

Executive Summary

Betchoice is a corporate bookmaker based in the Northern Territory. Betchoice offers telephone and Internet wagering on racing and sporting events to a variety of customers both in and out of Australia.

Wagering is a heavily regulated industry in Australia. Laws and regulations exist at the State and Territory level and at the Federal level. It is submitted that the current regulatory and licensing approach to wagering (both terrestrial and online) is preferable to prohibition.

The Australian wagering industry has undergone a transformation in the past ten years as corporate bookmakers and betting exchanges have entered the market. Punters have more options than ever before in terms of the races or sports on which they can accept bets and the means by which bets can be made.

Betchoice believes these changes have been beneficial to the sporting sector and the punter. Unfortunately, this is not a view shared unanimously. Numerous submissions have been made to the Commission suggesting that the racing industry is in crisis and that the cause is corporate bookmakers.

We believe the argument that the racing industry is in dire straits is built upon a fundamental misunderstanding. The racing industry has argued that the earnings of totalisators, the largest financial contributors to the industry, are in decline. A thorough examination of the evidence suggests that this is not the case. In general terms, there has been growth in turnover over the past ten years. However, this growth has been affected by two important national events, Split Vision and the Equine Influenza Outbreak, which have resulted in temporary adverse effects on the rate of growth. The evidence shows that, when these events are taken into account, growth will continue.

To address the perceived decline, some in the racing industry have argued that a product fee of 1.5 per cent of turnover imposed on bookmakers is required. This submission explains why a product fee of 1.5 per cent of turnover would not be a fair fee and against the interests of all participants in the racing industry.

We believe significant scope exists for the current reporting regimes to be simplified. This is particularly so for online wagering operators whose businesses cross multiple jurisdictions. This submission summarises the current state of play and makes suggestions concerning a possible solution that would save significant amounts of time and money, which could then be used in a manner more beneficial to industry participants.

Finally, the submission also addresses harm minimisation. We argue that a common approach to harm minimisation measures would ease public concern over problem gambling and ensure that those who are at risk are identified and provided with the assistance required.

Betchoice makes the following recommendations to the Commission:

- Recommendation 1:** Corporate bookmakers should pay a product fee equivalent to 5 per cent of gross profits on the basis that corporate bookmakers refrain from having a physical presence in pubs and clubs throughout Australia.
- Recommendation 2:** Totalisators should not be required to pay a product fee additional to their licence fee in recognition of the contributions they already make to the racing industry.
- Recommendation 3:** The product fee needs to be reasonable for all participants in the industry and should not affect their business stability.
- Recommendation 4:** Restrictions on ‘In the Run Betting’ should be removed.
- Recommendation 5:** A central agency should be established for collecting reporting data and product fee payments.
- Recommendation 6:** Harm minimisation measures should be standardised and apply across the gambling sector.
- Recommendation 7:** All gaming and wagering operators should report clients that exceed set betting frequency parameters to this central agency.

The State of Wagering in Australia

The racing industry has consistently justified product fees on the basis that the necessary levels of funding are deteriorating as a result of the activities of corporate bookmakers¹. Given the seriousness of this claim, it is well worth considering in greater detail.

Over the past two decades, there has certainly been a decline in wagering turnover as a percentage of overall gambling expenditure. This should not be surprising given the changes to Australia's gambling environment over this period. Indeed, the Australian Racing Board's own submission explains the cause has been²:

... the liberalisation of other forms of gambling – notably, casinos and gaming machines – [which] 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.

We agree with the Australian Racing Board that there has been a percentage decline in wagering revenue relative to overall gambling expenditure, that this has been the result of an increased variety of gambling options available to punters and that this decline has been occurring for the past 20 years.

However, a decline in the share of Australia's gambling market does not necessarily lead to the conclusion that funding levels of the racing industry are under threat. Upon closer analysis, quite the opposite appears to be the case. At the same time as racing's percentage share of the gambling dollar has been decreasing, the turnover of Australian totalisators has been increasing. We again refer to the submission of the Australian Racing Board³:

From FY 2001 to FY 2006, the compound annual growth rate in Australian totalisator turnover was 3.4 per cent in line with the average compound annual growth rate in Australian totalisator turnover over the past 20 years.

While it is evident from the statistics quoted above that racing has declined dramatically as a proportion of the Australian gambling spend, it would be incorrect to draw the conclusion that overall gambling expenditure on racing has declined. Rather, it is that with the liberalisation of other forms of gambling over the past 20 years, expenditure on these new forms has increased. In other words, it is not that racing's 'slice of the pie' has become smaller but that the 'pie' itself has become larger and that there are more 'slices of the pie'.

Australian Gambling Statistics is a comprehensive set of statistics covering the entire range of legalised Australian gambling products. The publication has been produced since 1984 and is now compiled annually by the Queensland Office of Economic and Statistical Research with the assistance of all Australian State and Territory governments. The latest edition is the 25th and contains statistics from 1981-82 to 2006-07.

¹ See Submission 213 by the Australian Racing Board, p 31; Submission 228 by Racing NSW, p 3; Racing NSW's submission to the Independent Review of Wagering Regulation in NSW ('the Cameron Inquiry'), pp 2-3, 6-7.

² Submission 213, p 12.

³ Submission 213, p 18.

Table 1. Totalisator turnover by State and Territory from 1981-82 to 2006-07 for all codes of racing.

	NSW	Vic	Qld	SA	WA	Tas	ACT	NT	Total	Growth
85-86	1,765.690	1,224.880	560.324	237.232	328.823	83.399	45.667	17.471	4,263.486	
86-87	1,919.811	1,358.237	610.847	249.696	340.641	87.717	45.590	21.120	4,633.659	8.68
87-88	2,200.698	1,521.746	702.931	314.947	386.216	106.568	56.997	27.995	5,318.098	14.77
88-89	2,644.683	1,729.463	827.482	393.256	441.195	125.000	65.837	35.113	6,262.029	17.75
89-90	2,958.340	1,898.608	904.246	463.842	478.610	144.410	70.631	41.259	6,959.946	11.15
90-91	3,170.753	1,996.558	990.540	491.740	460.537	157.498	76.995	47.974	7,392.595	6.22
91-92	3,217.192	2,104.547	1,059.920	494.491	459.058	181.697	79.632	49.831	7,646.368	3.43
92-93	3,221.439	2,230.886	1,122.745	503.183	519.048	201.132	82.813	52.818	7,934.064	3.76
93-94	3,329.177	2,323.920	1,249.199	526.852	583.869	221.512	87.199	60.634	8,382.362	5.65
94-95	3,467.924	2,259.918	1,281.074	513.283	619.472	267.060	83.465	69.235	8,561.431	2.14
95-96	3,574.283	2,274.362	1,295.100	496.392	658.249	253.145	102.631	72.000	8,726.162	1.92
96-97	3,625.400	2,285.145	1,329.000	522.926	676.719	226.116	112.880	87.900	8,866.086	1.60
97-98	3,554.474	2,371.919	1,344.900	590.304	733.455	204.833	113.027	74.095	8,987.007	1.36
98-99	3,672.300	2,537.683	1,418.100	617.823	779.194	206.855	115.128	70.240	9,417.323	4.79
99-00	3,772.700	2,576.276	1,526.065	616.363	813.080	195.108	110.915	67.819	9,678.326	2.77
00-01	3,912.400	2,687.640	1,551.565	630.254	846.171	208.395	129.171	70.796	10,036.392	3.70
01-02	4,485.000	2,818.234	1,590.191	622.050	886.898	229.493	126.538	76.987	10,835.391	7.96
02-03	4,642.100	2,940.641	1,686.593	631.043	961.381	261.980	128.905	86.119	11,338.762	4.65
03-04	4,343.950	3,074.044	1,808.578	663.895	1,030.888	273.879	151.210	91.337	11,437.781	0.87
04-05	4,448.803	3,242.283	1,915.544	683.780	1,168.319	286.660	157.582	101.914	12,004.885	4.96
05-06	4,285.428	3,269.919	1,932.031	657.715	1,267.357	302.550	168.134	106.722	11,989.856	-0.13
06-07	4,322.166	3,476.624	2,065.409	700.604	1,418.427	375.499	158.325	128.750	12,645.804	5.47

Source: Australian Gambling Statistics, 25th Edition (2008), 1981-82 to 2006-07.

Table 2. Totalisator and off course bookmaker turnover from 1992/93 to 2007/08 for thoroughbred racing.

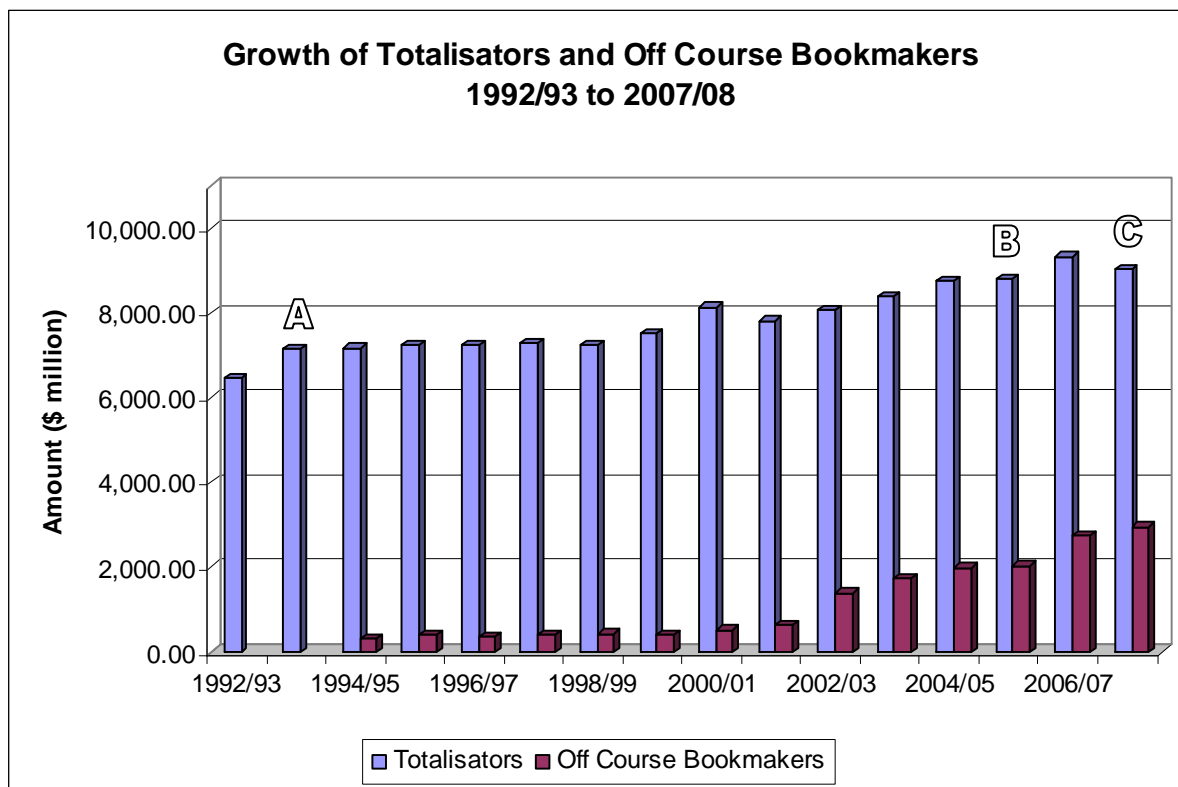
	Totalisators (\$ million)	Off Course Bookmakers (\$ million)
1992/93	6,479.0	- ⁴
1993/94	7,141.0	-
1994/95	7,176.0	303.0
1995/96	7,260.0	383.0
1996/97	7,230.0	366.0
1997/98	7,276.0	406.0
1998/99	7,242.0	427.0
1999/00	7,509.0	397.0
2000/01	8,141.0	518.0
2001/02	7,821.1	625.0
2002/03	8,089.3	1,389.3
2003/04	8,408.2	1,742.7
2004/05	8,764.0	1,983.6
2005/06	8,792.8	2,029.3
2006/07	9,342.3	2,736.3
2007/08	9,051.3	2,950.7

