

Comments on the Draft Report: Gambling, published by the Productivity Commission 2009

These comments are provided in response to the invitation from the Commission at page III.

General

The Draft Report, it was anticipated, would extend and improve on the research work issued in 1999. Unfortunately it has to be concluded that these expectations have not been met. In fact the Commission has stated that it did not make this a goal: 'the Commission has not sought to replicate the coverage and depth of its earlier research' (page XVII). Nowhere is this lack of coverage and depth more apparent than in Section 13 - Developments in the racing and wagering industries. This piece is considered so obviously flawed that it should be removed from the final report.

Another overall impression of the report is that the Commission has determined to advantage on-line gambling to the detriment of land-based venues. Given the very little evidence that exists for Australian consumer behaviour with on-line gambling and the relatively short life of the technology to date this approach equates oddly with a harm minimisation goal.

Once again the bulk of the report has a principal focus on problem gambling and is thus concentrating on one aspect of a subject where that primary activity is inadequately researched and understood in the Australian arena. How can conclusions be reached and recommendations made about the attitudes and behaviour of a minor set of persons with a problem when the attitudes and behaviour of the majority are unknown? The uncertainty of the Commission as to the number of persons with a problem is an illustration of this point. There is confusion within the report about even the range boundaries for the numbers. This is further noted below.

Consistency in numerical data

An impression of imprecision or inconsistency is created within the opening pages of the report with numerical data not shown with consistency. Annual player expenditure is shown variously as \$18 billion, \$18.19 billion and \$18.2 billion over three consecutive pages (pages XVII-XIX). The second version is in Figure 1 that has no reference for a year of applicability. Later the number becomes \$18.187 billion in 2006-07 (page 2.5). This is but one example.

While it is not clearly stated it is assumed the Commission is using a figure of approximately 16.1 million for the total of Australian adults in 2006-07. (Page 2.3, Table 2.1 – total expenditure \$18.187 billion and average expenditure per adult of \$1,131). On this topic an obvious typo is to be found at page XVII – 'Around three in four Australians gambled in the past year'. Presumably this should read Australian adults. The report also states:

...only around 15 per cent of Australian adults participate regularly in any form of gambling. But roughly one in ten among this group would be classified as problem gamblers, with an additional 15 per cent experiencing moderate risks.

While precision is impossible, estimates of the number of problem gamblers in Australia lie in a range around 125 000, with the estimated number of gamblers at moderate-risk ranging around 290 000.

...These current prevalence estimates translate to around 0.75 per cent and 1.7 per cent of the adult population for problem and moderate risk gambling respectively. (Page XXI)

Presumably 'current' is mid-2009. Again the number of adults is not referenced but it appears a total of around 16.7 million is in use. Regular gambling is defined as once or more per week on

non-lottery products (page 4.28) but 15 per cent of Australian adults is 2 505 000 and one in ten 250 500. The additional 15 per cent is 375 833.

At page XXIII:

...(pokies) account for 75-80 per cent of problem gamblers.

At the mid-point of 77.5 per cent the number of 'pokie' problem gamblers is then in the range 194 138 (of 250 500) or 96 875 (of 125 000) to 292 271 (of 375 833) or 224 750 (of 290 000).

At page 4.25, Table 4.9 the problem gambler prevalence rates are summarised as:

Type	Low number	Average number	High number
Problem	88 000	125 000	169 000
Moderate Risk	230 000	287 000	355 000
Combined Higher-risk	339 000	412 000	491 000

On the same page there is Draft Finding 4.2:

There are estimated to be between 90 000 and 170 000 Australian adults suffering significant problems from their gambling in a year...and between 230 000 and 350 000 with moderate risks.

The report returns to EGMs or the 'pokies':

Overall, around 5 per cent of Australian adults play weekly or more...

