

## GAMBLING IN AUSTRALIA: SUBMISSION TO PRODUCTIVITY COMMISSION

### A HAND IS IN MY POCKET

Australia has a problem arising in arrangements – entitlements -- allowing favored private interests to draw funds for their own purposes from the gambling losses of others: the problem is illustratively associated with gaming machines in clubs and betting with TABs on racing events.

For the beneficiaries there is a sense of -- *you bet, I win* – and -- *my hand is in your pocket* -- in their relationships with gamblers. It is a short step to beneficiaries fostering outcomes characterized as *I win even more* and .... *deeper in your pocket* – and that has happened with both clubs and TABs.

The problem with entitlements takes on diabolical dimensions when the expectation of an ever-growing entitlement is not only disappointed but the flow of entitlement-funds contracts. This is happening now for both clubs and TABs reeling in the wake of competition from gaming machines in pubs and interstate discount-bookmaking operations.

Predictably enough the disappointed beneficiaries are not happy. Unfortunately, the beneficiaries' reaction has typically been a whatever-it-takes determination to continue drawing their 'fairly expected' entitlement -- this becomes tiger-on-my-back stuff for other members of clubs and TAB punters, and implicitly the wider community.

At the club level, the risk is that clubs continuing to be mismanaged will fail -- that all members will lose the benefits of a cooperative mutual otherwise capable of bringing great benefits to a local community. State governments have a responsibility to manage and change beneficiaries' expectations of entitlements in the interests of fair play for all members of clubs.

The situation with the racing industry is more disturbing. The beneficiaries of the entitlement to a share of TAB turnover represent very powerful interests, not least governments (and mirror-image oppositions) dependent on support from the racing-lobby in rural electorates. State government initiatives to bolster state TAB monopolies seem to be at odds with both protecting free trade between the states and the more specific commitment of state governments to observe national competition policy, including in the availability of services to punters.

Inherent in these entitlement arrangements are the dangers associated with the disbursement of funds at the administrative discretion of boards of clubs and state racing authorities run by dependent cliques of 'insiders'. It will almost invariably be the case that 'waste' will characterize a substantial part of any discretionary disbursement of an automatic entitlement, money will be spent on beneficiary business operations that have no self-sustaining commercial merit. The racing industry needs a comprehensive national inquiry.

Inherent in all this also is a reasonable suspicion that inclinations to problem gambling are systemically encouraged if others have entitlements to money that gamblers lose<sup>1</sup>.

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<sup>1</sup> See also my story - *Winners can't take all* - in the March issue of CFO magazine (cfoweb.com.au)

## BASICS

Two things distinguish gambling in Australia. First, when the upfront takeout is typically 20%, gamblers are certain to lose money. Second, favored sectional interests given earmarked entitlements to share the takeout typically waste much of it.

The primary focus here is the sectional interests, funded from gambling losses, not only spending the funds selfishly but also contriving to increase the losses of gamblers to benefit their interests.

A sub text is ‘freedom’ as a foundation stone of sound public policy. One critical freedom is about shielding vulnerable groups from capture by sectional interests. Sectional interests given automatic entitlements to receive funds contributed by others, should not be encouraged to exploit others to subsidize their personal preferences. One corollary is that sectional interests would preferably pursue their interests on a self-sufficient basis: if activities favored by sectional-interests are not self-sustaining, funding shortfalls from the gambling losses of others is not an acceptable outcome.

Put sharply, when the business of gambling is “*you bet, I win*” the scene is set for misbehavior. Powerful private interests, feeding off vulnerable others losing money, will ride roughshod over well-intentioned schemes for managing problem gambling. More importantly, substantial inequities and inefficiencies inevitably attend the misuse of ‘money for jam’ at the unaccountable discretion of sectional interests.

Over the past decade, an unsatisfactory situation deteriorated further.

The illustrative focal points are,

- licensed clubs controlled by sectional interests feeding off machine gambling losses (and liquor sales profits); and
- state racing authorities funding local racing from automatic entitlements to a fixed share of excessive TAB takeouts, at the expense of TAB punters.