Source: Australian Racing Fact Book 2007/08.

Statistics from the Australian Racing Fact Book break out thoroughbred racing from the other racing codes. Data from 1992/93 to 2007/08 (the latest available figures) demonstrate a similar position with respect to thoroughbred racing. It becomes clear, as the chart below demonstrates, of trends, plateaus and falls. For the Commission's benefit, we have identified the three most important as 'A', 'B' and 'C' with accompanying notes.

⁴ No data available.

Chart 1. Turnover growth of totalisators and off course bookmakers from 1992/93 to 2007/08 for thoroughbred racing.



- A** Poker machines introduced in 1992 in hotels in NSW (current cap 99,000), in Victoria (current cap 27,500) and in Queensland (current cap 20,000).
- B** Split Vision
Split vision refers to a dispute between the television channels SKY and TVN. This resulted in the television broadcasts for races in Australia being 'split' between two different networks. This issue is dealt with in greater detail below.
- C** Equine Influenza Outbreak
The Equine Influenza Outbreak was an outbreak of equine influenza that affected horses in New South Wales and Queensland, resulting in significant sums of lost turnover after races were cancelled. This is dealt with in greater detail below.

Source: Australian Racing Fact Book 2007/08, Australasian Gaming Council Database 2008/09.

The racing industry has argued that new wagering operators, such as corporate bookmakers and betting exchanges, have taken punters from established operators such as the totalisators and, by extension, deprived the racing industry of funding that would otherwise have flown to it. Yet as the Australian Racing Board has submitted and as the figures demonstrate, turnover of both corporate bookmakers and totalisators has been increasing almost continuously for the past 16 years. Moreover, the growth of totalisator turnover appears to have been unchanged from the decade before the emergence of corporate bookmakers.

The fact is that corporate bookmakers and totalisators target different customers. Most bets

placed with corporate bookmakers are made online. In Betchoice's case approximately 80 to 85 per cent of bets are placed online with the remaining placed by telephone. This is a different situation as compared with totalisators. The pari-mutuel licences held by totalisator operators include the right to operate physical betting outlets and these can take the form of retail outlets or terminals placed in pubs and hotels. As a result, the origin of their customers is different.

Furthermore, the products that are offered attract different customers. The pari-mutuel model is less attractive to punters placing larger bets than the fixed odds model bookmakers provide. Punters placing large bets into a pari-mutuel pool can dramatically alter the dividend offered to winners. For these punters, corporate bookmakers provide a superior product.

Table 3. Origin of bets⁵ placed with totalisators in 2007/08 for thoroughbred racing.

	NSW	Vic	Qld	SA	WA	Tas	ACT	NT
Retail	78.25%	71.05%	75.80%	79.02%	84.08%	67.42%	63.21%	65.10%
Phone	8.99%	16.59%	14.99%	10.30%	6.48%	6.25%	5.78%	8.13%
Internet	12.76%	12.35%	9.22%	10.67%	9.44%	26.33%	31.00%	26.77%

Source: Australian Racing Fact Book 2007/2008.

In all but the three smallest jurisdictions (Tasmania, ACT and the Northern Territory), the proportion of bets placed at retail outlets is in excess of 70 per cent.

In a recent draft determination⁶ in respect of agreements between TOTE Tasmania, ACTTAB, Racing and Wagering Western Australia and Centrebet, the ACCC noted that, while there is some evidence that punters considered the services of corporate bookmakers substitutable for retail outlets, 'there is also a strong preference among a significant proportion of punters to place bets through retail outlets that provide a suite of facilities and services beyond just accepting the wager.'⁷

Both principals and governments in the racing establishment have portrayed corporate bookmakers as parasites and pirates⁸; implying the success of corporate bookmakers has been at the expense of totalisators. It stands to reason that, if this were the case, a corresponding decline in Australia-wide totalisator turnover should be evident as the turnover of bookmakers has increased. This is not the case. Instead, a market that was largely unserved

⁵ The statistics in the Australian Racing Fact Book consolidate all fixed odds betting (regardless of origin) into a separate category from retail, phone and Internet. As a result these figures represent the amount wagered on pari-mutuel betting with fixed odds wagering excluded. In all States and Territories the amount wagered on fixed odds does not exceed 2 per cent of the total amount wagered with the totalisator.

⁶ ACCC, 'Draft Determination, Applications for authorisation lodged by TOTE Tasmania Pty Ltd, ACTTAB Limited and Racing and Wagering Western Australia in respect of agreements between the applicants in relation to the joint supply of fixed odds wagering services and the appointment of Centrebet to manage the supply of these services on the applicants' behalf', 24 June 2009.

⁷ ACCC Draft Determination, paragraph 4.22.

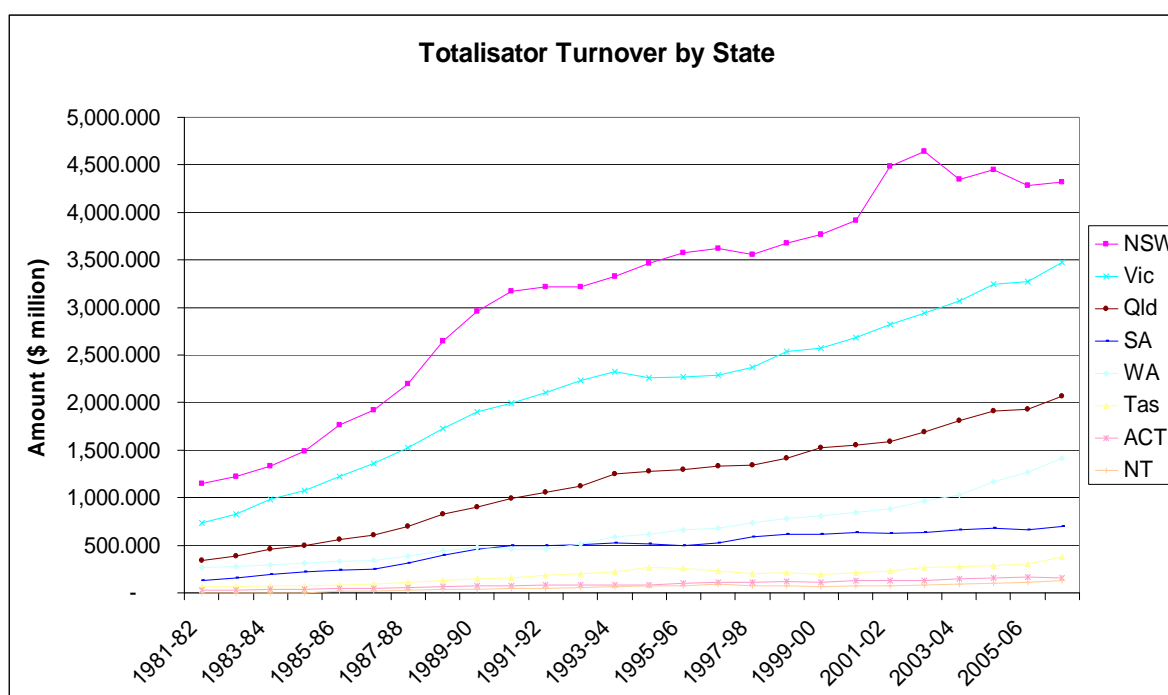
⁸ Racing NSW CEO Peter V'Landys referred to corporate bookmakers as 'nothing but pirates' in 2006. See Schell, J and Young, C, 'V'Landys won't be intimidated by "pirate" betting firms', The Sydney Morning Herald, 4 February 2006, <http://www.smh.com.au/news/horseracing/vlandys-wont-be-intimidated-by-pirate-betting-firms/2006/02/03/1138958911337.html>, Accessed 6 August 2009. Similar comments were made by the former New South Wales Minister for Racing, Richard Face (Hansard, New South Wales Parliament, 28 February 2002, p 137) and by the Victorian Parliamentary Secretary for Education, Steve Herbert (Hansard, Victorian Parliament, 14 September 2005, p 919).

by previous offerings has taken up wagering online.

The Impact of External Factors

New South Wales is consistently held up by the racing industry as emblematic of the problems facing Australia. However, the data strongly suggest that the situation in New South Wales is not indicative of the situation in other States. The following chart illustrates this difference.

Chart 2. Totalisator turnover by State and Territory from 1981-82 to 2006-07 for all codes of racing.



Source: Australian Gambling Statistics, 25th Edition (2008), 1981-82 to 2006-07.