Problem gambling rates among regular EGM players lie between 7 and 32 per cent (with an average of around 16 per cent). And, if moderate risk gamblers are included, the range is between 18 and 45 per cent (an average of 30 per cent). (Page 4.29)

The numbers that can be derived from these percentages are:

Regular players at 5 per cent = 835 000

Problem gamblers at 7 per cent of the 835 000 = 58 450

At 32 per cent = 267 200

At 16 per cent = 133 600

At 18 per cent = 150 300

At 45 per cent = 375 750

At 30 per cent = 250 500

At page 4.31 there is draft finding 4.4:

About 5 per cent of adults play gaming machines weekly or more often. Around 15 per cent of this group would be classified as problem gamblers, with around an additional 15 per cent experiencing moderate risks. Altogether, around one third of regular gaming machine players face significant risks.

Regular players at 5 per cent = 835 000. 15 per cent of the number is 125 500. One third is 278 333.

Discussing pre-commitment at page 7.7:

It is estimated that around 15 000 exclusion agreements are currently in place...which represents only around 10 to 20 per cent of the problem gambling population.

Obviously 10 per cent is 150 000 and 20 per cent is 300 000.

The imprecision and inconsistency in the presentation of numbers relating to problem gambling is obvious. It brings to mind the persons who take the field option when TAB betting on the Melbourne Cup so they can truthfully boast that: 'I backed the winner of the Cup'.

Definitions

The report could be significantly improved by a glossary of terms and a consistency in their usage. Some of the elements that would be included are:

Base numbers – such as the number of Australian adults used for calculations.

Consumers – the Commission makes much of the potential to enable better gambling products and lower prices for consumers. All we learn about these consumers though, even those with a gambling problem, is the extent boundaries that the Commission has found. For example: three in four adults gamble and 15 per cent are 'regular' gamblers. It is believed the Commission has reached many of its conclusions without considering the differences amongst consumers. As a consequence many of its draft recommendations and findings are likely to be flawed. The first broad definition that needs to be considered is between professional and recreational gamblers. Both can fit into slots for regular or non-regular gamblers if the criterion for regular gambling is weekly or more frequent. Illustrations of the behaviour of professional and recreational gamblers follow although it is acknowledged these are broad and thus simplistic comments:

. Professional Gamblers

- Casinos. These gamblers are most likely to be found amongst the card-based tables such as blackjack or poker.
- EGMs. They will be roaming the larger venues looking for opportunities to play for time and value limited jackpots or buying out large winners in order to play the 'gamble' option on the machine.
- Keno. They will be playing when the jackpot is large and they will be selecting non-favourite number sets or using computer generated random numbers.
- Lotteries/Lotto. As for Keno.
- Wagering. They will be investing on opportunities that show an arbitrage value: often called an overlay.
- It should be noted that there are also semi-professionals. Typically these persons have other sources of income: often in the financial derivatives markets.
- Another sub-set of professional gamblers is major syndicates. These persons outlay huge amounts of money over the course of any year. They are believed to be highly profitable operations.
- The two elements that stand professionals apart from recreational are the amount of money outlaid and the consistency of profit over time.

. Recreational Gamblers

- Casinos. Inexperienced persons will 'sightsee' around the table games but, inhibited by the arcane procedures, finish among the EGMs. With greater exposure they will move on to roulette and blackjack, probably using the automated versions, and later baccarat. Those with the ethnic background will go to pai gow and sic bo.
- EGMs. As noted by the Commission faulty cognitions are likely to predominate with recreational gamblers in this environment.
- Keno. They will usually play in a social network environment.

- Lotteries/Lotto. Typically they enter the draws through work-place syndicates and/or a regular private ritual.
- Wagering. The regular venue for the great majority is the local TAB whether it is in the 'High Street', the club or the hotel.
- Some gamblers consider themselves to be professional or semi-professional but fall outside of the set because of failure to achieve. Often they will excuse the failure as the consequence of some bureaucratic policy whether this is regulatory or operational in basis. Thus, despite their own attitudes, they should be included within the recreational types.

Consumer Numbers – this commentator is unaware of any recent attempt to measure the number of consumers within the typology described immediately above. Nonetheless it is believed that policy decisions that may advantage one set over another should be weighed with considerable care. The following attempt at defining some of the numbers is mainly based upon industry experience.

