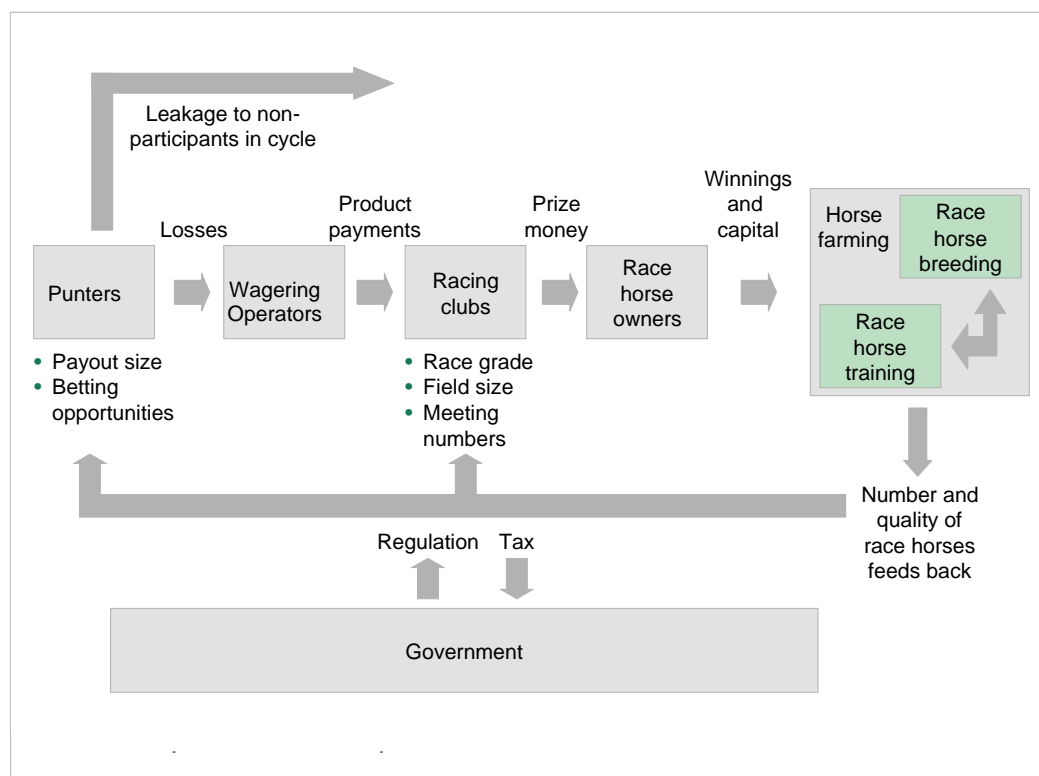
- a.** National endorsement of, and if needed, supporting legislation directed to the following:
 - Strong and enforceable race fields legislation that receives recognition and enforcement across State and Territory borders and which gives the ATRI the clear power to set the basis (turnover, gross profits or other) and level of the fees payable for use of race fields.
 - 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 fulfil industry integrity functions
- b.** Continuation of the section 8A exemption for remote wagering services maintained. Moreover, the prohibition of 'in the run' sports betting online should be maintained.
- c.** Offshore bookmakers should not be permitted to free ride on the ATRI. The IGA should be amended to extend the exceptions only to operators who have the requisite approvals to use race fields, so as to prevent free riding.
- d.** The IGA 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.
- e.** The power provided by section 69A of the IGA to make regulations creating financial transactions controls to enforce compliance with the IGA should be used.
- f.** All forms of wagering must ensure responsible gambling by their customers. The ATRI registers it support for:
 - A national ban on any wagering operator from providing credit to their clients.
 - A national ban on the offering of inducements and rebates.
 - A national set of advertising regulations that minimise the risk of problem gambling being exacerbated.

1 Relevance of the Australian Thoroughbred Racing Industry to the Commission's Inquiry into Australia's Gambling Industries

The Productivity Commission has been asked to undertake a 12 month public inquiry into Australia's gambling industries. We submit that, notwithstanding that the Australian Thoroughbred Racing Industry (ATRI) has some facets that if taken in isolation do not consist of "organisations that provide gambling services"¹, the ATRI, taken as a whole, has all of the characteristics that qualify it as an industry that should be examined by the Commission in the course of this Inquiry.

Put another way, the Australian Racing Industry is 'first cousin' to several families: the agricultural sector, the entertainment sector, and the sports sector, but its closest relationship is inarguably its connection with gambling. As was identified in the course of the National Competition Policy review process, these interrelationships consist of both structural links, through legislation, and financial interdependence². Exhibit 1, which describes income cycles between racing and wagering, illustrates the point.

Exhibit 1: Income flows in the wagering cycle



The importance to the ATRI of the Commission including us within its Inquiry is that many of the issues that are the focus of the Inquiry's terms of reference are matters which are of vital concern to the future of Australian Racing.

¹. Definition of gambling industries *Issues Paper* page 10

² NSW OLGR. 2001 *National Competition Policy Review of NSW Racing Betting Legislation*. Sydney, NSW

Here we refer specifically to:

- The economic impacts of the gambling industries (TOR3)
- The social impacts of the gambling industries (TOR4)
- The contribution of gambling revenue on community development activity and employment (TOR5)
- The effects of regulatory structures governing the gambling industries (TOR6)
- The implication of new technologies (TOR7)
- The impact of gambling on government budgets. (TOR8)

We believe that examination of those issues as they affect the ATRI will also be of more general utility to the Commission's Inquiry: Australian Racing was the nation's first gambling industry and for the much of its history Australia's largest gambling industry, so that the ATRI's circumstances are a prism that yields significant insights into gambling in Australia.

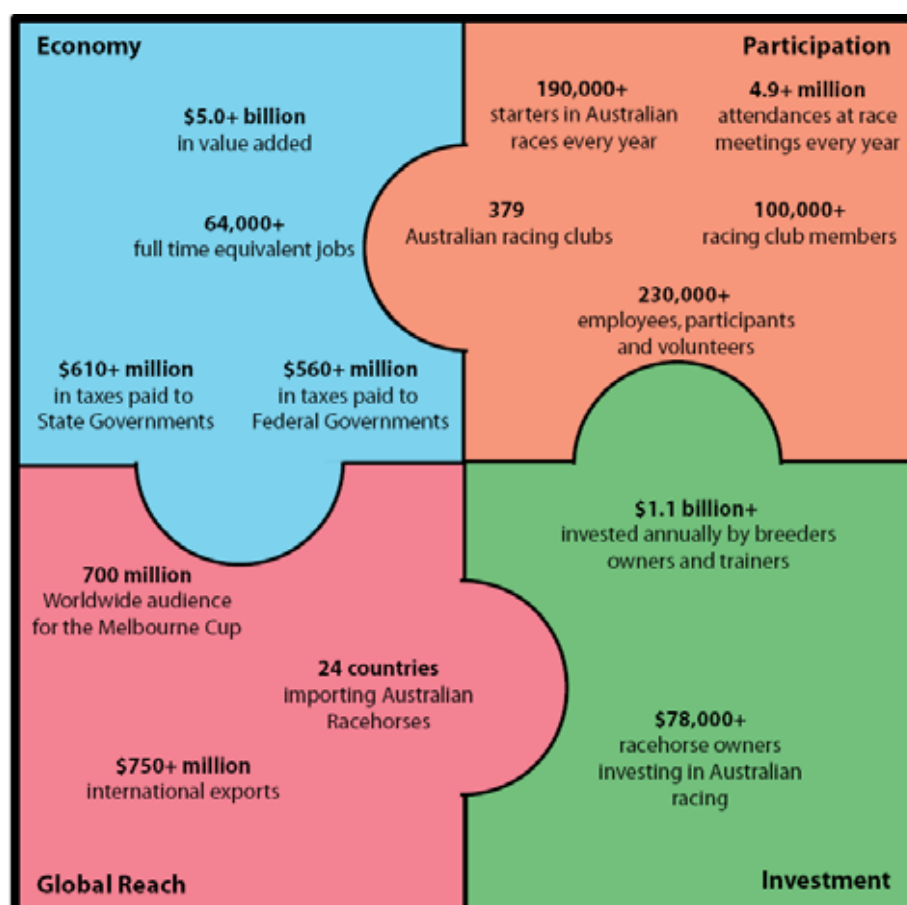
Finally, the interrelationship of gambling with sport, whilst not specifically identified in the terms of reference, is of increasing significance and recommends itself as an issue that should be examined in the course of a comprehensive inquiry into Australia's gambling industries. The experience of the ATRI is apposite in this regard.

2 Scope and contribution of Australian Thoroughbred Racing

2.1 Overview

The impact of the ATRI extends far beyond ‘declaration of correct weight’. The ATRI fills an integral place in the sporting life, cultural traditions and everyday economy of Australia. From the first official race meeting staged by Governor Macquarie at Hyde Park Sydney in 1810, Australian Racing has grown to a scale that would have been difficult to imagine two centuries ago, and has few equals anywhere in the world. Today, Australian Racing spans both the calendar and continent: over 17,000 thoroughbred races are held each year, staged in almost every part of Australia. On any given day there are between 40 and 300 races run, which as George Johnston observed “*is a pretty deafening thunder of hooves by any standard*”³. Here we provide a snapshot of the size and scope of the ATRI, illustrating the remarkable extent of its influence on Australia’s economic and social life.

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



Source: Australian Racing Fact Book; ABS attendance at sport

2.2 Definition of the Australian Thoroughbred Racing Industry

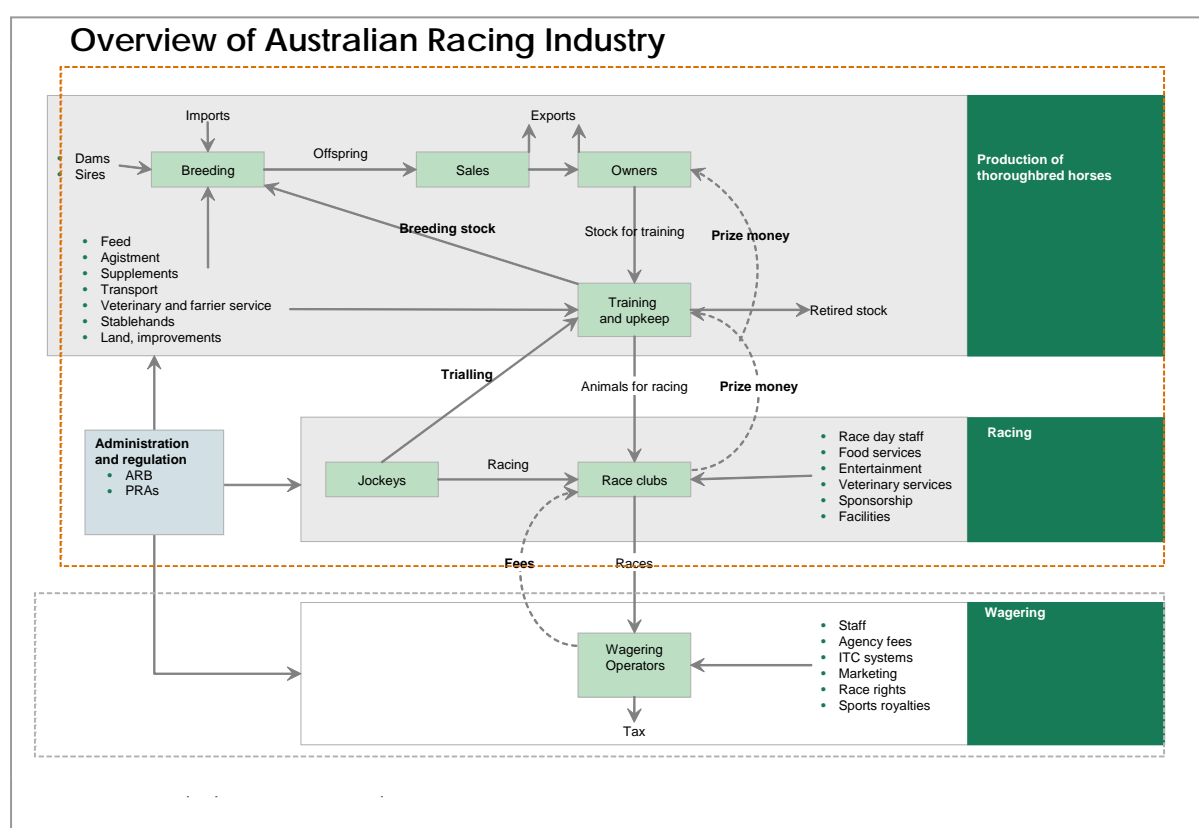
For the purposes of this submission, we have defined the Australian thoroughbred racing industry as comprising three integrated parts:

³ George Johnston, *The Australians*

1. The production of thoroughbred horses - this includes horse breeding, bloodstock sales, horse ownership, and the training and upkeep of horses
2. Racing - which entails the holding of race meetings and includes racing administration, race clubs and jockeys
3. Wagering - This involves operators such as bookmakers, TABs, corporate bookmakers and betting exchanges who accept wagers on races.

The industry also includes functions for administration and regulation. These are an integrated set of activities that have evolved together with the strongest links being between horse breeding, training and racing. Exhibit 3 illustrates this definition of the ATRI and the interrelationships between the key elements.

Exhibit 3: Industry overview



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

2.3 Significance of thoroughbred racing to Australia

The most recent and complete assessment of the ATRI was undertaken by IER for the ARB⁴ and covers the 2005-06 year. Including the direct and indirect impacts of thoroughbred racing together with their multiplier effects, the ATRI provided approximately \$5.04 billion in value added to the national economy. This represented 0.58% of Gross Domestic Product.

⁴ IER. 2007. *Economic Impact of Australian Racing*. Melbourne, VIC

Employment

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

Participation

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

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

Horse racing is one of Australia's oldest and most popular sports. The first organized thoroughbred race meeting in this country was held in Hyde Park, Sydney, in 1810, with Governor Macquarie in attendance. Today, about 2 million Australians attend a thoroughbred race meeting at least once per year, ranking it second only to AFL in terms of attendance⁵. While racing's best known event, the Melbourne Cup, is now an international spectacle viewed by 700 million people, at the same time racing continues largely unchanged in picnic meetings run throughout country Australia where almost every place big enough to be called a town – as well as in some that are not – has its own racetrack. For many rural communities, their Cup race day remains one of the social highlights of the year.

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

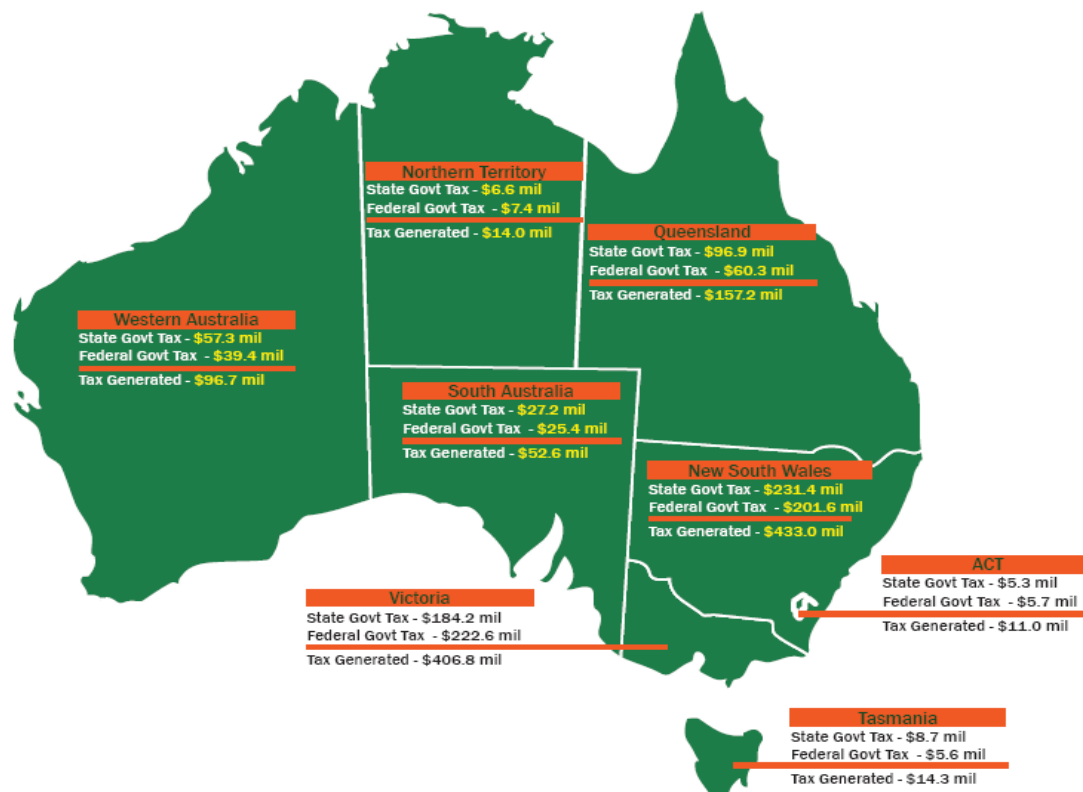
Indeed, it can be said that Australia has three truly national days: ANZAC Day; Australia Day; and the Melbourne Cup.

Taxation revenue

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

⁵ [ABS Attendance of Sport](#).

Exhibit 4: Taxation



Source IER.

2.4 International significance of Australian Thoroughbred Racing

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

On a per capita basis Australia has arguably the strongest racing industry in the world. Even in aggregate terms the ATRI ranks in the top 3 racing industries in the world on all industry indicators notwithstanding its much smaller population and economy *vis a vis* competitors such as the US, Japan, Great Britain and France.

Exhibit 5: Australian thoroughbred racing on a world stage

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

Source: ARB Australian Racing Fact Book

2.5 Conclusion

The ATRI spans a network of activities that starts with people choosing to wager on thoroughbred horse racing which creates the demand for the bloodstock industry. Wagering provides the prize money to horse owners who fund breeding and training, the success of which affects the scale and quality of thoroughbred racing events, which in turn affects wagering demand.

The ATRI makes significant contributions to the Australian economy through employment, valued added, and tax paid. A large part of the Australian population participates in thoroughbred racing, directly by producing and delivering the racing product, or indirectly by attending race meetings and wagering. Any decline in funding that led to a contraction in the size of the thoroughbred racing industry would have wide flow-on effects.

3 The Australian wagering market

3.1 Wagering as a segment of the gambling market

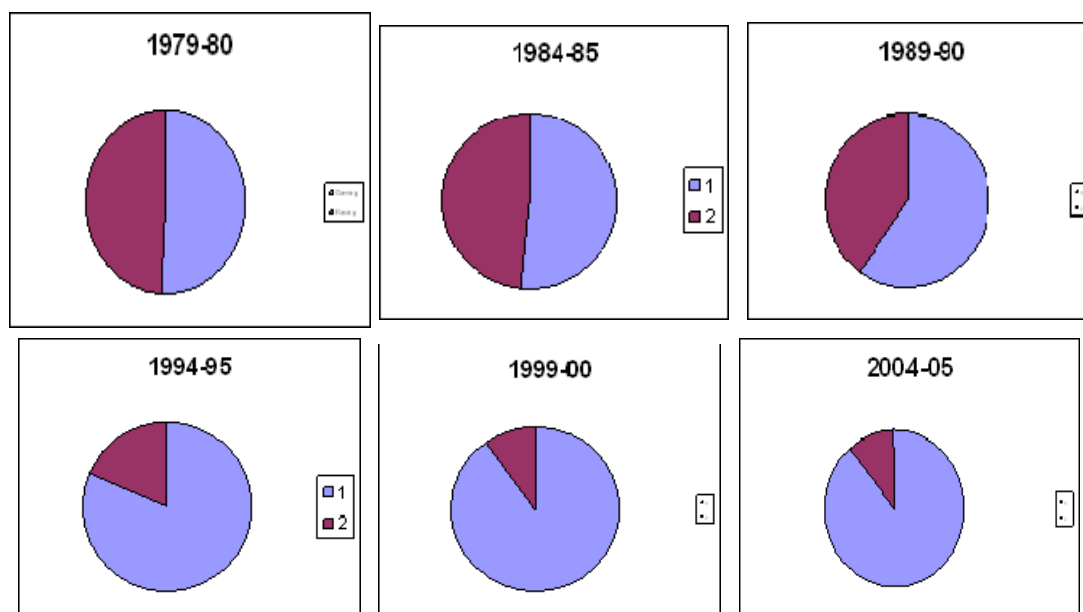
Wagering is a readily delineated subset of the gambling market. Wagering is distinguished from other forms of gambling, such as casino games, electronic machines, keno and lotteries (collectively known as “gaming”), because the probability of winning is not purely random – for example, punters can improve their chances of winning by studying the form of the participants in the event. The Australian wagering market takes in all forms of betting on both racing and other sports (sports betting).

Horse racing was the first form of organised gambling in Australia. By the late 19th century, horse racing had become a popular form of entertainment, with racetracks built in every major town. Betting activity, initially facilitated by local bookmakers, has always been closely associated with the development of racing. The totalisator was introduced by the 1890s to racecourses in several States, increasing both track attendance and interest in betting.

To counteract illegal off-course betting, State governments progressively introduced off-course totalisator agency boards (TABs). TABs grew to dominate wagering on racing in Australia and are perhaps the most identifiable wagering brand name anywhere in the world.

Up until the 1970s, race wagering was the most popular form of gambling in Australia, generating most of the gambling tax revenue collected by State governments. Since then, the liberalisation of other forms of gambling – notably, casinos and gaming machines – has reduced the market share of wagering from 40 per cent of the gambling market in 1989-90 to 11 per cent in 2004-05.

Exhibit 6: Wagering as a segment of the gambling market



Source: ARB Australian Racing Fact Book

Looking to the future, while the Productivity Commission has noted the post 1990s deceleration in gaming expenditure (attributed to a ‘maturing’ of the market for EGMs) there is a prospect of wagering on racing facing increased competitive pressure from this quarter. For example, BCG⁶ notes that whereas gambling on EGMs is at present an essentially passive activity, changes in the type of game offered could see EGMs compete much more directly with wagering in terms of involvement, excitement and the desire to win. The major EGM manufacturers have been demonstrating machines that closely parallel computer and video games and have the potential to appeal to the rapidly growing segment of the population who have grown up with computers and the internet (‘Generation Y’). In contrast to traditional EGMs:

- They are participatory and social. For example, two people may play against each other on the same machine, or a group of machines may be networked to allow groups to play among themselves.
- They entail skill, both physical and mental, that affect the chance of winning. For example, the machines will have joy sticks and other controls, and they may entail problem solving and successive levels of difficulty. The fact that they are not games of chance may pose additional regulatory issues.

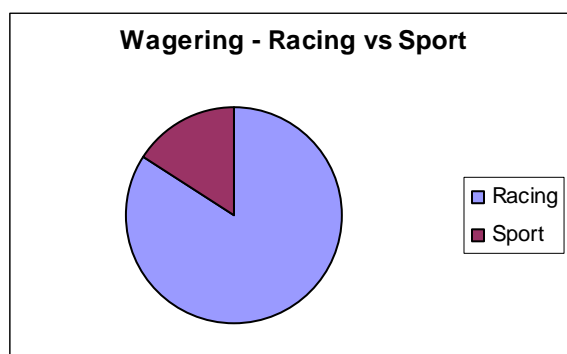
For race wagering, such machines will provide new challenges in competing for the discretionary spend of the rapidly growing Generation Y.

Another imminent technology is the introduction of server-based gaming. Unlike today where games are embedded in the machine hardware, in future games will be software based and able to be updated almost instantly, and adapted to match the player.

3.2 Race wagering vs. Sports betting

Within the wagering market, while betting on other sporting events has increased significantly, particularly since the mid-1990s, racing is the predominant wagering contingency. In 2007/08 the three codes of racing represented approximately 85% of the total Australian wagering turnover, with the other sports collectively representing some 15% of turnover.

Exhibit 7: Wagering – Racing vs. Sport



Source: ARB Australian Racing Fact Book

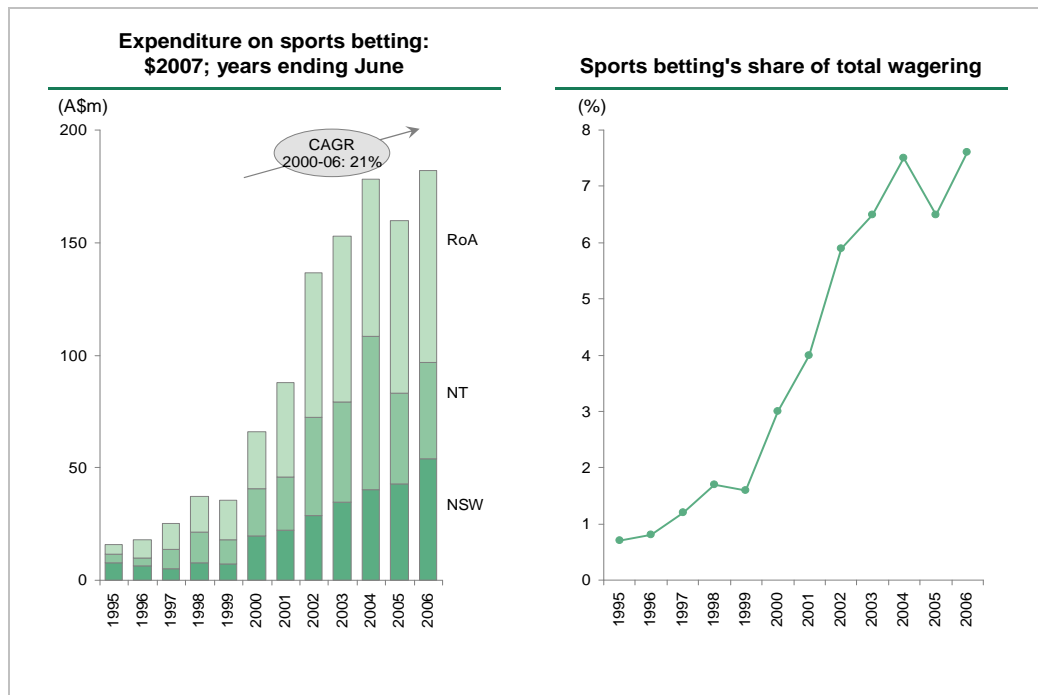
Sports betting shares some common features with race wagering in that it is active, participatory, and benefits from prior knowledge. Probably the key difference is that betting is a secondary reason for people to follow sports, whereas in racing, wagering is

⁶ The Boston Consulting Group (BCG) in its report prepared for the Cameron Review of wagering issues in NSW.

typically the main reason. Also, many more people believe they have the know-how and insight to the outcome of sporting fixtures than horse races.

Sports betting is the fastest growing area of gambling in most western countries, including Australia. Since the year 2000, expenditure on sports betting has grown at an annual compound rate of 18 percent a year in real terms, though starting from a small base (Exhibit 7).

Exhibit 8: Sports betting expenditure



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

BCG has identified that the key drivers of the rapid growth in sports betting include:

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

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

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

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

In Australia, the *Interactive Gambling Act 2001* (IGA) limits in-play betting to phone and face-to-face bets and prohibits it via the internet. NT corporate bookmakers and Betfair both promote in-play betting heavily and Australian residents can still place in-play internet bets through UK bookmakers.

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

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

3.3 Types of racing wagering operations

(a) On-course Bookmakers

From Archer's 1861 Melbourne Cup to the milieu of today's racing tracks, on-course bookmaking activity has been an exciting and essential part of the ATRI.

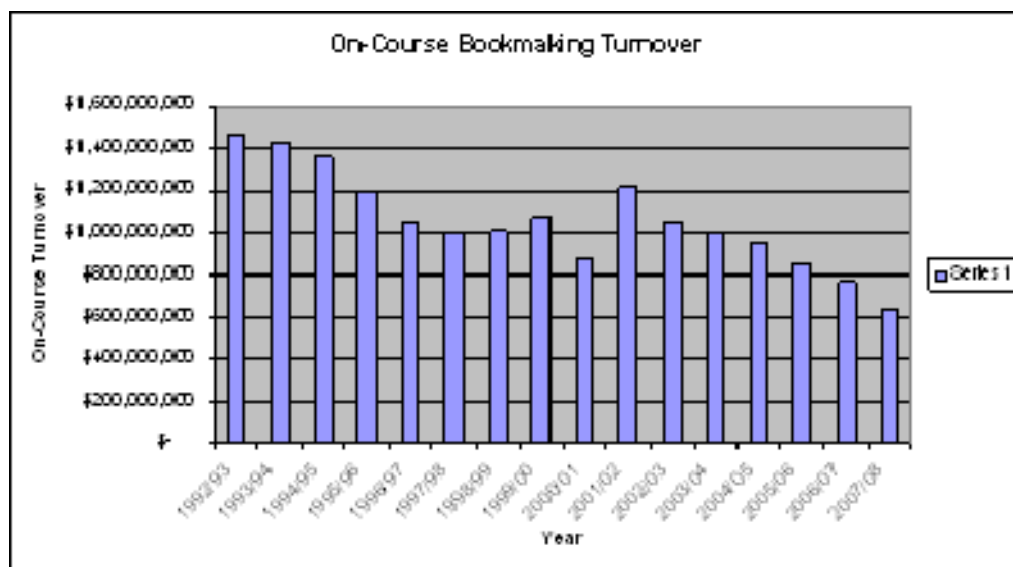
Today there are approximately 650 bookmakers across Australia. As individuals who are licensed to provide fixed odds wagering services on racing, bookmakers require approval by the relevant racing Controlling Body to operate within their jurisdiction. Apart from the terms of conditions of their licence, the major restrictions on bookmakers are minimum wagering obligations and in some jurisdictions controls on the publishing of their odds. (In terms of recent developments it may be noted that the Victorian Government is in the process of removing its long standing restriction on the publication of betting odds during race meetings in recognition of the widespread availability of this information across Australia.)

Bookmakers primarily offer fixed odds win and each-way betting, although place, doubles and other bets are also available. Traditionally, bookmakers have been restricted to providing these services whilst on-course i.e. bookmakers have been allowed to provide their services, whether face-to-face or via the telephone (and more recently via the internet), only whilst the bookmaker is on-course. More recently some jurisdictions have allowed bookmakers to provide off-course wagering via the phone and internet for racing futures and sporting events.

The on-course bookmaking market is very competitive. Providers are clustered together in a betting ring at the race-track, and on-course prices available are often better than not only starting prices, but also better than official fluctuations.

On-course bookmaking has experienced consistent decline over the past 30 years. Exhibit 9 shows this long-run downward pressure on on-course bookmaking turnover.

Exhibit 9: On-course bookmaking turnover 1992/93 – 2007/08



Source: ARB Australian Racing Fact Book

(b) Corporate Bookmakers

Recent years have seen the strong growth in wagering activities of corporate bookmakers. These bookmakers differ from stand-up bookmakers in two important respects. First, they are large businesses that operate from premises on-course on a 24/7 basis and receive their bets over the telephone and the internet. As such, they do not directly contribute to the racing experience of those attending the racetrack. Second, they offer some derivative products that stand-up bookmakers in some jurisdictions are prohibited from offering. Derivative products are generally designed to attract customers based on price, offering the prospect of guaranteed better dividends than on-course bookmakers and TABs.