On 30 June 2009, Racing Victoria Limited CEO Rob Hines released a letter to industry participants explaining the current state of play in Victoria⁹. According to the letter, income received from product fees paid by wagering operators and Racing Victoria's joint venture with Tabcorp¹⁰ increased \$19 million or nearly 9 per cent in 2008/09 from \$215 million to \$234 million. That income for 2009/10 is projected at \$248 million, an increase of \$14

⁹ Hines, R, 'Letter from RVL CEO Rob Hines', 30 June 2009,

http://www.racingvictoria.net.au/news/RVL/n_Letter_from_RVL_CEO_Rob_Hines.aspx, Accessed 4 August 2009.

¹⁰ VicRacing Pty Ltd and Tabcorp Holding Limited control an unincorporated joint venture that operates a wagering and gaming business in Victoria. VicRacing is entitled to a 25 per cent share of the joint venture's total profit (incorporating the net profit arising from Tabcorp's wagering and gaming businesses) and distributes this money to the three codes for racing, including Racing Victoria. Rob Hines' letter does not provide a figure for what proportion of the expected income is from the gaming side of the business. In June 2008, the Victorian Minister for Racing, Robert Hulls, stated that Racing Victoria receives around \$75 million a year from poker machines (Victorian Public Accounts and Estimates Committee Inquiry, Report on the 2008-09 Budget Estimates, http://www.parliament.vic.gov.au/paec/inquiries/budgetestimates_2008-09/Report%20-%20Part%20Two/Appendix_1_Ch_7.pdf, p 44).

million or nearly 6 per cent. As noted by racing commentator Bill Saunders this does not take into account the millions of dollars in sponsorship flowing directly to Victorian race clubs from wagering operators, such as corporate bookmakers¹¹.

The effects of two events in the past five years are evident in the statistical data and assist in explaining, to the extent there has been a decrease in the growth of totalisator turnover over those two periods and not others, the cause of this decrease. These events are Split Vision and the Equine Influenza Outbreak.

Split Vision

Split Vision refers to a protracted dispute between the television network SKY and the media company TVN. SKY is a television broadcaster that telecasts thoroughbred, harness and greyhound racing. It commenced broadcasting in 1986 and until 2005 was the only dedicated broadcaster of racing in Australia.

In 2002, several Victorian thoroughbred racing clubs formed a company, TVN, to collectively negotiate with SKY on licensing issues. Over the course of the dispute, the two Sydney metropolitan racing clubs, the Australian Jockey Club and the Sydney Turf Club, became part owners in TVN.

From May 2002 until May 2005, SKY broadcast races at the Victorian clubs pursuant to an agreement between TVN and SKY. In 2004 and 2005, TVN and SKY were in negotiations about forming a new thoroughbred only racing channel. These negotiations broke down and TVN created its own channel which began broadcasting in May 2005.

Prior to licensing their rights to TVN, the two Sydney clubs negotiated with SKY directly. In early March 2004 these discussions also broke down, resulting in video from Sydney race meetings not being broadcast on SKY from early March 2004 until 7 August 2004. This period is often referred to as the 'blackout'. SKY broadcast Sydney race meetings from August 2004 until May 2005 when negotiations between SKY and the Sydney racing clubs again broke down. From May 2005 Sydney race meetings were broadcast by TVN.

The creation of two channels required wagering outlets, such as pubs and clubs, to purchase both TVN and SKY. It also required punters to switch between the channels as TVN only had the rights to broadcast races held in Victoria, Sydney and Darwin with SKY holding the rights to all other races. Significant consumer confusion resulted. In May 2006, TVN and SKY negotiated a deal to end Split Vision.

SKY and TVN competed from 4 May 2005 to 16 May 2006. During this period turnover either contracted or marginal growth. Various racing authorities attributed the effect on turnover during this period to Split Vision as opposed to corporate bookmakers¹². In Tabcorp's initial submission to the ACCC¹³ concerning an Application for Authorisation of

¹¹ Saunders, B, 'A Tale of Two Cities', The Virtual Form Guide, 1 July 2009, <http://www.virtualformguide.com/cgi-bin/tvf/displaynewsitem.pl?20090701two.txt>, Accessed 4 August 2009.

¹² See Racing NSW Annual Report 2006, p 2; Queensland Racing Annual Report 2006, p 4; Thoroughbred Racing SA Annual Report 2006, p 1.

¹³ SKY and TVN applied to the ACCC for authorisation with respect to the agreement that ended Split Vision. See 'Application for Authorisation of an Arrangement Between Thoroughvision Pty Limited, Tabcorp Holdings Limited and Sky Channel Pty Ltd', 15 February 2007,

an Arrangement between ThoroughVision Pty Limited, Tabcorp Holdings Limited and Sky Channel Pty Limited, it wrote¹⁴:

Split Vision had significant negative consequences for virtually all stakeholders in the Australian racing industry. Wagering turnover fell, funding to the industry decreased, prize monies decreased, races were cancelled, pubs and clubs faced increased costs and loss of patronage, and punters were frustrated and bet less.

Tabcorp noted that, while SKY broadcast 90 per cent of races that were held (including harness racing and greyhound racing), the content on TVN represented 35 per cent of Tabcorp's turnover prior to Split Vision.

Later in its submission Tabcorp observed¹⁵:

While this submission examines the impact of Split Vision on wagering in Victoria and New South Wales, Split Vision negatively impacted totalisator wagering across Australia and thus impacted distributions to the racing industry on a nation wide basis.

Victorian wagering growth was between 3 and 4 per cent for the period 2001-2005. Assuming a similar growth could have been expected in 2005/06, growth of only 0.88 per cent suggests lost wagering turnover from Split Vision was at least \$51.25 million¹⁶ in Victoria alone.

In New South Wales, the situation is complicated because growth over the previous period was not as steady as Victoria. Tabcorp provided the ACCC with estimates of the direct cost of Split Vision on its New South Wales business by comparing the period from 4 May 2005 to 16 May 2006 with a 'control period' from 5 May 2004 to 17 May 2005.

Tabcorp found the percentage difference in New South Wales was a contraction of 3.6 per cent or \$176.86 million. Tabcorp noted that these figures were inflated slightly since during the control period races from the two Sydney clubs were periodically blacked out resulting in lower wagering turnover during these times.

UNiTAB, which was, and still is, the totalisator operator in Queensland, South Australia and the Northern Territory, announced in a media release to the Australian Stock Exchange on 17 February 2006 that potential sales growth was reduced by 2 per cent to 3 per cent as a result of Split Vision¹⁷. Revenue for this period was \$246.207 million. On the basis that the maximum amount of turnover that UNiTAB is permitted to retain is 16 per cent¹⁸, this

<http://www.accc.gov.au/content/trimFile.phtml?trimFileName=D07+15544.pdf&trimFileTitle=D07+15544.pdf&trimFileFromVersionId=793794>, Accessed 4 August 2009. A final decision in favour of granting authorisation was made by the ACCC on 4 July 2007.

¹⁴ 'Application for Authorisation of an Arrangement Between Thoroughvision Pty Limited, Tabcorp Holdings Limited and Sky Channel Pty Ltd', Paragraph 8.60.

¹⁵ Application for Authorisation of an Arrangement Between Thoroughvision Pty Limited, Tabcorp Holdings Limited and Sky Channel Pty Ltd', Paragraph 11.6.

¹⁶ Total totalisator wagering turnover was \$2,417.43 million for 2004/05 (Australian Racing Fact Book 2005/06). Multiplying this figure by 2.12 per cent (the difference between actual growth, 0.88 per cent, and expected growth, 3 per cent) results in a figure of \$51.25 million.

¹⁷ Media Release to the Australian Stock Exchange, UNiTAB, 17 February 2006, <http://www.asx.com.au/asxpdf/20060217/pdf/3vh1nn3zj31c7.pdf>, Accessed 4 August 2009.

¹⁸ 'UNiTAB – Tattersall's Merger of Equals', Explanatory Memorandum, p 113.

suggests wagering turnover of \$1,538.79 million. Using the lower figure of 2 per cent, Split Vision resulted in a loss of \$30.78 million across Queensland, South Australia and the Northern Territory.

In October 2006, the Chairman of TOTE Tasmania, Michael Kent, was reported as claiming Split Vision cost TOTE \$2 million to \$2.4 million in turnover¹⁹.

The cost of Split Vision is clearly significant and must be accounted for in any serious consideration of the growth of turnover. The table below summarises the above information:

Table 4. Lost turnover for thoroughbred racing from Split Vision by jurisdiction.

Jurisdiction	Lost Turnover (\$ million)	% of 2005/06 Turnover
New South Wales	176.86	5.53
Victoria	51.25	2.11
Queensland, South Australia, Northern Territory	30.78	1.50
Tasmania	2.4	1.05
Western Australia	No data available	-
Australian Capital Territory	No data available	-

Source: Tabcorp, UNiTAB, TOTE Tasmania, Australian Racing Fact Book 2007/08

The Equine Influenza Outbreak

On 24 August 2007, the NSW Department of Primary Industries confirmed an outbreak of equine influenza (EI) in Sydney. EI is a highly contagious virus that can be fatal to foals and debilitated horses and affects the performance of thoroughbred race horses. The virus spread throughout sites in New South Wales and into Queensland and the racing industry in both States was greatly impacted. The Australian Racing Fact Book 2007/08 explains:

[EI] was, quite simply, a disaster for the racing and breeding industries of this country. By noon on 26 August 2007, all weekend race meetings in Australia had been cancelled, and in the first week 50 thoroughbred race meetings were lost. The standstill soon lifted elsewhere, but in NSW and Queensland no metropolitan race meetings were held for three months and racing in other parts of those States was disrupted for several months.

As a high proportion of races that are bet on in Australia are conducted in New South Wales and Queensland the EI outbreak affected the wagering turnover of all States and Territories.

A complete assessment of the impact of EI is extremely difficult to determine. However, comments from individual participants within the racing industry assist in understanding its scope. It should be noted that these comments concern the direct costs to turnover and do not take into account any additional impact as a result of EI. As such they represent a conservative estimate.

¹⁹ 'TOTE Tasmania Outperforms Mainland TABs', Racing and Sports, 31 October 2006, http://www.racingandsports.com.au/racing/rsNewsArt.asp?NID=94813&story=TOTE_Tasmania_Outperforms_Mainland_TABs, Accessed 4 August 2009.