. Professionals

- Major syndicates would total less than ten in Australia. The largest, however, is believed to have hundreds of staff.
- Other professionals would number under 300.
- Semi-professionals might approach 1500.
- Accordingly the professional set represents less than 0.1 per cent of the total Australians who gamble. As they typically win more than they outlay over a year it is not appropriate to measure them on an expenditure/loss basis. Their combined turnover might approach \$3.5 billion and their 'win' \$350 million.
- While turnover across the different forms of gambling is accepted to be an uncertain measure the total expenditure/loss, as found by the Commission, of around \$18.2 billion would suggest a total turnover in the region of \$100 billion. This is mentioned so as to highlight the importance of a few professionals to the amount of gambling.

EGM – electronic gaming machine, the report variously uses the term 'pokies', gaming machines and EGMs. A consistent usage would be helpful.

Gambling – the Commission acknowledges that it has adopted an 'orthodox' definition (page 1.3) without noting the source. It finds a distinction with investment market activities in that gamblers must lose and that gambling is intended to be recreational. This is seen to be a flawed summary in that there are some gamblers who consistently win and there are some investors who regard participation in stock exchange movements as an entertainment. Others it can be noted have found gambling to be 'peculiarly difficult to define'.¹

Regular Gambling – as already noted the report imprecisely defines a term that it frequently uses.

On-line Gaming – this is an industry wide difficulty in that 'gaming' once was only associated with gambling but these days many, especially younger persons, will assume the term refers to games on the Internet such as World of Warfare.

Safe Gambling – the Commission finds lotteries, Lotto and 'scratchies' to be 'safe' gambling. What causes the safety? Scratchies can be played with great frequency. There is no limit on total purchases. The percentage of 'new money' in player expenditure required for each Lotto or lottery draw is very high.

¹ Roger Munting, 1996, *An economic and social history of gambling in Britain and the USA*, Manchester University Press, pp 1-5.

Community Education

In Section 6 of the report reference is made to the range of faulty cognitions held by many gamblers. In examining community education programs to address this problem the Commission takes the narrow focus of looking only at the issue of using the education to move problem or moderate-risk gamblers to counselling. This is almost the approach of an anti-gambling zealot. In contrast this researcher holds the view that gamblers should be informed of responsible gambling techniques. During 2009 this researcher experimented with a pilot program of responsible gambling education. Members of a community social club were given a one-hour presentation followed by a question and explanation session. Feedback was most positive and there were indications of behaviour change.

Draft Recommendation 6.4

The Commission has proposed that the practice of providing gamblers with information about past results should be stopped. This is presumably aimed at lottery and casino operators. The former would be concerning the publication of most and least drawn Lotto numbers and the latter concerning the facilitation of roulette number records. While the idea appears reasonable it is believed its implementation should be approached with caution and only after persons with a sound understanding of gambling and aspects of the behaviour of gamblers are consulted. In racing, for example, any regulation should not be used to prevent the publication of factual data such as: horse number one wins more races than any other number, on average the favourite wins around one-third of all races, and long-shots almost never win.

Preference for on-line gambling

At page 9.38:

The Commission considers that there is a strong case for banning the use of credit cards and access to credit accounts in (land-based) venues for gambling.

But not for on-line gambling despite having noted:

Although such differences might adversely affect the competitiveness of the different gambling providers.

Draft Recommendation 9.2 accordingly underlines the preference for on-line gambling. If restrictions on access to credit are a sound harm minimisation measure why is on-line gambling excluded? The justification offered by the Commission would appear to be most flimsy:

The use of credit cards for online payment for goods and services is a typical commercial practice.

Would this not also be true for land-based department stores and supermarkets? If so, why should land-based gambling venues be prevented from engaging in a typical commercial practice?

Draft Recommendation 9.3

As a problem gambling control method the Commission seeks to have Governments require venues to pay any gambling prize above \$250 by cheque or direct account credit. It is difficult to believe the Commission has considered the likely outcomes of this recommendation in any depth. Firstly it is believed the Commission should seek the views of AUSTRAC and the Federal Police. Making even small payouts of the order of \$250 subject to detailed records will be of great interest to money laundering criminals. Illustrations of methodologies could be provided but are deliberately omitted from this commentary. 'I made the money gambling and here are the bank statements to prove it' is likely to become a criminal cliché of far heavier usage than it is now. Secondly it would also mean a greater accumulation of cash in the gambling venue leading inevitably to higher levels