### - **portents of change**

Understanding current developments highlights the importance of fostering stronger competition for the gambling dollar: competition is a powerful antidote to abuses of monopoly power. There are very welcome signs that the more competitive environment emerging for gambling promoters is already eroding funding entitlements flowing to private interests unfairly.

Allowing poker machines in pubs puts financial pressure on clubs. Clubs with debt and sports-funding commitments, and drifting onto the ropes, respond by promoting gaming facilities more aggressively while cutting back both returns to gamblers and subsidies for other member facilities. It is a formula for failure, if mutual clubs are to survive, fundamental reform is essential.

In the racing industry, the growth of bookmaking exempt from substantial turnover taxes is taking business from state TAB monopolies.

Erosion of the TAB entitlement heralds a smaller national racing industry, fewer horses, fewer racetracks and less racing – and redundancies of employees and other resources.

Putting a financial squeeze on powerful interests gets a predictably powerful reaction that compromises the integrity of both the parliament and the free press -- institutions otherwise essential to protecting the public interest. Politicians and the media are beholden to gambling interests.

- **a way ahead**

Licensed clubs operating as co-operative mutual businesses can benefit local communities enormously -- unfortunately, they readily accommodate cliques taking control of available funds for their own purposes. Liquor and gaming licenses could be conditional on clubs fairly matching benefits to contributions of trading profits from different classes of member: if necessary, different licenses for different days of the week.

Viewed objectively, the range of words appropriate to describe the Australian horseracing industry includes ‘fragmented’, ‘unsound’ and ‘unsustainable’. Re-establishing political control over the powerful interests associated with racing probably requires federal intervention. Coordinated rationalization across the states would substitute a national framework underpinned by sound commercial objectives and disciplines (and financial assistance to resettle redundant resources).

## **COLLAPSING CLUBS**

Substituting apocryphal illustrations for the harder evidence of a comprehensive survey of problems besetting licensed clubs may be excusable if an ‘objective’ story rings sufficiently true across clubs generally.

- **Ideals**

Benchmark ideals put practical shortcomings in context.

Ideally, licensed clubs would operate in the interests of all their members with an elected board, itself reasonably representative of all members, overseeing executive management. The board and management would ensure that contributions to trading profits from identifiable groups of members reflect fairly in benefits provided to those groups i.e. that all members are treated fairly.

This framework would not preclude clubs having a particular sporting focus (golf, bowls, etc) but it would ensure that members enjoying specialized facilities would only do so on a basis that was financially self-sufficient within that member group: i.e. these members would not take substantial net subsidies from trading and gaming profits contributed by other members.

For most clubs their natural membership base is a local community, a walk-to facility for companionship while enjoying a drink and perhaps a flutter. These days, people are more likely to attend a club than a church and it is increasingly appropriate for clubs to take a coordinating role for a range of leisure and entertainment activities in their local community.

Given the national attachment to a fair-go, a framework matching benefits and contributors would have broad appeal.

- **shortcomings**

Reality commonly falls well short of anything like this ideal.

Local community clubs often have substantial monopoly power because there is no conveniently comparable alternative: abuses of this power are common.

Not all members are equal. Within clubs, elite interests affiliated with particular activities commonly hold the purse strings, spending available funds disproportionately on themselves. In the worst cases, membership rules blatantly discriminate against 'associate members' – usually the majority – with 'full members' exclusively eligible to be board members, and typically dominating voting in elections for board seats.

The mechanics of elites dominating clubs mimic political processes in most institutions. Board vacancies tend to occur casually, conducive to the board appointing a like-minded 'incumbent' ahead of the next election. Board membership is often token, an implicit understanding that compliant board members on a party ticket will support the sponsoring leader. Entitlements to perquisites reward board members, especially apparent status, expense allowances and official travel and entertainment (to say nothing of the potential for rorts involving third-party suppliers).

Technically, elected board positions are contestable. Revolutions are possible but divisive confrontations in local communities can be very unpleasant. As usual, the exploited members are typically fragmented, and do not vote, while the members in control exclusively support candidates favorable to their interests. The politics of these situations demands some regulatory codes and guidelines to protect vulnerable members and promote fair play.