The following statements were made:

- In February 2008, Tabcorp (the operators of the totalisator licences in New South Wales and Victoria) published a half yearly report stating that the cost of EI had resulted in a decrease in turnover of \$327 million²⁰.
- The Tatts Group (the operators of the totalisator licences in Queensland, South Australia and the Northern Territory) estimated turnover was down \$100 million as a direct result of EI²¹.
- Racing and Wagering Western Australia, the operator of the totalisator licence in Western Australia, estimated the direct cost of the EI outbreak at \$70 million in lost wagering turnover²².
- The Tasmanian Government, which operates TOTE Tasmania, estimated the direct cost of EI had been \$1.8 million²³.
- The Chief Executive of ACTTAB, operator of the totalisator licence in the ACT, estimated before an ACT Government Committee that EI had resulted in a decrease in turnover of \$2 million²⁴.

Impacts of Split Vision and the Equine Influenza Outbreak

The impact of these two events is clearly evident in the statistics from the Australian Racing Board's Fact Book 2007/08 excerpted below.

Table 5. Totalisator turnover (millions of dollars) by State and Territory from 1998/99 to 2007/08 for thoroughbred racing.

	NSW	Vic	Qld	SA	WA	Tas	ACT	NT
1998/99	2,656.00	1,999.50	1,235.50	475.70	541.10	153.20	103.20	77.50
1999/00	2,951.40	2,002.90	1,210.90	473.90	552.40	153.90	94.90	68.40
2000/01	3,486.00	2,073.50	1,224.40	540.80	544.10	159.50	110.60	68.40
2001/02	3,029.27	2,163.50	1,232.48	455.68	556.09	174.60	134.55	74.86
2002/03	3,119.50	2,242.94	1,285.84	465.98	588.89	199.87	106.04	80.27
2003/04	3,219.28	2,315.39	1,367.69	483.63	616.40	206.00	118.42	81.41
2004/05	3,285.00	2,417.43	1,445.58	501.27	690.62	216.08	122.97	85.07
2005/06	3,199.81	2,425.69	1,472.86	481.93	758.07	228.84	132.58	92.99
2006/07	3,258.49	2,586.23	1,576.81	509.23	868.21	278.47	158.92	105.95
2007/08	3,036.39	2,508.46	1,534.59	480.06	857.90	353.22	165.37	115.27

Source: Australian Racing Fact Book 2007/08.

²⁰ Media Release for Half Yearly Results until 31 December 2007, Tabcorp, 21 February 2008, http://www.tabcorp.com.au/resources.ashx/mediareleaseschilddatadocuments/312/FileName/540E309EA1258017880A9062121BDDF6/Half_year_results_31_Dec_07_Media_Release.pdf, Accessed 4 August 2009, p 2.

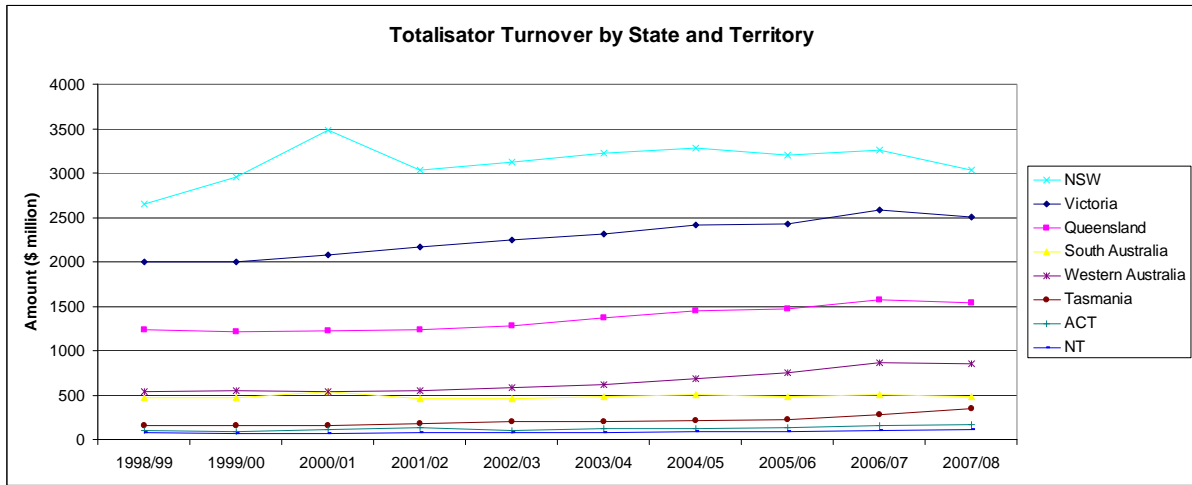
²¹ Tatts Group Annual Report 2008, p 5.

²² RWWA Annual Report 2008, p 39.

²³ Tasmanian Legislative Council, Government Business Scrutiny Committee 'B' 2008, p 3.

²⁴ Hansard, Australian Capital Territory, Standing Committee on Public Accounts, p 64.

Chart 3. Totalisator turnover by State and Territory from 1998/99 to 2007/08 for thoroughbred racing.



Source: Australian Racing Fact Book 2007/08.

The dips in turnover are visible in New South Wales, Victoria, Queensland, South Australia and Western Australia. These contractions contrast with the data from previous years which demonstrates growth in turnover in all States (with the exception of New South Wales and South Australia). We also draw the Commission’s attention to the fluctuations in New South Wales’ turnover and the lack of any corresponding fluctuations in other wagering markets.

The table below compares the actual figures for turnover with figures which add in the lost revenue: in the case of Split Vision \$260.89 million²⁵ and in the case of the EI Outbreak \$500.8 million. In addition, national wagering turnover excluding New South Wales is included in the table for ease of comparison. The adjustments for New South Wales are \$176.86 million and \$243.1²⁶ million for Split Vision and EI respectively.

Table 6. Estimates of totalisator turnover for thoroughbred racing adjusted for Split Vision and EI outbreak.

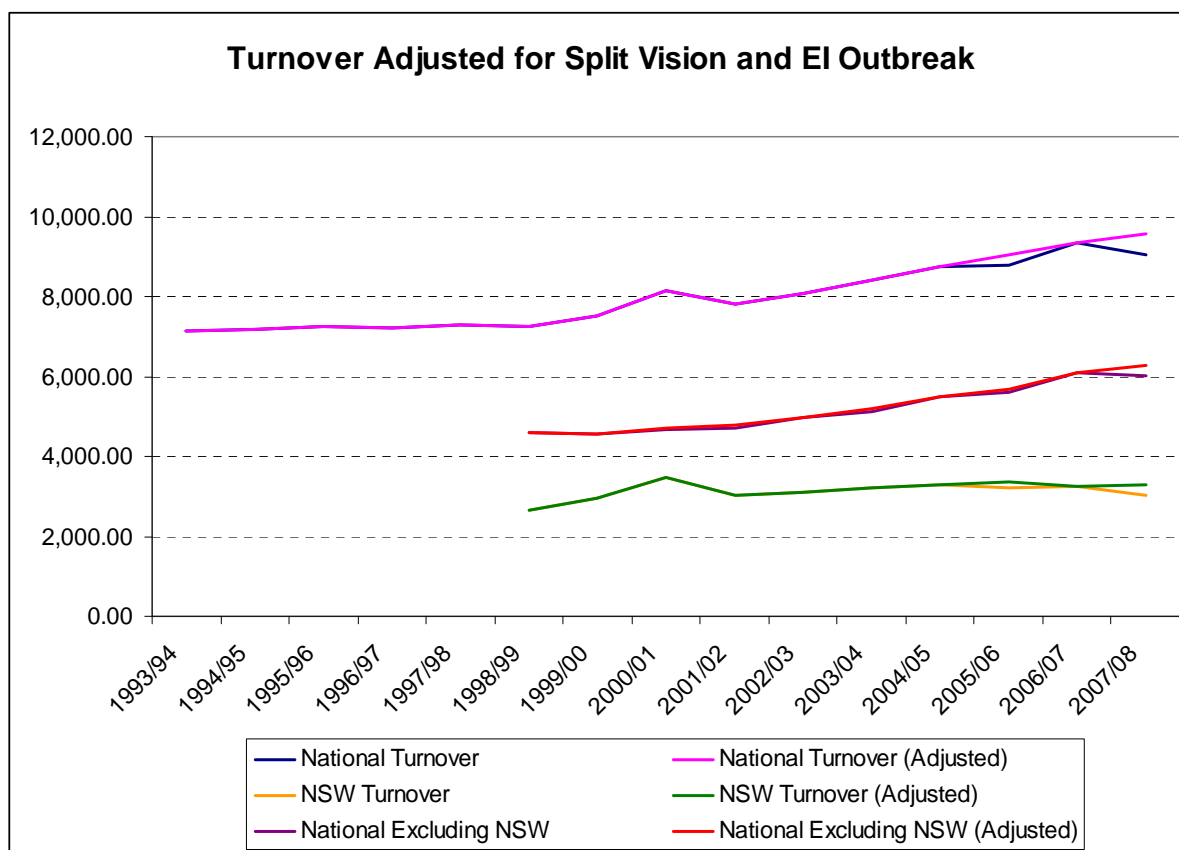
	National			NSW				National Excluding NSW			
	Turnover	Turnover Adjusted	% Growth Adjusted	Turnover	% Growth	Turnover Adjusted	% Growth Adjusted	Turnover	% Growth	Turnover Adjusted	% Growth Adjusted
2002/03	8,089.3	8,089.3	3.43	3,119.5	2.98	3,119.5	2.98	4,969.8	5.3	4,969.8	3.72
2003/04	8,408.2	8,408.2	3.94	3,219.3	3.2	3,219.3	3.20	5,118.9	3	5,188.9	4.41
2004/05	8,764.0	8,764.0	4.23	3,285.0	2.04	3,285.0	2.04	5,479.0	7.03	5,479.0	5.59
2005/06	8,792.8	9,053.7	3.30	3,199.8	-2.59	3,376.7	2.79	5,593.0	2.08	5,677.0	3.61
2006/07	9,342.3	9,342.3	3.19	3,258.5	1.83	3,258.5	1.83	6,083.8	8.78	6,083.8	7.17
2007/08	9,051.3	9,552.1	2.25	3,036.4	-6.82	3,279.5	0.64	6,014.9	-1.13	6,272.6	3.10
Avge.			3.39		0.1		2.24		4.17		4.60

Source: Australian Racing Fact Book 2007/08, Tabcorp Half Yearly Report 2007/08, Tatts Group Annual Report 2007/08, Racing and Wagering Western Australia Annual Report 2007/08, UNiTAB Half Yearly Report 2005/06, Tasmanian Government, ACT Government.