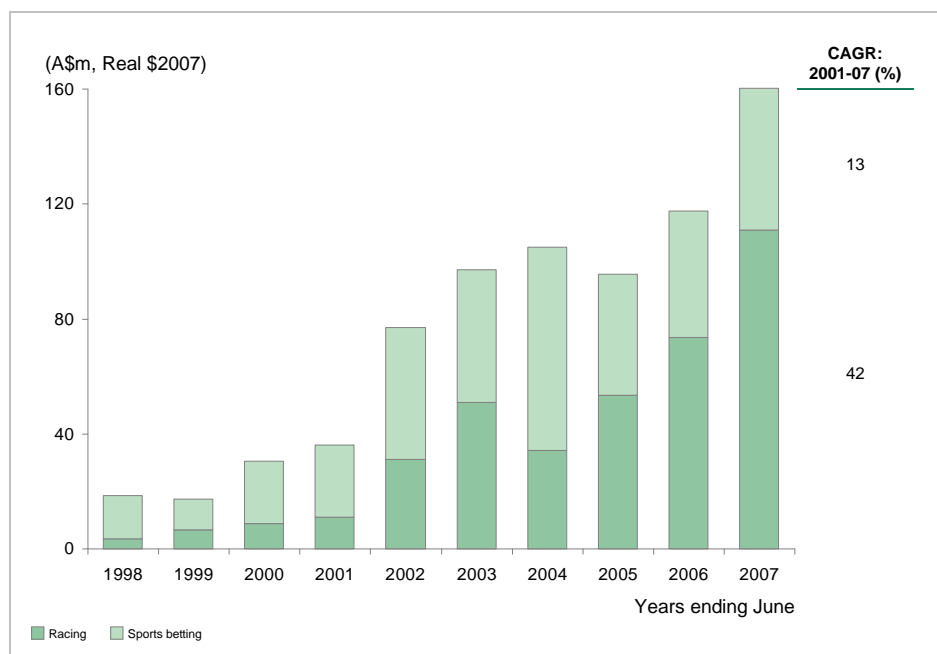
Corporate bookmakers are fully incorporated, often listed companies or subsidiaries of listed companies. Today corporate bookmakers are predominantly located in the Northern Territory. In 2006/07, NT bookmakers' share of Australian race wagering turnover (the total amount wagered) is estimated to be 16 percent and for sports betting turnover, 42 percent⁷.

The rate of growth for race wagering through NT bookmakers is very high (Exhibit 10). In 2008 the entry of TABCORP into NT bookmaking through the vehicle of Luxbet underscored the seemingly ineluctable momentum of this growth.

The main competitive advantage of interstate corporate bookmakers is favourable regulation: (i) low betting duty, (ii) lower payments to the racing industry, and (iii) very few operating restrictions compared with bookmakers in other States. The freedom with which corporate bookmakers can operate on the internet also means that they have a very low-cost operating structure.

⁷ Queensland Treasury. 2007. *Australian Gambling Statistics 1980-81 to 2005-06*; Australian Racing Board, op. cit.;

Exhibit 10: Wagering expenditure for NT corporate bookmakers



Source: Queensland Treasury. 2007. Australian Gambling Statistics 1980-81 to 2005-06; NT Government. 2008. www.nt.gov.au/justice/licenreg/statistics/statistics.shtml

As noted the strength of this trend has taken such deep hold that even one of the other major TABs, TABCORP, has elected to participate through its Luxbet operation.

One matter that should be particularly noted in considering these growth figures for corporate bookmakers is the impact of advertising restrictions. A number of States have legislation prohibiting advertising by out-of-state wagering operators, including interstate corporate bookmakers. Although this prohibition has been poorly enforced it was a limited brake on the growth of corporate bookmakers and betting exchanges racing websites carrying advertisements for NT bookmakers⁸. Following the High Court ruling in *Betfair v. the Western Australian Government* these advertising restrictions have essentially been dismantled; and are expected to be formally removed from State legislation. This has triggered an explosion of advertising which it is anticipated will be reflected in a further spurt in corporate bookmaker turnover in 2008/09 and beyond.

(c) TABs

Participants in totalisator (tote) betting place a unit wager on the horse they are backing to win, which is placed into a race pool. The winning bettors share equally in the total amount wagered, less a percentage retained by the operator. This means that the odds or return to a successful bet is not known until after the event, though punters can observe an approximate payout before the event, which is progressively updated as bets are placed.

The TABs were established between 1961 and 1985 in each State and Territory. With some relatively minor exceptions (eg. Port Pirie in South Australia) the introduction of TABs was accompanied by the closure of bookmaker betting shops in jurisdictions where they had existed up to that time (Northern Territory, South Australia and Tasmania).

⁸ Sportingbet, a NT bookmaker, was successfully prosecuted in the NSW courts in 2005 for advertising in print in NSW.

Between 1994 and 2002, the TABs in Victoria (1994), NSW (1998), Queensland (1999), NT (2000) and SA (2002) were privatised. Exhibit 11 shows the current holders of the 8 TAB licences.

Exhibit 11: Holders of TAB licences

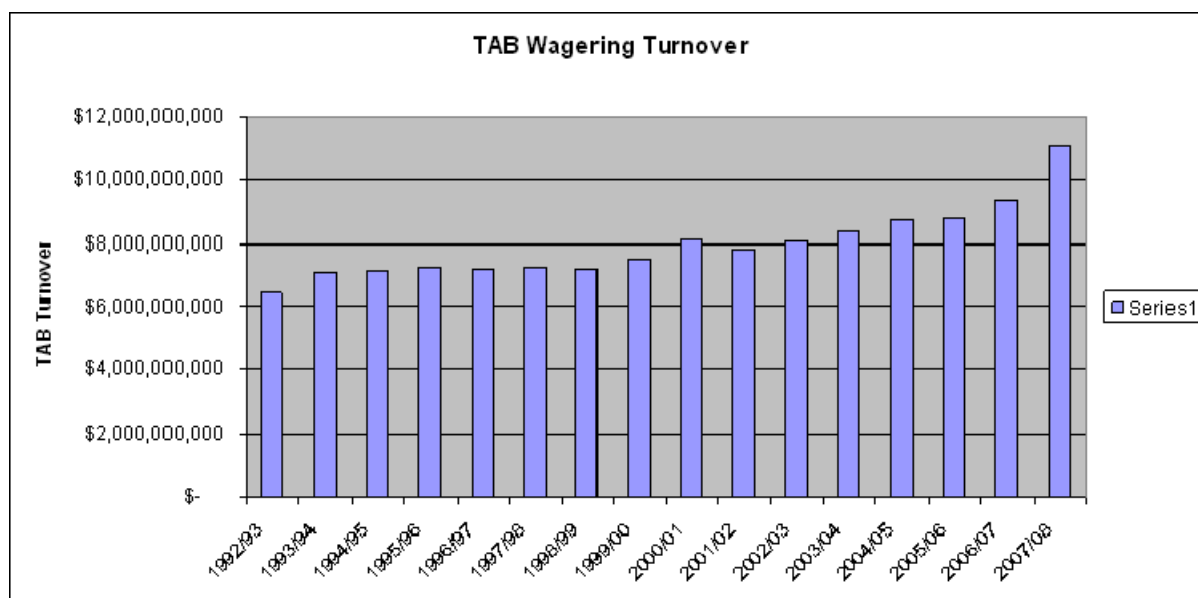
Jurisdiction	Totalisator Licensee	Affiliation
NSW	TAB Limited	Wholly owned subsidiary of TABCORP, currently operates stand alone NSW pool
VIC	TABCORP	Operates superTAB pool
QLD	UniTAB	Operates Queensland pool
WA	RWWA/TAB	Government owned, part of SuperTAB pool
SA	SA TAB Pty Ltd	Wholly owned subsidiary of UniTAB, part of UniTAB pool
TAS	Tote Tasmania Pty Ltd*	Government owned, part of SuperTAB pool
ACT	ACTTAB	Government owned, part of SuperTAB pool
NT	NT TAB Pty Ltd	Wholly owned subsidiary of UniTAB, part of UniTAB pool

Source: ARB Compilation

* Currently undergoing privatisation.

From FY 2001 to FY 2006, the compound annual growth rate in Australian totalisator turnover was 3.4% in line with the average compound annual growth rate in Australian totalisator turnover over the past 20 years. By contrast over that some FY 2001 – FY 2006 period the compound annual growth rate on bookmakers' turnover was 19.4%.

Exhibit 12: TAB wagering turnover



Source: ARB Australian Racing Fact Book

(d) Betting exchanges

The business model of a betting exchange (BE) is different to that of totalisators or bookmakers. Corporate bookmakers use the reach of the internet to locate in jurisdictions with favourable regulations that significantly reduce the cost of doing business, but in

many other respects, the bookmaking business model is unchanged. In contrast, betting exchanges capitalise on the networking capabilities of the internet to create a new wagering model, based on the principle of the stock exchange. Wagering odds are set in the same way as share prices. The betting exchange offers fixed odds on events, by matching up people wishing to back a particular horse to win with others who wish to bet against (“lay”) that horse. The betting exchange is not a party to the wager, but simply a facilitator. The betting exchange also assumes no risk: it is simply an intermediary whose income is generated by taking a percentage commission of a punter’s winnings.

In Australia, Tasmania is currently the only State to have licensed a betting exchange, in this case Betfair (although the Victorian Government has introduced legislation to Parliament proposing that the holder of the next wagering licence (to come into operation in 2012) will have the option of conducting a betting exchange.) Indeed, betting exchanges are currently synonymous with Betfair, which has an estimated 90 percent global market share. Betfair commission starts at five percent and decreases to a two percent, based on the accumulated volume of betting of the customer.

Based on Betfair’s 20 percent (of commissions) product fee payment for wagering on Australian thoroughbred racing, its total commissions on winning wagers on Australian horse racing were \$13m in 2006/07⁹. Assuming an average commission of 3.75 percent, and adjusting for the fact that the commission is on the winning wager only¹⁰, then a turnover figure of \$680m is estimated, compared with \$16b total racing turnover in Australia.

Betfair appears to have been less successful in Australia to date than expected, as evidenced by the amount of tax it has paid to the Tasmanian Government (Exhibit 13). Wagering revenue in 2006/07 was less than half that originally projected and the growth estimated for 2007/08 was pared back, though still substantial at about 20 percent.

Exhibit 13: Tasmanian tax revenue from Betfair

	2005/06 Actual	2006/07 Expected	2006/07 Actual	2007/08 Expected
Tax from betting exchange	\$1.13m	\$12.86m	\$5.56m	\$6.67m

Source: Department of Treasury and Finance. 2007. *The 2007-08 Tasmanian State Budget*. Hobart, TAS.

The lower-than-expected penetration is attributed to the ban on advertising in States other than Tasmania. As noted above the High Court’s decision in *Betfair v. Western Australian Government* was the catalyst for those advertising restrictions to be dismantled, which is likely to enable further penetration. The introduction of starting prices into the Australian market is likely to have a further impact.

Betfair has the largest share of online wagering in the United Kingdom, its home market, and UK horse racing accounts for about one-third of its revenue. Its share of net winnings by all race wagerers (internet and retail) is projected to be 21 percent in 2008/09¹¹. Which is in part attributable to its low commission rate of about 3.5%.

⁹ Tasmanian Gaming Commission. 2007. *2006/07 Annual Report*. Hobart, TAS.

¹⁰ Betfair’s commission is a percentage of the winning wager; to be at least partly comparable with TAB and bookmaker take-outs, that figure needs to be halved to account for the amount wagered and lost.

¹¹ British Horseracing Authority. 2007. *Determination of the 47th Horserace Betting Levy Scheme: Submission of British Horseracing*. London

A new wave of growth for Betfair in the UK has followed from its introduction of starting prices on win bets in December 2007. A key obstacle to Betfair's growth has been the need for wagerers to be knowledgeable about racing which has been favoured by serious wagerers, not the casual or novice. Starting prices overcome this by allowing an individual to specify the amount and direction of a bet without having to set the betting odds. Betfair is extending Starting Prices to place bets.

(e) Offshore bookmakers

Offshore bookmakers can compete with Australian wagering operations either by offering wagering on Australian races, or by providing a large range of alternative wagering opportunities for Australian residents, moving them away from wagering on Australian races. For example, many offshore wagering sites carry all UK horse racing and racing from the major US tracks, as well as coverage from South Africa and some Asian countries. People visiting the sites with the primary intention of horse race wagering may cross-over to sports and other betting. The growth in pay-TV sports coverage means that Australian wagerers have better access to many of those sports events than in the past.

BCG has suggested that Australia might be seen as an attractive step-out market for UK bookmakers now that they are banned from offering their service to the United States. In this regard BCG point to the large size of the ATRI (second to the US in the number of races run) and the high propensity of Australians to gamble (Australia has the highest gross gaming revenues in the world¹²). High Street bookmakers like Ladbrokes, William Hill, Coral and Paddy Power are well-known brands with strong reputations. They have easily accessible online gambling sites with large and international content. The take-out rate on these sites is about 6 percent to 9 percent¹³, which at the upper end is comparable with the take-out in TAB fixed odds betting.

Apart from UK bookmakers the possibility always exists that if the regulatory environment in Australia is inconvenient then Australian operators may relocate offshore, as was the case with the betting shops that based themselves in Vanuatu in the 1980s and 1990s. In the 1990s the Vanuatu-based bookmaker operation, the Number One Betting Shop, was said (anecdotally) to have a turnover of between AUS \$300 and \$600 million. When it was acquired by Sportingbet and relocated to the Northern Territory, Sportingbet announced that it would be acquiring a client database of 25,000 Australian clients, 20 per cent of which were active at that time.¹⁴

No reliable figures are available on the current extent of expenditure with offshore bookmakers by Australian residents betting on ATRI.

3.4 New wagering channels

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

¹² Swiss Institute of Comparative Law. 2006. *Study of Gambling Services in the Internal Market of the European Union*. European Commission, Brussels.

¹³ Beaumont, J. 2008. *The UK Gambling Sector*. Kaupthing Singer & Friedlander Capital Markets, London.

¹⁴ Media releases sportingbet.com (UK) 15/03/2001

lead the uptake of mobile gambling. Wagering via interactive television has now entered Australia though currently only in Victoria.

(a) Internet

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

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

While phone betting is still twice the volume of internet betting, growth in the latter is strong. In 2006/07, betting via the internet accounted for 10 percent of wagering on thoroughbred racing through all Australian TABs, a three-fold increase over five years.¹⁵ The internet is much more important for sports betting than race wagering, and for corporate bookmakers and Betfair than the TABs, so the total amount of Internet wagering overall figure is probably several percentage points higher, in the order of 13 percent, excluding online wagering on offshore sites.

The generally held view is that the share of gambling on the internet will continue to grow rapidly, for the reasons summarised in the European Union review of gambling.¹⁶

- An increasing proportion of the population have access to the relevant technologies
- The technologies are becoming increasingly user-friendly
- The technologies are becoming increasingly integrated [and mobile]
- These systems have automated and convenient electronic billing systems which make financial transactions increasingly easy
- Adult populations in the years to come will increasingly consist of people who have grown up familiar with playing electronic games and utilising computers in their everyday lives
- Spending on leisure and on home-based entertainment is increasing.

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

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

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

¹⁵ Australian Racing Fact book

¹⁶ Swiss Institute of Comparative Law, op. cit

(b) Mobile phone gambling

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

3G phone networks have only become widely available in the past few years and are driving the projected growth in mobile gambling over the next five years. The global gross win (revenue) from mobile gambling is forecast to increase from just over US\$100m in 2007 to US\$3.2b in 2012¹⁷. While significant, internet wagering via computer will still be much larger than via mobile devices.

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

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

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

Australia has over 100 percent mobile penetration and all four mobile operators run 3G networks; the more advanced 3.5G debuted in 2007. This places Australia ahead of most countries in 3G deployment. Telstra is forecasting it will achieve 60 to 70 percent penetration of 3G by 2010. Mobile companies have made substantial investments in 3G technology, so new sources of revenue, such as mobile gambling, are key to their earning an adequate return.

At the moment, although 30 percent of Australian mobile phones are 3G, there has been limited uptake of the new services they enable¹⁸. BCG suggests that the growth forecast for mobile gambling may continue to slip over time.

In terms of providers, Betfair was the first to launch mobile gambling in Australia and Centrebet followed in November 2007. Sportsbet intended to have their mobile platform running in early 2008 but it has been delayed.

(c) Interactive television (iTV)

¹⁷ Holden, W. 2007. *Mobile Gambling-A Good Bet for the Future*. Juniper Research, Basingstoke Hamps.

¹⁸ "3G services largely unused." *Sydney Morning Herald*, 9 May 2008.

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

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

4 The Wagering and Racing nexus

4.1 Wagering and Racing: a symbiotic relationship

The long history of lawful gambling in Australia on racing, associated regulatory structures and the predominance of racing events in terms of wagering turnover has resulted in an inter-dependent relationship between the racing industry and wagering operators in Australia in which:

- The racing industry conducts the events (i.e. stages the races) on which the wagering operators conduct betting;
- Wagering operators provide the vast majority of the funding for the racing industry. Each State's racing industry has traditionally sourced its funding principally from the off-course totalisator operator in that State. Each State's racing industry also receives fees from bookmakers licensed in that State (which in Tasmania now includes payments from the betting exchange licensed in that State). However, until the "race fields" legislation was introduced, no State's racing industry received material fees from any wagering operator licensed in other States;
- The integrity and reputation of wagering and racing are inter-related. Wagering operators depend on the racing industry to maintain the integrity and "fairness" of racing events to maintain the attractiveness of the events to wagering customers. Conversely, there is almost invariably a degree of wagering activity associated with incidents which adversely impact the integrity of racing. Scrutiny of wagering patterns is an important element in detecting potential integrity issues.
- Wagering activity is reliant on wagering customers having accurate and timely access to racing information and live broadcast coverage of the races.
- Widely available live television coverage of racing events is critical to wagering as wagering customers tend to want to watch the event on which they have bet. Experience suggests that turnover on racing events benefits by in the order of 10% - 40% from the live telecast of the race to places where customers place their bets (traditionally TAB outlets and hotels/clubs, but increasing broader coverage is required given the increasing proportion of wagering being conducted by telephone and internet where the customer needs to be in any particular type of venue).

It may be noted that unlike other sports events, racing has not traditionally obtained substantial coverage on free-to-air television other than major carnival events. Nor has it received extensive coverage in other forms of television as "general entertainment". Instead, the primary broadcast coverage of racing has come from specialist racing telecasters who have developed to service wagering operators and wagering customers:

- Sky Channel is the principal telecaster of racing in Australia, providing live telecasts of more than 5,000 race meetings each year. Sky Channel covers all three race codes and races from all Australia States and Territories. Sky Channel provides two racing services; the "Sky Channel Commercial Service" which is provided on a subscription basis to more than 5,000 TAB outlets, hotels, Clubs and other commercial venues across Australia and the "Sky Racing Domestic Pay Television Service: which is available on Foxtel, Optus, Austar and other domestic pay television services.

- Specialised racing telecasts are also provided by ThoroughVision (TVN) which provides live telecasts of Victorian thoroughbred racing and Sydney metropolitan thoroughbred racing and selected other events. TVN provides a subscription service to TAB outlets, hotels, clubs and other commercial venues, domestic pay television service and internet coverage.

Radio also plays a significant role with dedicated racing radio stations broadcasting daily throughout Australia. It is estimated that over 1.6 million adults listen to racing radio stations during a typical week, with audience levels increasing substantially when major carnivals are being conducted. Research conducted on behalf of Victoria's Radio Sport 927 suggests that 96 per cent of regular TAB bettors tune into the station on a weekly basis and 78 per cent use its racing coverage to guide them in their selections. Racing radio stations provide fans with detailed and coverage from recognised experts does not involve payment to use or view, have the vital portability factor and can be heard virtually throughout the lengths and breadth of Australia.

4.2 The totalisator model of funding

The thoroughbred racing industry receives funding from different sources including sponsors, media companies, racetrack patrons and racehorse owners. However, while sponsorships, catering, track admissions and other sources of revenue alleviate some of the costs of putting on a racing event, their total contribution is minor (collectively accounting for less than 30 percent of racing funding), when compared to the amount returned to racing from wagering.

As noted above each State's racing industry has traditionally sourced its funding principally from the off-course totalisator operator. The capacity to provide high levels of industry revenues was indeed a key motivation for State Governments introducing off-course totalizators in the 1960s. For example, the Kinsella Royal Commission (NSW) gave as one of the principal reasons for recommending the establishment of an off-course totalisator – in preference to licensed bookmaker betting shops - the anticipated greater financial benefit to the State's racing industry:

“Experience in New Zealand has shown that the off-course totalizator has conferred immense benefits on the racing industry. The evidence of Mr T Smith already referred to, indicates that it had similar results on the racing industry in France. In Victoria for the twelve months ended 31 July 1962 the off-course totalisator has made available to racing 440, 000 pounds. Between 1 August 1962 and 28 February 1963 the turnover has increased by 100%. It may therefore reasonably be assumed that at the end of the current year a much greater contribution will be made to Victorian racing.

A similar result would have a most stimulating effect on the racing industry in New South Wales. Prizemoney could be increased, much need improvements to racecourses and their amenities for the public could be undertaken, country racing could be given practical aid.

There can be little doubt that an off-course totalizator would make very substantial contributions to the racing industry in New South Wales¹⁹.”

¹⁹ Kinsella Report

Substantial totalisator wagering is also a concomitant of strong racing where it is found elsewhere in the world as illustrated in Exhibit 14 using returns to owners as an indicator.

Exhibit 14:

Returns to Owners		Wagering Model
100% +	Hong Kong	Totalisator Only
	Singapore	Totalisator Only
60% -100%	Japan	Totalisator Only
45% - 60%	France	Totalisator Only
	USA	Totalisator Only
	Australia	Totalisator Dominant
	South Africa	Totalisator Dominant
< 30 %	Ireland	Bookmaker Dominant
	Germany	Bookmaker Dominant
	Britain	Bookmaker Dominant

Source: Racing NSW CEO Presentation to 32nd Asian Racing Conference, Tokyo 2008.

By way of comparison Appendix G describes the impact on the British racing industry of the regulatory structures for wagering that have been in place there.

The progressive privatisation of the TABs has not materially affected the predominant role they have played in returning revenue generated from wagering back to the ATRI. As part of the privatisation process aspects of the previous statutory regime were replaced by commercial arrangements between the totalisator operator and the State racing industry and commercial arrangements between the three codes of racing in that State. The elements of the commercial arrangements are commonly as follows:

- Commitments by each code of racing to the TABs and the other codes to conduct at least a minimum program of race meetings in the relevant State each year
- Commitments by the TAB to conduct totalisator wagering on at least the minimum program of race meetings of each code.
- Payments of fees by the TABs to the racing industry.

The structure of fees returned to the ATRI by TABs is set out in Exhibit 15

Exhibit 15: Racing Industry Revenue Arrangements, 2002-03

Jurisdiction	Calculation Basis	\$m	Industry revenue as % of wagering	
		2002-03	Turnover	Expenditure
NSW	Product Fee: 21.9965% of commission Wagering Incentive Fee: 25% of EBIT	202.2	4.4%	27.2%
VIC	Product Fee: 18.8% of commission Marketing Fee: Base figure indexed by growth in retail & account sales Variable contribution: 25% of net profit	250.0	7.7%	46.4%
QLD	39% of commission	106.3	6.2%	39.3%
WA	50% of margin after tax	63.3	6.0%	35.4%
SA	39% of commission	43.5	6.3%	
TAS	N/A	15.4	5.7%	60.1%
ACT	4.5% turnover taken by Government and distributed to licensed race clubs and racing development fund	6.1	4.4%	27.9%
NT	No direct revenue from the TAB, but funded by Territory Government.	6.7	6.4%	40.1%

Source: Access Economics 2005 Financial Implications of Betting Exchanges

The growth of internet and telephone betting by operators licensed in States or Territories with favourable regulatory and tax regimes, has meant that, in practical terms, the “exclusive access” which wagering operators licensed in a particular State or Territory had to wagering customers located in that State or Territory, which existed until the 1990s, has eroded rapidly.

Exhibit 16 uses the NSW TAB for the purposes of comparing the takeout rates and key characteristics for competing of the different types of wagering operates currently trading in Australia.

Exhibit 16: Take-out rate and key characteristics for competing Australian wagering providers.

	NSW TAB (tote wagering)	NSW bookmaker	Corporate bookmaker	TAS Betfair
Take-out rate	16% (+fractions)	6.0%	6.0%	1.0% - 2.5%
\$ per \$100 wagered				
State/Fed Governments	\$4.50	\$0.50	\$0.75	\$0.25 - \$0.60
Australian racing	\$4.50	\$1.00	--	\$0.20 - \$0.50
Wagering provider	\$6.90	\$4.50	\$5.25	\$0.55 - \$1.40
Key operating parameters				
Internet betting	Yes	No	Yes	Yes
24/7/364 days	Yes	No	Yes	Yes
TAB-odds betting	N/A	No	Yes	N/A

	NSW TAB (tote wagering)	NSW bookmaker	Corporate bookmaker	TAS Betfair
Rebates/discounts	No	No	Yes	Yes
Other characteristics				
Operator risk	Minimal risk, payouts based on total bets into tote	Medium risk, based on outcome at fixed odds	Medium risk, based on outcome at fixed odds	Little to no risk, operator acts as facilitator
Required pool size	Large: scale dependent	Small: minimal scale	Small: minimal scale	Medium: scale necessary to match bets
Fluctuation of odds	Odds unknown at time bet is taken, fluctuate with bet patterns and pool size	None	None on fixed odds; tote odds depend on tote bet patterns and pool size	None, fixed odds thru matching

Source: Tabcorp Holdings Limited. 2006. Vision for the Gambling Industry: Wagering. Submission to Review of State Gambling Licences, Melbourne VIC; NSW Office of Financial Management. 2007. Interstate Comparison of Taxes 2007-08; Queensland Treasury, op. cit. Compilation by BCG.

The average takeout rate for TABs is 16 per cent plus fractions. It can be seen that the average take-out rate for NT bookmakers is about one-third of this. Part of the difference reflects the mix of bet types between bookmakers and TABs. For the same racing product, the difference is smaller; for example the NSW TAB take-out rate on a win bet is 14.25 percent compared to an estimated 6 percent for NT bookmakers. Still, a two-fold price difference is very significant, especially for serious wagerers who are highly sensitive to the take-out rate and represent a large part of the market.²⁰ On-course racing bookmakers in other States would have a similarly low take-out rate to an NT bookmaker, but that factor is negated somewhat by restrictions on internet betting, operating hours, bet-type and rebates/discounting.

4.3 Totalisator odds betting

Up until the mid-1990s, licensed bookmakers in Australia basically only ever offered a fixed odds product. This stems primarily from the broad racing industry requirement that bookmakers display a fixed price about runners in races upon which they are fielding. Thus an agreed price between punter and bookmakers is struck at the time of entering the contract of wager.

The only variation was the ability of bookmakers to also offer clients the alternatives of “starting price” and “top fluctuations”. Nevertheless, in both cases, the payout is based on bookmakers’ prices and bookmakers offering these betting products are generally required to be fielding on the race, ie offering fixed odds about all runners.

The on-course punter in Australia has traditionally enjoyed access to the choice (at least with respect to win, each-way and doubles betting) between the fixed odds offered by bookmakers and the totalisator betting offered by race clubs/TABs.

This choice was extended – with limitations – to the off-course wagering market in 1993/94 with the introduction of bookmaker telephone betting in all Australian States and Territories.

²⁰ Cummings Associates, 2004. *Analysis of the Data and Fundamental Economics Behind the Thoroughbred Racing Industry*; Arlington, MA.

In several Australian jurisdictions, Governments and/or the racing industry have, for some time, explicitly proscribed the practice of a bookmaker (or anybody other than a TAB) basing a payout on the dividend of a totalisator.

In January 1996, IASBet (then Darwin All Sports) was licensed by the Northern Territory Government. Essentially from the commencement of its operations, IASBet marketed a “TAB-odds” product on racing. Today all of the corporate bookmakers licensed in the Northern Territory and the ACT conduct totalisator odds betting on a significant scale.

A working party appointed by the Racing Ministers of each State and Territory (the **Cross Border Betting Task Force**) carried out a detailed investigation into the practice. The working party’s report identified the following arguments against totalisators odds betting:

- (i) *The perceived risk of totalisator (TAB) pool manipulation and the consequences for the integrity and fairness (actual and perceived) of totalisator (TAB) betting. Further, the risk of pool manipulation increases in line with greater volumes of bets accepted by bookmakers at TAB odds relative to the size of the TAB pools upon which those bookmakers’ payouts are based. Ironically, part of the traditional rationale for smaller jurisdictions (eg Northern Territory) “commingling” (pooling) their TAB bets with other jurisdictions is to create larger and more robust TAB pools which are less susceptible to pool manipulation.*
- (ii) *The growing volume of TAB-odds bookmaker betting among corporate bookmakers combined with the possibility of transfers of wagering turnover from TABs to TAB-odds bookmakers will likely exacerbate risks of (perceived) pool manipulation if this practice of TAB-odds bookmaking is allowed to grow unchecked in some Australian jurisdictions. Separate but related issues arise in terms of consumer protection. A punter may be attracted to bet with a TAB-odds bookmaker in the belief the bet will be “held” by the bookmaker, that is, not “bet back” into the TAB pool on which the payout will be based. However, the punter has no way of identifying, after the event, whether or not this has occurred. This disadvantage to a punter of a relatively sizeable wager being “bet back” under these circumstances relates to the reduction of the dividend in which the payout is based if the bet is successful.*
- (iii) *The risk of the excessive transfer of wagers away from TAB/totalisator systems;*
- (iv) *Issues relating to the intellectual property rights of affected TABs.*
 - *The “free rider” effect. In two important areas TABs (and, indirectly, the racing industry) bear a significant proportion of the cost burden associated with racing and wagering: Costs of presenting the racing product to the general public (via Sky Channel, print media, etc); and*
 - *Costs associated with operating totalisator wagering and ensuring its actual and perceived integrity. The integrity of the totalisator pool is just as important to a punter having a bet with a bookmaker at TAB odds as it is to a punter betting directly into a TAB pool.*

In offering TAB odds products, bookmakers are arguably “free riding” directly on that TAB (and racing industry) expenditure

- (v) *The absence of any benefits to the race wagering market in terms of the co-existence of bookmaker (fixed) and totalisator betting. In contrast, in a wagering environment where bookmakers are offering (genuine) fixed odds, the ability of the punter to arbitrage between bookmaker odds and the totalisator is generally regarded as having a positive effect. In the case of TAB-odds bookmaker betting, the payouts offered by the bookmaker are merely a function of TAB dividends – as against a genuine alternative odds market for the punter.*”

The recommendation made by the working group, by majority, was the introduction of a national prohibition on bookmakers offering totalisator odds betting. The Cameron Review also examined this issue and concluded that there should be a nationally consistent approach.

It may be noted that in March 2009 TABCORP launched an action against a corporate bookmaker claiming copyright in its totalisator dividends.

4.4 Projections of impact of wagering market changes on ARI funding

We outline below the content of four sets of projections that have been made regarding the impact of these current wagering market changes on ARI funding.

(a) The Allen Consulting Group

In 2003 the ARB engaged the Allen Consulting Group (Allens) to forecast the future progression of changes to the wagering market that were then already underway, and to provide modelling of the consequential impacts on the ATRI's funding. This modelling included both a baseline assessment and a series of scenarios involving hypothetical new product fee arrangements. The ARB was at this time working with the State and Territory Racing Ministers on the development of a product fee framework, which subsequently saw the introduction of race fields legislation.

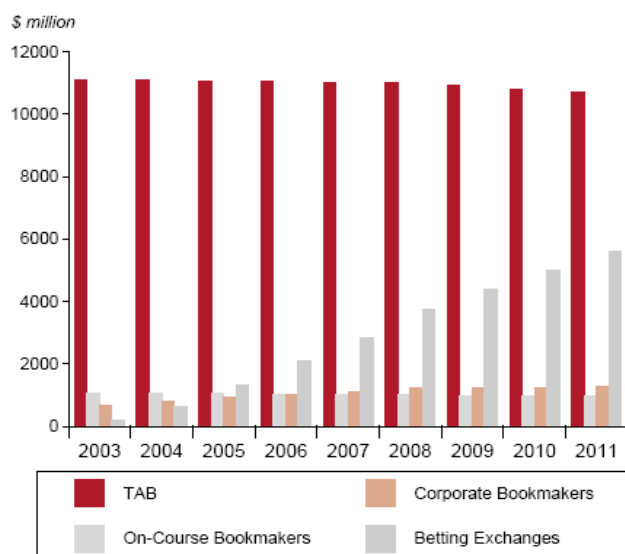
Relevant to this Inquiry is the baseline modelling showing the expected ATRI funding having regard to the predicted growth rate of providers and wagering channels from 2003 to 2011. The baseline modelling assumed that no changes were made to the industry's funding arrangements. Advertising restrictions were also assumed to remain in place. Allens' modelling under the baseline scenario suggested that:

- Turnover of TABs would remain relatively flat over the period, although this would mask a major shift between distribution media from retail to telephone to internet betting channels.
- Turnover of on-course bookmakers would remain relatively flat, with on-course phone and internet-based bets potentially mitigating the effects of a slow decline of in-person bets.
- Turnover of corporate bookmakers would continue to grow rapidly, although over time this would be affected by a loss of those customers to betting exchanges;
- Turnover of betting exchanges would continue to grow rapidly, as more TAB and corporate bookmaker internet-based customers transferred to the betting exchange product.