of hold-up/robbery offences. Thirdly in the wagering and casino venues there would need to be a significant rise in employee numbers or the acceptance of long service queues as a cheque or bank transfer must take longer than a cash payout. For example the mean average return for a \$1 win bet with a bookmaker on a Saturday afternoon horserace is around \$8.50. Thus a not untypical bet of \$25 each way would result in a cheque or account transfer payout. At the on-course totalisator or in the TAB venue the recording levels would probably be even higher with payouts on the popular trifecta bets. For example on Saturday 28 November, from 32 afternoon races, there were 18 instances of a \$1 bet returning in excess of \$250 for the trifecta. If the average trifecta pool was \$100,000, the take-out 20 per cent and the dividend \$275, then some 290 cheques might be needed for each of those 18 races. That is 5,220 additional cheques in a single afternoon in one state.

Section 12 On-line gaming and the Interactive Gambling Act

Perhaps an appropriate sub-heading might be: *More preference for on-line gambling.*

The Commission proposes the Commonwealth Government should repeal the Interactive Gambling Act (IGA) although it incorrectly terms it the Internet Gambling Act in its Key points box at page 12.1. It is obvious that the IGA caused the demise of a fledging Australian industry with the consequence that some businesses and individual innovators moved overseas. Those that remained eventually stopped their trading, as they were unable to exist solely on overseas clients. As the Commission notes some Australian gamblers probably ignored the IGA and have used overseas gambling sites.

If the IGA is repealed the businesses best placed to immediately benefit are the existing Australian-based on-line wagering sites. A number of these are now owned overseas. Presumably some of the largest on-line gambling operations would seek to buy-in through other Australian sites. Many in the community will see that as unsatisfactory. While it may be possible to theorise a consumer benefit at the level of some individuals the overall economic consequences may be doubtful. Further this commentator is yet to find a gambler who is desperate to have an expansion of on-line gambling.

Section 13 Developments in the racing and wagering industries

Much of the overall report has obviously resulted from an extensive examination of the available literature. This belief was formed from a review of the list of references. Section 13, however, is an obvious exception. It is hoped the conclusions have not been reached solely from the submissions of parties with an obvious self-interest or a long-held bias. Perhaps as a consequence, and as noted earlier in these comments, this section is found so badly flawed that it should be removed from the report. Nonetheless the following comments are offered:

Page 13.2:

The issues facing wagering and racing today resemble the debate that took place prior to the introduction of Totalisator Agency Boards (TABs) in the 1950s.

Thus the great policy deliberations of the 1950s and 1960s are summarised as a 'debate'. This word choice scarcely conveys how thoroughly the long lists of issues were examined at that time. Nor does it reveal the depth and extent of those policy deliberations and the alternatives that were introduced and failed. It does not reveal that the 'debate' was of great public interest and consequently of great concern to their parliamentary representatives. The first TAB was in New Zealand and there the policy decision was made at the highest level with a national referendum.²

² Sean Brawley, 1995, *Beating the Odds*, Focus Publishing, pp 19-20.

In Australia the decisions were reached by the major state parliaments following comprehensive Royal Commissions of Inquiry and/or after a system of legalised off-course betting by bookmakers was found to be unsuitable.³ An examination of the literature of the time will show that the legislators considered and rejected off-course bookmaking for many of the reasons for their attraction as corporate bookmakers today. These include: betting on credit with consequent potential harm, minimisation of taxation, and avoidance of contribution to racing. It was also noted that a climate where these three issues prospered would be likely to lead to excessive gambling. While the term 'harm minimisation' had not then been coined for gambling it is obvious that this point was of great concern to legislators.

The Commission might also have noted that similar 'debates' were taking place in other nations around the same time period. One of those was in the United Kingdom and this is of particular relevance given some of the Commission's draft recommendations within this section. A Royal Commission on Betting, Lotteries and Gaming reported in 1951. One recommendation was that off-course betting be legalised. It took nine years for this recommendation to be legislated after intense lobbying on many fronts. The antipodean decisions, however, were reversed with a system of betting shop bookmakers preferred over the TAB concept. At their introduction these bookmakers were not required to make a contribution to racing nor did they have to pay a betting tax. A racing levy did follow in 1961 and a tax in 1966.⁴

Page 13.4:

...the liberalisation of the wagering market [in 1994] to allow phone betting.