²⁵ This figure is based on lost turnover of \$176.86 million in NSW, \$51.25 million in Victoria, \$30.78 million in Queensland, South Australia, Northern Territory, and \$2.4 million in Tasmania. We note the most conservative figures have been used to calculate this result.

²⁶ This figure has been calculated on the basis that of the total \$500.8 million the EI outbreak cost, \$243.1 million was lost in New South Wales. \$243.1 million is 74.33 per cent of Tabcorp's combined New South Wales and Victorian turnover decrease. This percentage accords with the New South Wales share in figures published by Tabcorp on 1 May 2008 at http://www.tabcorp.com.au/news_equine-influenza.aspx.

Chart 4. Estimates of totalisator turnover for thoroughbred racing adjusted for Split Vision and EI outbreak.



Source: Australian Racing Fact Book 2007/08, Tabcorp Half Yearly Report 2007/08, Tatts Group Annual Report 2007/08, Racing and Wagering Western Australia Annual Report 2007/08, UNiTAB Half Yearly Report 2005/06, Tasmanian Government, ACT Government.

These figures demonstrate that, once the effects of the Split Vision and the EI Outbreak are taken into account, Australian wagering turnover has continued to grow over the past six years. This is at the same time as the greatest growth period in terms of turnover for corporate bookmakers. Moreover, if New South Wales is excluded, the average rate of growth for the country as a whole has been 4.5 per cent – far exceeding the growth of 3.4 per cent for the country as a whole referred to in the ARB submission²⁷. New South Wales is far from typical of the situation in other States and Territories. The poor rate of growth has caused the actual rate of growth in respect of other States and Territories to be reduced.

An isolated decline in New South Wales could be the result of corporate bookmakers if a larger proportion of bets were being placed on New South Wales racing than in other jurisdictions. However, Betchoice understands only 24.1 per cent of corporate bookmakers' total racing turnover comes from New South Wales thoroughbred racing. In fact, when compared pro-rata to the population of each State, wagering turnover on New South Wales racing is lower per capita than in other States and Territories.

²⁷ Submission 213, p 18.

Were corporate bookmakers responsible for the issues in New South Wales, similar declines should have occurred in other jurisdictions. This has not been the case. It is clearly disingenuous to suggest that, because a decline has occurred in New South Wales, the decline is due solely (or principally) to the activities of corporate bookmakers when there are other material factors that must be taken into account. The argument put forward by the racing industry that corporate bookmakers have caused the decline in totalisator turnover is simply not supported by the evidence.

The Problems with the Racing Industry in New South Wales

There are numerous State-specific factors that may contribute to the poor performance of the totalisator in New South Wales. While a thorough analysis of these factors is beyond the scope of this submission, these factors have been included as a suggestion for further investigation into the problems afflicting the New South Wales racing industry.

Disproportionate Impact of Split Vision and EI Outbreak

As illustrated in the data earlier, the impact of Split Vision and the EI Outbreak was felt most substantially in New South Wales. It stands to reason that the recovery of the New South Wales racing industry will be slower than has been the case in other jurisdictions.

Unmerged Pool

New South Wales is the only jurisdiction in Australia that does not combine its totalisator pool with other States and Territories. Combining totalisator pools allows for better returns for punters because it helps to minimise the changes in odds caused by other punters betting into the pool. Tabcorp, the operator of the totalisator in New South Wales, has petitioned the New South Wales State Government for this restriction to be lifted but with no success²⁸.

Poker Machines

New South Wales has 98,872 poker machines. This is more than double the amount of machines found in any other State in Australia²⁹. In South Australia, Thoroughbred Racing SA has identified their presence in clubs and hotels as a cause of the lower amount received from the South Australian totalisator as compared with Western Australia (where poker machines outside of the Burswood International Casino are banned)³⁰. 78.25 per cent of totalisator betting in New South Wales is conducted in retail outlets³¹, such as pubs and clubs, where poker machines vie for the attention of punters.

Free Riding and Product Fees

In addition to laying blame at the feet of corporate bookmakers, the racing industry regularly asserts such bookmakers are ‘free riders’, uninterested in supporting the industry. This is simply not the case. Betchoice has always been willing to make contributions and remains

²⁸ ACCC, ‘Draft Determination, Applications for authorisation lodged by Tabcorp Pty Ltd in respect of agreements governing ACTTAB Limited and Racing and Wagering Western Australia’s participation in the SuperTAB pool’, 15 July 2009, paragraph 2.23.

²⁹ See the Australian Gambling Statistics 2007-08 and Australian Bureau of Statistics 2007.

³⁰ Thoroughbred Racing SA Annual Report 2006, p 1.

³¹ Australian Racing Fact Book 2007/2008.

willing to enter into discussions with racing authorities.

In 2006, Betchoice offered to pay a fee of 1.0 per cent of turnover to help support the industry to the then Department of Gaming and Racing. This would have allowed Betchoice to remain in New South Wales as a licensed corporate bookmaker with the ability to promote their services. This offer was rejected.

In July 2006, Betchoice, after having made the decision to obtain a Northern Territory licence as a result of the first rejection, offered the Department of Gaming and Racing a fee of 0.67 per cent of turnover³² to help support the industry in return for permission to promote Betchoice's services in New South Wales. This offer was referred to Racing NSW and rejected.

Both offers were made voluntarily and prior to requests being made by Racing NSW for a product fee. After the rejection of both offers, Betchoice was left with no alternative other than to relocate to the Northern Territory.

Corporate bookmakers do want to make contributions to help support racing. They only want these contributions to be equitable. The situation with respect to sports betting demonstrates this. Although under no obligation in most States and Territories to enter into product fee arrangements, corporate bookmakers have been more than willing to sign fee and integrity agreements with national sporting bodies such as the Australian Football League and Cricket Australia. These agreements take account of the differences between corporate bookmakers and other types of wagering operators and create an outcome that is fair for all parties.

Unfortunately, a similar situation has not, by and large, been the case with racing. Instead of taking account of the differences between bookmakers, betting exchanges and totalisators, half the authorities that have the power to apply product fees have sought to apply a fee of 1.5 per cent of turnover on all operators. The table below summarises the position.

³² As a condition of its Northern Territory licence, Betchoice paid 0.33 per cent of turnover to the Northern Territory government. It proposed to pay the remaining 0.67 per cent of the 1.0 per cent originally offered to the Department of Gaming and Racing. The Department referred the request to Racing NSW (see appendix).

Table 7. Product fees throughout Australia

	Thoroughbred Racing	Harness Racing	Greyhound Racing
New South Wales	1.5% turnover	1.5% turnover	10% revenues ³³
Victoria	10% revenues ³⁴	1.5% turnover	10% revenues
Queensland	1.5% turnover	1.5% turnover	1.5% turnover
South Australia	10% revenues	10% revenues	10% revenues
Western Australia	N/A	N/A	N/A
Tasmania	N/A	N/A	N/A
Northern Territory	N/A	N/A	N/A
ACT	N/A	N/A	N/A

Source: Relevant racing authorities.

Turnover or Revenue?

Despite assertions to the contrary, the disagreement between corporate bookmakers and the racing industry is not over whether a product fee should be paid. The disagreement largely lies over whether the product fee is paid on the basis of turnover or of revenue.

As noted above, the position of a number of authorities is to levy a fee of 1.5 per cent on turnover. While this figure of 1.5 per cent has been applied consistently by a number of authorities, it is unclear on what basis the figure was determined.

In its submission to the 2008 Cameron Inquiry in New South Wales, Racing NSW stated it had made the determination to charge a fee of 1.5 per cent of turnover to all wagering operators³⁵. While Racing NSW makes the point that a figure of 1.5 per cent is below the 3 per cent figure charged in New Zealand it does not explain whether the racing industry in New Zealand is a relevant comparison nor does it provide any details about the material on which its decision was based.

To accompany the submission, Racing NSW commissioned a report from consulting firm BCG. The BCG Report states:

The UK *Gambling Act* 2005 introduced a duty specific to remote gambling operations licensed in the UK. The rate is 15 percent of Gross Profit (the amount wagered minus pay-outs but before any other costs) which is 1.5 percent of wagering turnover on a Gross Profit margin of 10 percent, a similar impact to that proposed by race fields payments in Australia.

³³ The figure is the lesser of 10 per cent of gross profits or 1.5 per cent of turnover.

³⁴ The amount increases to 15 per cent during October and November.

³⁵ Racing NSW Submission to the Cameron Inquiry, p 2.

If this is indeed the basis on which the figure of 1.5 per cent was determined, there are three immediate concerns.

The first is that the fee was levied on profit not turnover. As stated above, corporate bookmakers are not opposed to a fee on profit and have negotiated fees calculated on this basis with other professional sporting bodies.

The second is that the profit margin of Australian corporate bookmakers is not 10 per cent. The generally accepted figure is that profit margin for corporate bookmakers is closer to 6 per cent³⁶. A fee of 1.5 per cent of turnover is, therefore, not of similar impact to that faced by operators in the UK. It is the difference between 25 per cent of gross profit margin as compared with 15 per cent. The sustainability of such a fee must be called into question when the difference in impact is on such a scale.

The third is that there is evidence to suggest the UK figure is not sustainable. Recently, two major UK bookmakers, Ladbrokes and William Hill, have announced their intention to move their Internet betting operations to Gibraltar in order to stay competitive with other operators operating in lower cost jurisdictions³⁷.

Betchoice submits that a fee based on turnover is unfair to bookmakers relative to totalisators given their vastly different operating models. The differences between operating models has been ably summarised by the submission of Australian Internet Bookmakers Association³⁸ and we direct the Commission's attention to that submission for a concise overview of how they compare.

The significant difference to note is that totalisators provide no risk products (ie. guaranteed profit) whereas bookmakers provide high risk products (ie. no guarantee of profit). Totalisators collect all bets on a race and place them in a 'pool' out of which they pay dividends to winning punters. The return to punters depends entirely on the structure of the pool. However, regardless of the amount distributed to each individual punter, the percentage of the pool which the totalisator takes as their fee is fixed. As turnover increases, the amount collected by the totalisator increases as a linear function.