Exhibit 17: Australia wagering turnover 2003 – 2011

Figure 9.1

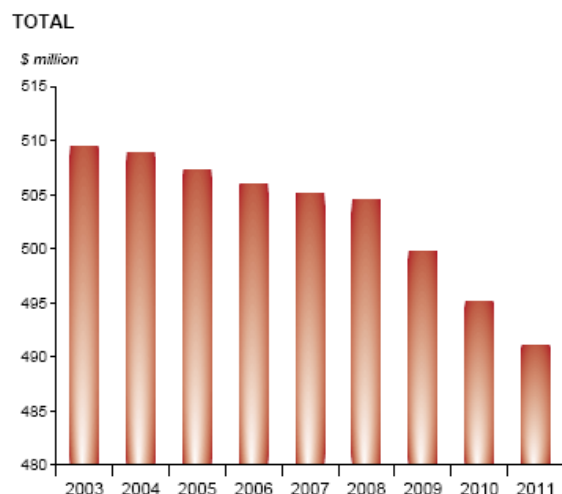
TURNOVER



Source: The Allen Consulting Group

The implications of the baseline scenario for funding of the ATRI are depicted in Exhibit 18 below. Essentially a decline in ATRI funding was forecast attributable to the industry not sharing in the turnover growth of corporate bookmakers and betting exchanges identified above.

Exhibit 18: ARI funding 2003 – 2011



Source: The Allen Consulting Group

(b) Modelling published by TABCORP

In 2007 TABCORP published estimates of the impact of what it has described as ‘turnover leakage’ from two States Victoria and New South Wales. It estimated that if the racing wagers placed by NSW residents through NT bookmakers and betting exchanges had passed through NSW TAB then in 2006/07 there would have been an additional \$51m of revenue for NSW racing and an additional \$26m of tax for the State government. In Victoria’s case, it estimated that if the racing wagers placed by Victorian residents through NT bookmakers and betting exchanges has passed through the Victorian TABCORP pool,

then in 2006/07 there would have been an additional \$40 million of revenue for Victoria racing and an additional \$17 million of tax for the State government.

TABCORP advised that its analysis had been verified by Pricewaterhouse Coopers as providing “a reasonable estimate of the possible revenue impact to NSW and Victorian Governments as well as their respective industries”.²¹

Exhibit 19: Impact of NT bookmakers and Betfair on Racing

	\$M 2006/07
The Losers	
VICTORIA	
> Racing Industry	39.8
> VIC Government	16.8
> Oncourse Bookmakers	10.1
NSW	
> Racing Industry	51.4
> Government	26.4
> Oncourse Bookmakers	16.8
> Federal Government	10.8
The Winners	
> Other TABs	15.9
> Corporate Bookmakers	65.3
> Betfair	8
> Other State Governments	5.9
> Other Racing Industry	18

Key Assumptions

- In 2007, corporate bookmaker turnover was \$2.7billion and betting exchange turnover was \$400million.
- Corporate bookmakers and betting exchanges receive 50% of their turnover from NSW and 30% from Victoria.
- Of this turnover leakage, 70% comes from TABs and 30% comes from bookmakers.
- Corporate bookmakers and betting exchanges turnover figures have been discounted by 20% due to higher returns to punters.

Source: TABCORP

It should be noted that a key variable in estimating the losses that TABCORP suggested is the responsiveness of turnover to the take-out rates i.e. the amount by which turnover would drop when the take-out increased from the average of 5 to 6 percent for NT bookmakers to the 16 percent for NSW TAB.

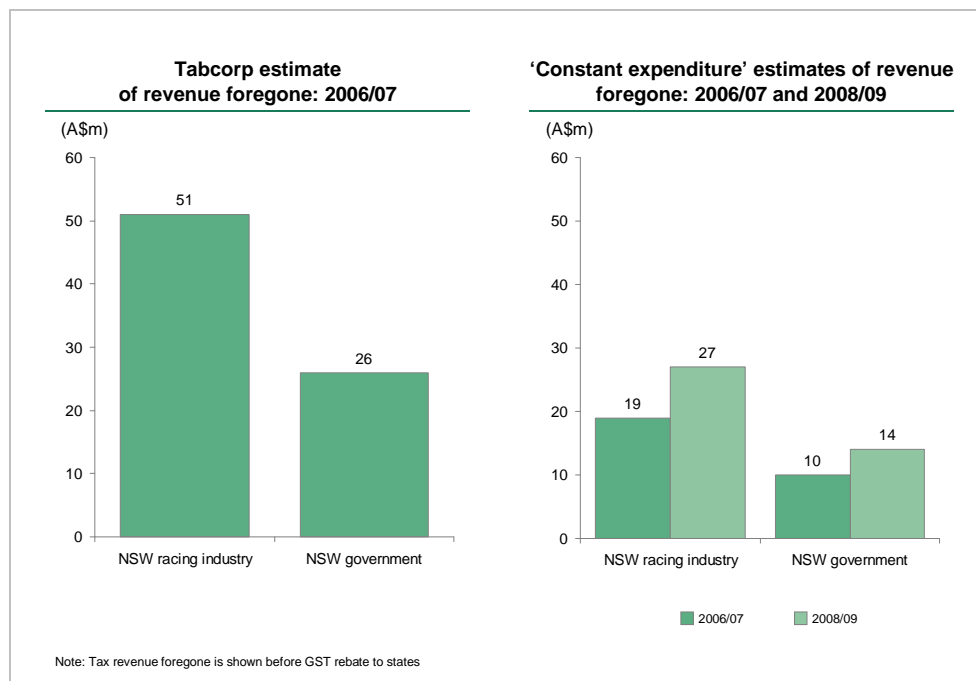
The assumption underlining the TABCORP estimates is that of ‘constant expenditure,’ i.e. that wagerers continue to lose the same amount in total regardless of the take-out rate. This assumes an own-price elasticity of -1.0. If price rises by a given percentage, the volume purchased (turnover) falls by the same amount, so that expenditure remains the same.²²

²¹ PWC 8th November, 2007

²² Organisation Consulting Partnership. 2008. 47th Horserace Betting Levy Scheme. Report to the UK Department of Culture, Media and Sport

Exhibit shows TABCORP's estimates of revenue foregone by NSW racing and the NSW government in 2006/07, and also shows estimates based on the assumption of 'constant expenditure' for 2006/07 and 2008/09. In the 2008/09 calculations, it is assumed that NT bookmakers' turnover reaches \$4b.

Exhibit 20: Estimated racing payments and tax revenue lost to NT bookmakers and Betfair



Source: "Tabcorp moves while industry waits". *Thoroughbred News*, 20 May 2008.

(c) Boston Consulting Group

In 2008 BCG was engaged by the Controlling Body for thoroughbred racing in New South Wales to undertake modelling work in connection with the Cameron review of wagering regulation in NSW. As part of its brief, BCG modelled the impact of changes in the wagering landscape on the funding on NSW sector of the ATRI. While modelling is limited to the NSW sector of the ATRI, and influenced by some variable that are unique to that State, the BCG work represents the most recent rigorous analysis of current changes to the wagering landscape by a top tier house of economists.

BCG approached its modelling in three steps:

1. Define the baseline wagering funding inflows to the NSW thoroughbred racing industry
 - Based on today's environment—regulatory and competitive, but excluding race fields—and projected wagering growth rates
 - Accounting for trends in NSW wagering turnover and interstate wagering by NSW punters
2. Identify and size the issues that could potentially impact the wagering and tax baseline in the short- to medium-term

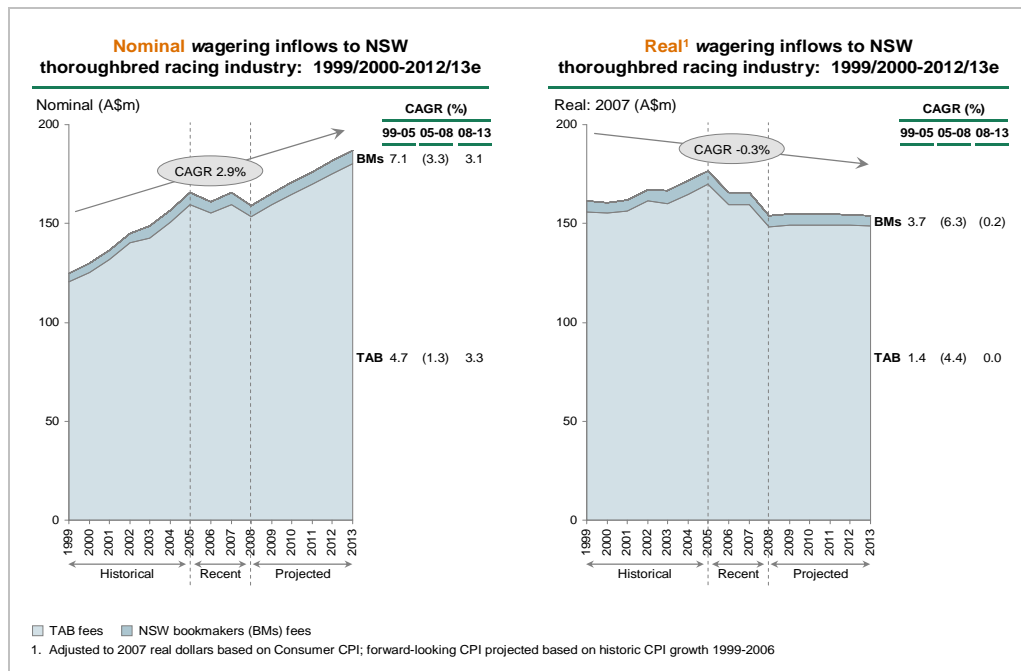
- Grouped 13 issues into four channels: NSW TAB, NSW bookmakers, non-NSW Australian wagering operators, and international operators
 - Analysed three scenarios: open market, global precedents and restricted environment
 - Measured indicative size of impact on racing industry funding
3. Calculate the gap between required industry funding (from wagering) and wagering inflows after accounting for various scenario outcomes

Baseline funding (historic and projected)

BCG reported that the wagering funding provided to NSW thoroughbred racing experienced a period of relatively steady nominal growth (4.8 percent CAGR) from 1999 to 2005, growing from \$125m in FY99 to \$166m in FY05 (Exhibit 21). They noted, however, that this growth somewhat masked the increasing financial pressures on the NSW racing industry driven by a combination of modest income growth from wagering and continuing cost increases. BCG found that the growth from 1993-2005 was largely a result of efficiency improvements in the TAB which flowed to racing through profit sharing arrangements, the impact of one-off factors and a number of negotiated revisions to the financial arrangements with TAB, including the addition of the fixed product fee.

From 2006-2008, that growth disappeared due to a number of factors, including the negative impact of equine influenza in FY08 and the accelerated leaking of wagering dollars to heretofore ‘unleviable’ channels such as corporate bookmakers and betting exchanges. In real dollars (based on consumer CPI), funding inflows from wagering were relatively flat from FY99 to FY05, and actually declined at 4.5 percent per annum from FY05.

Exhibit 21: Baseline and projected wagering funding inflows to thoroughbred racing



Note: Projected funding includes expected uplift due to removal of overall TAB take-out cap (16 percent plus fractions).

Source: Racing NSW financials; Literature search; BCG analysis

Projected funding

BCG projected wagering inflows to NSW racing up to 2012/13 using a baseline estimate that took into account the current regulatory and competitive environment, as well as current underlying wagering trends, both in NSW wagering turnover and interstate wagering by NSW punters. The baseline included the estimated continued growth of corporate bookmakers and betting exchanges, and the resulting erosion of NSW TAB and NSW-licensed bookmaker wagering market share. The TAB projections also included the expected impact of the removal of the overall 'take-out cap' (formerly 16 percent plus fractions), which it estimated was likely to expand total TAB take-out by up to one percent over a three- to four-year time period.

Product fees from non-NSW wagering operators due to race fields legislation were not been included in the baseline projections.

Based on these assumptions, BCG forecast inflows to the NSW thoroughbred racing industry from wagering operators to reach \$185M (nominal) in FY13, for an annual growth rate of 3.3 percent per annum from FY08-FY13. BCG concluded that in real terms funding would stagnate from FY09-F13 over the next five years and would fail to recover from the funding decline experienced during FY05-FY08 (Exhibit 22).

Exhibit 22: Assumptions and detailed figures for wagering funding baseline

Source of funding	Actuals									Projected					
	'99	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12	'13
Nominal (A\$m)															
TAB fees	121	125	132	140	143	150	159	155	160	153	159	165	170	175	180
NSW bookmaker fees	4	4	5	5	6	6	6	6	6	6	6	6	6	7	7
Total	125	129	137	145	149	156	165	161	166	159	165	171	176	182	187
Real: 2007 (A\$m)															
TAB fees	156	155	156	162	160	165	170	160	160	148	149	149	149	149	148
NSW bookmaker fees	5	5	6	6	7	7	7	6	6	6	6	6	6	6	6
Total	161	160	162	168	167	172	177	166	166	154	155	155	155	155	154

Note: Assumptions of baseline

- Historical figures (FY99-2007) based on actual payments from NSW TAB and NSW bookmakers
- TAB payments to racing include variable product fee, wagering incentive fee, and fixed product fee
- Projections (FY08-13) based on current underlying wagering trends and regulatory environment which is in force today
 - Baseline includes continued growth of corporate bookmakers, and ongoing erosion of NSW TAB and bookmaker wagering share going forward
 - Growth rates for NSW TAB and NSW bookmakers based on recent growth given underlying wagering trends
 - TAB projections include effect of removal of overall take-out cap, which will likely expand total take-out by up to 1% over a 3-4 year time period
 - Product fees collected via race fields legislation are considered separately based on varying levels of compliance possible
 - Includes decline in total wagering in FY08 due to the negative impact of equine influenza

Source: RNSW financials; Literature search; BCG analysis

BCG then identified and quantified 13 factors that could potentially affect revenues to racing from wagering and undertook a scenario analysis of potential outcomes.

The factors identified were:

1. TABCORP establishing competing operations outside of NSW (which subsequently transpired with the establishment of TABCORPs Luxbet operation in the NT)
2. Pooling of NSW TAB wagering pool
3. Advertising restrictions
4. Fixed odds betting restrictions
5. Inducements/rebates
6. iTV (television wagering)
7. NSW bookmaker regulations
8. Other bet types (for example, tote-odds betting, field against favourites)
9. Corporate bookmakers

10. Betting exchanges
11. Race fields legislation
12. Advertising restrictions
13. International bookmakers.

These 13 factors were assessed in the context of three scenarios:

1. **Open market:** Under this scenario, the wagering market is highly deregulated. Wagering operators have more freedom to choose the types of products and methods of placing bets they offer to their customers
2. **Global precedents:** The outcomes of this scenario are based on the experiences of other jurisdictions within Australia and internationally when confronted with these and similar issues
3. **Restricted environment:** Under this scenario, the wagering market is tightly regulated on most wagering concerns. This scenario most closely represents the current environment in a number of areas

The potential outcomes of each issue varied considerably across the three scenarios, based on the assumptions for market share shift, compliance levels, regulatory changes and other relevant factors. Exhibit 23 depicts BCG's assessment of those potential outcomes.

Exhibit 23: Indicative impact of potential changes to funding from wagering

Channel	Issues	Racing impact above (below) baseline: FY13 ¹		
		Open market	Global precedents ²	Restricted environment
NSW TAB	• Tabcorp Ltd. operations outside of NSW (interstate or international)	—	—	○
	• Pooling of NSW TAB wagering pool	—	—	○
	• Advertising restrictions	—	○	○
	• Fixed odds betting restrictions	—	—	○
	• Inducements/rebates	○	○	○
	• iTV (television wagering)	+	+	○
NSW Bookmakers	• NSW bookmaker regulations	—	—	○
	• Other bet types (eg, tote-odds betting, field against favourites)	—	—	○
Non-NSW Australian wagering operators	• Corporate bookmakers' growth (without race fields)	—	—	○
	• Betting exchanges (without race fields)	—	—	○
	• Race fields legislation	+	++	++
	• Advertising restrictions	—	—	○
International wagering operators	• International bookmakers	—	○	○

— Large negative impact — Negative impact ○ Negligible impact + Positive impact ++ Large positive impact

1. Difference above (below) baseline in 2012/13 in nominal dollars 2. Assessment of value based on global experience. Under global precedents case, the consequences for NSW racing industry still may be unfavourable - highlights need to enforce new rules or do more than was done internationally

Source: BCG analysis; Industry interviews; Literature search

The impact of the scenarios on racing's funding baseline

The overall results of the scenarios are illustrated in Exhibit 24 where for the three modelled scenarios the outcomes, versus the FY13 baseline, range from:

- For the NSW thoroughbred racing industry: (\$65M) to \$45M
- For the State Government tax take: (\$45M) to \$0

Exhibit 24: Estimated impact of potential changes on racing funding and State tax take

Channel	Issues	Racing impact above (below) baseline: FY13 ¹		
		Open market	Global precedents ²	Restricted environment
NSW TAB	• Tabcorp Ltd. operations outside of NSW (interstate or international)	—	—	○
	• Pooling of NSW TAB wagering pool	—	—	○
	• Advertising restrictions	—	○	○
	• Fixed odds betting restrictions	—	—	○
	• Inducements/rebates	○	○	○
	• ITV (television wagering)	+	+	○
NSW Bookmakers	• NSW bookmaker regulations	—	—	○
	• Other bet types (eg, tote-odds betting, field against favourites)	—	—	○
Non-NSW Australian wagering operators	• Corporate bookmakers' growth (without race fields)	— —	— —	○
	• Betting exchanges (without race fields)	—	—	○
	• Race fields legislation	+	++	++
	• Advertising restrictions	—	—	○
International wagering operators	• International bookmakers	—	○	○
Impact on thoroughbred racing funding		(\$30M – \$65M)	(\$10M – \$50M)	\$35M – \$45M
Impact on NSW Government tax revenue		(\$25M – \$45M)	(\$20M – \$40M)	No impact

— Large negative impact — Negative impact ○ Negligible impact + Positive impact ++ Large positive impact

1. Difference above (below) baseline in 2012/13 in nominal dollars 2. Assessment of value based on global experience . Under global precedents case, the consequences for NSW racing industry still may be unfavourable - highlights need to enforce new rules or do more than was done internationally

Source: BCG analysis; Industry interviews; Literature search

In order to gauge the most positive and negative aggregate impacts on racing industry funding, BCG constructed two hypothetical scenarios by selecting an outcome for each of the 13 issues (Exhibit 25).

Exhibit 25: Racing impact above (below) baseline under most/least favourable environments

Channel	Issues	Racing impact above (below) baseline: FY13 ¹		
		Open market	Global precedents ²	Restricted environment
NSW TAB	• Tabcorp Ltd. operations outside of NSW (interstate or international)	-	-	○
	• Pooling of NSW TAB wagering pool	-	-	○
	• Advertising restrictions	-	○	○
	• Fixed odds betting restrictions	-	-	○
	• Inducements/rebates	○	○	○
	• iTV (television wagering)	+	+	○
NSW Bookmakers	• NSW bookmaker regulations	-	-	○
	• Other bet types (eg, tote-odds betting, field against favourites)	-	-	○
Non-NSW Australian wagering operators	• Corporate bookmakers' growth (without race fields)	-	-	○
	• Betting exchanges (without race fields)	-	-	○
	• Race fields legislation	+	++	++
	• Advertising restrictions	-	-	○
International wagering operators	• International bookmakers	-	○	○

○ 'Most favourable' ○ 'Least favourable'

--- Large negative impact - Negative impact ○ Negligible impact + Positive impact ++ Large positive impact

1. Difference above (below) baseline in 2012/13 in nominal dollars 2. Assessment of value based on global experience. Under global precedents case, the consequences for NSW racing industry still may be unfavourable - highlights need to enforce new rules or do more than was done internationally

Source: BCG analysis; Industry interviews; Literature search

Under the first hypothetical scenario, BCG selected the outcome for each of the 13 issues that most favoured the NSW thoroughbred racing industry. The aggregate affect on the NSW thoroughbred racing industry was a \$40M to \$50M increase in funding above the baseline in 2012/13. The net impact on NSW State tax revenue was an increase of \$2M to \$5M above the baseline in 2012/13.

BCG made two observations about this first hypothetical scenario:

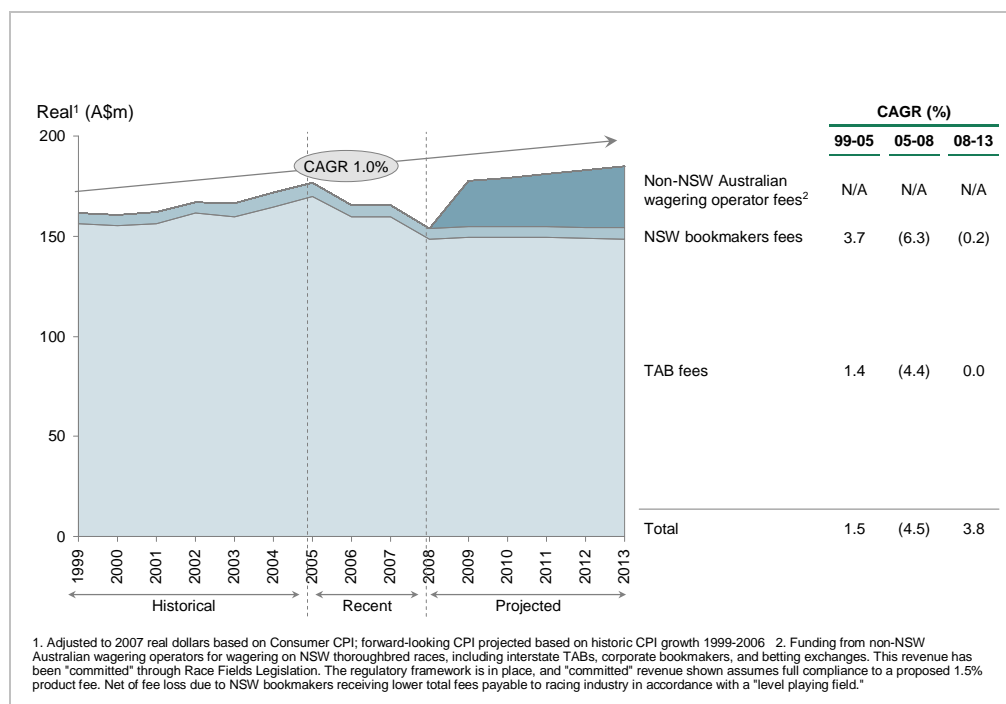
- Even if everything went in favour of the racing industry, the only independently large uplift to funding would come from race fields legislation, contributing a \$35m to \$45m increase under the 'Restricted environment' scenario.
- A lot of issues could go against the NSW racing industry. For example, if corporate bookmakers and betting exchanges continued to grow at an accelerated growth rate (under 'open market' scenario) and race fields product fees proved difficult to enforce (under 'open market' scenario), then the wagering funding provided to the racing industry could suffer considerably. If just those two outcomes changed accordingly, while every other issue resulted in the 'most favourable' outcome, the net impact to racing funding in FY13 would be an approximate decline of \$10M to \$35M below the projected baseline, and a corresponding drop in NSW tax revenue of \$10M to \$20M.

Under the hypothetical 'least favourable' scenario wherein each of the 13 issues results in the least favourable outcome for NSW thoroughbred racing, racing funding in FY13 would fall an estimated \$50M to \$75M below the projected baseline and the NSW government would forego an estimated \$35M to \$50M in tax revenue.

A significant conclusion from the BCG modelling was that while products fees collected due to enforceable race fields legislation were a prerequisite to the continued viability of the NSW

racing industry, they would not, of themselves, be sufficient to achieve that outcome. While the baseline projects NSW thoroughbred racing funding from wagering to stagnate from FY08 to FY13 (in real dollars), full compliance to proposed race fields product fees would grow real funding by approximately 3.8 percent per annum through 2013 (Exhibit 26). Race fields products fees would therefore be essential to prevent the decline of racing industry funding in the short-term, and especially going forward.

Exhibit 26: Real wagering inflows to NSW thoroughbred racing with race fields payments (full compliance)



Source: RNSW financials and estimates; BCG analysis

(d) Racing Victoria Limited

Projection of Wagering Income for the Victorian Thoroughbred Racing Industry

The Victorian Thoroughbred Racing Industry (VTRI) is sustained by the income generated from wagering. This income is used by the VTRI to conduct racing by funding prizemoney and payments to racing's participants as well as for the significant operating costs to allow for 4,400 races to be run at 67 racecourses across the state. Thoroughbred racing in Victoria employs more than 30,000 people, the majority located in regional areas. The estimated economic value of the VTRI is \$1.6 billion per annum and it generates Federal and State taxes totalling more than \$365 million.

The income from wagering is received from the following sources:

- The joint venture with Tabcorp which operates the totalisator in Victoria;
- Bookmakers licensed in Victoria;
- Wagering operators located interstate, including totalisators, bookmakers and a betting exchange which are pursuant to the *Gambling Regulation Act (Vic) 2003* approved by

Racing Victoria Limited (RVL) to publish and use Victorian thoroughbred race fields; and

- International wagering operators both directly and through agency arrangements coordinated by Sky Channel.

Additionally, racing clubs receive funds relating to race sponsorship from wagering operators, which is separate to this analysis of wagering income.

The Australian wagering market is undergoing a period of rapid change with:

- the accelerated growth of corporate bookmakers licensed in the Northern Territory;
- a licensed betting exchange operating from Tasmania;
- the removal of the restrictions for interstate wagering operators to advertise in Victoria and New South Wales;
- the implementation of legislation in a number of States to require the approval from the racing controlling body for wagering operators to publish local race fields; and
- the breakdown of the former Gentlemen's Agreement which provided for free exchange of interstate racing between the state totalisators and the commencement of interstate product fees being charged to totalisators from September 2008.

These changes are largely driven by developments in the regulatory framework and this pace of change is not expected to abate in the near future, particularly with the sale of the Tasmanian totalisator, the Victorian Government issuing a new wagering licence (which includes the provision for a betting exchange) commencing from 2012, and the New South Wales totalisator being non-exclusive from 2013.

Significant changes to the funding of the racing industry and the employment and economic benefits which this industry generates may also occur as a consequence of the outcomes of the following current legal actions in both Victoria and New South Wales:

- the action brought by Sportsbet in October 2007 in the Federal Court against RVL and the State of Victoria
- the action brought by Tab Limited in February 2009 in the Victorian Supreme Court against RVL;
- the action brought by Betfair in October 2008 in the Federal Court against Racing NSW;
- the action brought by Sportsbet in November 2008 in the Federal Court against Racing NSW and the State of NSW; and
- the copyright infringement action brought by Tab Ltd and Tabcorp Holdings in February 2009 in the Federal Court against Sportsbet.

In recognition of these changes and potential developments in the wagering market and the funding needs for the VTRI, RVL in November 2008, adopted a revised structure of product fees to apply to interstate wagering operators which publish or use Victorian thoroughbred race fields as well as to Victorian bookmakers who are licensed by RVL. These product fees are based on 10% of gross revenues generated by the wagering operator on Victorian thoroughbred racing and a premium rate of 15% of gross revenues to apply during Victoria's Spring Racing Carnival conducted in October and November each year. This product fee policy will remain under review as the pace of change in the Australian wagering market continues.