- **a better way ahead**

Regulatory reform should outlaw the prevailing inclination to manage clubs in the interests of dominant member cliques. Regulation could require that identifiable classes of members with special interests benefit only pro-rata to their reasonably identifiable relative contribution.

This quest for fairness in the administration of licensed clubs entails putting 'liquor trading and gaming' profits into escrow – at least conceptually -- and making their release conditional on audited budgets complying with fair-distribution rules across identifiable classes of member.

Some club managements might choke down on that prospect but, allowing time to adjust as appropriate, it is hardly objectionable.

The Commission could promote a review of the licensing of gambling (and liquor trading) activities of registered clubs. The primary objective would be restoring a sense of fair play across all members of clubs operating as cooperative, mutual businesses. The primary approach would be to make the spending of the trading profits from clubs' licensed operations, subject to approval and audit protocols overseen by a regulatory agency responsible to protect the entitlement of all members to fair play.

## RACING OUT OF CONTROL

A general inquiry into ‘gambling’ is not the place for an in-depth review of the Australian racing industry. It would nonetheless be entirely appropriate if one development from this inquiry saw a brief given, perhaps to the Productivity Commission itself, for a wholesale review of the national racing industry.

The focus here is consistent with my underlying theme that, across the states, sectional interests associated with the racing industry are first benefiting unfairly and then wasting much of the benefit. [My illustrative comments embrace harness racing and greyhound racing as well as horse racing.]

### - unfairness

Unfairness reflects state governments granting to their local racing industry, an automatic entitlement to a fixed share of the losses of TAB gamblers, to fund the conduct of racing. State government taxes gambling generally and the taxes raised would best flow to the public purse in the first instance: decisions to spend those funds are conceptually quite separate.

In the racing industry, it was a convenient deception to short-circuit that convention: funding entitlements for racing legislatively link the spending to the taxing. This ‘taxing’ and ‘spending’ is ‘off budget’, buried and protected within a legislative bypass that does not invite scrutiny. One deceptive consequence is TABs proclaiming that they ‘fund racing’ while demanding ‘legislative reform’ to outlaw TAB competitors so they can promote ‘the growth of the racing industry’.

Superficially, the unfairness is to TAB gamblers asked to pay too much: too-high deductions from the betting pools and low dividends. A more fundamental unfairness is to the wider community if taxes, fairly raised, flow directly to a sectional interest and are not spent in the general interests of all (which ‘general interests’ would include some racing industry funding, separately applied for and allocated on sound commercial terms.)

Excessive taxes raised from monopolized TAB gambling penalize punters unfairly. Beyond that, taxes taken should be allocated wisely, not given to the racing industry to spend as it likes, disadvantaging the general community unfairly.

The emergence of competition for the racing-gambling dollar is slowly eroding the entitlement flowing from TAB gambling and punters are slowly getting a better deal.

Unfairness, nonetheless, remains substantial and entrenched. Predictably, the defensive reaction of the racing industry and beholden-politicians is to reject competition and extend the TAB monopoly, by imposing harsh levies on bookmaker turnover. On the bright side, some state and territory governments have licensed TAB competitors and the Constitution protects their interstate operations. As well, national competition policy obliges the states to abandon self-serving monopolization of commercial operations, including services provided by sponsored agencies such as TABs.

- **waste**

The real concern with the racing industry is the waste of money taken excessively from the pockets of punters (and implicitly from the public purse) with little if any accountability for the use of it to subsidize the conduct of racing: the racing industry gets it, wastes much of it, and continually demands more. A racing industry operating in a competitive national framework would waste less on unwanted racing product. Committed to a competitive national industry, there would be less inclination to either unfairly exploit state TAB monopolies or otherwise milk the public purse to prop up bloated industries around the states.

The inclination to waste is the subtext for the fuller review of the racing industry. The evidence of waste is everywhere in the industry: too many of everything -- too many races, horses, tracks and dependant employees to say nothing of the superstructure of associated contributors hanging off this inefficient industry.

One persuasive summary statistic, there are some 20,000 thoroughbred races run in Australia each year, some 400 each week at 50 different race meetings across the country. The number of races run in Australia each month thus approximates the combined annual totals for two emerging giants of the global racing industry – Hong Kong and Singapore.