This requires the insertion of 'bookmakers' before 'phone'. The TABs provided phone betting from their inception in the 1960s. In 1997 the TAB in New South Wales became one of the first wagering operators in the world to offer an Internet betting service.

Page 13.5:

Box 13.2 should have included a statement that TABs offer a fixed odds betting service along side the totalisator service.

There should have been a box describing the various types of consumers.

The TABs in each state and territory still hold a significant degree of market power. This has resulted in poor outcomes for consumers and is a constraint on the future growth of the wagering industry.

This statement is made without any supporting material, source notes or clarification. In the experience of this researcher it is the type of comment often made by persons who have failed in their intentions to be a successful professional or semi-professional punter. This commentator has undertaken an analysis of the customer returns for every Saturday afternoon Melbourne and Sydney thoroughbred race over two full racing years. Saturday afternoon is the primary betting period in every week except the first one in November:

³ Victoria, 1959, *Royal Commission of Inquiry into off-the-course betting*.

Western Australia, 1960, *Royal Commission on Betting*.

Queensland, Kay Cohen, 1992, *Character and Circumstance: Thirty Years of the Totalisator Administration Board in Queensland*, Boolarong Publications, pp 1-9.

New South Wales, 1963, *Royal Commission of Inquiry into off-course betting*.

⁴ Christopher Hill, 1988, *Horse Power: the politics of the turf*, Manchester University Press, pp 1-39

Return for \$1 bet on every winner

Racing Year /Operator	2007/08	2008/09	Percentage Advantage for consumers	
			2007/08	2008/09
Bookmakers' Starting Price	\$6 232	\$6 423	-	-
NSW TAB Dividend	\$6 415	\$6 718	3%	5%

Source: Sydney *Sunday Telegraph* 'punter', editions August 2007 to August 2009 inclusive.

Proponents for bookmakers might reasonably argue that many, especially corporate bookmakers, provide a best fluctuation service that may increase the return above the starting price. In many cases though the starting price is the best fluctuation. The essential point is that the Commission is plainly wrong in its unsupported, sweeping conclusion about poor consumer outcomes.

Page 13.6

The report continues with its unsupported declarations:

The off-course retail monopoly held by the TABs means that consumers have worse odds than those that a competitive market would deliver...

TABs typically have take-out rates of between 16 and 20 per cent.

Now the Commission strays into plainly demonstrable inaccuracies. The largest TAB: New South Wales has the following take-out rates:

Bet Type	Deduction Rate %
Place	14.25
Win	14.5
Duet	14.5
Quinella	14.75
Exacta	16.5
Double	17.0
Quadrella	20.0
Trifecta	20.0
First 4	22.5
Big 6	25.0

Section 13 is continually found to be incomplete with conclusions based upon mere segments of each complex issue. Here the take-out rate findings overlook the matter of percentage rebates paid to professionals, especially major syndicates.

Corporate bookmakers, for example, deliver a rate of return of around 94 per cent, whereas EGMs usually return above 90 per cent and casino games such as blackjack can offer up to 99 per cent.

Firstly this is an attempt to compare apples to oranges, then to bananas, then pumpkins. Secondly it selects a rate for a casino game that could only be achieved by a very experienced blackjack player with excellent logic. Thirdly it ignores the higher rates of the casino game: Big Wheel.

In addition to reducing the value-for-money offered to punters, the TAB dominated funding model is unlikely to serve the long-term interests of the racing industry either. While giving TABs the sole rights to provide off-course retail wagering solved the free-rider problem, the resulting higher price of wagering on racing increased the incentive of punters to seek out better returns in other forms of gambling ... This type of substitution is further encouraged by the other problems associated with monopolies.

Once again sweeping conclusions are given without any justification or point of reference. An obvious question arises. If these points are of such grave concern why does the report not contain a section on lotteries and similar products? They have the highest take-out rates of any form of gambling. They are conducted by fixed-boundary monopolies.