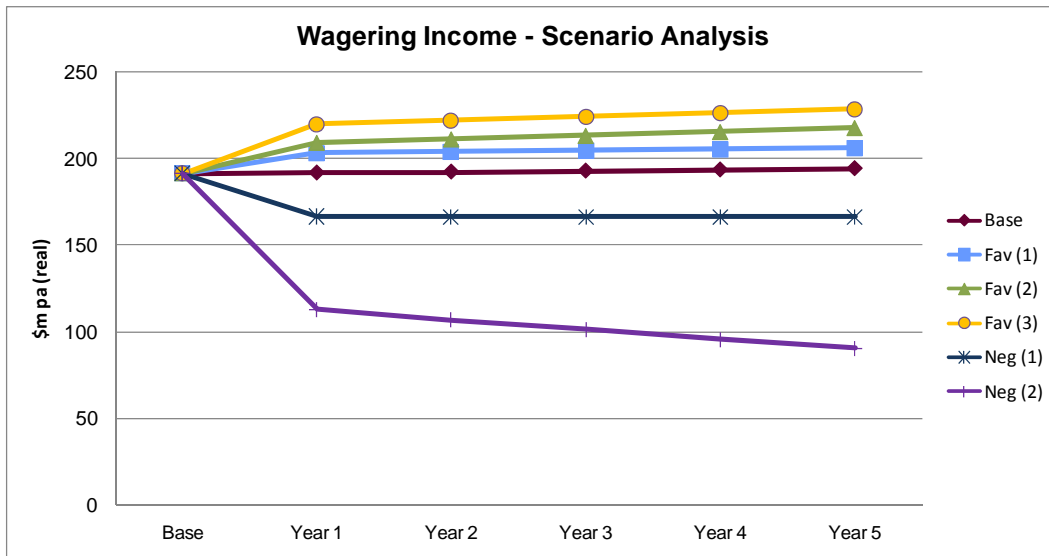
Analysis of Wagering Income Scenarios

RVL has developed the following analysis to project wagering income to the VTRI resulting from the following potential scenarios:

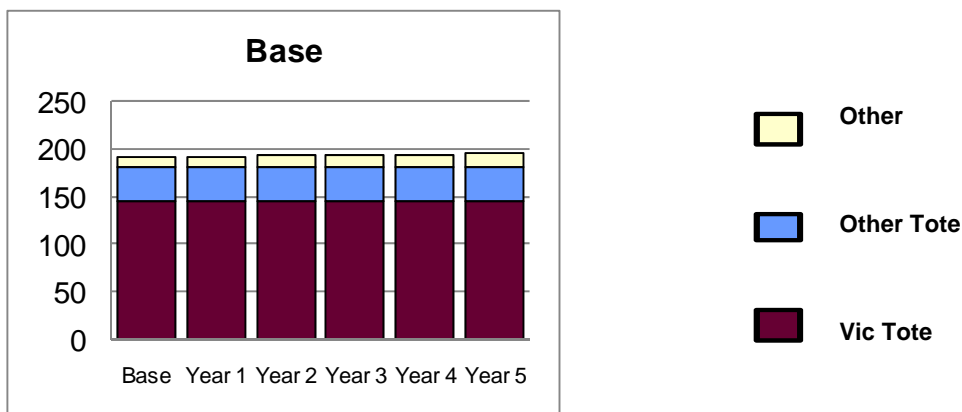
Scenario Summary

Base	No change to racing industry funding from Victorian wagering operators Product Fee of 10% gross revenues and 15% for the Spring Racing Carnival (under race fields legislation) to apply to interstate wagering operators on Victorian thoroughbred racing Product Fee of 10% gross revenues payable for the Victorian tote's use of interstate racing
Favourable (1)	No change to racing industry funding from Victorian wagering operators Product Fee of 15% gross revenues and 20% for the Spring Racing Carnival (under race fields legislation) to apply to interstate wagering operators on Victorian thoroughbred racing Product Fee of 15% gross revenues payable for the Victorian tote's use of interstate racing
Favourable (2)	No change to racing industry funding from Victorian wagering operators Product Fee of 1.5% of turnover (under race fields legislation) to apply to interstate wagering operators on Victorian thoroughbred racing Product Fee of 1.5% of turnover payable for the Victorian tote's use of interstate racing
Favourable (3)	No change to racing industry funding from Victorian wagering operators Product Fee of 1.5% of turnover (under race fields legislation) to apply to interstate wagering operators on Victorian thoroughbred racing Product Fee of 1.5% of turnover payable for the Victorian tote's use of interstate racing The use of tote odds <u>only</u> by totalisators
Negative (1)	No change to racing industry funding from Victorian wagering operators No Product Fees payable by, or to, interstate wagering operators under race fields legislation or other commercial arrangements
Negative (2)	No change to racing industry funding from Victorian wagering operators The breakdown of the Victorian tote retail exclusivity by interstate wagering operators (offering tote odds) with no product fees payable to the racing industry No Product Fees payable by, or to, interstate wagering operators under race fields legislation or other commercial arrangements

The funding outcome for each scenario is projected, in real terms, to be:

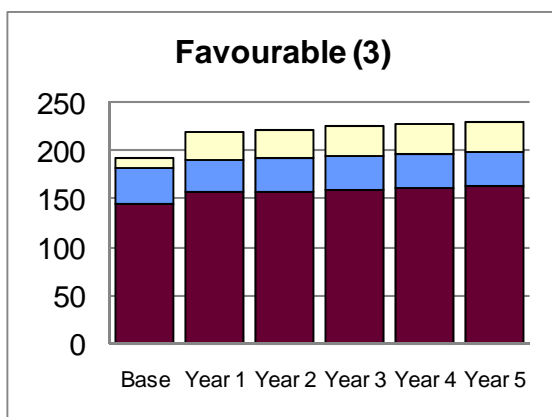
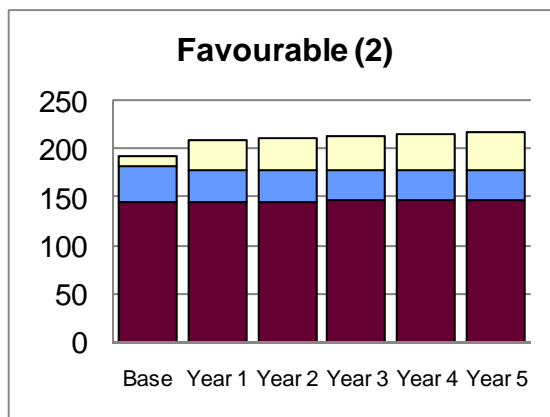
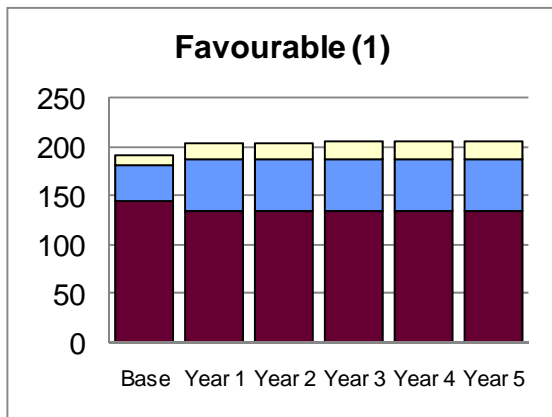


Base Projection



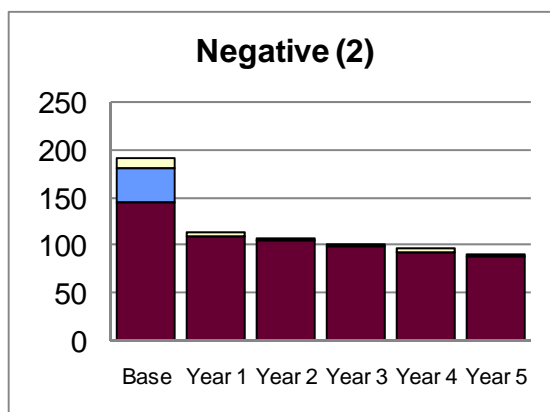
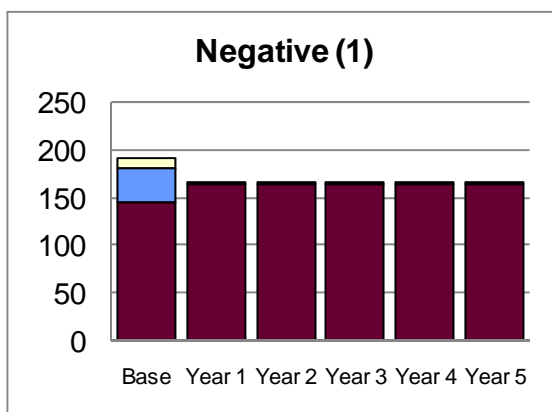
In the base projection, wagering income to the VTRI is projected to increase slightly (in real terms) over the next 5 years, with increasing returns from non-totalisator wagering operators and a real decline in the returns from totalisators.

Projections – Favourable Scenarios



In each of the favourable scenarios, wagering income to the VTRI is projected to increase from the base projection by 6%, 12% and 18% in year 5, predominantly driven by the increased return from non-totalisator wagering operators.

Projections – Negative Scenarios



In each of the negative scenarios, wagering income to the VTRI is projected to significantly decrease from the base by 14% and 53% in year 5. In the Negative (1) scenario, this is as a result of the elimination of income from interstate wagering operators, partially offset by the reduced expense to the VTRI for the use of interstate racing. For the Negative (2) scenario, the potential impact of the breakdown in the retail exclusivity of the Victorian totalisator, with no arrangements for the funding of the racing industry from interstate wagering operators, is

projected to lead to a catastrophic decline in wagering income to the VTRI, which would inevitably lead to reductions in races conducted, closure of racecourses and a significant loss of employment and economic benefit.

Summary

The viability of the VTRI is dependent upon the income generated in the Australian wagering market, which is undergoing a period of rapid change. The regulatory base which ensures that the VTRI benefits from an appropriate share of the income generated by wagering operators on its racing, which is used to conduct the racing, is currently threatened by rapid change in the Australian wagering market and the possible consequences of the outcomes arising from legal actions. Without an appropriate regulatory response, the racing industry may suffer a catastrophic loss of funding, industry rationalisation and loss of employment and economic benefits.

4.5 Conclusion

The wagering landscape in Australia has changed fundamentally, and some of that change is irreversible: there is no prospect of Australia returning to the era of TABs having a monopoly over off-course wagering.

However, this does not mean that all of these changes will have an improved public benefit as their likely conclusion, or that the scope for intelligent government policy to influence the trajectory of these changes has been exhausted.

As corporate bookmakers and new offerings have taken a growing share of wagering dollars away from traditional 'leviable' channels, racing faces the risk of a decline in real funding levels. For the ATRI to remain viable in the medium to long term the regulatory environment in which the Australian wagering market operates needs to be so structured as to ensure fair and reasonable payments to racing. The ATRI holds no brief to cosset TABs from competition, but equally that competition should take place within a market that represents a fair playing field, not on the basis of pricing advantages that are based on avoiding adequate returns to the ATRI. Moreover, the scope of betting activities that different types of wagering operators engage in, especially the issue of derivative products, needs to be squarely addressed.

The issues involved here go directly to 6th and 7th Terms of Reference for the Commission's inquiry, specifically, the effects of regulatory structures for industry development (TOR6), and the implications of new technologies for gambling and for traditional government controls on gambling industries (TOR7).

As the Productivity Commission has observed elsewhere any attempt to identify 'natural' market outcomes for gambling industries needs to take into account that "*gambling is and, always has been, a creature of regulation*".²³

The current scale and nature of the ATRI is not accidental: it is the product of a set of regulatory arrangements that have existed for some 40 years. It being accepted that a viable Australian Thoroughbred Racing Industry delivers a net public benefit, then the future

²³ Chairman of Productivity Commission 2007 Australian Gambling Expo.

regulatory framework for the wagering market must be such that enables not only the consumer benefits from competition between operators but also industry sustainability to be achieved.

Finally, it should be noted that the Australasian Racing Ministers Conference held 5 December 2008 resolved to “*work with their respective Heads of Treasury to prepare a submission to the Treasurers’ Ministerial Council in relation to the financial arrangements underpinning Australian racing and wagering*”²⁴, confirming that there is a growing realisation at State and Territory Government level of the serious policy issues that are raised by the current changes in the wagering market.

²⁴ Media Release 5/12/08

5 Gambling and Integrity

5.1 Overview

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

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

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

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

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

5.2 International experience of gambling and integrity of sport

Some international example of gambling’s potential to influence the integrity of sport, either by proven corruption or damaging speculation include²⁵:

International Cricket

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

Soccer

²⁵ Further details are set out in Appendix

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

Racing

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

Tennis

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

Basketball

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

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

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

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

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

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

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

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

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

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

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

5.3 Victorian Sports Betting Act

The Victorian legislation held up by the UK major sports as a model to be emulated was introduced in 2007, the *Gambling and Racing Legislation Amendment (Sports Betting) Act* (not “Sports Betting Act”).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Notably, the details of the betting agreement, including the type and level of fee, is to be determined by the parties to the agreement, the rationale for this being that the parties themselves, rather than the government, are in the best position to establish an efficient fee that reflects commercial realities. If a betting provider and controlling body are unable to negotiate a

betting agreement, then the betting provider may apply to the VCGR for dispute resolution. The VCGR is able to make a binding determination on the outstanding issues, having regard to specified criteria.

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

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

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

5.4 New integrity challenges for ATRI

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

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

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

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

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

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

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

6 Race fields legislation

Broadly stated, race fields legislation is intended to compel wagering operators to obtain from the relevant racing authority approval to publish race fields, and to enable the racing authority to impose commercial and integrity conditions on the grant of those approvals. This achieves two primary objectives: (i) ensure fair and reasonable payment to the racing industry for the use of its products for wagering, and (ii) protect racing's integrity by ensuring appropriate wagering data from all operators is shared with racing stewards.

6.1 Rationale

The need to obtain betting data and associated information for integrity purposes has been sufficiently described in section 5 above. So far as the commercial aspect of this concept is concerned, much of the policy debate associated with race fields legislation has centred on ensuring that wagering operators do not commercially gain from the racing industry without making appropriate contributions to its revenues, an occurrence which is sometimes described as 'free riding'.

The issue of "free riding" has been a hot topic in the racing industry for at least a decade. A paper by the Centre for International Economics written in 1998 described "free riding" on the racing industry as follows:

'The nature of racing events is such that it is difficult to exclude parties from utilising the primary product of the event – the outcome or result of a race. As such, it is possible that betting service providers could 'free ride' on the racing industry, taking bets on races without contributing to the costs of running them. Such a situation could lead to there being too few race meetings and a smaller racing industry.'

The draft report *Australia's Gambling Industries* published by the Productivity Commission in 1999, cited this CIE reference. While questioning whether the arrangements that existed at the time could necessarily be said to result in the 'right' amount of funding or the 'right' number of races, the draft report concluded in respect of this 'free riding' that:

"There is a case for Government intervention to overcome the particular market failures which affect the racing industry"

The Productivity Commission's draft report goes on to mention a 'property rights' approach as one of several potential bases for funding of the racing industry as an alternative to TAB exclusivity. (The final report of the Productivity Commission excluded consideration of these and other issues relating to competition in the gambling market.)

'Free riding' on the ATRI has also been explored in a number of extensive reviews carried out for the Australasian Racing Ministers Conference, including:

- Report of the Officers' Working Party on Interactive Wagering, October 1997.
- Second report of the Officers' Working Party on Interactive Wagering, October 1998.
- Report of the Cross-Border Betting Task Force, November 2002.

Within the racing industry itself consideration has been given to a range of approaches to addressing ‘free riding’ including: copyright, a national product free framework linked with licensing of wagering operators, and Commonwealth legislation.

In 2004 a significant development occurred when the NSW Department of Gaming and Racing (OLGR) sought legal advice on whether the High Court’s reasoning in *Dow Jones v Gutnick*, a defamation case that involved deciding on what constitutes ‘publication’ over the internet, could be extended to certain NSW legislative provisions dealing with the publication of racing data and betting information. Very broadly, the High Court held in *Dow Jones* that publication of material on an internet website occurs anywhere it can be accessed: while the relevant material was uploaded onto the web in the United States, it was considered “published” in Victoria because it could be viewed by a person in Victoria accessing the website.

The two NSW legislative provisions were as follows:

Racing Administration Act 1998

Section 33 Unauthorised race programs

A person must not publish:

- (1) a list of the horses or dogs nominated for any intended race that is to be held at any race meeting on a licensed racecourse, or*
- (2) a list of the horses or dogs that will or will not take part in any such race,*

Unless the publication of the list has been approved or authorized by the person, club or association conducting the race meeting.

Maximum penalty:

- (a) for a first offence – 10 penalty units, and*
- (b) for a second or subsequent offence – 20 penalty units or imprisonment for 6 months (or both).*

Section 29(1) Publication of betting information

(1) A person must not publish any betting information.

Maximum penalty: 50 penalty units or imprisonment for 12 months (or both).

It is understood that the legal advice to the OLGR on the operation of the above two sections in the context of the decision in *Dow Jones* was to the effect that placing racing and betting information on the internet, which was then accessible by a person in New South Wales, might constitute a breach of sections 29 and 33 of the *Racing Administration Act*. Acting on this advice OLGR commenced legal proceedings against an interstate bookmaker in relation to the publication of betting odds and race fields for a harness racing meeting conducted by the NSW Harness Racing Club at Harold Park.

For reasons that are not material to this submission the prosecution was discontinued. What is relevant is that the commencement of the prosecution caused racing authorities to also consider

the potential usefulness of legislative provisions relating to the publication of race fields as a means of addressing 'free riding' and integrity issues. In the result, a consensus was arrived at that the enactment of such legislation Australia wide should be encouraged. This encouragement was to take the form of:

- Each Principal Racing Authority requesting its State or Territory Government to introduce race fields legislation.
- The ARB making a submission to the Australasian Racing Ministers Conference (Auckland 2005) on the merits of Australia – wide race fields legislation.

6.2 Enactment of race fields legislation

Four State Governments initially agreed to industry requests to enact race field legislation: New South Wales, South Australia, Victoria and Western Australia.

Victoria

The Victorian Parliament enacted race fields legislation in 2005. The second reading speech explained the Government's purpose as follows:

"The bill creates a new offence prohibiting the publication of race fields by unauthorised wagering service providers.

This amendment is designed to protect the industry against the current and potential practices of unauthorised wagering operators based interstate or overseas. Unauthorised wagering service providers generate, or have potential to derive, significant revenue from Victorian racing however unlike authorised operators make no financial contribution to the industry or to state revenue in return. It has been established that betting turnover on Victorian racing, currently being generated by large corporate bookmakers in the Northern Territory, is resulting in a significant revenue loss to the Victorian racing industry and government. In addition, the transactions of unauthorised wagering operators are invisible to racing regulators. As a consequence, these transactions undermine the integrity of Victorian and Australian racing.

This new offence is intended to deter interstate and overseas operators from unauthorised use of Victorian racing's product. The amendment is also consistent with the legislative approach adopted in other states such as New South Wales which is in the process of prosecuting a corporate Darwin bookmaker for the unauthorised use of NSW race fields. The offence fills a gap in an existing suite of betting-related offences contained within the Gambling Regulation Act.

It is important to note that the offence has been drafted so as to provide the government with capacity, if so desired, to exempt selected betting operators from its application. Such flexibility is a relevant consideration in the context of the current review being undertaken of Victoria's electronic gaming machine, wagering and lotteries licences.

Appropriate exceptions to the offence have also been identified to ensure that there are no unintended consequences for industry stakeholders, such as newspapers, who perform a legitimate service function to the industry when reproducing race field information.

This amendment has been requested by the racing industry and accordingly will be welcomed by the industry both within Victoria and nationally.”

The Victorian legislation was amended in 2007. The purposes for amending the legislation were described as follows:

“The bill includes amendments to the existing race fields legislation which, at the time, was the first of its kind anywhere in the world. The legislation seeks to ensure that all wagering operators based outside Victoria make a fair and reasonable economic contribution back to the racing industry on which their businesses are based.

First of all, the bill allows for a Controlling Body to impose or vary conditions on the grant of an approval to publish race fields and to revoke or suspend an approval. This provision will give the Controlling Bodies a tool in which to effectively manage the applications of interstate and overseas wagering service providers.

The next amendment allows for a person to apply to VCAT to review a decision made by a racing Controlling Body to reject or cancel an application or vary the conditions of an approval. This enables any applicant to appeal to VCAT if they feel aggrieved by a decision made by a Controlling Body and ensures fairness. Applicants will however not be allowed to challenge the payment of fees to controlling bodies for the use of Victorian race field information.

The bill allows for a racing Controlling Body to impose a charge as a condition of granting an approval. The amended legislation clarifies the right of a Controlling Body to charge a fee and should prevent the threat of legal action by interstate and overseas wagering providers over the imposition of charges for the use of Victorian race field information.

Finally, the bill provides authorisation under the Commonwealth Trade Practices Act 1974 for racing controlling bodies to enter into agreements for the purpose of collecting race field publication fees.

This amendment will provide surety to interstate and overseas wagering service providers applying to use Victorian race field information as Controlling Bodies can now implement a consistent policy in relation to the charging of fees.”

Western Australia

The Western Australian Parliament enacted race fields protection on 2006 as part of a package of legislation dealing with both publication of race fields and the operating of betting exchanges. The High Court’s 2008 decision on a challenge to this package of legislation is dealt with below.

South Australia

In 2006 the South Australian Government released an exposure draft of a bill designed to do three things:

- Prohibit publication of South Australian race fields without approval.

- Prohibit betting exchanges from operating in South Australia
- Prohibit persons in South Australia from using a betting exchange.

The South Australian Parliament's consideration of this proposed legislation was deferred pending the High Court's decision on the challenge brought against Western Australia's legislation.

In 2008 the South Australian Parliament amended the *Authorised Betting Operatives Act 2000* to introduce a race fields scheme. Betting exchanges are not treated any differently under this scheme.

New South Wales

The New South Wales Parliament enacted race fields legislation in 2006. In broad brush, the content of this legislation is as follows:

- A person must not, whether in NSW or elsewhere, publish a race field unless the person is authorised to do so by a race field publication approval or under the regulations.
- A NSW racing control body may grant a field publication approval for its races and may impose the following conditions:
 - A condition that the holder of the approval pay a fee or a series of fees of an amount or amounts and in the manner specified in the approval (being a fee or fees imposed in accordance with any requirements prescribed by the regulations),
 - Other conditions as may be specified in the approval (being conditions of a kind that are prescribed as permissible conditions by the regulations).
- Any fee that is payable under a race field publication approval is a debt due to the relevant racing Controlling body that granted the approval and is recoverable as such in a court of competent jurisdiction.
- A NSW controlling body in considering an application for approval must:
 - Consult with relevant race clubs.
 - Take into account criteria prescribed by regulations.
- Regulations may specify:
 - Matters which must be taken into account.
 - Matters which must not be taken into account.

- A NSW racing controlling body must give written reasons for any refusal to grant approval.
- Section 51 TPA Authorisation is granted for:
 - Intercode agreements between control bodies re collection of fees
 - Interstate agreements between PRAs re collection of fees
 - Conduct of control bodies and agents in negotiating or entering such agreements.
 - Performance of such agreements
- Appeals to Minister against decisions to refuse, vary or cancel an approval and re conditions **other** than a condition in relation to fees.
- Review of Minister's decisions by Administrative Decisions Tribunal

The necessary regulations relating to approval to publish race fields information were made in June 2008.

Queensland and Tasmania introduced race fields legislation in 2008, so that it is now in place in all States. It is not clear at this point what course the NT and ACT will follow. It should be noted that whereas all States now have race fields legislations in place, the nature and quantum (turnover of profit based) differs from State to State either as a product of the enabling legislation or the implementation by respective Controlling Bodies. This is explained further in 6.5 below.

6.3 High Court decision: *Betfair v WA*

On 27th March 2008 the High Court unanimously found in favour of Betfair's constitutional challenge to two provisions of the Western Australian *Betting Control Act* 1954. The High Court decision relates specifically to the WA laws discussed in that case but the obvious question is whether there are implications for the laws which apply in other States.

(i) Content of the WA laws

In 2006 the Western Australian Parliament enacted a package of amendments to its betting and racing legislation. Broadly stated there were three sets of amendments:

- One making the establishment or operation of betting exchange an offence (s27B(1))
- Another making it an offence to bet with a betting exchange (s24(1aa);
- Another making it an offence to publish a WA race field without approval (s27D (1)).

As a result, the second plaintiff, a WA resident called Mr Erceg, could not make bets with Betfair, nor could Betfair publish online a WA race field to facilitate bets on WA races. Betfair and Mr Erceg challenged the WA amendments saying that they:

- Prevented the increase in competition which would have arisen from the ability of customers in WA to access Betfair; and

- Disadvantaged non-WA racing operators by not allowing an out-of-state operator in the position of Betfair access to information about WA race-fields.

The High Court found that WA's amendments to make it an offence to establish a betting exchange and to bet with a betting exchange were both invalid under the Constitution. Given those conclusions the Court did not need to make a formal finding on the third amendment.

(ii) Technology and innovation drive a national economy

Section 92 of the Constitution requires trade within the Commonwealth to be "absolutely free". In the context of modern Australia, particularly given the implementation in 1995 of National Competition Policy, the High Court considered the creation and fostering of national markets to "*further the plan of the Constitution for the creation of a new federal nation and to be expressive of national unity*".

The High Court considered that the geographic dimensions of State boundaries have little significance when considering competition in internet commerce markets. So with increasing developments in new technology, and particularly the internet, which enables real time transactions to occur between people in different geographic locations, the notion that s92 of the Constitution protects State-based "economic centres" is overly broad.

This approach indicates that the High Court is going to focus on the economic reality of what is occurring in the modern economy and not permit State-based protections to undermine the development of a national economy. Notably the Court endorsed Betfair's argument that with increasing implementation of National Competition Policy there would be less and less recourse to s92 of the Constitution.

(iii) Constitutional Invalidity of WA amendments

The High Court decision does not seek to prevent States from regulating the conduct of betting exchanges within individual States. There were, however, two critical problems with the WA amendments.

First, the law did not confine itself to residents of WA. The provision which made the use of betting exchange an offence applied to any punter who placed a bet in Western Australia through a betting exchange, regardless of whether that person was a citizen residing in WA or who simply happened to be present there at a particular time. It could not therefore be justified on the basis that it was for the well being of the people of WA because it applied more broadly than that.

Second, the absolute prohibition on betting exchanges. Even if it applied more specifically to residents of WA, the law needs to be appropriate and adapted to the relevant objective sought to be achieved. This is sometimes described as requiring appropriate proportionality. Here the High Court concluded that the effect of this provision was to prohibit a person in Western Australia from betting via a betting exchange and that this placed a "*discriminatory burden on interstate trade of a protectionist kind*".

The provision "*operates to protect the established wagering operators in Western Australia, including RWWA, from the competition Betfair would otherwise present*". It was noted that the provision was not of the type introduced in Victoria to seek to achieve policy objectives by a regulatory mechanism. Such an approach may well be acceptable and implicitly the High Court endorsed the approach taken in Victoria.

6.4 Overview of strengths and weaknesses in light of High Court decision

In light of the High Court's decision in *Betfair v. WA* an attempt to provide a current overview of the strengths and weaknesses of race fields legislation as a model for addressing "free riding" and assisting in the ATRI's integrity endeavours is provided in Exhibit 27:

Exhibit 27: Race fields Legislation

Strengths	Weaknesses
<ul style="list-style-type: none">• Provides a basis for addressing both integrity and commercial considerations in determining whether to grant approval for a wagering operator to publish race fields. (Of copyright).• Legislation is tailored specifically to publication of race fields, as opposed to applying general principles of copyright – circumvents any uncertainty about copyright subsisting in race fields.• Manifests support from State Governments to racing's 'rights' as content originators to recover fees from wagering operators and impose conditions relating to integrity (eg. access to information).	<ul style="list-style-type: none">• Legal validity unknown. High Court decision in <i>Betfair v. WA</i> did not rule on validity of WA race fields legislation. While some of the High Court's comments might implicitly lend some support, the risk remains that race fields legislation could be struck down.• Enforcement outside State borders is untested ie. process of enforcing legislation against an interstate or international operator is untried.• Racing cannot determine whether enforcement against non-complying wagering operators will occur. This is a decision for governments/other agencies.• If operators relocate offshore then legislation may have limited impact on "Number One Betting Shop" type operations.

6.5 Application of race fields legislation

Victoria

In April 2006 the Controlling Bodies in Victoria, Racing Victoria Limited (RVL), published two sets of policies for assessing applications for authorization to publish Victorian race fields:

- Integrity policy
- Economic contributions policy

In 2008 RVL amended its economic contribution policy.

TABCORP is currently bringing a legal challenge against RVL involving the charges that it has set as a condition of approval to use Victorian thoroughbred race fields.

Western Australia

The scheme of the WA race fields legislation is that whereas the Ministers' delegate decides on applications for approvals to publish WA race fields, each successful applicant must then enter into an agreement with Racing and Wagering Western Australia (RWWA).

The standard agreement that RWWA enters into with wagering service providers (**the Information Agreement**) provides that a successful applicant must pay the Assessable Fee. It is understood that the Assessable Fee is currently set at zero, which is subject to a 30 day review by RWWA. The Information Agreement makes no reference to offsets.

New South Wales

Amendments made in 2006 to the *Racing Administration Act 1998* (NSW) which require approval of Racing NSW to any publication, unless it is specifically exempt under the regulation, commenced on 1st July 2008.

The following material setting out Racing NSW's intended approach in relation to applications for approval to publish NSW thoroughbred race fields are attached to this paper:

- Information regarding "Race Fields" for Australian Wagering Operators.
- Standard Conditions.
- Application form for approval to publish NSW thoroughbred race fields.

Betfair is currently bringing a legal challenge against the Controlling Body in New South Wales, Racing NSW, against the charges that it has set as a condition of approval to use NSW thoroughbred race fields. The challenge is not to the validity of the race fields legislation but rather to the manner in which it has been implemented by Racing NSW, in particular the fact that the fee payable is set at a percentage of turnover rather than a percentage of profits. Betfair alleges that this involves anticompetitive conduct. It is anticipated that the challenge will be heard in the latter half of 2009. A separate challenge being brought by Sportsbet challenges the validity of the NSW race fields legislation itself.

6.6 Responses to race fields

Given the low take-out rates on which bookmakers operate and the intense competition that exists among them, such fees may have a significant effect on their business model. BCG suggests that corporate bookmakers might respond to higher costs for race wagering in five ways:

1. Accept a product fee. Depending on the level of fee, and any regulatory changes, they may accept it as an unavoidable cost. The bookmakers could also alter their pricing to pass on some of the product fee to the wagerer.
2. Change their product mix. Racing from other jurisdictions could be substituted, sporting events promoted more heavily in place of racing, new types of betting introduced and new

forms of content added. Some NT corporate bookmakers already see their future growth lying with sports betting rather than race wagering.

3. Deploy virtual racing. This involves wagering on virtual horse races as an alternative to live racing. This is not currently an option because the IGA prohibits remote gaming and virtual racing is classified as an EGM.
4. Relocate overseas. Almost all major racing jurisdictions worldwide are in the same situation as Australia, with the incumbent wagering operator facing competition from betting operators in low-tax and low-cost jurisdictions. Australia's federal system means that a low-tax, low-cost jurisdiction exists within the country's borders. If the NT's favourable environment was eroded, relocating overseas could be an option for some of the NT bookmakers. Some bookmakers have moved their operations offshore in the past (e.g., Vanuatu), and the UK experience also demonstrates the high mobility of corporate bookmakers, most recently the response to the UK remote gambling levy.

Overseas operators typically experience some disadvantages relative to their domestic counterparts. They are precluded from advertising in Australia, which proves a large obstacle to attracting new customers. In addition, there are provisions in some states that prohibit residents from wagering with overseas operators. However, given that NT bookmakers are well-established and have sizable customer bases, relocating offshore is not an insurmountable hurdle.

5. Ignore the product fee and fight against enforcement. Corporate bookmakers may challenge or simply breach race fields regulations if they are not accompanied by effective enforcement mechanisms.

To help understand the effect of higher costs (and product fees) on NT bookmakers, BCG built a simple financial model of Centrebet International Ltd, which was chosen because it is an ASX-listed NT bookmaker for which a large amount of public information exists. Assuming a payment equal to 1.5 percent of its estimated wagering turnover on thoroughbred racing in Australia, and a -1.0 price elasticity of turnover with respect to take-out rate, then the potential impact on Centrebet's EBITDA of a racing product fee is a 20 percent reduction. The result is highly sensitive to the price elasticity assumed.

In the work that Allens did for the ARB in 2003 they also considered the issue of likely reactions by corporate bookmakers and betting exchanges to new product fees. Allens suggested that if a fee of 2 per cent of turnover was imposed on all phone betting with on-course bookmakers, and all betting with corporate bookmakers and betting exchanges then:

“Under this scenario, corporate bookmakers would increase their price by the full 2 per cent and betting exchanges would be forced to adjust their business model, such that Australian racing becomes a higher priced-product than any other they offer. These price impacts initially reduce turnover for corporate bookmakers and betting exchanges, although both continue to grow, particularly betting exchanges.

However, this growth is not at the expense of TABs, which experience strong growth in their internet business, fuelled by additionally, substitution from its own phone business and a slower loss of turnover to corporate bookmakers and betting exchanges.

The total contribution of on-course bookmakers also increases, due to the remote product fee applied to phone bets.”

7 New technologies and problem gambling

7.1 Reasons why the IGA wagering exemption is appropriate and should continue

Exhibit 28: Essential differences between Wagering and Gaming

CONTRAST Interactive Wagering on Racing v Interactive Gaming	
Interactive Wagering on Racing	Interactive Gaming
Live racing event	Computer-generated random results
Third party contingency – No involvement of wagering operator in race result	Operator conducts “game”
Wagering online does not create a new “product” – it merely provides an alternative telecommunications link between account holders and operators	Gaming online enables remote gambling
Wagering growth remains flat notwithstanding introduction of internet wagering	Gaming continues to grow

Within the generic term “gambling” it is important to distinguish between two very different classes: wagering and gaming. This distinction can be drawn on four grounds.

(i) *Third party contingency*

Wagering, in its pure form, is traditionally based upon a third party outcome or contingency. That is, determination of the outcome of the race is independent of the gambler and the operator. In contrast, in most forms of gaming, such as roulette or lotteries, the operator oversees the conduct of the process (or “game”) by which the outcome is determined.

(ii) *Skill v. pressing a button*

A further distinguishing feature is that whereas wagering requires the bettor to exercise some judgement (at varying degrees and levels of skill) the vast majority of gaming activity and turnover relate to gaming machines which do not require any judgemental or skill competencies on the part of the player.

(iii) *The different implications of interactive technologies for Wagering and Gaming respectively.*

The implications of the internet and other new interactive technologies are entirely different for wagering and gaming.

In the case of wagering, online merely provides an alternative telecommunications link between account holders and wagering operators.

In this context it is essential to understand the maturity of telephone wagering. In the case of wagering, remote betting by account holders has been a long-existing feature and the effect of the internet has essentially been limited to an evolution in communications technology.

Since virtually the inception of Australian TABs in the 1960s, significant proportions of turnover have been attributable to off-course punters placing bets with TABs against pre-established account funds via the telephone (currently some 11% percent of total TAB turnover on thoroughbred racing Australia-wide). Additionally, since the early to mid-1990s larger-scale punters in all jurisdictions have had access to official bookmakers' telephone betting services, so that telephone is now the medium for 22% of wagering on thoroughbred racing.

Furthermore, the approximate dividends available about a runner in the lead up to a race are easily accessed by a punter away from official TAB outlets through Teletext-type services as well as radio transmissions. This, combined with the existence of a racing channel on pay TV means that, in terms of enabling "remote" gambling, internet wagering facilities have as such added little to what has already been available over the telephone for several decades.

Indeed, the Productivity Commission's report *Australia's Gambling Industries* found in this respect that "*internet wagering only represents a small technological step since people could already lodge the bets remotely by phone*". (Para 17.14)

Shortly stated, wagering on the internet is merely an alternative method of placing bets, and is equivalent to the existing TAB telephone-betting service. It is currently the medium for 11% of wagering on thoroughbred racing.