As a starting point, anyone suggesting the racing industry in Australia is too big by at least half, would have little fear of contradiction by a competent independent analyst -- and that is just an opening bid for rationalization. Consistent with the touchstone of ‘freedom’ guiding public policy decisions, racing industry participants prepared to operate on a commercially sound and self-sustaining basis, should be free to do so: there was a viable rural racing industry long before entitlements to funding from TAB turnover distorted the business.

The sense of inefficiency and waste in Australian racing presently is accentuated by the scope for ‘free trade’ importing of quality racing product from overseas in a convenient local time slot. If there were any need to supplement Australia’s best racing, substituting high-quality imported product for the over-supply of substandard local fare would better serve both Australian punters and the wider Australian community. Properly focused, a national racing industry would welcome competition and encourage the import of first-class racing entertainment – and work towards being an exporter of equally attractive product.

### **RACING’S ROAD TO PERDITION**

A national icon industry having drifted into a parlous state prompts some retrospective concern.

The institutionalized misconduct of our national racing industry is a predictable outcome of poor public policy settings. It was an inevitable consequence of state governments giving their local racing industries unqualified political support along with unaccountable entitlements to a fixed share of turnover on the local TAB: nationally this pot-of-gold, entitlement runs to some \$ 1 billion annually, 5% of a national TAB turnover of some \$20 billion.

Under the guise of making racing politically independent, control of racing in the states is vested in a board of politically appointed ‘insiders’ drawn from the local racing industry. These boards hand out the money at will with no obligation to observe commercial disciplines in distributing the entitlements. On the evidence, what these boards like is to waste much of the entitlement propping up elements of the racing industry with no self-sustaining commercial merit.

- **the mechanics of waste**

What these boards also like to see is the industry in ‘their’ state growing strongly, as measured by the ‘numbers’ of the various things involved increasing – ever more horses, racetracks, grandstand seats and employed dependants -- in addition to more ‘owners’ who bet costs against fame and fortune at odds of 2 to 1 on or worse.

Success on this ‘numbers’ criterion is most likely if the discretion to distribute rewards ranks mere participation above excellence in performance. Promoting racing that no one (apart from the beneficiaries) really wants, wastes much of the money across the states. ‘Waste’ means low-grade races, largely unwanted, attracting insufficient TAB turnover to recover prize-money and associated production costs contributed by state authorities. There is a wider dimension if the resources in the racing industry unreasonably propped up by subsidies, could be making a different, more useful contribution employed elsewhere.

- **the gentlemen’s agreement**

Those wondering why the penny does not drop, and this waste curtailed, may like to ponder the implications of the ‘gentlemen’s agreement’.

The the industry funding entitlement in each state reflects total TAB turnover in that state. Fixing the entitlement has no regard to the practical reality that in most states most TAB turnover is on races run in other states, especially Victoria. In the wash up money taken from betting on the Melbourne cup in Western Australia, for example, is part of a pool used to fund racing of no national consequence in rural WA. Within each state, there is a similar ‘wasteful’ bias towards subsidizing non-metropolitan racing with funds contributed via wagering on metropolitan racing.

There is a glimmer of hope: recent months have seen steps taken by Victoria to put aside the ‘gentlemen’s agreement’. Net payments to Victoria, of fees for racing product, would reinforce the competitive pressure on other states coming from corporate bookmakers: there would be even less money to waste and even less inclination to waste it.

- **the thickening plot**

Simply wasting money – even taxpayer money – is perhaps benign enough but the real troubles, the real problems in the racing industry flow from the consequences of giving ‘money for jam’.

The institutionalized misconduct of the racing industry starts with the unholy alliances at the top level effectively rigging the game to exploit TAB punters. The allies are politicians (governments) dependent on the racing vote in marginal rural electorates; industry participants owners, trainers, breeders et al dependent on getting a share of the entitlement and TABs, clipping each ticket sold and dedicated to building betting turnover on anything and everything able to be clipped.

