AUSTRALIAN GOVERNMENT

PRODUCTIVITY COMMISSION

DRAFT REPORT INTO GAMBLING

OCTOBER 2009

RESPONSE OF
HARNESS RACING AUSTRALIA
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HRA
HARNESS RACING AUSTRALIA

Introduction & Executive Summary

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

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

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

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

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

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

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

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

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

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

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

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

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

Preliminary Comments

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

1. Use of the term Consumer

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

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

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

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

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

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

3. Size of the racing industry

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

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

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

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

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

Draft Finding 13.1

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

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

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

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

Draft Recommendation 13.1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Draft Recommendation 13.2

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

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

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

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

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

Draft Finding 13.2

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

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

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

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

The experience in the United Kingdom, where the betting levy payable to the British Horseracing Board is based on gross revenue and is currently set at 10 per cent (low by international standards) provides a valuable lesson to the Australian racing industry. Despite this low levy, a number of wagering operators including Ladbrokes and William Hill[4] are still opting to relocate to places like Gibraltar to take advantage of negligible income tax rates and to avoid paying a levy to the UK racing industry.

Draft Finding 13.3

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

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

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

Draft Finding 13.4

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

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

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

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

Draft Finding 13.5

The arguments for renewing TAB retail exclusivity are not compelling.

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

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

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

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

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

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

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

It is also worth nothing that retail wagering outlets have retained their market share in recent times, despite increased competition from internet and telephone wagering operators, who have grown their market share significantly. The ability of the retail outlets to maintain market share in this environment suggests that they are providing a useful and valuable service to consumers. Furthermore, it is HRA's view that increased competition in the retail network would ultimately lead to poorer outcomes for consumers. The level of service and comfort currently enjoyed by Australians in TAB retail outlets would diminish as the increased competition would lead to smaller pools, less incentive for consumers to wager on the totalisator and ultimately, less investment by the pari-mutuel operator in the retail network.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBMISSION ENDS