This contrasts markedly with gaming. Here interactive gaming equates to the introduction of remote gaming.

Most forms of gaming in Australia have traditionally involved person-to-person contact between punter and operator (or the operator's agent or employee) and have involved a cash transaction at the time of playing the game. Examples include casino games along with poker and card machines in registered clubs and hotels. Cash over-the-counter sales through agents with on-line links to lotteries offices have accounted for the vast bulk of lottery and lotto sales in recent years.

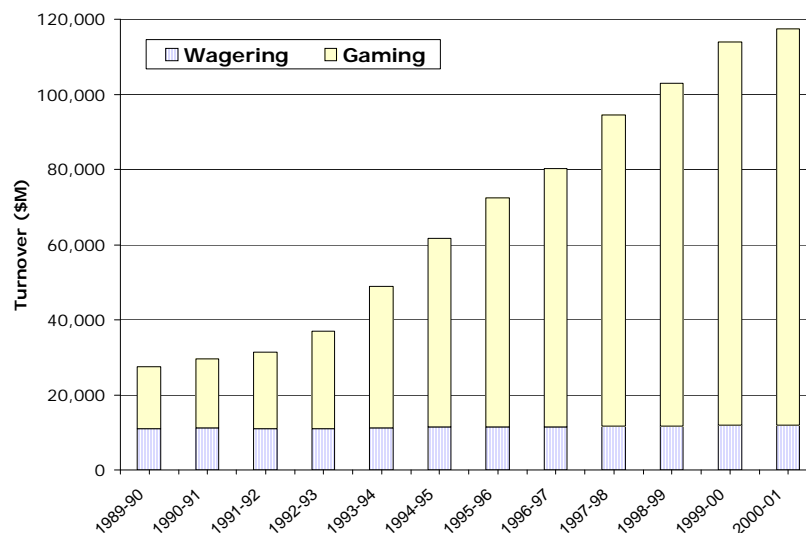
On-line gaming would plainly add a new dimension to this form of gambling as it would enable what was previously impossible – access to gaming from the player's home.

(iv) *Scale and Trends in Wagering and Gaming*

Despite the much longer history that it has had in Australia, the scale of wagering is completely overshadowed by gaming. Exhibit 6 above shows that wagering occupies a small and declining part of the Australian gambling market, falling from 40 per cent in 1989 – 90 to 11 per cent in 2004 – 2005.

Looking more closely at trends in wagering and gaming respectively, it is apparent that there has been negligible growth in wagering turnover in Australia for many years; increases in Australian expenditure on gambling have been wholly attributable to increased gaming. Moreover, there is clear evidence that this has not been altered by internet wagering - wagering growth over the past five years since internet wagering was introduced has remained flat.

Exhibit 29: Wagering vs. Gaming 1989- 90 to 2000 -01



* Gaming here is all legal forms of gambling other than wagering (ie racing related), such as Lotteries, Lotto, Tattslotto, Pools, Gaming Machines, Casino gaming, Instant Lottery, Keno, Sports Betting and minor gaming.
Source: Tasmanian Gaming Commission, Australian Gambling Statistics 1972 – 73 – 2000 – 2001

The Productivity Commission’s report *Australia’s Gambling Industries* found that “*Online casino games – like gaming machines and roulette – are continuous forms of gaming, with high frequency low payoff. As in their physical counterparts, such continuous forms of gambling present the greatest risks for problem gambling*”.

(Para 17.14)

The ATRI acknowledges the possible harm that internet gaming may cause and supported the enactment of the IGA as a means of preventing the proliferation of electronic gaming machines and casino games in the home via the internet.

In determining the scope of the IGA the Commonwealth Government decided that there were cogent reasons for providing an exemption for wagering (other than “betting in the run”). The Commonwealth Government’s decision to provide this exemption in the IGA for wagering services was soundly based.

The essential differences between gaming and wagering as gambling opportunities, the maturity of telephone account wagering, and the limited function as a distribution channel the internet plays in relation to wagering, all point to the conclusion that online wagering does not carry

with it the same inherent capacity to exacerbate problem gambling that is associated with online gaming.

Furthermore, the experience since 2001 has shown that the Commonwealth Government's decision to provide a wagering exemption was the correct one. The effect of allowing internet wagering has been to see a gradual transfer by bettors to this distribution channel in keeping with the general community trend in transferring from telephone to the internet as a telecommunications channel. Allowing internet wagering has produced no increase in the rate of growth of wagering, and there is no evidence of it having had any impact in exacerbating problem gambling.

In all these circumstances, it is the ARB's submission that the section 8A exemption for wagering services is appropriate and should be maintained.

Sports betting should not be unrestricted in terms of the events and contingencies on which betting can be conducted (eg micro-bets on any contingency within a sporting event such as who will make the next tackle in a rugby match, who will take the next catch or bowl the next over in a cricket game), particularly if combined with unrestricted "in-the-run" betting (currently prohibited in relation to electronic receipt of bets under the IGA) as that would raise both harm minimization issues and potential integrity and probity issues as such "micro-bets" are more susceptible to manipulation or corruption.

Accordingly the current prohibition under the IGA on the electronic receipt of bets "in-the-run" should remain.

7.2 Advertising

Since interstate advertising restrictions were removed, Australia has seen a substantial increase in the level of wagering advertising. Previously, TAB advertising was largely directed to alerting the availability of a TAB service in a venue, rather than attempting to induce wagering. Since advertising restrictions have been relaxed there has been a spike in advertising by wagering operators, especially corporate bookmakers, but also by TABs. Examples of those new advertisements, including inducements to open new wagering accounts or to refer friends, are set out in Appendix -.

In December 2008 the Australasian Racing Ministers Conference together with the national peak bodies for three codes of racing agreed to establish a working party to examine advertising standards for wagering services providers:

Deputy Premier and Minister for Racing Rob Hulls said the States and Territories had agreed to consider nationally consistent standards for advertising by bookmakers and TABs which would include a prohibition on monetary inducements to open betting accounts.

"Under the national standards, I expect that the large billboards we have recently seen around Melbourne offering cash incentives to open online betting accounts would no longer be tolerated," Mr Hulls said.

“It is important for all jurisdictions to work together to develop agreed standards for betting advertising and those recommendations echo the Brumby Government’s commitment to a responsible gambling environment in Victoria.”²⁶

7.3 Credit Betting

Credit betting is widely recognised as an area that requires close attention so far as responsible gambling is concerned. In the case of gaming machines all States and Territories have a ban on accessing credit to gamble – this includes a ban on cash advances from credit cards through ATM facilities and prohibiting operators from offering credit to a patron for the purposes of gaming.²⁷

The most recent examination of this issue as it relates to wagering was the NSW Cameron Review. In its submission to the review BCG recommended a national ban:

“There needs to be consistency among jurisdictions and channels in the provision of credit betting and that is best achieved by a blanket prohibition.”

The position taken by Cameron himself was to agree on the desirability of a general ban on credit betting but distinguish the case of bookmakers betting with established clients:

“While credit betting in the sense of borrowing from the wagering operator or running a credit account with that operator has obvious risk, those rules are much less when the punter is dealing with a bookmaker rather than a totalisator or a betting exchange and even less when the relationship is established over say, 3 months, before any credit betting is permitted...”

Recommendation 2: That the NSW Government should prohibit all wagering operators licensed in NSW from providing credit betting and from publicly promoting their services by way of inducements such as free bets. The only exception to the ban on credit betting should be bookmakers dealing with established customers.”

The ATRI is concerned that the approach proposed by Cameron above does not adequately address the risks of problem gambling fuelled by the provision of credit. The ATRI is therefore supportive of the development of national measures which prevent wagering operators from providing credit to their clients.

²⁶ Media Release 5/12/08

²⁷ Australian Government: A National Snapshot of Harm Minimisation Strategies.

8 National policy making

8.1 Forces shaping the racing and wagering industries

In the communiqué from a meeting of COAG in 2008 it was noted that:

“COAG acknowledged that Australia’s overlapping and inconsistent regulations impede productivity growth. Without change Australia’s future living standards would be compromised, the competitiveness of the economy reduced and our ability to meet the challenges posed by an ageing population diminished.

Many of the challenges facing the economy can only be addressed through more effective Commonwealth – State arrangements. By moving towards a seamless national economy through the reform of business and other regulation, COAG’s reform will make it easier for businesses and workers to operate across State and Territory (State) borders, these reforms will make life simpler for businesses and consumers, while continuing to provide the necessary protections and access for consumers and the community.”

The logic of moving to a national framework for racing and wagering is consistent with these sentiments.

The Cameron Review concluded that movement to a more coordinated national response to the regulation and funding of the racing industry would have a range of potential benefits:

- A consistent framework for the development of the national industry – given that all States and Territories have experienced the same underlying consumer and commercial trends, each has been investigating appropriate responses. Such consideration has often been undermined by a lack of appropriate sequencing and a lack of full see-through to understand possible changes in other jurisdictions (eg the Cameron Review itself was being undertaken without full knowledge as to the future racing and wagering environment in Victoria, and *vice versa*, and hence options advanced may not work together in an optimal manner). The result has been a patchwork series of responses that could have been better coordinated at a national level;
- Reduced regulatory arbitrage – a more national approach would reduce the ability of operators to pick off States and Territories which are willing to trade off regulatory or tax standards in order to secure local investment or other economic activity. That is, the inconsistent regulatory environment across Australia means that operators can “pick off or play off governments and racing authorities one at a time and get away with it”; and
- Lower chance of regulatory capture – there is the risk that some operators in particular jurisdictions may have significant sway over the relevant regulators and/or legislators because of their size in the particular State or Territory market. However, in a national context, the power of individual operators is likely to be diminished such that the chance of regulatory capture is reduced.

8.2 Why the States should support a national approach

The evolution of the wagering market, increased competition, new technologies and the increasing frequency of legal actions by wagering operators against State government legislation and racing industry bodies are indicative of the increasing difficulties faced by State regulators.

Put simply, regulators are trying to provide State-based regulatory frameworks to an increasingly national wagering market.

A unified national approach is likely to prove more effective as:

- State-based laws have not been enforced or may prove to be unenforceable;

Issue	Comment
Tote odds	Tote odds betting is either wholly prohibited or significantly restricted in a number of Australian jurisdictions. No prosecutions have been commenced in any State of Australia. For example in NSW and Victoria no person has been charged in relation to interstate wagering operators providing tote odds betting as prohibited under section 88 of the Totalizator Act (NSW) 1997 or Gambling Regulation Act (VIC) 2003.
Race fields legislation	No prosecutions were commenced by the Victorian Government in relation to compliance by interstate operators to Race Fields Legislation set out in the Gambling Regulation Act (VIC) 2003, notwithstanding that at least one NT registered corporate bookmaker is understood to have been in breach for an extended period.
Advertising	Section 30 of the Racing Administration Act (NSW) 1998 has recently been repealed by the NSW Government on the basis that it was concerned that constitutionality of the wagering advertising laws. Legal challenge by Betfair Pty Ltd and Sportingbet Australia Pty Limited v the NSW Government has been discontinued.
Advertising	The Victorian Government has announced that it will not prosecute breaches of its advertising laws and intends to repeal them. The background to this is that wagering advertising restrictions of the Gambling Regulation Act (VIC) 2003 were under challenge by Betfair Pty Ltd and Sportingbet Australia Pty Limited.
Retail exclusivity	There is an expectation that several corporate bookmakers are intending to challenge the existing laws relating to retail exclusivity of TABs.
Betting with an international wagering operator on an Australian race	Section 8 of the Unlawful Gambling Act (NSW) 1998 it is illegal for a NSW resident to bet on an Australian race event with an international wagering operator.
Betting exchange laws	Tasmania is the only state with laws in place to regulate betting exchange usage. Prosecution of these provisions outside Tasmania (7th of the 8 most populous jurisdictions) are likely to be unenforceable.

- It is impractical to appropriately regulate problem gambling and integrity regimes on a State basis where wagering services are provided to wagering customers by telephone or internet from remote jurisdictions (credit betting, self exclusion, codes of practice, corrupt behaviour, etc.);

Issue	Comment
Tote odds betting	Tote odds betting may have the potential to diminish the integrity of wagering pools by: <ul style="list-style-type: none"> o Reducing the reliability of indicative odds as a source of valuable punter information; o Distorting the pools; and o Increasing the risk of deliberate pool manipulation.
Credit betting	Most totalisator operators are wholly prohibited or significantly restricted (require Ministerial approval) to provide credit. However corporate bookmakers provide betting "tote odds" prices have no such restrictions.
Internet based wagering	State regulation of a national distribution mechanism will always prove problematic

- Legal actions between operators and between operators and regulators/governments will be time consuming, expensive and potentially impact achievement of public policy objectives;

Issue	Comment
Race fields legislation	Betfair Pty Limited v Racing NSW and Harness Racing New South Wales Constitutional challenge to the imposition of fee by Respondents on betting operators covering NSW thoroughbred and harness racing.
Advertising	Betfair Pty Limited and Sportingbet Australian Pty Limited v State of Victoria (Action discontinued). Challenge to the advertising restrictions in Victoria. Victorian Government has announced that it intends to lift advertising restrictions on interstate bookmakers advertising in Victoria
Advertising	Betfair Pty Limited and Sportingbet Australian Pty Limited v State of New South Wales (Action discontinued) Challenge to the advertising restrictions in Victoria. NSW Government announced repealing of certain sections of the Racing Administration Act (NSW) 1998
Race fields legislation	Sportsbet Pty Limited v Racing Victoria and Orrs (Directions hearing 4/11/08). Challenge to Victorian race fields provisions. The challenge is based on a variety of grounds including TPA, constitutional, copyright and improper purpose. (Action discontinued)
Race fields legislation	Tom & Bill Waterhouse Pty Limited v Racing NSW (Completed) Plaintiff entitled to declaration that the manner in which they presently conduct their business does not require it to seek race fields publication approval under the Racing Administration Act (NSW) 1998
Betting exchange prohibition	Betfair Pty Limited v State of Western Australia (Completed in favour of plaintiff)

8.3 National Action to Strengthen a National Industry: the necessary elements of a national policy.

A. Race Fields

The race fields concept is a good one. If the current litigation involving its application succeeds then action needs to be taken by the Commonwealth Government and or the State and Territory Governments collectively, to ensure a workable race fields model.

The racing industry recognises the increasing importance of new channels and business models and has no ‘in principle’ objection to them provided that economic, integrity and social obligations are met. Accordingly, we submit that there should be 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 and which gives the ATRI the clear power to set the basis (turnover, gross profits or other) and level of the fees payable for use of race fields.
- 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 fulfil industry integrity functions

B. IGA Exemption

The section 8A exemption for remote wagering services is appropriate and should be maintained. The prohibition on ‘in the run’ sports betting online should be maintained.

C. Offshore operators

Offshore bookmakers should not be permitted to free ride on the ATRI. The IGA should be amended to extend the exceptions only to operators who have the requisite approvals to use race fields, so as to prevent free riding.

D. Totalisator odds betting

Totalisator odds betting should only be permitted to be undertaken by totalisators. The IGA 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.

E. Financial Transactions Controls

The power provided by section 69A of the IGA to make regulations creating financial transactions controls to enforce compliance with the IGA should be used.

F. Responsible Gambling

All forms of wagering must ensure responsible gambling by their customers. The ATRI registers its support for:

- A national ban on any wagering operator from providing credit to their clients.
- A national ban on the offering of inducements and rebates.
- A national set of advertising regulations that minimise the risk of problem gambling being exacerbated.

END OF SUBMISSION.

Appendix A: Experience of the United States battling internet gambling

(Extract from BCG Submission to Cameron Review)

How effective has the US internet gambling ban been?

The US Government has been seeking to ban online gambling since its inception in the mid-1990s. Its position is that online gambling contravenes the prohibition on interstate sports betting by phone under the federal Wire Act of 1961.

There are no legal online gambling companies based in the United States (apart from exceptions for horse wagering and lotteries) so US demand for remote gambling has been met by offshore gambling companies operating online or by phone.

The US Government has sought to control offshore operators by pressuring US-based intermediaries such as banks, credit card companies and advertising media to stop providing services to online gambling companies. Until mid-2006, the Government's efforts were seen as fairly ineffective. This was reflected in the fact that US residents accounted for over one-half of the global online gambling expenditure of US\$12.4b in 2005.²⁸

Two developments in 2006 saw the US authorities ratchet up their efforts. One was the arrest on two separate occasions of executives from listed online gambling companies when they visited the United States. The other development was the passing of the federal Unlawful internet Gambling Enforcement Act 2006 (UIGEA06) in September 2006. The Act makes it illegal for all "financial transaction providers" to make fund transfers to online sites that take bets or wagers on "outcomes of a contest, sports event or game subject to chance". Nor can internet gambling providers accept money transfers from potential US online gamblers.

The two developments had a huge impact on many major online gambling companies, most of which had targeted the US as their primary market and some of which had listed on the London Stock Exchange (LSE) because of the United Kingdom's liberal gambling laws. Their market value either dropped precipitously or they were delisted (Table C-1), with few exceptions.

Many online gambling companies now exclude US residents from opening an account with them and there has been a shift in market focus toward Europe. All forms of offshore online gambling are caught in the US ban and so UK bookmakers also stopped accepting horse race wagers and sports betting from US residents. Betfair was not affected; it had never entered the US market because of the legal risk.

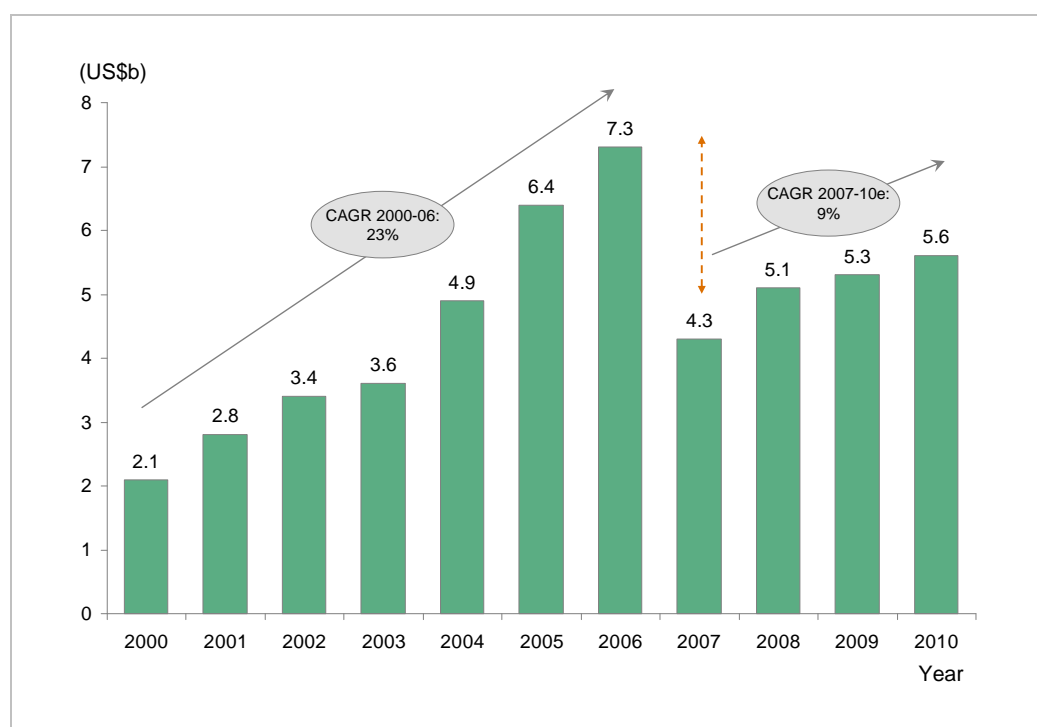
²⁸ PartyGaming Plc. 2007. Annual Report 2006, using estimates by Global Betting and Gaming Consultants.

Table C-1: LSE companies dependent on US online gambling in 2006

Company	Business	Jurisdiction	Value (\$m)		Percent change
			30 June 2006	30 June 2007	
PartyGaming	Gambling	Gibraltar	£4,620	£1,265	-73%
SportingBet	Gambling	Alderney	£1,646	£247	-85%
Playtech	Gambling	Alderney	£730	£836	+15%
888 Holdings	Gambling	Gibraltar	£721	£389	-46%
Neteller	Payments	n.a.	£710	Suspended	n.a.
Empire Online	Media agent	n.a.	£261	£122	-53%
Cryptologic	Internet	Alderney	£162	£153	-6%
Excapsa	Gambling	Kahnawake	£138	Delisted	n.a.
Fireone	Financial	n.a.	£134	Delisted	n.a.
Betonsports	Gambling	Antigua	£133	Delisted	n.a.
World Gaming	Software	Antigua	£127	Delisted	n.a.
Leisure & Gaming	Gambling	Curacao	£80	£12	-85%
Fairground	Gambling	Kahnawake	£33	Delisted	n.a.
Betcorp	Gambling	Antigua	£21	Delisted	n.a.

Source: D. Laffey. 2008. *Risky Business: London's Listed Gambling Firms and their American Gamble*. Working Paper 164, Kent Business School.

The table above indicates the likely impact that stepped-up enforcement has had companies and therefore the likely impact on the availability of offshore online gambling. Without the arrests and the passing of the UIGEA06, online gambling expenditure from North American would have reached over US\$8b in 2007 but is estimated to have been only half that figure. Also, much more modest growth is forecast from this lower base.

Exhibit C-1: Online gambling expenditure for North American residents

Source: PartyGaming plc, op. cit., using estimates by Global Betting and Gaming Consultants

It is private companies who continue to offer online gambling services to US residents, taking advantage of the exit of their publicly-listed and much more transparent competitors. There are over 2,000 online gambling websites²⁹, though most companies operate multiple sites.

It will likely prove difficult to achieve further significant reductions in online gambling by US residents, even though the US Department of Justice is only now finalising the regulations that will give effect to UIGEA06. The submissions on the regulations requiring banks and others to identify and block funds for illegal gambling online have highlighted a large number of practical problems.³⁰ For example, what constitutes illegal gambling online is not specified nor are penalties mandated. It will be for banks to decide if a particular transaction is legal or not and it will be difficult for them to do so.

In many ways the eventual implementation of regulations giving effect to UIGEA06 will not be a major change. As indicated above, state and federal authorities have already pressured most banks and credit card providers to halt transactions that could readily be linked to internet gambling. The list of internet payment businesses that have agreed to exclude internet gambling has been growing steadily, also. Existing legislation was adequate for Microsoft, Google and Yahoo! to be fined a total of US\$31m for carrying advertisements for internet gambling on their websites.³¹

A common expectation (implicit in the above forecasts) is that those websites that still provide gambling services to US residents will continue to do so. Private companies are much harder to control than the publicly-listed entities who have exited. US legislation does not target the gambler or wagerer and no US resident (currently) expects to be arrested for online gambling. On the other side of the ledger, it has become more difficult to gamble online and the gambling websites who continue to accept US customers are almost by definition less reputable. Nor do US residents have any legal recourse if they find themselves in dispute.

There is the possibility that UIGEA06 is repealed, modified, or simply not vigorously enforced. The prohibition on online gambling has the unwanted effect of channelling people to websites that have no policies to deal with problem gambling or measures to prevent under-age gambling. Commentators argue that the licensing and regulation of online gambling is a better solution than a ban.³²

A growing number of European countries have recently banned (e.g., Germany) or are considering bans (e.g. Finland, the Netherlands) on online gambling, similar to those imposed by the United States. In countries like Finland, the concern is with the rapid growth in problem gambling and their focus is on casino and other gaming sites. Other countries are concerned more with protecting the monopoly status (and tax revenues) of their national gambling operators.

WTO implications: The United States has sought to block all forms of offshore gambling including horse wagering. Antigua, who has licensed race wagering operators that exported to the US, lodged a complaint with the World Trade Organisation as trade in gambling services is a permitted activity. The US argued that its ban was based on moral and social grounds which

²⁹ CasinoCity.com, a directory website

³⁰ Triploi, L. 2008. Commentators criticize proposed regulations' clarity, practicality. *Gaming Law Review*, 12(1), 5-9.

³¹ "Google, Yahoo, Microsoft fined \$31.5m for gambling ads". *East Bay Business Times*, 19 December 2007

³² Landes, R.Y. 2007. Layovers and cargo ships: the prohibition of internet gambling and a proposed system of regulation. *New York University Law Review*, 82, 913-943; Dana, G. 2007. The economic incentive behind the Unlawful Internet Gambling Enforcement Act. *Cardozo Journal of International and Comparative Law*, 15, 533-

are a valid basis for imposing such restrictions. However, as the US allowed interstate and intrastate horse wagering over the internet, the WTO rejected the argument and ruled that the US was discriminating against offshore suppliers relative to US suppliers.

Rather than modify its online gambling ban to allow for offshore wagering on horse racing, but to continue to prohibit online casinos and other forms of gaming which are also prohibited within the US, the US withdrew from the relevant WTO provisions. To do so, it had to reach a number of off-setting agreements. A European Union claim for US\$100b compensation was settled by the US easing restrictions on warehousing, technical testing, R&D, and postal services whose value will be much less. The European Union is still pursuing the case, though, and has now launched a formal investigation to determine if US policy discriminates against EU firms. Confidential agreements have been announced with Canada, Japan and Australia. Also, the WTO awarded Antigua \$21 million per year, by allowing it to ignore copyrights on US films and music up to that amount.³³

Implications for Australia: Under Australia's IGA, race wagering and sports betting on offshore websites is legal, as it is within (most of) Australia. It is illegal, however, to provide other interactive gambling services (i.e. online casinos and other gaming) to customers residing in Australia, regardless of whether the provider is located in Australia or offshore. Online gambling providers can be based in Australia but cannot provide their services to countries which prohibit it.

³³ Rose, I.N. 2008. The US and the ongoing mess with the WTO. *Gaming Law Review and Economics*, 12(2), 105-108.

Appendix B: Gambling and Integrity of Sport

January 30, 1980: Pakistan were 272 for 4 at the end of the second day's play against India, in the sixth and final Test of the series at Calcutta. Earlier, India had made 331. That night, there was heavy betting on whether or not Pakistan would cross India's total. Asif Iqbal, in fact, declared the Pakistan innings closed at 331 -- the identical score as India's. And those who had betted heavily on Pakistan bettering India's first innings total lost significant sums of money.

November 4, 1987: In the semifinals of the Reliance World Cup, Pakistan lost to Australia. Subsequently, fast bowler Sarfaraz Nawaz accused Javed Miandad of having deliberately played below par, and of having entered into an agreement with Sheikh Abdul Rehman Bukhatir, bossman of cricket in Sharjah, to ensure Pakistan's defeat.

September 15 to 16, 1994: The Singer World Series was being played in Sri Lanka, and intense interest surrounded the India-Pakistan fixture. Manoj Prabhakar, in an interview to *Outlook* in June 1997, alleged that on the evening before the game, he was offered Rs 2.5 million by a team-mate to play below par. In the event, rain washed out the game -- but Prabhakar's allegation, earlier this year, was among the catalysts responsible for the appointment of the Justice Chandrachud commission. Pakistan opener Aamir Sohail, meanwhile, alleged earlier this year that during this series, several members of the Pakistan side had been bribed to play at below par, leading to the team's losses against Australia (by 28 runs) and Sri Lanka (by seven wickets).

September 28 to October 2, 1994: Shane Warne and Tim May alleged, in 1996, that during the Karachi Test between Australia and Pakistan played out during these days, then captain Salim Malik offered them Rs 7 million apiece to perform below par. In the event, Pakistan won by one wicket.

October 30, 1994: In the Kanpur one day international against the West Indies, India needed 63 to win, with five wickets in hand and 43 deliveries to come. Manoj Prabhakar and Nayan Mongia stonewalled, in a display of defensive batting that saw them being dropped from the side for disciplinary reasons.

January 31 to February 4, 1995: Pakistan went down, in sensational fashion, to Zimbabwe in the Harare Test. Prior to the game, Zimbabwe were quoted at 40-1 against, but went on to win by an innings and 64 runs, inside four days. Pakistan players Basit Ali and Rashid Latif promptly announced their retirement, saying that "things were going on in the Pakistan side" that they wanted no part of.

February 16, 1995: India took on New Zealand in an ODI at Napier, as part of the latter country's centenary celebrations -- and lost by four wickets. Last year, a police sub-inspector in Bombay claimed that before, and during the game, a prominent bookmaker based in the metrop had been in telephonic contact with Indian players and officials at the venue, and offered to produce tape recordings and other evidence in support of this contention.

March 9, 1996: For the Wills World Cup quarterfinal against India, Pakistan skipper Wasim Akram announced on the morning of the match that he was resting himself because of a shoulder injury. However, the fact that Akram would not be playing was common knowledge in sections of the media 48 hours before the event -- and the media cited bookmakers as the source of their information.

September 1, 1996: Pakistan wicketkeeper Rashid Latif scored a match-winning 31 not out in just 28 balls to help his side beat England in the last game of the ODI series, at Nottingham. The win avoided a clean sweep by England. Latif was later axed from the side -- and went on to accuse members of the Pakistan side of having been bribed to ensure a whitewash.

1996, The match-fixing report by the Central Bureau of Investigation said Ram Adhar had received 50,000 rupees (1,100 dollars) from ex-Test cricketer Ajay Sharma for underpreparing the wicket for the one-off Test against Australia in 1996

September 23, 1997: During the Sahara Cup in Toronto, Calcutta police arrest a prominent bookmaker based in the metro, and recover files and other evidence which, they say, implicates several cricketers and officials.

February 1999 a Malaysian-based betting syndicate was caught attempting to install a remote-control device to sabotage the floodlights at **English Premier League team Charlton Athletic's** ground with the aid of a corrupt security officer. If the match had been abandoned after half-time, then the result and bets would have stood. Subsequent investigations showed that the gang had been responsible for previously unsuspected "floodlight failures" at West Ham's ground in November 1997, and again a month later at Crystal Palace's ground during a home match of Palace's groundsharing tenant Wimbledon.

2000 the Delhi police intercepted a conversation between a blacklisted bookie and the South African cricket captain **Hansie Cronje** in which they learnt that Cronje accepted money to throw matches. The South African government refused to allow any of its players to face the Indian investigation unit, which created significant issues and controversy. A court of inquiry was set up and Cronje admitted to throwing matches. He was immediately banned from all cricket. He also named Salim Malik (Pakistan), Mohammed Azharuddin and Ajay Jadeja (India). Jadeja was banned for 4 years. They too were banned from all cricket. As a major identity in the affair, Cronje exposed the dark side of betting, however with his untimely death in 2002 most of his sources also have escaped law enforcement agencies. Two South African cricketers, Herschelle Gibbs and Nicky Boje, are also wanted by the Delhi police for their role in the match fixing saga. A few years before in 1998, Australian players Mark Waugh and Shane Warne were fined for revealing information about the 'weather' to a bookmaker.

March 2004, at Lingfield on 2nd March 2004, Keiran Fallon was 10 lengths clear on Ballinger Ridge, eased his mount right down and was caught on the line, which was greeted by stunned silence, followed by loud booing.

June 2004 in South Africa, thirty-three people (including nineteen referees, club officials, a match commissioner and an official of the **South African Football Association**) were arrested on match-fixing charges.

January 2005, the **German Football Association (DFB)** and German prosecutors launched separate probes into charges that **referee Robert Hoyzer** bet on and fixed several matches that he worked, including a German Cup tie. Hoyzer later admitted to the allegations; it has been reported that he was involved with Croat gambling syndicates. He also implicated other referees and players in the match fixing scheme. The first arrests in the Hoyzer investigation were made on January 28 in Berlin, and Hoyzer himself was arrested on February 12 after new evidence apparently emerged to suggest that he had been involved in fixing more matches than he had admitted to. Hoyzer has been banned for life from football by the DFB. On March 10, a second referee, Dominik Marks, was arrested after being implicated in the scheme by Hoyzer. Still later (March 24), it was reported that Hoyzer had told investigators that the gambling ring he

was involved with had access to UEFA's referee assignments for international matches and Champions League and UEFA Cup fixtures several days before UEFA publicly announced them. Ultimately, Hoyzer was sentenced to serve 2 years and 5 months in prison.