Page 13.7

This page and its illustrations might be summarised as indicating wagering on racing stagnated from the 1990s until 'saved' by the corporate bookmakers from 2000 onwards. Perhaps someone other than the one, who wrote at page 2.6, prepared it:

The 1990s saw a very rapid growth in gambling provision and expenditure.

How could racing wagering have withstood the explosion of the EGM product? EGMs were everywhere, available 24 hours per day, and representing the opposite of intellectual challenge in play. If racing wagering had held its position then presumably the essentials of living would have come under stress for many Australian families.

As to the growth by corporate bookmakers the report overlooks the demise of illegal betting in Australia. Illegal betting, especially by phone, remained in Australia even after the introduction of PubTAB in the 1980s. Two service issues drove these illegal operations. First was the availability of credit and the second was the offer of a fixed odds bet together with a percentage rebate. These illegal operations have now all but disappeared as the corporate bookmakers offer the same service. After decades of debate about the extent of illegal betting in Australia authorities are now able to look at the turnover of corporate bookmakers and put a reasonable figure on record.

Further as previously noted the consumer type using the corporate bookmakers may be different to those at the TAB. The corporate operations must be attractive to professionals and semi-professionals. The opportunity to find an overlay and place a large bet is very unlike the customer placing a small bet at the convenient local TAB.

Page 13.8:

...a number of commentators assert that the dominance of the TABs has been detrimental to racing and wagering in Australia.

The commentators selected by the Commission are probably well meaning but they could scarcely be put up as authoritative sources on this major issue. They also appear to looking at only at their local scene without consideration of alternatives.

Page 13.10

This page contains the statement:

There has been very limited research done to test this proposition [that lower takeouts will increase the amount of betting].

This finding is believed to be particularly true in the Australian model. There have been some trials but they have been limited by time and inconsistent in their approach. Publicity or the marketing of the trial has often been minimal. The commentator quoted by the Commission though could be asked to justify his claim through evidence:

You are better off taking a small slice of a very big and rapidly expanding fresh pie than trying to take a huge slice out of a stale and contracting party pie.

The question could also be asked as to the likely impact when the new pie loses its freshness.

Page 13.11

The recent Cameron Review into racing in New South Wales also raised the issue of races per racecourse. This commentator does not accept that it is a supreme issue but did say the following in a submission to the Cameron Review:

Nevertheless the question of rationalisation of racecourse utilisation in NSW is one that demands real action. It is a subject that has attracted the attention of racing administrators from time-to-time but progress has been minimal. It can be concluded that there are too many racecourses across the State and that standards of safety and amenity could be raised generally if some were permanently closed. The following points are offered as an illustration of this view.

Dubbo is a fast-growing centre in rural NSW. Residents of towns around the region can be observed to travel to Dubbo for all manner of retail and professional services. There is an attractive racecourse that has the capacity for expansion of facilities.

In Sydney a racegoer residing in the Eastern Suburbs of the city would generally allow, with the exception of helicopter travel, a minimum of an hour for transport time to a meeting at Rosehill Gardens on a Saturday.

Around Dubbo there are at least seven racecourses where the travel time to Dubbo by motor vehicle is less than one hour. The racecourses and travel times are: Wellington – 41 minutes, Narromine – 29 minutes, Peak Hill – 52 minutes, Gilgandra – 48 minutes, Trangie - 54 minutes, Geurie – 24 minutes, Tomingley – 39 minutes. There would seem to be the opportunity for these seven clubs to continue to exist and operate except that they hold their race meetings at Dubbo racecourse. The situation would generally, almost certainly, be replicated in many regions across the State.⁵

Perhaps the same may prevail in other states although this commentator is unaware of any studies.

Page 13.12

The commentators, selected by the Commission, who regard the extent of racing in Australia as wasteful are seen to be overlooking the mores of modern society. No longer do shops open at 9am and close at 5pm or hotels close at 6pm. What other industry attempts to conform to a model that equates with the position that stood in the 1950s? Other gambling forms are available on a 24/7 basis and racing should be the same.

Page 13.13:

...an industry ultimately exists to meet the demands of consumers and for the interests of the community generally, not for its own sake.