The situation with bookmakers is vastly different. Bookmakers are not permitted to operate pari-mutuel pools like totalisators and so instead agree to odds that are independent of their wagering pools. Unlike totalisators, bookmakers are only paid when punters lose. If bookmakers are forced to pay out more than they collected they can literally be at a loss, even though the turnover on that particular race may be quite high. There is, therefore, no relationship, linear or otherwise, between turnover and profit when it comes to bookmaking.

³⁶ The difference can be attributed to the differences with respect to off-course physical outlets. In the UK, bookmakers are permitted to operate off-course physical outlets. In Australia, only the licensed totalisator in a particular jurisdiction is permitted to operate off-course physical outlets.

³⁷ Heyhoe, M, 'Ladbrokes join William Hill in moving internet betting operations offshore', The Guardian, 7 August 2009, <http://www.guardian.co.uk/sport/2009/aug/07/ladbrokes-internet-betting-william-hill>, Accessed 10 August 2009..

³⁸ Submission 221, p 51.

The argument of the racing industry is that the decision of a business to adopt a particular model like bookmaking is a decision for that particular business. This argument might be more compelling if the decision were the decision of the particular business. This is not the case.

The situation in all States and Territories in Australia is that an exclusive totalisator licence is granted in each jurisdiction. For instance, it is not possible for a corporate bookmaker to obtain a licence to operate a totalisator in New South Wales until 2013. In addition to providing exclusivity in terms of totalisator operation, these licences also provide for exclusivity in off-course retail outlets. In other words, the exclusivity arrangements result in totalisators being monopoly wagering providers in the retail space³⁹.

It is appropriate, in the interests of fostering competition and improving the range of products for the punter, that the racing industry take into account this discrepancy. Simply pretending that all wagering operators are created equal does not make it so.

A Fair Fee

In recognition of these differences, a fee that takes account of the high turnover/high risk model that bookmakers necessarily undertake should be adopted. For totalisators and betting exchanges, an increase in turnover always results in an increase in profit. This is not the case in respect of bookmakers. If the contributions of bookmakers are not calculated by reference to their profit, many will be forced out of the market. In the interests of stimulating competition and providing for consumer choice in the wagering sector, Betchoice submits that a fee based on gross profit is preferable to one based on turnover.

Before examining the effect of a fee based on gross profit it is worth considering alternative benchmarks. The following table sets out several possible alternatives benchmarks on a turnover of \$100 million.

³⁹ Due to this situation, bookmakers have been forced to introduce best-tote betting to remain competitive against the effect of the totalisator operators having retail outlet exclusivity. It is important to note, though, that this is not a true pari-mutuel product. Unlike the totalisator, the bookmaker can lose on his bets-tote book.

Table 8. Comparison of effect of different rates for product fees.

	1.5% of turnover	20% of gross profits	10% of gross profits	5% of gross profits
Turnover	\$100 million	\$100 million	\$100 million	\$100 million
Gross Profit Margin 6%	\$6 million	\$6 million	\$6 million	\$6 million
Running Costs Total 3.8%	\$3.8 million	\$3.8 million	\$3.8 million	\$3.8 million
EBIT ⁴⁰ Before Product Fee	\$2.2 million	\$2.2 million	\$2.2 million	\$2.2 million
Product Fee	\$1.5 million	\$1.2 million	\$0.6 million	\$0.3 million
EBIT After Product Fee	\$0.7 million	\$1.0 million	\$1.6 million	\$1.9 million
NPAT	\$0.49 million	\$0.7 million	\$1.12 million	\$1.33 million
Product Fee as % of EBIT	68.18%	54.55%	27.27%	13.64%

A product fee of 1.5 per cent of turnover amounts to 68.18 per cent of EBIT. As is evident from the above table, this is equal to more than 3 times net profit. It compares with 31.46 per cent in the case of the Tabcorp⁴¹.

Even when calculated as a percentage of gross profit, a 1.5 per cent of turnover fee equates to 25 per cent of gross profit for corporate bookmakers. This compares with a figure of as little as 10 per cent for the NSW totalisator⁴². It is difficult to see how such a fee can be seen as anything other than an attempt to eliminate competition to the totalisators. It is hardly 'fair'.

Betfair has suggested that a fee of up to 20 per cent of gross profit would be appropriate. Betchoice notes that Betfair utilises a model similar to totalisators where profit closely correlates with turnover. As the chart above demonstrates, such an amount would represent an unsustainable 54.55% of EBIT. Even at 10 per cent of gross profit, the product fee amounts to 27.27% of EBIT..

⁴⁰ An EBIT of 2.2 per cent of turnover has been used, calculated on the average EBIT of Centrebet International Limited and Sportingbet Plc for 2007/08.

⁴¹ Tabcorp is the operator of the totalisators in New South Wales and Victoria. According to the Australian Racing Fact Book 2007/08 turnover in New South Wales was \$3,036.39 million while in Victoria it was \$2,508.46 million (combined turnover \$5,544.85 million). The Tabcorp Annual Report 2007/08 states EBIT for the wagering division was \$264.4 million. A product fee of 1.5 per cent of Tabcorp's combined turnover is equal to \$83.2 million or 31.46 per cent of EBIT.

⁴² The NSW TAB Totalisator Rules provide that the maximum commission on a win (that is picking the horse that wins the race) is 14.5 per cent. In the \$100 million turnover scenario outlined above, \$1.5 million represents 10.34 per cent of the \$14.5 million commission. The latest update to the Rules in relation to commission was gazetted on 1 August 2008 in New South Wales Government Gazette No. 93, p 7419.

For corporate bookmakers, any product fee calculated at a rate that is substantially above a rate of 5 per cent of gross profit will force them, in the interests of economic survival, to explore ways in which they can increase their margins. One way of achieving this is through obtaining a form of presence in pubs and clubs where the majority of Australian wagering turnover is generated. Some operators have already begun looking into such systems⁴³.

Betchoice has negotiated numerous product fee agreements with other major Australian sporting bodies for 5 per cent of gross profit and submits that this is also an appropriate benchmark in the case of racing. For a fee that is, by the racing industry's own analogy, intended to be akin to an intellectual property fee, this is a very high rate. Despite this, Betchoice and, to the best of its knowledge, other corporate bookmakers are willing to pay this amount as a sign of their good faith to help support the racing industry.

Gross Profit Defined

It is worthwhile defining precisely what gross profit means as the term can have different meanings in different contexts. Betchoice considers that gross profit should be calculated as turnover, less winnings paid out and adjusted for bet backs. A bet back is a wager made by a bookmaker with another wagering operator in an attempt to reduce the bookmaker's exposure. Although most racing authorities have a policy that takes into account bet backs when determining the product fee, they are often not consistent. Betchoice suggests the definition used by Racing NSW should be preferred. For the Commission's reference, that definition is as follows:

“Bet back” means a wager which is made by the [bettor] on the “backers” side of the wagering transaction...:

- (a) for the purposes of genuinely reducing or laying-off the [bettor's] liability on a fixed-odds wager which has already been accepted by the [bettor] and on which the [bettor] has taken risk on the “layer's” side of the wagering transactions;*
- (b) on the same contingency... the [bettor] has already accepted risk on the “layer's” side of the wagering transaction referred to in (a); and*
- (c) in respect of which the amount which the [bettor] stands to win does not exceed the amount that the [bettor] stands to lose on the same contingency on the “layer's” side of the wagering transaction referred to in paragraph (a).*

⁴³ VenueBet is a corporation that operates a gaming terminal currently being trialled at a hotel in Melbourne. The product allows customers to recharge their mobile phone credit, purchase lottery tickets and place bets through the corporate bookmaker Sportsbet.

Recommendation 1: Corporate bookmakers should pay a product fee equivalent to 5 per cent of gross profits on the basis that corporate bookmakers refrain from having a physical presence in pubs and clubs throughout Australia.

A fee of 5 per cent of gross profit would ensure the continued sustainability of corporate bookmakers and the market they serve without requiring expansion into off-course retail outlets. This would ensure healthy competition remains in the wagering sector without threatening the viability of either the totalisators or the corporate bookmakers.

Recommendation 2: Totalisators should not be required to pay an additional fee in recognition of the contributions they already make to the racing industry.

In the same way that the racing industry should take account of the different regulatory factors impacting on corporate bookmakers, similar consideration should be given to the factors that apply to totalisator operators. To the extent that a licence is granted to conduct a totalisator operation and a licence fee is payable, Betchoice considers this should be recognised as including a product fee.

Race fields legislation in Queensland provides for consideration of the contributions made by the licensed totalisator under other agreements when determining the fee payable for an authority to use a race field⁴⁴. By taking into account the current contributions of participants such as totalisators, racing authorities can help to ensure that, as much as possible, a level playing field exists for all wagering operators.

Recommendation 3: The product fee needs to be sustainable for the sake of all participants in the industry.

As we have explained above, a product fee of 1.5 per cent of turnover is unsustainable and will force corporate bookmakers to close or move offshore. To the extent there are funding issues in racing, particularly in New South Wales, an excessively high product fee targeting corporate bookmakers is simply a quick fix solution and will not solve the underlying issues. It is predictable that, within twelve months or so, corporate bookmakers will be forced to relocate offshore and the shortfall in New South Wales will continue. Betchoice is concerned that participants in other industries will then be targeted to make up this shortfall once funding from corporate bookmakers ceases. It is imperative that the real cause of the shortfall be addressed before this occurs.

While so far the focus has been on the benefits wagering operators derive from racing, wagering operators are hardly alone in this respect. There are other businesses which are dependent on the racing industry's existence for their commercial viability. One clear

⁴⁴ Section 113E(6) of the *Racing Act* 2002 (Qld).

example, as the press has reported⁴⁵, is the breeding industry.

Thoroughbred horse breeding is a large and lucrative business. The following table lists the top 20 sires by total fees earned in 2007/2008.