As well, Tabcorp – operating the NSW and Victorian TABs among other affiliations, effectively monopolizes the national broadcast media in pubs and clubs and TAB agencies through SKY Channel and a national radio network. [Ideally Tabcorp would be required to divest its interests in broadcast media. Wagering and broadcasting conducted in tandem opens opportunities for abuses of the proclivities of problem gamblers. The linkage more generally underwrites the presentation of wall-to-wall broadcasting in pubs and clubs and impulsive gambling.]

The unholy alliance has been an overwhelmingly powerful force exploiting punters for decades – overcharging TAB punters and railing against any competition for TAB business.

The tide is slowly turning: competition for TABs is strengthening with constitutional protection of corporate bookmaking operations interstate. Even so, strong ongoing resistance from the allies continues in the courts: there have been some celebrated stoushes in recent years as state racing authorities were overruled in favor of those substituting competition for monopolization: e.g. Betfair (bookmaking) and TVN (broadcasting).].

- **more thickening things**

One can easily imagine the consequence of putting a pot of gold coins on the grass and saying ‘go for it’ to an assembled throng: farmyard analogies that come quickly to mind are spot on with what happens in the racing industry. The consequences are unseemly as the following brief illustrations suggest.

**(i) the captive press**

One critical consequence is the compromised independence of the press and the suppression of people, punters and participants, who might speak out on industry issues.

The racing media is ‘managed’ by the racing industry. The absence of any substantial and well-informed discussion of underlying racing industry policy issues in the media (bar TVN on occasion) is ample testimony to a virtual ‘D Notice’ imposed by the allies on unauthorized comments and loose media speculation that could expose industry sensitivities and insensitivities.

Racing journalists would probably lose essential industry-contacts if they disregarded the embargo: conversely, representatives of the allies regularly feature in the media, contributing self-serving commentary. The public presentation of the racing policy debate in the media is so unbalanced as to warrant corrective action. There is no place for the words ‘critical scrutiny’ in a fair description of media coverage of racing industry policy in Australia by major national media players.

**(ii) speak no evil**

At one point, circa 2000-04, as the statutory ‘consumer representative’ in the RacingNSW framework, my comments circulated to industry participants and posted on industry discussion sites drew favorable attention from the media, punters and prospective competitors to monopoly interests.

The attention drawn from the allies – the Minister, RacingNSW and TAB – was intimidating and disturbing and ultimately entailed a distortion of parliamentary processes.

A proposal to change the legislation in 2002, and remove me from the post, came to nothing. It surfaced next in mid 2004, when, without any prior public discussion, the government gazette proclaimed legislation to the same end. Subsequently, as the last man left standing after the position was re-advertized, the ‘consumer rep’ position remained vacant. An overhaul of the framework for RacingNSW in 2007 abolished the consumer rep position.

### **(iii)no quality control**

Among the more misleading noise to come from the racing industry is the constant refrain of ‘racing is run with the utmost integrity’.

While the racing industry stewards are, in my experience, beyond question as to their personal integrity and dedication, the powers and resources available to the stewards to protect the integrity of racing are inadequate.

In the racing industry, there is no meaningful understanding of, or commitment to, product quality management. Using insightful collection and analysis of race day data to classify racing of very variable quality would be informative: it could also detect patterns of unexpected results beyond the bounds of probability. It is, for example, disturbing that connections can, and occasionally do, make more from not running a good horse on its merits, except on occasions conducive to success at long odds.

Racing’s stewards are apparently limited in dealing effectively with recurrent misbehavior. The deliberate misconduct of racing brings the industry into disrepute and racing boards failing to ensure its detection compound those offences. Appropriate responses would include contractual arrangements proscribing the misbehavior of licensed participants; unfettered cooperation from wagering operators holding the data to expose it and unlimited powers for the stewards to prosecute it.

If the racing industry were genuinely keen to present itself as ‘run fairly’ the powers and responsibilities of the stewards would be quite different to the present restricted focus on each race as a stand-alone event.

### **(iv)insiders plunder mugs**

Racing, while a wonderful entertainment medium, is no place for mugs: lamentably, racing not run fairly becomes a mugs game.

All the customers, not least TAB punters, are entitled to have access to much the same form guide and associated prior knowledge. Unfortunately, observation of betting trends in ‘win pools’ on TAB websites readily reveals the mechanics of well-informed insiders exploiting gullible punters.