In these words the Commission delivers a concise rebuttal of the views expressed by its selected commentators on the previous page. Moving on, however, the Commission overturns its logic:

Accordingly, if punters prefer better odds (even at the expense of fewer domestic races), then a leaner racing industry that delivers this is preferable to a larger industry that does not.

A survey of shoppers in a major retail mall would almost certainly see a very positive response to a question: Would you like to see lower prices? But what if the supplementary question was asked?

⁵ NSW OLGR

<http://www.olgr.nsw.gov.au/pdfs/Allen%20Windross%20submission.pdf>(accessed 1 December 2009)

Would you still agree if you were told the lower prices would only come if you are able to shop between noon and 5pm on Wednesdays and Saturdays and in selected weeks?

This page also refers to the term ‘Gentlemen’s Agreement’. This commentator again draws on his submission to the Cameron Review:

There is no such agreement and the title is a relatively recent invention to explain away the circumstances. From the first days of TAB operations in Australia, early 1960s, tacit consent was given to the circumstances. An advantage has always applied to NSW and other jurisdictions outside Victoria due to several major races of national interest, e.g. the Melbourne Cup, that are conducted in Melbourne... The tacit consent was adopted because it was considered impracticable to enforce some form of ownership right. As well there were the arguments that a lot of the NSW betting on interstate races came when NSW animals and jockeys travelled to compete, i.e., a form of parochial support. There did exist an informal agreement but this related to the discouragement of cross-border advertising of TAB services.⁶

Page 13.14

Here the Commission clearly discloses that while it may have a firm understanding of the complexities of economic theory it has failed to become aware of the practices within racing wagering. Much of the distortions in the modern day numbers are not caused by the so-called ‘Gentlemen’s Agreement’ but by the activities of major betting syndicates. Those that understand the position exhibit an amused face when they see Table 13.1. For the largest implied transfers are gained by the two states where the biggest syndicate is based. Other positives flow from the ‘bet-back’ activities of corporate bookmakers.

Page 13.17

In Table 13.4 the Commission appears to counter its own position of apparent bias in favour of low margin Internet operators. Racing, by various measures, is seen to have declined in real terms since 1999/2000. Yet at page 13.7 the Commission wrote:

...corporate bookmakers have grown rapidly since their inception, increasing their turnover by over 350 per cent since 2000.

Or is this an inadvertent indication that the Commission favours a smaller Australian racing industry?

Page 13.18

This commentator finds himself confused by many of the statements on this page. Perhaps the cause is the use of selected views from various lobbyists. Just one of the many puzzling points is selected for comment:

...consumers who bet with the TAB on interstate races...may ultimately have to accept even higher prices.

Have the TABs said that? Or was it their competitors? If it were valid would it not also apply to Internet bookmakers?

Pages 13.19 to 13.22

In New South Wales the inter-code and intra-code agreements were primarily determined just over a decade ago. This commentator is unaware of any coercion applying at the time. Perhaps though

⁶ NSW OLGR op. cit.

the agreements should have included adjustment processes. The cry of 'waste' is repeated, page 13.21, but without a clear expression of the alternative.

Page 13.23

Draft Finding 13.1

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

This commentator has no difficulty with the first sentence but strongly believes the Commission has failed to sustain the argument to support the second. Note also the use of the qualifying word 'potentially'. That is something that is possible rather than certain.

Page 13.25

Two pages on and the something that was possible has become certain:

In particular, the future health of racing and wagering is dependent on a funding model that can accommodate lower margin operators.

There is no intervening material that supports the change of position.

Much of the wagering industry is characterised by operators whose prices (take-out rates) substantially exceed that of other forms of gambling.

As already noted in these comments the Commission has not established its comprehension of the relevance of these rates.

In the long term, the racing and wagering industries will be better served by a funding model that allows wagering operators to offer comparable prices to the alternative gambling products they are in competition with.

This point has not been confirmed by any logic within the report. What are comparable prices? Should the TABs' Big 6, almost a lottery style product, have a higher or lower rate? It is currently set at around half the rate for Lotto. Should the TABs' Duet have a rate equivalent to an EGM? But the prize drop on an EGM is fixed while the Duet depends on the volume bet by others. What are the alternative gambling products?