Table 9. Top 20 Australian sires by service fee 2007/08

	Stallion	Service Fee	Mares Served	Total Fees
1	Redoute's Choice	\$330,000	163	\$53,790,000
2	Encosta De Lago	\$220,000	193	\$42,460,000
3	Elusive Quality	\$137,500	172	\$23,650,000
4	Flying Spur	\$99,000	174	\$17,226,000
5	Rock of Gibraltar	\$82,500	193	\$15,922,500
6	Fastnet Rock	\$55,000	256	\$14,080,000
7	Commands	\$66,000	154	\$10,164,000
8	Exceed and Excel	\$55,000	183	\$10,065,000
9	Fasaichi Pegasus	\$66,000	152	\$10,032,000
10	Lonhro	\$66,000	143	\$9,438,000
11	Elvstroem	\$38,500	221	\$8,508,500
12	More Than Ready	\$44,000	163	\$7,172,000
13	Dehere	\$55,000	122	\$6,710,000
14	General Nediym	\$60,500	110	\$6,655,000
15	Hussonet	\$38,500	150	\$5,775,000
16	Holy Roman Emperor	\$44,000	131	\$5,764,000
17	Al Maher	\$38,500	145	\$5,582,500
18	Testa Rossa	\$35,200	146	\$5,139,200
19	Stravinsky	\$44,000	115	\$5,060,000
20	Anabaa	\$55,000	80	\$4,400,000

Source: Australian Racing Fact Book 2007/2008,

The total amount earned from these 20 horses is over \$267 million. If the racing industry's argument is that businesses that profit from racing should help to support it, we see no reason why, in the absence of corporate bookmakers, the racing industry will not consider seeking to charge fees on the breeding industry as well.

We also consider it possible that the racing industry would extend similar requirements to

⁴⁵ See Thomas, R, 'Breeders bristle at stallion tax proposal', The Daily Telegraph, 16 June 2009, <http://www.dailytelegraph.com.au/sport/breeders-bristle-at-stallion-tax-proposal/story-e6frey6r-1225735881714>, Accessed 10 August 2009; Calendar, K, 'Invincible a real speed machine', The Daily Telegraph, 20 July 2009, <http://www.dailytelegraph.com.au/sport/invincible-a-real-speed-machine/story-e6frey6r-1225751972754>, Accessed 10 August 2009; Madgwick, T, 'Nathan Tinkler on Thoroughbreds', Breednet.com.au, 10 August 2009, <http://www.breednet.com.au/news2006.asp?id=52206>, Accessed 10 August 2009.

auctioneers, trainers and all other participants making money from the racing industry. Although this would again be lucrative short term, Betchoice believes the fees imposed on the breeders would eventually be passed onto the owners. This would have disastrous flow-on consequences.

Recommendation 4: Remove restrictions on ‘In the Run Betting’ but with strict client activity reporting in place.

The *Interactive Gambling Act 2001* (Cth) broadly prohibits gambling using the Internet. There are exceptions for certain forms of gambling, wagering constituting one such form.

Wagering services are exempted from the operation of the Act by section 8A. This exception is qualified and two particular types of betting are excluded. Section 8A(2)(a) excludes from the exception wagering on sporting events after the event has occurred. This betting is generally referred to as ‘in-play’ or ‘in the run betting’ (**‘ITR betting’**).

The other exception concerns microbetting. Bets on contingencies that occur during a sporting event (eg. whether a bowler in a cricket match will get a wicket on the next ball) are commonly referred to as ‘microbets’. Section 8A(2)(b) excludes microbetting from the exception of section 8A.

The resulting situation is as follows:

Table 10. Restrictions on ITR Betting

	Before Event Begins	In the Run
Telephone betting (racing)	✓	✓
Online betting (racing)	✓	✓
Telephone betting (sports)	✓	✓
Online betting (sports)	✓	✗

Source: *Interactive Gambling Act 2001* (Cth).

The ridiculousness of this arrangement is self evident. It is permissible to bet in the run using the telephone but it is not permissible to bet in the run using the Internet. It makes no sense to prohibit ITR betting in one medium but not another.

The Revised Explanatory Memorandum to the *Interactive Gambling Bill 2001* (Cth) states that the exceptions for ITR betting and microbetting were⁴⁶:

...intended to exclude from the definition of ‘excluded wagering service’ types of continuous wagering, such as real-time ‘ball-by-ball’ betting on interactive television, that could evolve into highly addictive and easily accessible forms of interactive gambling.

⁴⁶ Revised Explanatory Memorandum to the *Interactive Gambling Bill 2001* (Cth), p 41.

Given this purpose, the Act makes a mistake by treating ITR betting and microbetting in the same manner. The two are quite separate. Moreover, a problem gambler will bet regardless of whether the medium is the telephone or the Internet. While use of the Internet may increase the transaction frequency as compared with the telephone, the result at the end of the day will be the same. Reducing the frequency at which a problem gambler loses does not assist in dealing with the real problem. Identifying and enabling problem gamblers to control their gambling should be the objective.

The current situation does not actually prevent online ITR betting. It merely prevents online ITR betting from being monitored and regulated in Australia. As is the case with online poker and other forms of prohibited online gambling, punters who wish to bet in this manner are not prevented (or indeed discouraged) from using overseas services. These services are not subject to the strict regulatory environment that exists in Australia and individuals who use these services are at substantial risk of fraud and exploitation. They cannot then be identified as problem gamblers nor subsequently provided with assistance.

In addition to the greater risks posed to individuals, sports and governments lose out on revenue when ITR betting is conducted with overseas operators. Overseas operators are under no obligation to pay fees or taxes in Australia. While there are no statistics on the amounts Australians wager with overseas operators on ITR betting products, we refer the Commission to the submission of Betfair and the statistic that 75 per cent of bets made on the UK Premier League are made in the run while, on tennis, the figure is 90 per cent⁴⁷. This suggests significant sums of money are being expended on ITR betting products. Tax from wagering and sports betting in 2005/06 amounted to \$384 million. Overall, in 2005-06 tax on all forms of gambling amounted to \$4.69 billion.⁴⁸

From a logical, economic and harm minimisation perspective, it is only sensible to amend the IGA to allow in the run betting.

Recommendation 5: A central agency should be established for collecting reporting data and product fee payments.

Online gambling brings with it numerous challenges and opportunities. Since regulated online wagering operators are required to track their customers' data, great potential exists for using this information to help prevent illegal conduct and preserve the integrity of sport.

Unfortunately at the present time this is neither simple nor straightforward. A corporate bookmaker, such as Betchoice, is required to have a separate consent agreement with each sporting body for the disclosure of information to that sporting body. This process is repeated for each provider as Chart 5 below illustrates.

The inefficiencies and resulting costs for each wagering operator of the current arrangements cannot be overstated. Each authority has different requirements as to forms, reporting periods and methods of calculation. There is little to no standardisation, even within similar sports.

⁴⁷ Submission 181, pp 13-14.

⁴⁸ Australian Gaming Council, 'A Database on Australia's Gambling Industry 2008/09', Chapter 4.

An operator such as Betchoice may have up to 21 separate agreements, each with slightly different reporting requirements with a similar predicament facing each operator, be they corporate bookmaker, totalisator or betting exchange. Significant time and money is being wasted at both ends as a result. Betchoice estimates that some of its staff spend 50 per cent of their time completing different reports for each control body.

This is an administrative nightmare for all parties. Betchoice considers that the simplest solution would be to create a central agency for administering reporting data and product fee payments. Wagering operators could share their data with this information agency which could in turn share the information upon a reasonable request from a racing body, sports administrator or other wagering operator. The proposed system would look like that illustrated in Chart 6.

The legislative framework that creates such a system could make it an obligation to provide data, thereby solving the problem caused by privacy laws that, while well-intentioned, prevent information sharing that would be in the public interest.

Such a system should be simplified with a single common report to be submitted to the central agency. Common integrity and financial benchmarks could be set after consultation with the various control bodies. Control bodies could request only the information that they require from the central agency. Individually, they can record and use this information differently if that was considered desirable. Such a system would allow this to occur without additional obligations on the part of the wagering operators.

In addition to reporting data, wagering providers should make one monthly payment to the agency for disbursement to relevant control bodies. This would further simplify administration for all parties concerned resulting in significant cost savings.