2005 Tennis, Wimbledon 2005, at least 10 male players have admitted they were contacted to influence matches, among them American Paul Goldstein, Frenchmen Michael Llodra and Arnaud Clement and Belgian Gilles Elseneer, who told a TV station he was offered roughly \$140,000 to throw a first-round match at Wimbledon in 2005. None admitted taking bribes.

July 2005, Italian Serie B champions Genoa was arbitrarily placed last in the division, and therefore condemned to relegation in Serie C1, after it was revealed that they bribed their opponents in the final match of the season, Venezia to throw the match. Genoa won the match 3-2 and had apparently secured promotion to Serie A.

September 2005, a Brazilian magazine revealed that **two football referees**, Edilson Pereira de Carvalho (a member of FIFA's referee staff) and Paulo José Danelon, had accepted bribes to fix matches. Soon afterwards, sport authorities ordered the replaying of 11 matches in the country's top competition, the Campeonato Brasileiro, that had been worked by Edilson. Both referees have been banned for life from football and face possible criminal charges. Brazilian supporters have taken to shout "Edilson" at a referee who they consider to have made a bad call against their team, in a reference to the scandal.

May 2006, perhaps the largest match fixing scandal in the history of Italian Serie A football was uncovered by Italian Police, implicating league champions Juventus, and powerhouses AC Milan, Fiorentina, and Lazio. Teams have been suspected of rigging games by selecting favorable referees, and even superstar Italian World Cup team goalkeeper Gianluigi Buffon has been charged with betting on football games. Initially, Juventus were stripped of their titles in 2004-05 and 2005-06, all four clubs were barred from European club competition in 2006-07, and all except Milan were forcibly relegated to Serie B. After all four clubs appealed, only Juventus remained relegated, and Milan were allowed to enter the third qualifying round of the Champions League. The stripping of Juventus' titles stood.

July 2007 it was revealed that National Basketball Association referee Tim Donaghy had gambled on 10 to 15 games, including games which he refereed. The matter is currently being investigated by the Federal Bureau of Investigation as well as the **NBA**

October 2007, allegedly "fixed" tennis matches, including those at the Australian Open and an Adelaide competition, are being investigated by international authorities. A quarter-final at the Australian Open and matches featuring Lleyton Hewitt and Wayne Arthurs are among 140 "suspect" matches played over the past four years, Fairfax newspapers say.

2008 Declan Hill alleges that in the 2006 World Cup, the group game between Ghana and Italy, the round-of-16 game between Ghana and Brazil, and the Italy-Ukraine quarter-final were all fixed by asian gambling syndicates to whom the final scores were known in advance. The German Football Federation (DFB) and German Football League (DFL) looked into claims made in a Der Spiegel interview with Hill that two Bundesliga matches were fixed by William Bee Wah Lim a fugitive with a 2004 conviction for match-fixing.

October 2008, it was reported that a Spanish judge who headed an investigation against Russian Mafia figures uncovered information alleging that the mobsters may have attempted to fix the the 2008 UEFA Cup semifinal between eventual champion Zenit St. Petersburg and Bayern Munich. Both clubs denied any knowledge of the alleged scheme. Prosecutors in the

German state of Bavaria, home to Bayern, later announced that they did not have enough evidence to justify a full investigation.

Appendix C: Information regarding “Race Fields” for Australian Wagering Operators (RNSW)

Further amendments to the *Racing Administration Act 1998 (NSW)* which require the approval of Racing NSW to any use of NSW thoroughbred race field information (whether that use occurs in NSW or elsewhere) unless the use is specifically exempt under the Regulations commenced on 3 December 2008. These amendments refined the Race Fields Publication approval process that became effective on 1 September 2008. It is an offence under the Racing Administration Act, punishable by fines and/or imprisonment, to use NSW thoroughbred race field information without the necessary approval from Racing NSW. This document outlines Racing NSW’s approach in relation to applications relating to use of NSW thoroughbred race field information in Australia by wagering operators who hold a wagering licence issued under the laws of an Australian State or Territory. Separate arrangements will apply to wagering operators who are not licensed in an Australian State or Territory and to wagering operations conducted outside Australia by Australian licensed wagering operators. Such operators should contact Racing NSW for further information.

Please check the Racing NSW website regularly for updates.

What is NSW Thoroughbred Race Field Information”?

“NSW thoroughbred race field information” is any information that identifies, or is capable of identifying, the name/s or number/s of the horses that have been nominated for, or will take part in, a thoroughbred race to be held at a NSW thoroughbred race meeting or that have been scratched or withdrawn from a thoroughbred race to be held at a NSW thoroughbred race meeting.

Considerations regarding Australian wagering operators

The following information is provided for Australian-licensed wagering operators and applies equally to all categories of wagering operator, whether totalizator operators, bookmakers or betting exchanges, who hold a wagering licence issued under the laws of any Australian State or Territory.

In considering an application by a wagering operator for approval to use NSW race field information, Racing NSW will take into account whether the operator holds a wagering licence issued under the laws of an Australian State or Territory and other matters required under the Regulations. However, Racing NSW will not take into account:

- Whether the applicant’s wagering licence was issued in New South Wales or under the laws of another Australian State or Territory; or
- The location in Australia in which the applicant resides or carries out his or her activities or, in the case of a corporate applicant, in which it has its head office or principal place of business.

Information for Australian wagering operators

When do I have to apply for approval?

The provisions of the Racing Administration Act make it an offence to use NSW thoroughbred race field information without the required approval from Racing NSW. Applications should be submitted at least 30 days prior to any intended use of NSW thoroughbred race field information.

Define uses NSW race field information

The Racing Administration Act defines “uses NSW race field information” extremely broadly to include, amongst other things, any oral, visual, written, electronic or other display or communication. Also included is any recording of race field information on betting sheets, computer records and betting tickets, regardless of whether or not such recording is provided to a third party. At a practical level, any wagering operator who fields on NSW thoroughbred racing should assume their wagering activities will involve the use of NSW race field information and apply for approval from Racing NSW.

How long does an approval last?

The initial approvals granted by Racing NSW to wagering operators will apply from the date of approval to 30 June 2009. After that, approvals will apply for a financial year – i.e. 1 July to 30 June in the following year.

What fees will I have to pay to Racing NSW?

In relation to approvals to use NSW thoroughbred race field information in Australia in the course of the wagering operations of a Australian-licensed wagering operator, the fee payable to Racing NSW will be equal to 1.5% of the wagering operator’s wagering turnover on NSW thoroughbred race meetings to the extent that turnover exceeds an “exempt turnover threshold”.

The “exempt turnover threshold” is an annual turnover on NSW thoroughbred racing of \$5 million over a financial year. Where an approval is granted during the course of a financial year, the threshold is adjusted pro-rata to reflect the proportion of the financial year in which the approval was effective.

For example, as the initial approvals granted by Racing NSW covered the period From 1 September 2008 to 30 June 2009, the “exempt turnover threshold” for the purpose of those approvals will be \$4,166,167 (being 10/12ths of the full year amount of \$5 million) and fees will only be charged on turnover on NSW thoroughbred racing in excess of that threshold. For the purpose of assessing the fees payable to Racing NSW where a number of wagering operators are “related”, a single “exempt turnover threshold” applies to the entire “Related Group”.

For example, if a company and its subsidiary both hold wagering licences granted under the laws of an Australian State or Territory and each hold approvals from Racing NSW for a full financial year, in that financial year those two companies would pay fees at a rate equal to 1.5% of the amount by which their combined wagering turnover on NSW thoroughbred racing exceeded \$5 million. As the companies are related they would not each be entitled to a separate exemption on their first \$5 million of turnover on NSW thoroughbred racing. Rather a single \$5 million threshold would apply to their combined turnover on NSW thoroughbred racing .1 Wagering operators will be regarded as being “related” and so have a single “exempt turnover threshold” for their combined wagering turnover if:

- They are “related bodies corporate” within the meaning of the Corporations Act (i.e. one 1 Note: The \$5 million threshold assumes that the approval is in place for a full financial year. The amount of the threshold will be adjusted pro-rata for approvals granted during a financial year so that, for example, the first approvals granted by Racing NSW will cover the period from 1 September 2008 to 30 June 2009 so the threshold which applies for that period will be \$4,166,167. is a subsidiary of the other);

- One of the wagering operators “controls” the other or the same person “controls” both wagering operators (in this context, “control” has the same meaning as in the Accounting Standards);
- A wagering operator is a “key employee” (which has the same meaning as given in the Racing Administration Regulations 2005), a director or an “associate” (within the meaning of the Corporations Act) of another wagering operator;
- They have a common “key employee” or a common director (*e.g. if a person is a director or key employee of two companies both of which have an Australian wagering licence, then those two companies are considered related*);
- The wagering operator or a “key employee” of the wagering operator is a partner in another wagering operation that is conducted as a partnership; or
- If both wagering operators are “related” to a common wagering operator (*e.g. “Company A” and its subsidiary “Company B” are related. If “Mr X” is a director of Company B, he would be related to both Company B and to Company A*).

What turnover is the fee charged on?

All turnover in respect of bets made in the course of the Australian wagering operations of an Australian-licensed wagering operator is relevant to the determination of fees payable to Racing NSW. However fees will only apply to that turnover which is on NSW thoroughbred racing and which exceeds the “exempt turnover threshold” described above. “Turnover” in this context refers to the total amount of wagers made on the “backers” side of wagering transactions made in relation to NSW thoroughbred races. Separate fee arrangements will apply to wagering operators who are not licensed in an Australian State or Territory and to wagering operations conducted outside Australia by Australian-licensed wagering operators. Such operators should contact Racing NSW for further information.

How will “bet backs” be treated for the purpose of determining fees?

Unlike totalizators and betting exchanges, wagering operators’ laying fixed-odds bets (i.e. bookmakers’ odds) are “at risk” and can suffer a net loss (i.e. turnover is less than amounts paid to their wagering customers on winning bets) on an event based on the outcome of that event.

A wagering operator laying fixed-odds bets is entitled to a “credit” (i.e. effectively a deduction on their turnover for the purpose of assessing fees) for a genuine bet back if, but only if, the bet back is made via an account (i.e. no “credits” for cash bets) with an Australian-licensed wagering operator who:

- has a race field information use approval from Racing NSW; AND
- is actually paying fees to the NSW racing industry in that financial year.

The onus is on the wagering operator claiming the credit for a bet back to demonstrate that they are entitled to that credit (*e.g. a bookmaker will have to produce the details of the relevant account with the other Australian-licensed wagering operator and be able to prove it was a genuine bet-back meeting the above requirements*). If the wagering operator can not satisfactorily demonstrate that those requirements have been satisfied then the wagering operator will be assessed on the full amount of the bet without any “offsetting credit” for the bet back.

How often will I need to pay fees?

Fee installments will be paid monthly based on a “monthly installment rate” determined by Racing NSW for each individual wagering operator. This provides wagering operators with a degree of certainty in relation to cashflow and reduces their administration. Each wagering operator will be notified of their monthly installment rate for the financial year at the same time as they are notified that their application has been approved. In determining a wagering operator’s monthly installment rate, Racing NSW will have regard to matters such as the wagering operator’s turnover on NSW thoroughbred racing in previous years and their turnover forecast and also to any unusual events which may have impacted turnover on NSW thoroughbred racing.

If at the end of a calendar quarter, the fees payable by a wagering operator based on their actual “financial year to date” turnover as at the end of that quarter are higher than the installments that the wagering operator has paid in the financial year to date, the wagering operator will need to make a supplementary payment to Racing NSW equal to the excess. Fees will be finally determined at the end of the financial year based on the wagering operator’s actual turnover on NSW thoroughbred racing and any adjustments required – either additional payments by the wagering operator (to the extent that the final fee is greater than the installments paid) or refunds by Racing NSW (to the extent that the final fee is less than the installments paid) will be made once the wagering operator’s turnover on NSW thoroughbred racing for the financial year is finally determined.

What financial information will I need to provide to Racing NSW?

At the end of each calendar quarter, wagering operators will need to provide a return certified as being true and correct by the wagering operator (or in the case of a company, by a director) showing the wagering operator’s turnover on NSW thoroughbred racing for the relevant quarter and for the financial year to date.

In addition, at the end of the financial year, each wagering operator will need to provide Racing NSW with a certificate from a registered auditor verifying the wagering operator’s annual turnover on NSW thoroughbred racing during the financial year. Wagering operators whose turnover on NSW thoroughbred racing in the financial year is less than \$4 million, will have the option of providing a statutory declaration verifying their turnover on NSW thoroughbred racing instead of providing a certificate from a registered auditor. Racing NSW will have the right to have an audit conducted by an auditor nominated by Racing NSW to verify the amount of fees payable.

What other conditions (i.e. in addition to those regarding fees) will apply to an approval?

In addition to conditions relating to fees, the approval will be subject to conditions designed to enable Racing NSW to administer the arrangements and to discharge its responsibilities and functions regarding the protection of the integrity and reputation of NSW thoroughbred racing industry. These conditions will include that the wagering operator must:

- Maintain a wagering licence under the laws of an Australian State or Territory which authorises it to carry out its wagering activities;
- Conduct appropriate identification of account customers;
- Have appropriate internal procedures and controls for identifying suspect betting transactions or other matters impacting on racing integrity and for reporting to Racing NSW any matter relating to NSW thoroughbred racing identified through those procedures and controls;

- Not open an account for a person who is warned off a racecourse or who is a disqualified person under the rules of racing without prior approval and notify Racing NSW if any person who is warned off a racecourse or who is a disqualified person under the rules of racing attempts to open an account with that wagering operator;
- provide Racing NSW with access to the wagering operator's betting information and analyses in relation to NSW thoroughbred racing if requested by Racing NSW in connection with its functions regarding the integrity and reputation of NSW thoroughbred racing;
- provide Racing NSW with all information in the wagering operator's power, possession or control (including details of any betting accounts) which may be requested by Racing NSW in connection with any investigation or inquiry specified by Racing NSW and provide such other assistance as may be requested by Racing NSW in connection with such investigations or inquiries;
- maintain appropriate internal procedures and controls to enable the wagering operator to comply with the conditions attaching to the approval;
- maintain a proper record and audit trail of all wagers;
- use appropriately secure computer systems in the wagering operations;
- participate in an on-line wagering monitoring system specified by Racing NSW if required by Racing NSW;
- notify Racing NSW of significant events, such as changes in control, changes in financial position or prosecutions or disciplinary action being taken against the wagering operator under any legislation or the rules of racing or betting. The ability of the wagering operator to comply with such conditions will be considered in assessing applications for approval.

Will my information be treated confidentially?

Information provided by wagering operators in connection with an application for approval or in accordance with conditions attaching to an approval will be regarded as confidential and will not be disclosed to other wagering operators or publicised. This will be subject to exceptions of the kind which commonly apply in relation to confidentiality obligations such as where the disclosure is required by law or is relevant to an investigation by a regulatory body.

Where can I get an application form?

Applications are available on the Racing NSW website www.racingnsw.com.au or by contacting Racing NSW on (02) 9551 7500. Information which will need to be provided in or accompany the application form for a wagering operator will include:

- The applicant's name and contact details;
- The applicant's proposed use of NSW thoroughbred race field information (including the class of races and the proposed times, places and manner of use);
- Details of the applicant's wagering licence;
- Details of the types of wagering and bet-types offered by the applicant;
- Details of the applicant's wagering activities;
- Details of the applicant's wagering turnover on NSW thoroughbred racing for the financial year ended 30 June 2006, the financial year ended 30 June 2007 and the financial year ended 30 June 2008 and, to the extent available, the applicant's forecast or anticipated turnover on NSW thoroughbred racing for the financial year ending 30 June 2009;
- The experience, disciplinary record and repute of the applicant and, where applicable, its directors, close associates and key employees, including whether there is a history of

- integrity breaches and any criminal convictions or disciplinary action under legislation, rules of racing or rules of betting;
- Details of the applicant's policy and procedures for identifying suspect betting transactions, fraud or other matters impacting on racing integrity or the reputation of racing; and
- Details of all wagering operators who are "related" to the applicant (as outlined above).

Each wagering operator (including those which are part of a related group) will need to complete a separate application form.

Appendix D: Standard Conditions (RNSW)

1 Race Field Information Use Approval

1.1 Race Field Information Use Approval

In accordance with section 33A of the Racing Administration Act, Racing NSW grants to the Approval Holder approval to use NSW Thoroughbred Race Field Information:

- (a) During the Approval Period;
- (b) In the course of the wagering operations of the Approval Holder which are conducted under its Australian Wagering Licence; and
- (c) Where the use takes place:
 - (1) In Australia; or
 - (2) In respect of a website which is:
 - (a) hosted and maintained in Australia; and
 - (b) used for the wagering operations of the Approval Holder which are conducted under its Australian Wagering Licence, even if that website is accessible by persons located outside Australia, provided that the website only relates to wagering operations conducted under Australian Wagering Licences and not to any other wagering operations (including any wagering operations conducted under a licence or approval granted under the laws of any jurisdiction other than an Australian State or Territory), subject to, and on the terms set out in, these conditions and any Special Conditions.

1.2 Approval Period

The Race Field Information Use Approval commences on the Effective Date and ends on the End Date unless earlier cancelled in accordance with these conditions.

2 Fees

2.1 Fees

- (a) The Approval Holder must pay to Racing NSW a fee of an amount equal to 1.5% of the Approval Holder's Net Assessable Turnover in respect of the Approval Period.
- (b) The Approval Holder must pay the fee referred to in clause 2.1(a) in accordance with this clause 2, including by paying:
 - (1) All installments in accordance with clause 2.4 and 2.5; and
 - (2) Any amount payable by the Approval Holder in accordance with clause 2.6.

2.2 Exempt Turnover Threshold

(a) The Approval Holder's Exempt Turnover Amount in respect of a period is:

(1) if the Approval Holder is not Related to any other Australian Wagering Operator at any time during the relevant period, the Exempt Turnover Threshold in respect of that period;

(2) if the Approval Holder is not Related to any other Australian Wagering Operator for only part of the relevant period:

(a) in respect of that part of the relevant period in which the Approval Holder was not Related to any other Australian Wagering Operator, the Exempt Turnover Threshold for that part of the relevant period; and

(b) in respect of that remainder of the relevant period, the amount, if any, of the Exempt Turnover Threshold for that part of the relevant period that Racing NSW allocates to the Approval Holder under clause 2.2(b); or

(3) if the Approval Holder is Related to any other Australian Wagering Operator during the whole of the relevant period, the amount, if any, of the Exempt Turnover Threshold for that period that Racing NSW allocates to the Approval Holder under clause 2.2(b). (b) If the Approval Holder is related to any other Australian Wagering Operator during the Approval

Period, Racing NSW will allocate the Exempt Turnover Threshold amongst the members of the Group to the intent that, in determining the fees payable to Racing NSW in accordance with conditions imposed on Approvals to Group Members, the Australian Wagering Operators in the Group:

(1) Will collectively be entitled to the benefit of the Exempt Turnover Threshold; but

(2) Will not collectively be entitled to deductions from their NSW Thoroughbred Turnover (other than credits for bet backs in accordance with Approvals to Group Members) of more than the Exempt Turnover Threshold. *(For example, if the Approval Holder and a subsidiary company of the Approval Holder both hold*

Australia Wagering Licences and each holds race field information use approvals from Racing NSW for a full Financial Year, in that Financial Year the Approval Holder and its subsidiary company would collectively pay fees at a rate equal to 1.5% of the amount by which their combined NSW Thoroughbred Turnover (net of any bet back credits) exceeded \$5 million. As the Approval Holder and its subsidiary company are Related they would not each be entitled to a separate exemption on their first \$5 million of NSW Thoroughbred Turnover (net of any bet back

credits). Rather a single \$5 million threshold would apply to their combined NSW Thoroughbred Turnover (net of buy back credits) and Racing NSW would allocate that single threshold between the Approval Holder and its subsidiary.)

(c) Racing NSW may change the allocation of the Exempt Turnover Threshold under clause 2.2(b) if there is a change in the Australian Wagering Operators to whom the Approval Holder is related.

(d) In allocating the Exempt Turnover Threshold amongst the members of the Group under clause

2.2(b) Racing NSW will seek to allocate that Exempt Turnover Threshold:

(1) where the members of the Group were Related at the start of the Financial Year and all members of the Group specify the same proposed allocation of the Exempt Turnover Threshold in their applications to Racing NSW for race field information use approvals, in accordance with the proposed allocation specified in those applications; or

(2) otherwise, to the member of the Group with the highest anticipated NSW Thoroughbred Turnover for the Financial Year and then, to the extent that the Exempt Turnover Threshold is not fully allocated, to the member of the Group with the next highest anticipated NSW Thoroughbred Turnover and so on, but Racing NSW will not be liable to any person, on any basis whatsoever, as a result of the manner in which the Exempt Turnover Threshold is allocated amongst members of the Group, including if the allocation is not conducted in accordance with this clause 2.2(d). (e) Item 8 of the Approval Schedule sets out the Approval Holder's Exempt Turnover Amount on the assumption that the Race Field Information Use Approval commences on the Effective Date and ends on the End Date, the Australian Wagering Operators to whom the Approval Holder is Related are as set out in Item 7 of the Approval Schedule and that, during the Approval Period, there is no change in the Australian Wagering Operators to whom the Approval Holder is Related. The Approval Holder's Exempt Turnover Amount may vary from that set out in Item 8 of the Approval Schedule if events do not occur as assumed in this clause 2.2(e) or if Racing NSW determines that the amount stated in Item 8 of the Approval Schedule does not accurately reflect the Approval Holder's Exempt Turnover Amount determined in accordance with this clause 2.2.

2.3 Bet Back Credits

(a) For the purpose of determining amounts payable by the Approval Holder under clauses 2.1, 2.5 or 2.6, the Approval Holder is entitled to a credit of an amount equal to the amount staked by the Approval Holder in any Bet Back made during the period in respect of which the relevant payment relates if, but only if, the Bet Back is made through an account with an Australian Wagering Operator:

(1) to whom Racing NSW has, prior to the Bet Back being made, granted a race field information use approval in accordance with section 33A of the Racing Administration Act; and

(2) Who either:

(a) pays fees to Racing NSW under the approval referred to in clause 2.3(a)(1) in the Financial Year in which the Bet Back was made (*for example: unless clause 2.3(a)(2)(b) applies, a Bet Back Credit would not be available for a Bet Back made with an Australian Wagering Operator who was not required to pay fees to Racing NSW under a race field information use approval because that Australian Wagering Operator's Net Assessable Turnover was zero*); or

(b) under an arrangement evidence in writing with a NSW thoroughbred racing club registered by Racing NSW, pays that racing club a fee which is calculated by reference to that Australian Wagering Operator's turnover or revenue in relation to the Bet Back. (b) For the avoidance of doubt, the Approval Holder is not entitled to any Bet Back Credit for a Bet Back:

(1) which is made in cash rather than through an account;
or

(2) unless the Approval Holder can prove through documentary evidence that the Approval Holder is entitled to that credit under clause 2.3(a).

2.4 Monthly Instalment Payments

(a) The Approval Holder must pay to Racing NSW in respect of each month an amount equal to the Monthly Instalment Amount, and must pay each of those amounts:

(1) monthly in arrears; and

(2) within 7 days after the end of the month to which the payment relates.

(b) If the Effective Date is not the first day of a month, then the amount of the payment under clause

2.4(a) For the month which includes the Effective Date is reduced pro-rata in proportion to the number of days in the month which occur on or after the Effective Date.

(c) Payments under this clause 2.4 are installment payments in respect of the fee referred to in clause 2.1(a).

2.5 Supplementary Quarterly Installment Payments

(a) If, as at the end of a Quarter ending on 30 September, 31 December or 31 March, the amount which is 1.5% of the Approval Holder's Net Assessable

Turnover for the period from the Effective Date until the end of the relevant Quarter exceeds the sum of:

(1) all instalments paid under clause 2.4 in respect of months up to and including the end of the relevant Quarter. (For the avoidance of doubt, these amounts include any amount payable under clause 2.4 in respect of the last month of the Quarter even though that amount is not paid until the 7th day of following month);

(2) any amounts paid under this clause 2.5 in respect of previous Quarters, the Approval Holder must, within 28 days after the end of the relevant Quarter, pay to Racing NSW an amount equal to that excess. *(For example: if an Approval Holder's Net Assessable Turnover for the period from the Effective Date to the end of a relevant Quarter was \$10 million, and the Approval Holder had made payments under clauses 2.4 and 2.5 totalling \$120,000, then the Approval Holder would be required to make a payment under this clause 2.5 of \$30,000 (i.e. 1.5% x \$10 million - \$120,000) within 28 days of the end of the relevant Quarter.*

(b) Payments under this clause 2.5 are instalment payments in respect of the fee referred to in clause 2.1(a).

2.6 Final Fee Adjustment

(a) If, at the end of the Approval Period, the amount of the fee referred to in clause 2.1(a):

(1) exceeds the sum of all instalment payments in respect of that fee under clauses 2.4 and 2.5, the Approval Holder must pay to Racing NSW an amount equal to that excess;

(2) is less than the sum of all instalment payments in respect of that fee under clauses 2.4 and 2.5, Racing NSW must refund to the Approval Holder an amount equal to the amount by which the sum of all instalment payments in respect of that fee under clauses 2.4 and 2.5 exceeds the amount of the fee referred to in clause 2.1(a).

(b) The Approval Holder must pay any amount payable by the Approval Holder under clause 2.6(a) within 6 weeks after the end of the Approval Period.

(c) Racing NSW must pay the amount of any refund payable by Racing NSW under clause 2.6(a):

(1) if, by the date which is 6 weeks after the end of the Approval Period, Racing NSW has given written notice to the Approval Holder that it requires an audit under clause 3.4, within 14 days after Racing NSW gives notice under clause 3.4(e) in respect of that audit; or

(2) otherwise, within 6 weeks after the end of the Approval Period.

(d) For the avoidance of doubt, neither the acceptance of a payment from the Approval Holder nor the payment of a refund by Racing NSW under clause 2.6 constitutes an admission by Racing NSW that the amount is correctly determined and Racing NSW retains the right to seek adjustments if those amounts are subsequently proven to be incorrect.

2.7 Payment method

(a) The Approval Holder must pay amounts payable under these conditions (including the fee referred to in clause 2.1 and amounts payable under clauses 2.4, 2.5 or 2.6) by:

(1) authorising Racing NSW to make a direct deduction from a bank account maintained by the Approval Holder and identified in writing by the Approval Holder to Racing NSW; or

(2) in accordance with such other arrangements as may be agreed between Racing NSW and the Approval Holder from time to time for the payment of amounts payable under these conditions, and do all things reasonably requested by Racing NSW to facilitate the implementation of those arrangements including, in the case of arrangements referred to in paragraph (1) providing such written authorities and consents (including from the Approval Holder's bank) as may be required by Racing NSW and Racing NSW's bank to enable Racing NSW to access the Approval Holder's relevant bank account or accounts for the purpose of deducting the amounts payable under these conditions.

(b) For the avoidance of doubt nothing in this clause 2.7 prohibits the Approval Holder cancelling a debit authority in relation to its bank account provided the Approval Holder otherwise maintains arrangements to which Racing NSW has agreed in advance for the payment of amounts payable under these conditions and reimburses Racing NSW for any additional cost or expense that Racing NSW may incur as a result of the adoption of an alternative agreed payment arrangement.

(c) In addition to any other remedy provided for under these conditions, including without limitation clause 2.8, if:

(1) the Approval Holder does not do all things necessary to facilitate the payment of any amount payable under these conditions by the due date and in accordance with arrangements provided for in accordance with clause 2.7(a) (including having sufficient funds available in the relevant account); or

(2) the Approval Holder's bank declines to facilitate those arrangements other than due to the act or omission of Racing NSW or Racing NSW's bank, Racing NSW may charge the Approval Holder an administration fee on account of the costs and expenses incurred by Racing NSW in seeking payment.

2.8 Interest

(a) Subject to clause 2.8(b), the Approval Holder must pay Racing NSW interest at the Interest Rate on any amount (including interest) payable under these conditions which is not paid by the due date.

(b) Interest is not payable under clause 2.8(a) if:

(1) the failure to pay the relevant amount by the due date resulted from the failure of Racing NSW or Racing NSW's bank to give effect to the arrangements provided for in these conditions for payment of those amounts; and

(2) the Approval Holder and the Approval Holder's bank had done all things necessary on their part to facilitate the payment (including having sufficient funds available in the relevant account).

(c) Interest payable under these conditions:

(1) accrues from day to day on the basis of a 365 day year from and including the due date for payment to the actual date of payment;

(2) accrues before and, as an additional obligation, after any judgment, decree or order into which the liability to pay any amount under these conditions becomes merged;

(3) may be capitalised by Racing NSW at monthly intervals.

3 Provision of Turnover Information

3.1 Quarterly reports

(a) Within 21 days after the end of each Quarter, the Approval Holder must lodge a return in a form approved by Racing NSW which contains the following information:

(1) the Approval Holder's NSW Thoroughbred Turnover during the relevant Quarter and from the start of the Financial Year to the end of the relevant Quarter;

(2) the amount of any Bet Back Credits which the Approval Holder claims to be entitled to in respect of Bet Backs made in the relevant Quarter and in respect of Bet Backs made in the period from the start of the Financial Year to the end of the relevant Quarter;

(3) the Approval Holder's Net Assessable Turnover during the relevant Quarter and from the start of the Financial Year to the end of the relevant Quarter;

(4) if the Approval Period commenced during the relevant Quarter or during the relevant Financial Year, the information referred to in paragraphs (1), (2) and (3) must distinguish between those amounts which relate to the Approval Period and amounts which relate to periods prior to the Approval Period; and

(5) such other information relevant to the assessment of fees or instalments payable under these conditions as Racing NSW may specify from time to time.

(b) The information in the return referred to in clause 3.1(a) must be certified by the Approval Holder (or, if the Approval Holder is a body corporate, by a director of that body corporate) as being true and correct.

3.2 Final Certification

(a) Within 1 month after the end of the Approval Period, the Approval Holder must lodge a return in a form approved by Racing NSW which contains the following information:

(1) the Approval Holder's NSW Thoroughbred Turnover during the Approval Period;

(2) the Approval Holder's Exempt Turnover Amount in respect of the Approval Period;

(3) details of any other Australian Wagering Operator to whom the Approval Holder was Related during the Approval Period (including the name of the Australian Wagering Operator, the basis on which that Australian Wagering Operator was Related to the Approval Holder and the times during the Approval Period that the Approval Holder and the other Australian Wagering Operator were Related) and the amount of Exempt Turnover Threshold allocated to each other Australian Wagering Operator in respect of the Approval Period;

(4) the amount of any Bet Back Credits which the Approval Holder claims to be entitled to in respect of the Approval Period and evidence to support the Approval Holder's entitlement to those credits;

(5) the Approval Holder's Net Assessable Turnover in respect of the Approval Period;

(6) the amount which the Approval Holder calculates as being the amount of the fee payable in accordance with clause 2.1 (being 1.5% of the Approval Holder's Net Assessable Turnover in respect of the Approval Period);

(7) the amount of any instalments paid under clause 2.4 or 2.5 in respect of the Approval Period; and

(8) such other information relevant to the assessment of fees payable under these conditions as Racing NSW may specify from time to time.

(b) The information in the return referred to in clause 3.2(a) must be certified by the Approval Holder (or, if the Approval Holder is a body corporate, by a director of that body corporate) as being true and correct and must be verified by:

(1) a certificate from a registered auditor; or

(2) if the Approval Holder's NSW Thoroughbred Turnover in respect of the Financial Year which includes the Approval Period is less than \$4 million, by a statutory declaration duly sworn by the Approval Holder (or, if the Approval Holder is a body corporate, by a director of that body corporate).

3.3 Access to information

(a) The Approval Holder must maintain all accounts and records (including financial records and wagering records) as may reasonably be required to enable Racing NSW to review, monitor or verify compliance with these conditions and all amounts payable to Racing NSW in accordance with these conditions.

(b) The Approval Holder must:

(1) provide Racing NSW with full access to any accounts and records referred to in clause 3.3(a) at such times and locations as reasonably requested by Racing NSW; and

(2) allow Racing NSW to take copies of any accounts and records referred to in clause 3.3(a).