The process involves insiders, with a knowledge advantage, staying their hand until betting late using favored access to betting terminals to back apparently ‘surprise winners’. Not every race is amenable to this deception, not every attempt to milk a pool of mug money is successful – but few doubt that some TAB punters ‘in the know’ milk the mugs consistently.

[Fraudsters on the Gold Coast promoting ‘investment schemes’ using TABs as the investment medium use this angle to lead suckers astray: it is easy enough to watch a flood of late money arrive at the jump but it is rarely possible for a small punter to get set in time.]

There can be little genuine sympathy for mugs among TAB punters betting on races, in regional outposts, between unknown horses without well-disclosed, established form.

That said TABs withhold critical information on betting activity that could protect ‘little’ TAB punters from exploitation: the practice raises the possibility that the protection afforded to the insiders is deliberately unfair.

Insiders keen to bet one horse to win in an ‘anchor race’ are likely to place other bets linking that horse to races run later in the day: to take this advantage, insiders must play their hand before betting closes on the anchor race.

[Note: For most races, there are some four or five separable contingent betting options with implicit ‘win pool’ dividends for each horse – these options variously embrace *running doubles*; *daily doubles*; *quadrellas* and, *newly*, *the Big6*. Even within a race an anchor horse may be over-bet in trifecta and first four wagers well before its odds shorten in the published win pool.

These ‘exotic’ bets have a ‘win pool’ counterpart quite separate to the formal ‘win’ pool for the race – i.e. a different set of ‘win pool’ dividends can be inferred from the horses selected for the legs of quadrellas, daily doubles, et al. It would be well within the capacity of TABs to extract and disclose these implicit win pools in formats that would highlight disparities.]

## **END PIECE**

This submission highlights my perceptions of problems with the conduct and management of two foundation stones of the Australia’s national entertainment culture – community clubs and racing.

These perceptions of problems see a causal connection between giving unfair entitlements to funding sectional interests and unwanted outcomes in the terms on which these entertainment industries operate, especially in their heavy dependence on gambling and the opportunities to manipulate gambling outcomes.

The politics surrounding these industries make reform a very sensitive challenge: those become dependent on the gambling losses of others are in no mood to curtail their appetite for funds or their sense of others obligation to provide additional funds. For state governments, and local communities, the sense of powerful sectional interests demanding more money can be a tiger on their back.

Gaming machines in pubs probably means unrelenting competitive pressure on clubs with costly obligations to dependents: clubs unable to adjust will fail and wind up.

For racing, the stakes are enormous: competition for the TAB dollar affects the viability of large sections of the national racing industry while the prospect of competition between the states will accentuate the impact on some states. Disappointingly, some states – NSW in particular – are resisting the inevitable contraction of their racing industries and loss of monopoly gambling rights, and challenging the national commitment to free trade and competition.

This bitter dispute, at a tough time, needs the catalyst of an independent national inquiry to facilitate needed rationalization.

- **on a personal note**

Racing – doing the form and placing small bets with TABs -- is my primary pastime entertainment, has been for decades. With a minimum bet of 50 cents and a 1-cent minimum live bet for flexi exotic bets, racing offers low-cost entertainment to its aficionados, supported by free-to-air broadcasts and excellent form guides made freely available with daily papers and on the internet. For the most part Saturday metropolitan racing run in Melbourne and Sydney is very fair and well conducted. For this racing, the perceived incidence of misbehavior is relatively low and others may share that assessment for the best races run in other states.

That said Saturday-quality metropolitan racing in Melbourne and Sydney is some 5% of the number of races Australia wide each year: embracing the best racing from other states might double that share.

Similarly, my membership of local clubs operating as mutual cooperatives has long been a valued privilege allowing access to congenial company in well-run facilities and relatively inexpensive access to entertainment and alcohol. A quick perusal of the submissions lodged by mid-March reveals proud contributions by clubs confident in the contribution they make to their local community. There will be no submissions from clubs that have failed or are in danger of failing because of imbalances in the distribution of costs and revenues as between their members.

Peter Mair  
15 March 2009