Chart 5. Current Information Sharing Framework

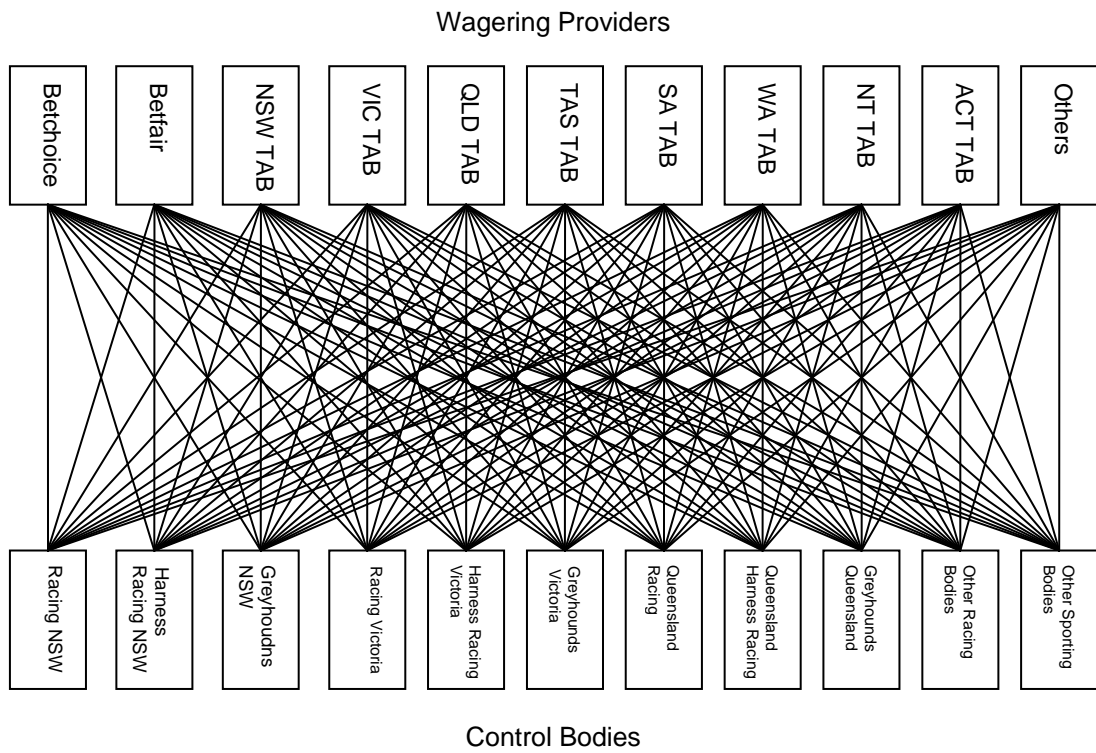
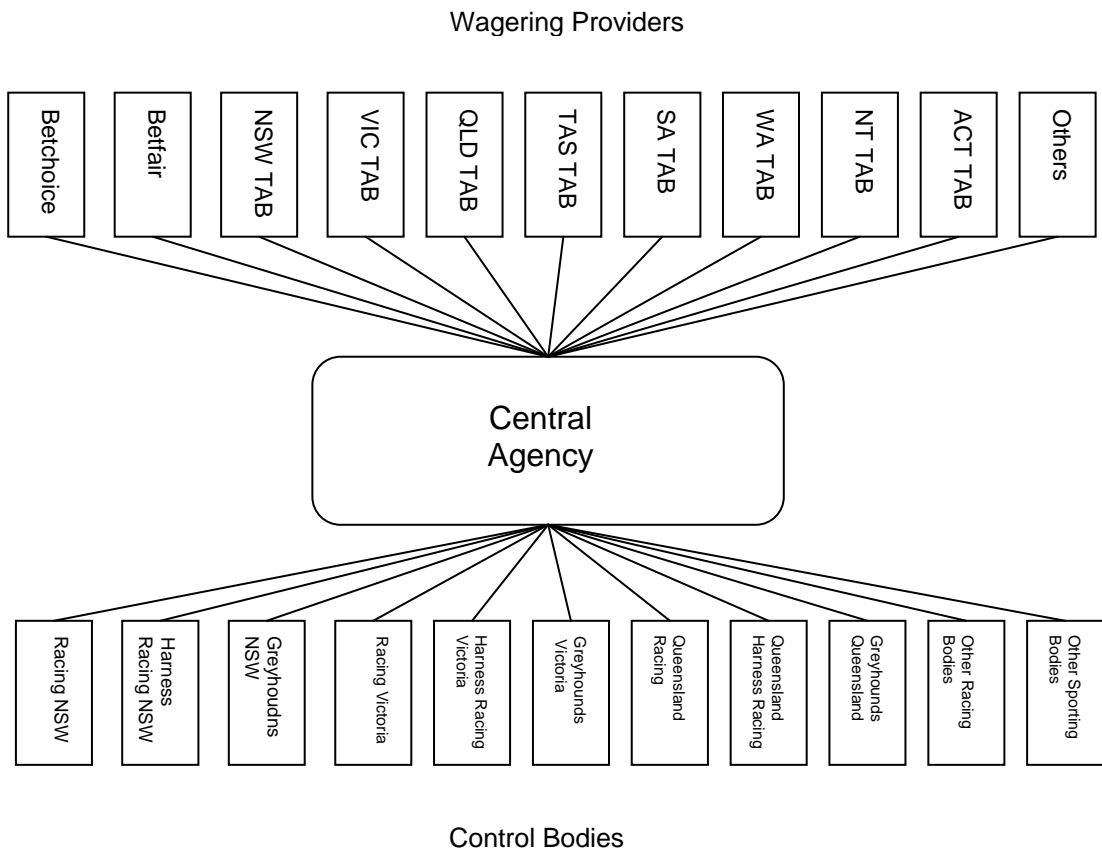


Chart 6. Proposed Information Sharing Framework



Recommendation 6: Harm minimisation measures should be standardised and apply across the industry.

Betchoice submits that problem gambling concerns arising from online wagering are materially less than in respect of other forms of gambling. Terrestrial gaming machines are by far the principal form of gambling activity giving rise to problem gambling.⁴⁹ In NSW 78.5 per cent of male problem gamblers and 95.4 per cent of female problem gamblers reported gaming machines to be their principal gambling activity. This compares with 0.7 per cent and 0.2 per cent for male and female problem gamblers respectively in respect of internet gaming, racing and sports betting⁵⁰.

We are concerned that many of the submissions lodged at this time have focused on the problem gambling issues that may result from a liberalisation of online gambling regulation. This seems incongruous with the above statistics demonstrating that up to 99 per cent of problem gambling arises from terrestrial gambling, predominantly poker machines.

Nevertheless, we wish to address the legitimate concerns that exist surrounding the dangers of problem gambling. Betchoice brings two points to the Commission's attention in this respect.

First, we note that the majority of issues raised relate to online operators who are not licensed and regulated in Australia. We consider this further strengthens the argument that regulation, rather than prohibition, should be the preferred approach in dealing with gambling providers. This will allow online operators to be licensed in Australia and regulated in accordance with Australian standards.

Second, we draw to the Commission's attention the areas in which requirements on online operators are far stricter than their terrestrial counterparts, particularly when it comes to gaming machines. Stringent obligations apply to Australian online operators in respect of identifying their customers and reporting their transactions⁵¹. These obligations do not apply to clubs and hotels, particularly in respect of poker machines. Betchoice submits that this distinction is illogical and, especially in light of the evidence of problem gambling resulting from the use of poker machines, does not address the issue of problem gamblers participating in forms of gambling where monitoring requirements are not as robust.

In its 1999 report, the Productivity Commission examined the regulatory framework of the different State governments⁵². The Commission recommended that a single independent authority be established in each jurisdiction to regulate gambling.⁵³ While some jurisdictions have moved partway towards realising the Commission's proposal, most States and Territories maintain a mix of different agencies, offices and departments.

⁴⁹ Australian Gaming Council, 'A Database on Australia's Gambling Industry 2008/09', Chapter 8.

⁵⁰ Australian Gaming Council, 'A Database on Australia's Gambling Industry 2008/09', p 157.

⁵¹ These obligations are covered in more detail by the Australian Internet Bookmakers Association in Submission 221 on p 26.

⁵² *Australia's Gambling Industries: Inquiry Report*, Productivity Commission, chapter 22.

⁵³ 1999 Productivity Commission Inquiry, p 22.24.

Betchoice submits that the conclusion of the Commission in 1999 was correct and that State and Territory governments should move to a single regulatory authority for the gambling industry. Furthermore, regulation between different sectors of the gambling industry should be made consistent. Numerous parties in their submissions to this inquiry have called for just such a move⁵⁴. The majority of these calls have come from those in the clubs and hotel industry.

Examples of such inconsistencies are plentiful. As was noted in the submission of the Public Interest Advocacy Centre⁵⁵, advertising restrictions which apply to gaming machine advertisements do not apply to advertisements for keno, lotteries, and the totalisators. Understandably, those in the clubs and hotel industry are concerned with restrictions they face which other operators do not.

As part of a move towards regulatory harmonisation, all gambling operators should be required to have in place systems to determine the identity of their customers, the amounts they are betting and the frequency with which they are betting. Such a system would enable all gambling operators to better monitor those customers who are at risk of developing problem gambling issues and provide assistance as early as possible.

A system of this type would have added benefits in terms of problem gamblers to self-exclude themselves from all forms of gambling rather than the venue by venue approach that is the case currently in most jurisdictions.

Betchoice recognises that any movement towards harmonisation will incur difficulties for all parties. As the clubs and hotel industry have legitimate concerns about the costs of such a system we recommend that it should be introduced over time. However, given the fact \$10.58 billion was spent in Australia on poker machines in 2006-07⁵⁶, establishing a system does not appear beyond the realm of possibility. Betchoice notes that in terms of poker machines a central monitoring system is already in place in all States and Territories and suggests that further inquiry could be undertaken into determining what potential exists for expanding the scope of current systems.

The Allen Consulting Group Internet Gambling Survey, commissioned by the Australian Government, did not find any evidence that people who gamble over the Internet are any more or less likely to become problem gamblers.⁵⁷ With a proper licensing system and harm-minimisation methods in place, online gambling should cause no more, or even less, social harm than terrestrial gambling. Any potential social harm from online gaming can be controlled, to a significant degree, through continued, sensible regulation of the industry.

⁵⁴ See Submission 135, p 24; Submission 147, p 25, Submission 175, p 46; Submission 198, p 9; and Submission 222, p 12.

⁵⁵ Submission 222, p 12.

⁵⁶ Australian Gambling Statistics 1981-82 to 2006-07.

⁵⁷ 'Final Report on Issues Related to Commonwealth Interactive Gambling Regulation' by The Allen Consulting Group, 2 July 2003 (amended 4 February 2004), Report for the Department of Communications, Information Technology and the Arts, pp 7-8.

Recommendation 7: All gaming and wagering operators should report clients that exceed set betting frequency parameters to a central agency.

Where providers implement systems that aim to identify those at risk, these systems will be ineffective unless the data is shared. A concern raised in some of the clubs industry's submissions to the Commission has been that systems that are disconnected will only inconvenience those without gambling problems while those that are at risk simply move between venues. We agree. The solution is not to avoid a system but to ensure that it is linked together.

A centralised agency should be established at the Federal level that collects data on clients that exceed a certain frequency of betting. This data can be used to identify those at risk and ensure they cannot simply move to a new venue.

Some of the harm minimisation measures in place for online gambling are non-existent when it comes to gambling with terrestrial providers. Technology exists, and has been referred to in previous submissions to the Commission, which would enable clubs, hotels, casinos and other terrestrial operators to report clients that exceed set betting frequency parameters.

What is required is a central agency that can collect this data and assist providers in preventing those at risk of gambling-related harm. This requires a whole of industry approach.

It is evident that a central agency is required for the collection of suspicious wagering data and for data that may help identify problem gambling. It follows that the most efficient way to do this is to establish an agency that looks after both.

Such an agency would make possible a range of other harm minimisation measures. All States and Territories have implemented exclusion provisions that allow problem gamblers to exclude themselves from venues. Most of the time this is done a venue by venue basis, a system that has obvious limitations in a nation like Australia which offers numerous options for gambling. A central agency would mean that venues could check the identity of patrons and clients to ensure that those who had excluded themselves could be prevented from access to all gambling providers.

Further harm minimisation measures become possible. Third party exclusion takes into account that problem gamblers are often unable to recognise their own vulnerability and allows family members or those otherwise close to an individual to exclude a person from gambling activity. This policy has been introduced in Tasmania under the *Gambling Control Act 1993* (Tas). We see no reason why a third party exclusion mechanism cannot be conducted throughout Australia.