3.4 Audit

(a) Racing NSW will have the right to require that any accounts and records referred to in clause 3.3(a) be audited by a registered auditor nominated by Racing NSW to verify or confirm amounts payable to Racing NSW in accordance with these conditions.

(b) Racing NSW must give written notice to the Approval Holder that it requires an audit under this clause 3.4. Notice under this clause may be given after the end of the Approval Period.

(c) The Approval Holder must provide a registered auditor nominated by Racing NSW under this clause 3.4 with:

(1) full access to any accounts and records referred to in clause 3.3(a) and any other documents in the Approval Holder's power, possession or control and allow the auditor to take copies for those accounts, records or documents for the purpose of the audit;

(2) access to the Approval Holder's premises; and

(3) such other assistance, including making staff available to provide information, explanations or answers to questions, as the registered auditor may request for the purpose of an audit under this clause 3.4. For the avoidance of doubt, the fact that information may be commercial confidential is not a basis for declining to provide that information to a registered auditor nominated by Racing NSW under this clause 3.4.

(d) A registered auditor conducting an audit under this clause 3.4 will be subject to the same confidentiality obligations as apply to Racing NSW under clause 8.

(e) Within 14 days of Racing NSW receiving the final written report in respect of an audit conducted under this clause 3.4, Racing NSW must notify the Approval Holder in writing whether the audit identified any increase in the amounts payable to Racing NSW in accordance with these conditions compared to the amounts which the Approval Holder has previously notified Racing NSW that the Approval Holder calculates as being the amount payable.

(f) The Approval Holder must reimburse Racing NSW for all costs and expenses of an audit under this clause 3.4 if, following that audit, the amount payable to Racing NSW in accordance with these conditions is found to be greater than the amounts which the Approval Holder has previously notified Racing NSW that the Approval Holder calculates as being the amount payable, by more than the lesser of:

(1) \$20,000; or

(2) 10% of the amount of the fee referred to in clause 2.1(a).

4 Approval Holder obligations and undertakings

4.1 Notice to be given of Notifiable Events

The Approval Holder must immediately notify Racing NSW in writing if any Notifiable Event occurs.

4.2 Australian Wagering Licence

The Approval Holder:

(a) represents and warrants that as at the Effective Date it holds; and

(b) must at all times during the Approval Period hold and maintain, an Australian Wagering Licence which authorizes the wagering operations conducted by the Approval Holder in Australia and through any website referred to in clause 1.1(c)(ii).

4.3 Group members

The Approval Holder must procure that no member of the Group uses NSW Thoroughbred Race Field Information in breach of section 33 of the Racing Administration Act.

4.4 Approval Application

The Approval Holder represents and warrants that as at the Effective Date:

- (a) the information contained in the Approval Holder's application for a race field information use approval is complete, true, correct and not misleading (in either its content or by omission), except to the extent that Approval Holder has on or before the Effective Date given Racing NSW notice in writing specifically correcting or updating that information;
- (b) the Approval Holder has made all reasonable enquiries of the Approval Holder's Key Employees and Close Associates in connection with matters disclosed in the Approval Holder's application for a race field information use approval; and
- (c) the Approval Holder's application for a race field information use approval was appropriately authorised and executed by or on behalf of the Approval Holder.

5 Integrity related conditions

5.1 Information for integrity purposes

The Approval Holder must:

- (a) provide to Racing NSW or its nominee, at such times and locations as requested by Racing NSW, any Document or information in the Approval Holder's power, possession or control of specified by Racing NSW in connection with the performance of Racing NSW's functions or responsibilities regarding the integrity and reputation of the NSW thoroughbred racing industry;
- (b) provide to Racing NSW or its nominee, at such times, in such manner and locations as requested by Racing NSW, access to the Approval Holder's wagering information and analyses in relation to NSW Thoroughbred Races and NSW Thoroughbred Turnover;
- (c) allow Racing NSW or its nominee to take copies of any information referred to in clause 5.1(a) or (b);
- (d) permit Racing NSW or its nominee, at such times and in such manner as may be specified by Racing NSW, to monitor wagering transactions and wagering activity in relation to NSW Thoroughbred Races which transactions and activity are effected in the course of the wagering operations conducted by the Approval Holder under its Australian Wagering Licence; and

(e) report to Racing NSW any matter of which the Approval Holder becomes aware which the Approval Holder reasonably considers may:

- (1) materially and adversely impact on the integrity or reputation of the NSW thoroughbred racing industry; or
- (2) warrant disciplinary action under the Rules of Racing against a person licensed by Racing NSW.

5.2 Information and assistance with inquiries and investigations

(a) Without limiting clause 5.1(a), the Approval Holder must:

- (1) provide to Racing NSW or its nominee, any Document or information in the Approval Holder's power, possession or control (including details of any betting accounts);
- (2) allow Racing NSW or its nominee to take copies of any Document or information referred to in paragraph (1); and
- (3) provide to Racing NSW or its nominee, any other assistance, requested in writing by Racing NSW in connection with any investigation or inquiry specified by Racing NSW.

(b) The Approval Holder must provide any Documents, information or other assistance requested by Racing NSW under clause 5.2(a), at such times and locations as specified by Racing NSW in the written request.

5.3 Systems and audit trail

The Approval Holder must:

- (a) maintain appropriate and adequate internal procedures, systems and controls to enable the Approval Holder to fully comply with these conditions and any Special Conditions;
- (b) maintain and implement appropriate and reasonable internal procedures, systems and controls for identifying suspect betting transactions or other matters which may impact on the integrity or reputation of NSW Thoroughbred Racing;
- (c) maintain complete, proper and accurate records:
 - (1) of all wagering transactions of the wagering operation conducted under the Approval Holder's Australian Wagering Licence, including an audit trail of those transactions;
 - (2) of all wagering accounts of the Approval Holder's customers;

(3) as required under the Approval Holder's Australian Wagering Licence, the laws of the Commonwealth or any Australian State or Territory or the Rules of Racing; or

(4) as may reasonably be required to enable the Approval Holder's compliance with these conditions or any Special Conditions to be reviewed, monitored or verified; and

(d) ensure that all records and systems are appropriately secure and protected from unauthorized access; and

(e) ensure that any computer systems used in the course of the Approval Holder's wagering operations comply with all specifications (including security and integrity requirements) required under the Approval Holder's Australian Wagering Licence.

5.4 Wagering accounts

The Approval Holder must:

(a) require any person who opens a wagering account with the Approval Holder to prove their identity in accordance with:

(1) any Rules of Racing applicable to the Approval Holder; and

(2) standards sufficient to comply with the prescribed verification procedure pursuant to the *Financial Transactions Reports Act 1988 (Cth)* or the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)* as applicable;

(b) not open wagering account for any person under a false or misleading name;

(c) not enter or permit to be entered in his or her wagering records (including any betting sheets) any false, misleading or fictitious entries or information;

(d) not, without prior approval, open an account for a person who is warned off a racecourse or who is a disqualified person under the Rules of Racing; and

(e) immediately notify Racing NSW in writing if any person who is warned off a racecourse or who is a disqualified person under the Rules of Racing attempts to open an account with the Approval Holder.

5.5 Online Wagering Monitoring System

Without limiting any other provision of these conditions, if Racing NSW gives the Approval Holder written notice requiring it to do so, the Approval Holder must:

(a) participate in an Online Wagering Monitoring System specified by Racing NSW; and

(b) take such action as may be required (including systems development) to enable computer systems used by the Approval Holder in its wagering operations to interface with the an Online Wagering Monitoring System in accordance with specifications determined by Racing NSW.

6 Cancellation or Variation

6.1 Cancellation or variation

(a) Racing NSW may, by written notice to the Approval Holder, cancel the Race Field Information Use Approval or vary the conditions of the Race Field Information Use Approval in a manner specified by Racing NSW if:

(1) the Approval Holder has breached a condition of the Race Field Information Use Approval;

(2) there is a change in the persons that have a Controlling interest in the Approval Holder;

(3) the Approval Holder or a Key Employee of the Approval Holder has been convicted or an offence, whether in New South Wales or elsewhere;

(4) disciplinary action is taken against the Approval Holder or a Key Employee of the Approval Holder under any legislation, whether in New South Wales or elsewhere, or under the Rules of Racing;

(5) the Approval Holder has employed or engaged a person as a Key Employee who has a criminal record or who has been subject to disciplinary action under any legislation, whether in New South Wales or elsewhere, or under the Rules of Racing; or

(6) an Insolvency Event occurs in relation to the Approval Holder.

(b) A cancellation or variation of the Race Field Information Use Approval takes effect on the date specified in the written notice from Racing NSW under clause 6.1(a).

6.2 Written notification of reasons

As required under section 33A(5) of the Racing Administration Act, if Racing NSW cancel or varies the Race Field Information Use Approval, Racing NSW must provide the Approval Holder with written reasons indicating why the Race Field Information Use Approval was cancelled or varied.

6.3 No prejudice to accrued rights

The expiration, cancellation or variation of the Race Field Information Use Approval in accordance with these conditions does not prejudice any rights accrued to Racing NSW prior to the expiration, cancellation or variation.

7 Relationship between parties

7.1 Independence

The Approval Holder does not have (and nothing in these conditions confers) any authority to bind to bind Racing NSW or to enter into any agreement or commitment for or on behalf of Racing NSW or to incur any liability or obligation on behalf of Racing NSW. These conditions do not create a relationship of employer and employee, principal and agent, partnership or joint venture between the Approval Holder and Racing NSW.

7.2 Non-exclusive

This Race Field Information Use Approval is non-exclusive. Neither the granting of the Race Field Information Use Approval or the conditions of the Race Field Information Use Approval in any way restricts Racing NSW from exploiting any Intellectual Property or in granting to any person approvals under section 33A of the Racing Administration Act or the conditions imposed by Racing NSW on any such approval.

7.3 Personal rights

This approval is personal to the Approval Holder and may not be assigned, sub-licensed or delegated and the Approval Holder may not authorize any other person to use NSW Thoroughbred Race Field Information.

7.4 No Intellectual Property Rights

For the avoidance of doubt, neither the granting of the Race Field Information Use Approval or the conditions of the Race Field Information Use Approval confers on the Approval Holder any right, title, interest or licence in relation to any Intellectual Property in any NSW Thoroughbred Race Field, any other racing information or any wagering information (including the Australian Prices Network).

8 Confidentiality

8.1 Confidentiality

Racing NSW must keep confidential all Confidential Information of the Approval Holder and only disclose that Confidential Information to other persons as permitted under clause 8.2 or clause 8.3 or with the consent of the Approval Holder.

8.2 Permitted Disclosure

Notwithstanding clause 8.1, Racing NSW may disclose Confidential Information:

- (a) in any proceedings arising out of, or in connection with, this Race Field Information Use Approval or any other legal or dispute resolution proceedings involving Racing NSW and the Approval Holder (whether those other proceedings relate to an approval under section 33 of the Racing Administration Act, any Intellectual Property or any other matter);

- (b) on a confidential basis, to its directors, officers, employees, advisers, agents, consultants or financiers (including any registered auditor appointed to conduct an audit under these conditions);
- (c) to the extent required by lawful requirement of any Government Agency;
- (d) to the controlling body of any racing code in any other State who has a legitimate interest in that information in connection with the exercise of their powers or functions as a controlling body on the basis;
- (e) as Racing NSW considers appropriate in the exercise of Racing NSW's statutory functions and powers under NSW legislation or the Rules of Racing, including in connection with an investigation or inquiry specified by Racing NSW; or
- (f) if required under any law, or administrative directive or the Rules of Racing.

8.3 Aggregated Data

Notwithstanding anything in these conditions, Racing NSW may disclose aggregated information which includes Confidential Information provided that a reasonable person to whom the aggregated information is disclosed could not readily identify the Approval Holder's Confidential Information and attribute that Confidential Information to the Approval Holder.

9 GST

9.1 Amounts exclusive of GST

- (a) Unless expressly included, the consideration for any supply under or in connection with these conditions or the race field approval does not include GST.
- (b) To the extent that any supply made under or in connection with these conditions or the Race Field Approval is a taxable supply and GST is not expressly included in the consideration, the recipient must pay, in addition to the consideration provided under these conditions or the Race Field Approval for that supply an amount (**additional amount**) equal to the amount of that consideration multiplied by the rate at which GST is imposed in respect of the supply. The recipient must pay the additional amount at the same time as the consideration to which it is referable.

9.2 Tax invoice

The supplier must issue a tax invoice to the recipient of a supply no later than the date required for payment of the GST inclusive consideration for that supply under these conditions or the Race Field Approval.

9.3 Registration

Each party represents and warrants that it is registered for the purposes of the GST Law.

9.4 Reimbursements

If either party is entitled under these conditions or the Race Field Information Use Approval to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with this Agreement, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an input tax credit may be claimed by the party being reimbursed or indemnified, or by its representative member.

9.5 Interpretation

Words and expressions used in this clause 9 which have a defined meaning in the GST Law have the same meaning in clause 9 as in the GST Law unless the context indicates otherwise.

10 General

10.1 Notices

(a) Any notice or other communication in relation to matters provided for in these conditions or the Special Conditions:

- (1) must be in legible writing and in English;
- (2) addressed as shown below:

- (i) if to the Approval Holder, at the address set out in item 2 of the Approval Schedule or such other address as the Approval Holder may nominate in writing to Racing NSW provided that the other address includes a postal address, an office address and an e-mail address to be used for notices to the Approval Holder.

- (ii) if to Racing NSW, at the address stated on the Racing NSW website (racingnsw.com.au) from time to time for the provision of such notices in connection with approvals under section 33A of the Racing Administration Act;

(3) is regarded as being given by the sender and received by the addressee:

- (a) if by delivery in person, when delivered to the addressee;
 - (b) if by e-mail, on delivery to the addressee; or
 - (c) if by post, on delivery to the addressee; or

(d) if by facsimile transmission, whether or not legibly received, when legibly received by the addressee, but if the delivery or receipt is on a day which is not a Business Day or is after 5pm (addressee's time) it is regarded as received at 9am on the following Business Day; and

(4) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.

(b) A fax transmission is regarded as legibly received unless the addressee telephones the sender within 2 hours after transmission is received or regarded as received under clause 10.1(a)(3) and informs the sender that it is not legible.

10.2 Governing law

These conditions and the Race Field Information Use Approval are governed by the laws of New South Wales.

10.3 Prohibition and enforceability

(a) Any provision of, or the application of any provision of, these conditions or any right, power, authority, discretion or remedy which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.

(b) Any provision of, or the application of any provision of, these conditions which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

10.4 Waivers

(a) Waiver of any right under these conditions or arising from a breach of these conditions or of any right, power, authority, discretion or remedy under these conditions or arising upon default under these conditions must be in writing and signed by the party granting the waiver.

(b) A failure or delay in exercise, or partial exercise, of:

(1) a right under these conditions or arising from a breach of these conditions; or

(2) a right, power, authority, discretion or remedy under these conditions or created or arising upon default under these conditions, does not result in a waiver of that right, power, authority, discretion or remedy.

(c) The Approval Holder is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy of Racing NSW arising under these conditions or from a breach of these conditions or on a

default under these conditions as constituting a waiver of that right, power, authority, discretion or remedy.

(d) The Approval Holder may not rely on any conduct of Racing NSW as a defence to exercise of a right, power, authority, discretion or remedy by that other party.

10.5 Survival

Without limiting the survival of any other clauses which would be construed as surviving the expiration or cancellation of the Race Field Information Use Approval:

(a) Racing NSW's rights to receive amounts payable to Racing NSW under these conditions and any Special Conditions.

(b) the rights of Racing NSW and the obligations of the Approval Holder under clauses 2.1, 2.4, 2.5, 2.6, 2.7, 2.8, 3.2, 3.3 and 3.4, survive the expiration or cancellation of the Race Field Information Use Approval

10.6 Cumulative rights

The rights, powers, authorities, discretions and remedies of Racing NSW arising out of or under these conditions are cumulative and do not exclude any other right, power, authority, discretion or remedy.

11 Definitions and interpretation

11.1 Definitions

In these conditions:

Approval Holder means the person to whom the Race Field Information Use Approval is granted by Racing NSW as named in Item 1 of the Approval Schedule;

Approval Holder's Exempt Turnover Amount means, in respect of a period, the amount determined in accordance with clause 2.2 in respect of that period;

Approval Period means the duration of the Race Field Information Use Approval as determined in accordance with clause 1.2;

Approval Schedule means the schedule in substantially the form set out in Schedule 1 issued by Racing NSW to an Australian Wagering Operator who has applied for a race field information use approval under the Racing Administration Act;

Approvals to Group Members means:

(a) this Race Field Information Use Approval; and

(b) race field information use approval granted by Racing NSW in accordance with section 33A of the Racing Administration Act to the Australian Wagering Operators in the Group other than the Approval Holder;

Associate has the meaning given to that term in the Corporations Act;

Australian State or Territory means New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania, the Australian Capital Territory or the Northern Territory;

Australian Wagering Licence means licence, permit, approval or authority (however described) under the laws of any Australian State or Territory to conduct any form of wagering including totalizator wagering, bookmaking, a betting exchange (as defined in the Racing Administration Regulations) or any other form of wagering whether now existing or subsequently designed or developed;

Australian Wagering Operator means a wagering operator (as defined in the Racing Administration Regulations) who holds an Australian Wagering Licence;

Bet Back means a wager which is made by the Approval Holder on the “backers” side of the wagering transaction in relation to NSW Thoroughbred Races (or contingencies related to NSW Thoroughbred Races):

(a) for the purpose of genuinely reducing or laying-off the Approval Holder’s liability on a fixed-odds wager which has already been accepted by the Approval Holder and on which the Approval Holder has taken risk on the “layers” side of the wagering transaction;

(b) on the same contingency in relation to the NSW Thoroughbred Race as the Approval Holder has already accepted risk on the “layers” side of the wagering transaction referred to in paragraph (a); and

(c) in respect of which the amount which the Approval Holder stands to win does not exceed the amount that the Approval Holder stands to lose on the same contingency on the “layers” side of the wagering transaction referred to in paragraph (a).

Bet Back Credit means a credit to which the Approval Holder is entitled in accordance with clause 2.3 in respect of Bet Backs made by the Approval Holder;

Business Day means a day on which banks are open for business in Sydney excluding a Saturday, Sunday or public holiday;

Close Associate has the meaning given to that term in the Racing Administration Regulations;

Confidential Information means confidential information in relation to the Approval Holder (including confidential financial information and confidential information in relation to the wagering operations of the Approval Holder, trade secrets, confidential know-how or confidential technical or product information) disclosed by the Approval

Holder to Racing NSW in the Approval Holder's approval application or pursuant to this Race Field Information Use Approval but does not include information which:

- (a) generated by Racing NSW independently of data or information provided by the Approval Holder under the Racing Field Information Use Approval;
- (b) is or has become part of the public domain other than as a result of a breach of an obligation of confidentiality;
- (c) was in the possession of Racing NSW at the time of disclosure and was not subject to an obligation of confidentiality;
- (d) is independently received by Racing NSW from a third party who Racing NSW is not aware is subject to an obligation of confidentiality in respect of that information; or
- (e) is provided to Racing NSW by the Approval Holder other than in the Approval Holder's approval application or pursuant to this Race Field Information Use Approval in circumstances where Racing NSW is not subject to obligations of confidentiality in respect of that information;

Control means control within the meaning of that term in either:

- (a) section 50AA of the Corporations Act; or
- (b) generally accepted accounting standards required under the Corporations Act, by the Australian Accounting Standards Board and other mandatory professional financial reporting requirements applicable in Australia;

Corporations Act means the *Corporations Act 2001 (Cth)*;

Document, when used in clause 5, has the meaning given to that term in the *Evidence Act 1995 (NSW)*;

Effective Date means the date on which this Race Field Information Use Approval commences, and is taken to be granted, as set out in Item 4 of the Approval Schedule;

End Date means the date on which this Race Field Information Use Approval expires as set out in Item 5 of the Approval Schedule;

Exempt Turnover Threshold means, in respect of a period:

- (1) if the relevant period is a full Financial Year, an amount of \$5 million; or
- (2) if the relevant period is other than a full Financial Year, an amount of \$5 million adjusted pro-rata in the proportion that the relevant period bears to a full Financial Year,

Financial Year means a period of 12 months commencing on 1 July in any year and ending on 30 June in the following calendar year;

Government Agency means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;

Group means the Approval Holder and any Australian Wagering Operator who is Related to the Approval Holder from time to time;

GST means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST Law or otherwise on a supply;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

GST Law has the same meaning as in the GST Act;

Insolvency Event means:

- (a) a receiver, receiver and manager, official manager, trustee, administrator or similar official is appointed, or steps are taken for such an appointment, over any of the assets or undertaking of a person;
- (b) an application or order is made or petition presented seeking winding up, dissolution or deregistration of a body that is not discharged or withdrawn within 10 Business Days of its presentation;
- (c) a person suspends payment of its debts generally;
- (d) a person is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Act, the Bankruptcy Act or other applicable legislation or is presumed to be insolvent under the Corporations Act, the Bankruptcy Act or other applicable legislation;
- (e) a person enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (f) an order is made for the winding-up or dissolution of a company or a resolution is passed otherwise than for the purpose of an amalgamation or reconstruction while solvent;
- (g) a resolution is passed to liquidate the body or any steps are taken to pass a resolution for the liquidation of the body;
- (h) a company becomes an “externally administered body corporate”, as that term is defined in the Corporations Act, or that company’s assets otherwise becomes subject to a law relating to insolvency; or
- (i) a person appointed under a power of attorney or other arrangement with a company’s financiers becomes entitled to manage the business or affairs of a company or to perform obligations of the company;

Intellectual Property means all intellectual and industrial property rights and interests in Australia and throughout the world (whether registered or unregistered), including:

- (a) any copyright or analogous rights, trade or service mark, design, patent, semiconductor or circuit layout right, trade business or company name or other proprietary right; and
- (b) any right registration of any of those rights;

Interest Rate means the interest rate applicable from time to time on judgement debts arising from orders of the Supreme Court of NSW;

Key Employee has the meaning given to that term in the Racing Administration Regulations;

Month means a calendar month;

Monthly Instalment Amount means the amount set out in Item 6 of the Approval Schedule;

Net Assessable Turnover, in respect of a period, means the greater of zero or the amount calculated in accordance with the formula: $TRT - ETT - BBC$ Where:

TRT is the Approval Holder's NSW Thoroughbred Turnover during the relevant period;
ETT is the Approval Holder's Exempt Turnover Amount in respect of the relevant period;

BBC is the amount of the Bet Back Credit to which the Approval Holder is entitled in respect of the relevant period;

Notifiable Event means:

- (a) an Insolvency Event occurs in relation to the Approval Holder;
- (b) the Approval Holder becomes Related to an Australian Wagering Operator during the Approval Period;
- (c) the Approval Holder ceases to be Related to an Australian Wagering Operator within paragraphs (a)-(i) of the definition of "Related" during the Approval Period;
- (d) there is a change in the persons that have a Controlling interest in the Approval Holder;
- (e) a prosecution is commenced against the Approval Holder, any of its Key Employees or another member of the Group;
- (f) a verdict is delivered in respect of a prosecution against the Approval Holder, any of its Key Employees or another member of the Group or such a prosecution is dismissed or discontinued;

(g) disciplinary action is taken under the Rules of Racing against the Approval Holder, any of its Key Employees or another member of the Group or formal notice is given of an investigation or inquiry to determine whether to take such disciplinary action;

(h) the Approval Holder is aware that any person who is a Key Employee of the Approval Holder has a criminal record or has been subject to disciplinary action under any legislation, whether in New South Wales or elsewhere, or under the Rules of Racing;

(i) there is a material change in the events on which the Approval Holder conducts wagering or in the mechanisms which the Approval Holder uses to facilitate the receipt of wagers (for example: if, during the period, the Approval Holder commences using the internet to facilitate the receipt of wagers, that would be a “Notifiable Event”);

(j) the Approval Holder breaches or fails to comply with any of the conditions of the Race Field Information Use Approval; or

(k) the Approval Holder is aware that any other member of the Group:

(1) uses NSW Thoroughbred Race Field Information in breach of section 33 of the Racing Administration Act; or

(2) has breached or failed to comply with the conditions imposed on race Field Information Use approvals granted by Racing NSW in accordance with section 33A of the Racing Administration Act to that member of the Group;

NSW Race Field Information has the meaning given to that term in the Racing Administration Act;

NSW Thoroughbred Race means a thoroughbred or other horse race (other than a harness race) held, or to be held, at any race meeting on a licensed racecourse in New South Wales;

NSW Thoroughbred Race Field means a NSW Race Field in relation to a NSW Thoroughbred Race;

NSW Thoroughbred Turnover means Turnover in respect of wagering transactions in relation to NSW Thoroughbred Races (or contingencies related to NSW Thoroughbred Races). Without limiting the generality of this definition, where:

(a) the result of a single wagering transaction depends on the combined outcome of a number of events (*for example: “doubles” bets*); and

(b) a NSW Thoroughbred Race is at least one of the events on which the outcome of that wagering transaction depends, NSW Wagering Turnover will include the same proportion of the amount of the wagers made on the “backers” side of the wagering transaction as the number of NSW Thoroughbred Races on

which the outcome of the wagering transaction depends bears to the total number of events on which the outcome of the wagering transaction depends, irrespective of the order in which those events are conducted or determined or the outcome of those events. (*For example:*

- if a “doubles bet” requires the selection of the winner of a NSW Thoroughbred Race and the winner of a thoroughbred race conducted in Melbourne, then $\frac{1}{2}$ of the amount of the wager on the “backers” side of the wagering transaction would be included as NSW Thoroughbred Turnover even if the race in Melbourne was held first and irrespective of the outcome of the Melbourne race;
- if a “doubles bet” requires the selection of the winner of two NSW Thoroughbred Races, then the whole amount of the wager on the “backers” side of the wagering transaction would be included as NSW Thoroughbred Turnover;
- if a bet was placed on the combined outcome of a NSW Thoroughbred Race, a rugby league match and a harness race, then $\frac{1}{3}$ of the amount of the wager on the “backers” side of the wagering transaction would be included as NSW Thoroughbred Turnover; and
- by contrast, if a bet was placed on the outcome of a NSW Thoroughbred Race and the “layer” directed that any winnings on that bet be applied in a wager on another event (e.g. an “All-up” bet) so that each was a separate wagering transaction, then the entire amount of the wager on the “backers” side of the first wagering transaction would be included as NSW Thoroughbred Turnover and the second transaction would be assessed as an independent wagering transaction).

Online Wagering Monitoring System means a system with specifications determined by Racing NSW which provides remote, real-time online access and monitoring of wagering transactions in relation to NSW Thoroughbred Races and such other functionality as determined by Racing NSW in the specifications of the system;

Racing Administration Act means the *Racing Administration Act 1998 (NSW)*;

Racing Administration Regulations means the *Racing Administration Regulations 2005 (NSW)*;

Race Field Information Use Approval means the race field information use approval in accordance with section 33A of the Racing Administration Act granted by Racing NSW to the Approval Holder subject to, and on the terms set out in, these conditions and any Special Conditions;

Related means, in relation to the Approval Holder and another Australian Wagering Operator, that:

(a) they are “related bodies corporate” within the meaning of the Corporations Act;

(b) one Controls the other;

- (c) they are both Controlled by the same person or group of people;
- (d) one is a Key Employee, a director or an “associate” (within the meaning of the Corporations Act) of the other (*for example: if a company has an Australian Wagering Licence and a director or key employee of that company also has an Australian Wagering Licence, then the company and the director/key employee are considered “Related”*);
- (e) they have a common Key Employee or a common director (*for example: if a person is a director or key employee of two companies both of which have Australian Wagering Licences, then those two companies are considered “Related”*);
- (f) one is a partner in another wagering operation that is conducted as a partnership
- (g) a Key Employee or a director of one is a partner of the other;
- (h) they are acting in concert with each other in relation to activities conducted under their respective Australian Wagering Licences or the taking of wagers on NSW Thoroughbred Racing; or
- (i) they are “Related” to a common person under paragraphs (a)-(h) (*for example: “Company A” and its subsidiary “Company B” are related. If “Mr X” is a director of Company B, he would be “Related” to both Company B and to Company A*), and, if the Approval Holder is Related to another Wagering Operator, then they are deemed for the purpose of these conditions to continue to be Related until the later of:
- (j) the Approval Holder ceasing to be “Related” to the other Australian Wagering Operator under any of paragraphs (a)-(i); or
- (k) the Approval Holder giving written notice to Racing NSW that it has ceased to be “Related” to the other Australian Wagering Operator;

Rules of Racing includes:

- (a) the Australian Rules of Racing;
- (b) the local rules of racing applicable in any Australian State or Territory (including the Rules of Racing of Racing NSW); and
- (c) the rules of betting applicable under the laws of an Australian State or Territory or the local rules of racing of an Australian State or Territory to the extent that those rules of betting apply to the wagering activities conducted by an Australian Wagering Operator;

Quarter means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December of any year;

Special Conditions means any conditions set out in Item 9 of the Approval Schedule;

Turnover means, in relation to a race or class of races, the total amount of wagers made on the “backers” side of wagering transactions made in connection with that race or class of races. For the avoidance of doubt, in the case of a person who holds an Australian Wagering Licence to operate a betting exchange, the “backers” side of wagering transactions made through the operation of that betting exchange is regarded as that person’s “Turnover” even if that person is not a party to the contract which constitutes the wagering transaction;

Uses Race Field Information has the meaning given to that term in section 32A of the Racing Administration Act.

11.2 Interpretation

(a) In these conditions, headings and bold type are for convenience only and do not affect the interpretation of this deed and, unless the context otherwise requires:

(1) words importing the singular include the plural and vice versa;

(2) words importing a gender include any gender;

(3) where a word or phrase is defined in these conditions, other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;

(4) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;

(5) a reference to any thing (including any right) includes a part of that thing but nothing in this clause 11.2(a)(5) implies that performance of part of an obligation constitutes performance of the obligation;

(6) a reference to a clause is a reference to a clause of these conditions and a reference to these conditions includes any schedule;

(7) a reference to a statute includes:

(a) all statutes amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so; and

(b) all regulations, proclamations, ordinances and by-laws issued under that statute or a statute referred to in clause 11.2(a)(7)(i);

(8) a reference to a body whether statutory or not:

(a) which ceases to exist; or

- (b) whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (9) a reference to a document includes all amendments or supplements to, or replacements or innovations of, that document;
- (10) a reference to a party to a document includes that party's successors and permitted assigns;
- (11) no provision of these conditions will be construed adversely to a party solely on the ground that the party was responsible for the preparation of these conditions;
- (12) an obligation or covenant on the part of 2 or more persons binds them jointly and severally; and
- (13) a reference to an agreement other than these conditions includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing.

(b) In these conditions, unless otherwise expressly stated:

- (1) "including" means "including but not limited to" and "include" and "includes" have corresponding meanings; and
- (2) examples are illustrative and may be used to assist interpretation but do not imply any limitation.

(c) Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

Appendix E: Application form for approval to publish NSW Thoroughbred race fields.

RF- AWO

Application Fee

\$50

(must accompany this application)



RACINGNSW
ABN: 86 281 604 417

RFP Application
Level 7 51 Druitt St
Sydney NSW 2000

APPLICATION TO USE NSW THOROUGHBRED RACE FIELD INFORMATION

Australian Wagering Operators

(Only use this form if you hold a wagering licence under the laws of an Australian State or Territory)

Section 33B, Racing Administration Act 1998

Note: Where insufficient space is provided for any section, please attach a separate sheet with additional details identifying the section to which that information relates. Each separate sheet should be signed and dated by the person signing this application for the Applicant.

Section 1: Details of Entity Seeking to Use NSW Thoroughbred Race Field Information

1.1 Name of Applicant:

(The Applicant must be the holder of the relevant Australian Wagering Licence. Each holder of an Australian Wagering Licence, even if related to other licensees, must complete a separate application)

1.2 Principal Address:

Post Code:

1.3 Daytime contact:

Name:

Email:

Telephone: Office: ()

Fax: ()

Mobile:

1.4 ABN/ACN:

1.5 Type of Business; please indicate type and include description:-

Please circle: Sole Trader / Company / Partnership / Other

Description/Comments:

1.6 Date of birth (individuals)/Date of incorporation (companies): / /

1.7 Australian State or Territory where licensed:

State:	Licensing Authority:	Years licensed:	Licence No:
State:	Licensing Authority:	Years licensed:	Licence No:
State:	Licensing Authority:	Years licensed:	Licence No:
State:	Licensing Authority:	Years licensed:	Licence No:

1.8 Description of operations:

1.8.1 Oncourse bookmaking at licensed racecourses during race meetings in (State):

1.8.2 Racing/Sports betting office at licensed racecourse/s in (State):

1.8.3 Off-course betting in (State:) -include type of wagering (e.g. totalizator, fixed-odds, betting exchange) and wagering distribution channels used (e.g. outlets, telephone, internet)

1.8.4 Other (please describe)

1.9 General description of daily operations:

Section 2: Details of wagering products and proposed use of NSW Thoroughbred Race Field Information

Please provide details of all wagering types or services intended to be offered/facilitated involving NSW Thoroughbred Race Field Information:-

2.1 Channels :

On-course face-to-face betting	Yes /No	
Off-course face-to-face betting	Yes /No	
Telephone betting	Yes /No	
Internet	Yes /No (If Yes, provide details of all websites)	
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Other (e.g. interactive television, "3G mobile")	Yes /No	(If Yes, provide details)
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2.2 Wagering types:

Please indicate all types of wagering offered

Totalizator (Pari-mutuel)	Yes /No	
Fixed-odds	Yes /No	
Betting Exchange	Yes/No	
Other	Yes/No	(If Yes, provide details)
<hr/>		
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2.3 Products: (Please circle all that apply)

Win	Doubles	Tote Odds	Jockey/Trainer Challenge
Each Way	Quinella	Concession	Multis Racing Only
Place	Feature Futures	Head to Head	Multis including Sport/Other
Win/Place	Future Doubles	Favourite Out	
	Ante Post (early betting non feature)	Fields vs Favourite/Any Runner	

Other Products/Bet Types (provide details):

2.4 Use of NSW Thoroughbred Race Field Information: Detail the proposed use of NSW Thoroughbred Race Field Information including the time (how often) and manner of use. (e.g whether only limited NSW thoroughbred racing events, used on betting board only, whether recorded electronically or in hard copy form, in betting ledgers or on betting tickets, used on a website and, if on a website, provide full web address, or by acknowledging or confirming NSW Race Field Information by accepting or facilitating the making of a bet).

2.4.1 History: Is the proposed use consistent with the time, frequency and manner of use of NSW Thoroughbred Race Field Information under the relevant Australian Wagering Licence over the past 5 years?

Yes/No

(If No, provide details of variations from prior use)

Section 3: Wagering Turnover

3.1 Historical Turnover: In respect of each of the past 3 Financial Years (i.e. the years ended 30 June 2006, 30 June 2007 and 30 June 2008), provide details of Applicant's:

- Total wagering turnover on all racing events of all codes; AND
- NSW Thoroughbred Turnover.

If NSW Thoroughbred Turnover is greater than \$4million per annum in any of those Financial Years, supporting documentation is required – please attach.

Note:

- *"Turnover" means the total amount of wagers made on the "backers" side of wagering transactions made in connection with that race of class of races. For the avoidance of doubt, in the case of a betting exchange, the "backers" side of wagering transactions made through the operation of that betting exchange is regarded as that person's "Turnover" even if that person is not a party to the contract which constitutes the wagering transaction.*
- *"NSW Thoroughbred Turnover" means Turnover in respect of wagering transactions in relation to NSW Thoroughbred Races (or contingencies related to NSW Thoroughbred Races). See "Standard Conditions" for allocation of turnover on bet-types involving multiple contingencies.*

FY2008 \$ _____ (Total wagering turnover on all racing events of all codes)

\$ _____ (NSW Thoroughbred Turnover)

FY2007 \$ _____ (Total wagering turnover on all racing events of all codes)

\$ _____ (NSW Thoroughbred Turnover)

FY2006 \$ _____ (Total wagering turnover on all racing events of all codes)

\$ _____ (NSW Thoroughbred Turnover)

If NSW Thoroughbred Turnover in each of the three Financial Years is less than \$4million per annum
PLEASE PROCEED TO QUESTION 3.3.

3.2 Bet backs: (Only respond to this question if NSW Thoroughbred Turnover in one or more of the last 3 Financial Years was \$4million or more)

Note: *"Bet Back" means a wager which is made by the Applicant on the "backers" side of the wagering transaction in relation to NSW Thoroughbred Races (or contingencies related to NSW Thoroughbred Races):*

- for the purpose of genuinely reducing or laying-off the Applicant's liability on a fixed-odds wager which has already been accepted by the Applicant and on which the Applicant has taken risk on the "layers" side of the wagering transaction;
- on the same contingency in relation to the NSW Thoroughbred Race as Applicant has already accepted risk on the "layers" side of the wagering transaction referred to in paragraph (a); and
- in respect of which the amount which the Applicant stands to win does not exceed the amount that the Applicant stands to lose on the same contingency on the "layers" side of the wagering transaction referred to in paragraph (a).

In respect of each of the past 3 Financial Years (i.e. the years ended 30 June 2006, 30 June 2007 and 30 June 2008), has any of the NSW Thoroughbred Turnover been the subject of Bet Backs?

Yes/No

(If Yes, provide details of):

- (a) The approximate percentage of NSW Thoroughbred Turnover which was the subject of Bet Backs in each of those 3 Financial Years:

FY2008 _____%

FY2007 _____%

FY2006 _____%

- (b) The name of all Australian Wagering Operators with whom the Applicant has made Bet Backs of more than \$100,000 total per annum in any of the past 3 Financial Years.

3.3 Forecast NSW Thoroughbred Turnover for FY2009

- (a) Provide (approx) forecast of NSW Thoroughbred Turnover for the Financial Year ending 30 June 2009:

FY2009 \$ _____

Is there any additional information which you consider Racing NSW should be aware of in connection with that forecast? If so, please provide details:

- (b) For those Applicants who responded to Question 3.2, is the level of Bet Backs in FY2009 expected to be materially different from FY2006-FY2008?

Yes/No

(If Yes, provide details including reasons for expected variance):

Section 4: Compliance

4.1 Please provide details of your policies and procedures in place to:

- (a) Establish the identity of customers establishing wagering accounts:

- (b) Identify and reporting suspect wagering transactions:

- (c) Identify and report customers or applicants for betting accounts that may be disqualified or warned off by a racing authority:

Section 5: Personnel

Information regarding the applicant, key employees and close associates

All relevant personnel must be listed below (attach separate list if required)

5.1 Key Employees

Note: A **Key Employee** means in relation to an applicant for or holder of an approval, means a person (whether or not appointed under a contract of service) who is: (a) employed in a managerial or supervisory capacity in relation to the conduct of wagering by the approval applicant or holder, or (b) authorized to make decisions, involving the exercise of his or her discretion, that regulate the operations of the approval applicant or holder in relation to the conduct of the wagering operations, or (c) concerned or engaged, in any manner, in the conduct of wagering operation by the approval holder or applicant.

(a) Full Name:	Date of Birth:	/	/
Position:	Years Held:		
(b) Full Name:	Date of Birth:	/	/
Position:	Years Held:		
(c) Full Name:	Date of Birth:	/	/
Position:	Years Held:		
(d) Full Name:	Date of Birth:	/	/
Position:	Years Held:		

5.2 Close Associates – include Company Directors in this section

Note: A **Close Associate** is as defined by Racing Administration Regulations as: a person is a **close associate** of an applicant for, or the holder of, an approval if the person: (a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the approval applicant or holder, and by virtue of that interest or power is or will be able (in the opinion of the relevant racing control body) to exercise a significant influence over or with respect to the conduct of that business, or (b) holds or will hold any relevant position, whether in his or her own right or on behalf of any other person, in the business of the approval applicant or holder. "**relevant financial interest**" is defined as: (a) any share in the capital of the business, or (b) any entitlement to receive any income derived from the business, whether the entitlement arises at law or in equity or otherwise.

(a) Full Name:	Date of Birth:	/	/
Position:	Years Held:		
(b) Full Name:	Date of Birth:	/	/
Position:	Years Held:		
(c) Full Name:	Date of Birth:	/	/
Position:	Years Held:		
(d) Full Name:	Date of Birth:	/	/
Position:	Years Held:		

5.3 Personal and licence history

In this section, the Applicant must provide details of the following matters in relation to the Applicant, and also in relation to key employees and close associates (as listed in sections 5.1 and 5.2) to the extent that the Applicant is aware of those details in relation to key employees and close associates after having made all reasonable enquiries:

- criminal history;
- any prosecutions which have been commenced against the Applicant, a key employee or a close associate; or
- any disciplinary action taken under any legislation or any rules of racing or betting (whether in New South Wales or elsewhere) against the Applicant, a key employee or a close associate.

5.3.1 Probity (criminal history and prosecutions) records

Has the Applicant, key employees or close associates:

- (a) in the last 10 years, been convicted of an offence, under their own name or any other name?
(If so, provide details):

- (b) in the last 10 years been on, or is now on, a bond or recognizance? (If so, provide details):

- (c) have any charges, criminal prosecution or civil proceedings against them now pending? (If so, provide details):

5.3 Personal and licence history

In this section, the Applicant must provide details of the following matters in relation to the Applicant, and also in relation to key employees and close associates (as listed in sections 5.1 and 5.2) to the extent that the Applicant is aware of those details in relation to key employees and close associates after having made all reasonable enquiries:

- criminal history;
- any prosecutions which have been commenced against the Applicant, a key employee or a close associate; or
- any disciplinary action taken under any legislation or any rules of racing or betting (whether in New South Wales or elsewhere) against the Applicant, a key employee or a close associate.

5.3.1 Probity (criminal history and prosecutions) records

Has the Applicant, key employees or close associates:

- (a) in the last 10 years, been convicted of an offence, under their own name or any other name?
(If so, provide details):

- (b) in the last 10 years been on, or is now on, a bond or recognizance? (If so, provide details):

- (c) have any charges, criminal prosecution or civil proceedings against them now pending? (If so, provide details):

(d) in the last 10 years forfeited bail? (If so, provide details):

(e) ever been convicted of any indictable offence or banned as a director by the Australian Securities and Investments Commission ("ASIC")? (If so, provide details):

(f) ever been proceeded against for Bankruptcy and/or have you taken advantage of the laws of Bankruptcy or Insolvency in force for the time? (If so, provide details):

5.3.2 Disciplinary proceedings – rules of racing or rules of betting

Has the Applicant, key employees or close associates :

(a) ever had a license disqualified, revoked, suspended, withdrawn, refused, or been listed as a defaulter by any Racing Authority? (If so, provide details)

Section 6: Related Australian Wagering Operators

Note: An Australian Wagering Operator is considered "Related" to the Applicant if:

- (a) they are "related bodies corporate" within the meaning of the Corporations Act;
- (b) one Controls the other (within the meaning of the Corporations Act or Accounting Standards);
- (c) they are both Controlled by the same person or group of people;
- (d) one is a Key Employee, a director or an "associate" (within the meaning of the Corporations Act) of the other (for example: if a company has an Australian Wagering Licence and a director or key employee of that company also has an Australian Wagering Licence, then the company and the director/key employee are considered "Related");
- (e) they have a common Key Employee or a common director (for example: if a person is a director or key employee of two companies both of which have Australian Wagering Licences, then those two companies are considered "Related");
- (f) one is a partner in another wagering operation that is conducted as a partnership
- (g) a Key Employee or a director of one is a partner of the other;
- (h) they are acting in concert with each other in relation to activities conducted under their respective Australian Wagering Licences or the taking of wagers on NSW Thoroughbred Racing; or
- (i) they are "Related" to a common person under paragraphs (a)-(h) (for example: "Company A" and its subsidiary "Company B" are related. If "Mr X" is a director of Company B, he would be "Related" to both Company B and to Company A),

6.1 Related Australian Wagering Operators

Is the Applicant "Related" to any other Australian Wagering Operator?

Yes/No

(If No, proceed to Section 7):

If Yes, for each Australian Wagering Operator to whom the Applicant is Related, provide details of:

(a) Name of Related Australian
Wagering Operator

Nature of "Relationship"

Licence Details

"Related" since

(b) Name of Related Australian
Wagering Operator

Nature of "Relationship"

Licence Details

"Related" since

Note: A separate Application is required to be lodged by each Australian Wagering Operator even if they are Related to other Australian Wagering Operators.

6.2 Allocation of Exempt Turnover Threshold

For the purpose of assessing the fees payable to Racing NSW where a number of Australian Wagering Operators are "Related", a single "exempt turnover threshold" applies to the entire "Group". *(For example, if the Applicant and a subsidiary both hold Australia Wagering Licences and each holds race field information use approvals from Racing NSW for a full Financial Year, in that Financial Year the Applicant and its subsidiary would collectively pay fees at a rate equal to 1.5% of the amount by which their combined NSW Thoroughbred Turnover (net of any bet back credits) exceeded \$5 million and would not each be entitled to a separate exemption on their first \$5 million of NSW Thoroughbred Turnover (net of any bet back credits)).*

Does the Applicant and its Related Australian Wagering Operators wish to nominate the amount of the Exempt TurnoverThreshold to the allocated to each of the members of the Group?

Yes/No

(If Yes, specify the allocation to each member of the Group)

Note: Racing NSW will only have regard to a nominated allocation if the total amounts allocated do not exceed \$5 million (adjusted pro-rata for the period of FY2009 covered by the NSW Thoroughbred Information Use Approval) and if all members of the group nominate the same allocation. See clause 2.2 of the Standard Conditions

Section 7: Conditions and Declaration

The Applicant acknowledges that, if this approval application is granted, the approval will be subject to the Racing NSW standard conditions for "NSW Thoroughbred Race Field Information Use Approvals for Australian Wagering Operators" (version 2, dated 9/12/08) ("Standard Conditions") a full copy of which is available on the Racing NSW website (www.racingnsw.com.au).

The Applicant acknowledges that it has had access to, and has reviewed, the *Standard Conditions* and agrees to be bound by the *Standard Conditions* if the application is approved by Racing NSW.

The Applicant acknowledges that Racing NSW reserves the right to request further information in relation to this application.

The Applicant represents and warrants that:

- (a) the information contained in this application is complete, true, correct and not misleading (in either its content or by omission);
- (b) the Applicant has made all reasonable enquiries of the Applicant's Key Employees and Close Associates in connection with matters disclosed in Section 5; and
- (c) this application has been appropriately authorised and executed by or on behalf of the Applicant.

This application is dated: / /

If the Applicant is an individual, signed by the Applicant in the presence of:

Applicant

Witness

Name (Please print)

Name (Please print)

If the Applicant is a company, signed by the Applicant by:

Director/Secretary

Director

Name (Please print)

Name (Please print)

This form together with the Application fee should be forwarded to Racing NSW, RFP Application, Level 7, 51 Druitt Street, Sydney NSW 2000

Privacy Statement

For the purposes of Racing NSW performing its functions as a thoroughbred racing controlling body, Racing NSW will seek and obtain personal or financial information about you/the entity from you/the entity and others. Racing NSW may disclose this personal and financial information to other racing controlling bodies and enforcement bodies.

Should you decline to provide personal or financial information to Racing NSW when requested, Racing NSW may refuse to grant or renew approval or may revoke approval.

You may gain access to information held by Racing NSW in relation to your activities as an approved wagering operator by contacting the Privacy Officer, Racing NSW Level 7, 51 Druitt St SYDNEY 2000.

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Appendix F: Racing NSW information sheet re Legal Challenges

The Facts about Race Field Legislation and New South Wales Racing Industry Revenue

Before race fields legislation, wagering operators who were profiting from the efforts of the 50,000+ participants in the NSW Racing Industry, put back the following amounts into the industry:

		Per Annum
Tabcorp	\$4.70 in every \$100 bet	\$161 million
On-course Bookmakers	\$1.00 in every \$100 bet	\$5 million
Corporate Bookmakers	\$0.00 in every \$100 bet	\$0
Betting Exchanges	\$0.00 in every \$100 bet	\$0

After Race Field Legislation, contributions required are as follows:

Tabcorp on turnover in excess of \$5 million	\$6.20 in every \$100 bet
Other totalisator operators in Australia on turnover in excess of \$5 million	\$1.50 in every \$100 bet
On-course Bookmakers & Corporate Bookmakers on turnover in Excess of \$5 million	\$1.50 in every \$100 bet
Betting Exchange on turnover in excess of \$5 million	\$1.50 in every \$100 bet

Corporate Bookmakers Sportsbet (supported by most other Corporate Bookmakers) along with betting exchange Betfair have taken legal action trying to force Racing NSW to accept an amount that equates to a mere:

50 cents in every \$100 bet

Don't be confused by the spin or accounting jargon. Corporate Bookmakers and betting exchanges have unilaterally developed their business models, but neglected to budget for a fee for the people who put on the show. The price they now want to pay is simply not enough to fund the racing industry to provide the facilities to train racehorses, integrity services which protect punters and prizemoney to sustain owners and participants. If you wish to read more please see the related article below.

Appendix G: British Racing: A case study of the impact of regulatory structures on industry development.

Whereas France has had a totalisator system in horseracing since 1872, the spur to its introduction in Britain was the imposition of betting duty in 1926. The Jockey Club made representations to Winston Churchill (then Chancellor of the Exchequer) that, if the government was going to draw revenue from gambling, racing should be allowed to do the same. Churchill responded that, while the Government would not take the initiative, it would not stand in the way of a Private Member's Bill. Thus in 1928 legislation was enacted, sponsored by the Jockey Club, establishing the Tote.

The 1928 Act provided that bookmaking on approved racecourses on racing days would be lawful and established the prototype of the present Tote with a brief to provide an oncourse alternative to the service offered by bookmakers and to ensure that the profits from pool betting were applied, not for private gain, but for "purposes conducive to the improvement of breeds of horses or the sport of horseracing".³⁴ Between 1929 and 1961 the Tote contributed £8.6m to horseracing.³⁵ The *Betting Levy Act 1961* transferred to the newly created Horserace Betting Levy Board the distribution functions previously discharged by the Tote. During the late 1960s the Tote suffered a considerable downturn in profitability. In order to revive its fortunes, the then government agreed that the Tote should be allowed to take off-course bets otherwise than by pool betting. This extension to its powers was effected by the *Horserace Totalisator and Betting Levy Boards Act 1972*.

While as over the course of its life several inquiries into the Tote has been conducted, including in the late 1970s the Royal Commission on Gambling, chaired by Lord Rothschild,³⁶ the proposal by the Tote that it should have a monopoly of all off-course betting, which would be confined to pool betting never took hold, and it has always been a minnow within the UK wagering market. Bookmakers have always been the dominant players, with William Hill and Ladbrokes the whales.

In the absence of significant totalisator funding the principal source of British racing's funding is what is referred to as "the Levy".

The Levy is a statutorily based means of transferring money from bookmakers to the racing industry. In 1960 bookmakers and the racing industry reached a compromise: bookmakers gave their blessing to a statutory levy on the basis that the industry would not oppose the legalisation of off-course betting. A previous scheme under which bookmakers' contributions had been voluntary was evaded by many bookmakers.³⁷ Originally the Levy was primarily a charge on bookmakers' profits. Successive annual schemes (the Levy is renegotiated annually) have increasingly provided also for a levy on the turnover of off-course bets (cash and credit).³⁸ The Levy is not set on the basis of a certain proportion of bookmakers' turnover, but as a cash sum. Once the cash sum has been determined, a scheme is devised which should raise that sum.

The Levy is administered by the Horserace Betting Levy Board (HBLB), a statutory body created by the *Betting, Gaming and Lotteries Act 1963*. The Board's duties are to assess and

³⁴ *Racecourse Betting Act 1928* section 3(6)

³⁵ Home Affairs Committee, *The Tote*, 22nd July 1991, HC 451 1990-91, V, para 3

³⁶ Royal Commission on Gambling: Final Report, July 1978, Cmnd 7200, chapter 8

³⁷ Home Affairs Committee, *Levy on horserace betting*, 12 May 199, HC 146-I 1990-91, vi

³⁸ Horse Betting Levy Board, *Prior options study for the Government's 1999 quinquennial review of the Horse Levy Board*, 2000, p5

collect monetary contributions from bookmakers and the Tote and apply them for designated purposes:

- The improvement of breeds of horses;
- The advancement or encouragement of veterinary science or veterinary education;
- The improvement of horseracing.³⁹

The Levy is negotiated annually between the Bookmakers' Committee (made up of industry representatives)⁴⁰ and the Levy Board. If the scheme is acceptable to a majority of the Board, or the two sides can agree on an amended version, then it is accepted. In the absence of agreement, the Secretary of State determines the Levy.

Towards the close of the 1990s the Chairman of the British Horse Racing Board (BHB) began to propose that industry funding shift to a different model. In October 2000 the BHB published its report on future funding in October 2000 which identified a number of weaknesses in the Levy system:

- It allows the betting industry rather than the racing industry to establish a price for the product;
- It allows the betting industry to negotiate as a monopoly distributor;
- It delivers control of the acceptance or rejection of the betting industry's offer to the three Government-appointed members of the Levy Board, leaving Racing with no control over the pricing of its product;
- It does not permit Racing to capture a share of offshore betting.⁴¹

The report reached the following conclusions:

“The structure for the future funding of British Racing is based on the combining of all of British Racing's rights into a rights package for sale to bookmakers and media companies.

Combining rights will enable British Racing to develop a sufficient, dependable and sustainable income stream; to enforce and cross-enforce the use of its rights package; to work together with the betting industry more efficiently and cost effectively; and to operate as a more united industry with a clearer strategy.

Rights will be combined under a 10-year agreement between the British Horseracing Board (BHB) and the Racecourse Association (RCA).

BHB will take the lead in negotiating with UK and Irish-based bookmakers for all betting rights and with all bookmakers for internet rights that do not include pictures; RCA will take the lead in negotiating media rights and other deals through a Newco.

³⁹ Section 24 of the 1963 Act

⁴⁰ The Committee is made up of the Betting Office Licensees Association, the British Betting Office Association, the National Association of Bookmakers, Coral, Ladbrokes, and William Hill.

⁴¹ British Horseracing Board, *The Future funding plan for British Racing*, October 2000, p4

BHB will be recognised as the central funding successor to the Levy Board with the maintenance of integrity and security as its key financial priority. The expertise of current Levy Board staff will be utilised where appropriate and cost-effective.

British Racing's agreed new commercial mechanism and funding structure will enable Racing to better control its own destiny and to better work together in a climate of shared responsibility, aggregated income and pre-determined revenue allocation. It will also enable the racing and betting industries to negotiate more effectively with each other.

British Racing can expect to generate, in the short-term, not less than £140 million per year from betting and media deals compared to less than £90 million at present. This would represent an increase of around £50 million per year to Racing.

It is intended that the new commercial mechanism will operate from the expiry of the current RCA/SIS⁴² agreement on 30 April 2002. It is hoped to agree transitional arrangements for the move from statutory levy to commercial contracts by October 2001.⁴³

In April 2002 the BHB reached agreement with the leading bookmakers on terms for the sale to them of racing's pre-race data, as the commercial replacement for the levy system.⁴⁴

Responding to the BHB's request the Government announced in 2000 its intention to abolish the Levy Board, and in 2003 introduced the necessary enabling legislation (the Horse Betting and Olympic Lottery Bill, No 8 of 2003-04).

The transition ran smoothly until 2004 when the European Court of Justice (ECJ) upheld a challenge brought against the BHB's new funding mechanism by William Hill. This reversal was made complete by the UK Court of Appeal upholding the ECJ ruling in 2005.

Shortly stated the ECJ ruled that the BHB did not have protectable rights over its data base effectively dismantling the BHB's "new commercial mechanism".

In 2005 the BHB and the Department of Culture, Media and Sport (DCMS), the Bookmakers' Committee and the Levy Board established the Future Funding of Racing Review Group (FFRRG) chaired by Lord Donoghue to consider alternative ways by which British racing could generate revenue in the absence of the Levy and in light of the ECJ's ruling.

After extensive consultation and its own analysis the FFRRG failed to come up with any viable alternative commercial mechanism.

The FFRRG's single achievement was that its exhaustive analysis of the range of potential options was the basis for persuading the Minister of Sport that the only realistic option was to return to Parliament with proposals to withdraw the enabling legislation that would have permitted the dissolution of the Levy Board, thus continuing the levy as the principal mean of funding British racing.

⁴² "Sis = Satellite Information Services (Holdings) Ltd

⁴³ British Horseracing Board, The future funding plan for British racing, October 200 p2-3

⁴⁴ Horserace Betting Levy Board, *Annual Report 2002-03*, p 6

While this news was gratefully received by the BHB's successor body the British Horseracing Authority (BHA) the BHA has made it plain that the inadequacies in the Levy model identified by the BHB in October 2000 remain, with returns from wagering to racing seriously below both what British racing requires to be sustainable and what, according to independent analysis, its product is worth.

The Levy Board reported a levy yield for 2007/08 of £ 116.5. The BHA in its submission on the 47th Levy Scheme (1st April 2007 to 31st March 2009) argued that a fair and reasonable return to British racing would require a Levy return in the range of £135 to £153 million in 2008/09. They drew support for this claim from separate analysis undertaken for them by LECG which concluded that the value of British Horseracing product to wagering operators was, on a conservative basis, within the range of £152 to £186 million.

Appendix H: Chronology of Events relating to attempts to find a commercial replacement for the levy.

CHRONOLOGY OF EVENTS RELATING TO ATTEMPTS TO FIND A COMMERCIAL REPLACEMENT FOR THE LEVY

Date	Event
11 March 1996	The Database Directive (Directive 96/9/EC) introduced
1 January 1998	The Copyright and Rights in Databases Regulations 1997 come into force, implementing the Database Directive in the UK
10 November 1998	BHB chairman Peter Savill calls for the Levy to be replaced by a commercial funding mechanism based on the sale of picture signals
2 March 2000	Government announces its intention to abolish the Levy Board and the Levy
23 March 2000	BHB and others bring proceedings against William Hill in the High Court for infringement of database rights
June 2000	Peter Savill calls for a commercial funding system based on "pooled" media rights from tracks (pictures) and the BHB (pre-race data)
June 2000	BHB asks the OFT to consider its rules and regulations so that it can be sure it is operating in accordance with competition law
17 October 2000	Future Funding Plan (" FFP ") published by BHB with "pooled" media rights to be sold to off-course bookmakers – designed to come into effect on 1 May 2002 and generate £140m per annum
9 February 2001	High Court finds in favour of BHB. William Hill appeals to the Court of Appeal
7 March 2001	Government abolishes betting duty with bookmakers to be taxed on their gross profits at a rate of 15% (from 1 January 2002)
31 July 2001	Court of Appeal indicates that it is inclined to support the High Court judgment in BHB/William Hill, but since questions of

	interpretation of European law are involved it stays proceedings and will refer questions to the ECJ
December 2001	Betfair and Flutter.com announce merger
31 January 2002	Tessa Jowell announces that the Levy for 2002/03 (41 st) will be based on the payment by off-course bookmakers of around 9% of their gross profits from horseracing
7 March 2002	41 st Levy finalised by Tessa Jowell – the payment by off-course bookmakers of around 9% of their gross profits from horseracing is expected to yield £90m - £105m
17 April 2002	Ladbrokes, William Hill, Coral, Stanleys and Dones sign five-year deals with BHB allowing them to use BHB's data for their British betting shops and telephone and internet operations. Each bookmaker pays an annual charge of 10% of gross profits from horserace betting on horse racing taking place in Great Britain
7 May 2002	FFP collapses as race courses enter into their own picture deal with off-course bookmakers
24 May 2002	Court of Appeal in BHB/William Hill refers various questions on Article 7 of the Database Directive to the ECJ for a preliminary ruling
31 October 2002	Levy for 2003/04 (42 nd) agreed – the payment by off-course bookmakers of around 10% of their gross profits from horseracing (if above £75,000) is expected to yield £94m
5 February 2003	Sporting Options, with the support of Betfair, launches legal challenge against the Levy Board's 10% charge on betting exchanges, due to come into effect on 1 April 2003
8 April 2003	OFT publishes report which warns BHB that it is breaking competition laws relating to the fixture list and provision of race data
May 2003	Sporting Options wins its legal action to obtain a judicial review of the 42 nd Levy
31 July 2003	Court finds in favour of Sporting Options, ruling that the 42nd Levy, as it relates to exchanges, is unlawful and irrational
22 October	Levy for 2004/05 (43 rd) agreed – the payment by off-course bookmakers of around 10% of their gross profits (if above £75,000)

2003	from horseracing is expected to yield £91.7m
10 June 2004	OFT reaches a provisional agreement with the BHB to reform the running of British horseracing
23 September 2004	Levy for 2005/06 (44 th) agreed – the payment by off-course bookmakers of around 10% of their gross profits (if above £75,000) from horseracing is expected to yield £94m
28 October 2004	Horserace Betting and Olympic Lottery Act 2004 ("HBOL Act") comes into force giving the Government the power to abolish the Levy
9 November 2004	ECJ ruling on Article 7 favourable to the position taken by William Hill - case returned to the Court of Appeal
January 2005	Lord Donoughue asked by BHB to conduct an Independent Review of Racing's Funding
11 March 2005	Lord Donoughue presents interim report to the Government – recommends an extension of the Levy by 3 years conditional on an agreement to roll over the 44 th Levy
18 March 2005	Richard Caborn announces that the Levy will continue until 31 March 2009 and the Levy Board will be closed 6 months later
13 July 2005	Court of Appeal applies ECJ's findings to rule in favour of William Hill in its dispute with BHB
1 November 2005	Levy for 2006/07 (45 th) agreed – the payment by off-course bookmakers of around 10% of their gross profits (if above £80,000) from horseracing is expected to yield between £98.75m and £101.9m
December 2005	Lord Donoughue presents final report. Recommends that the sale by racing of a package of televised pictures and associated data may present a way forward, subject to obtaining legal advice on whether any such arrangement would be likely to withstand a competition law challenge
23 March 2006	Richard Caborn and representatives of the racing industry discuss the Levy and the Donoughue group is then asked to conduct a further review of how the Levy legislation and procedures should be modified were the Government to decide to retain the Levy
20 September	Levy for 2007/08 (46 th) agreed - the payment by off-course bookmakers of around 10% of their gross profits (if above £82,600)

2006	from horseracing is expected to yield no less than £91m
14 December 2006	Government announces its intention to retain the Levy Board and the Levy "until such time as a secure and adequate alternative commercial funding arrangement can be identified". Government intends to repeal the parts of the HBOL Act which gives it power to abolish the Levy
January 2007	Racing UK and Alphameric announce Turf TV joint venture
April 2007	Turf TV launches
6 June 2007	David Harding, chief executive of William Hill, says that the bookmaker will use all means at its disposal to win the "war" declared on bookmakers by the racing industry
31 October 2007	Levy for 2008/09 (47 th) not agreed between bookmakers and Levy Board and referred to the Secretary of State for determination by April 2008
October 2007	Bookmakers Afternoon Greyhound Services (BAGS), William Hill, Ladbrokes, Coral (later withdrew) and Betfred sue Turf TV stating that it is running a price-fixing operation that amounts to an illegal cartel. Turf TV counter-claims, alleging that the bookmakers colluded in refusing to sign up to its service and by collectively withdrawing sponsorship from the courses involved
November 2007	Ladbrokes and Coral call for abolition of the Levy
December 2007	Coral signs up to Turf TV
January 2008	Ladbrokes and William Hill sign up to Turf TV
20 February 2008	Written ministerial statement by Gerry Sutcliffe determining that the 47 th Levy (2008/09) shall be the same as the 46 th Levy and calling for racing and the bookmakers to develop a modern business partnership
April 2008	Turf TV case starts in the High Court
9 August 2008	The claim by the bookmakers and BAGS against Turf TV fails. Judgement on Turf TV counter-claim to be dealt with in a separate judgement later in the year

DOCUMENT END