To the greatest extent possible, product fees should also be designed to be neutral between different types of racing or wagering products...

Predictably the Commission offers no material to support this conclusion. Taken to the extreme this perversion of logic suggests that the lottery should have a take-out rate equal to the blackjack table.

Page 13.26:

A product fee structure that disadvantages domestic on-line wagering companies is likely to be particularly counter-productive...some companies may elect to avoid onerous product fees by basing themselves outside of Australia.

Disadvantage is not defined but evidence is available that these companies will behave in a solely profit driven manner. Sportingbet claims to be the largest in Australia.⁷ It is a part the similarly named group that was formed in London but elected to base itself in Guernsey in September 2007 as a consequence of UK regulation. The company pays a 'voluntary' levy to the UK Horserace Levy Board.⁸

A speculative query is raised. What if the Australian Governments adopted all of the proposals of the Commission? Sportingbet grew massively larger through the removal of the various restrictions such as the IGA Act and the TAB monopolies. Consumers were almost competing to become its customers. Then in this scenario the company decided the harm minimisation proposals were too onerous and moved its operations to Norfolk Island or Vanuatu so as to avoid implementing the harm minimisation.

Page 13.32

The question as to whether product fees should be based on revenue or turnover is dealt with on pages 13.27 to 13.31. Then the reader is informed:

...consumer interests are better served by product fees based on gross revenue. This in turn, will enhance the prospects for both racing and wagering to remain relevant and vital industries in Australia.

Significantly the Commission draws on UK evidence to support this finding. In its wholehearted support for a gross revenue fee at least one issue seems to have been overlooked. This issue is the potential for fee minimisation. What if, for example, a professional started a new betting exchange undercutting the Betfair commission range? The professional engages a stooge who will be the largest customer enjoying the lowest commission rate. The professional actually lays large amounts of bets through the stooge. Obviously racing loses on the gross revenue model. A turnover base is easily the best being simple and readily audited. Dealing with the size of product fees:

Of those who use gross revenue...most racing authorities in Australia charge 10 per cent, which matches the levy applied in the UK. Setting the levy above these indicative figures would risk the movement offshore of on-line wagering providers to avoid the levy.

Again the UK model is referenced. At page 13.29 the Commission quoted from the 2008/09 Annual Report of the UK Horserace Betting Levy Board as a justification for its choice of gross revenue. It took this quote from the Chairman's Statement. Perhaps it may have been expedient for it to have also read the Chief Executive's Review in the same document. There may be found:

The Board remains concerned about the leakage to the levy from horseracing business lost to offshore operators.⁹

As already noted in these comments Sportingbet is one that has moved offshore and Ladbrokes has announced it intends to do the same. In October 2009 Sportingbet announced its intention to pay a 'voluntary' levy. Obviously from the Levy Board report not all that have moved from the UK are of a like mind.

⁷ Sportingbet.com.au

<http://www.sportingbet.com.au/ui/pub/sport.aspx>(accessed 3 December 2009)

⁸ Sportingbet PLC

<http://www.sportingbetplc.com/company%20snapshot.aspx>(accessed 3 December 2009)

⁹ Horserace Betting Levy Board 2008/09

<http://www.hblb.org.uk/sndFile.php?fileID=47>(accessed 3 December 2009)

It is clear that even a low fee may not keep the operators onshore once they have gained the market penetration they are seeking.

By this page any reader of the Commission's report will have concluded that it favours the UK funding of racing model, albeit with variations as set out in pages 13.33 and 13.34. But as already noted the Commission appears to have reached this view without an adequate study of that UK model. If this section is to remain in the report it is proposed it be rewritten after an examination of reference works such as:

- David Dixon, 1991, *From Prohibition to Regulation: bookmaking, anti-gambling and the law*, Clarendon Press.
- Christopher Hill, 1988, *Horse Power: the politics of the turf*, Manchester University Press.
- Roger Munting, 1996, *An economic and social history of gambling in Britain and the USA*, Manchester University Press.
- Woodrow Wyatt, 1985, *Confessions of an Optimist*, Collins.

These works reveal the extent of the political lobbying that occurred before and after each decision concerning racing and wagering. Taken together with more recent developments and many years of observation the data allows the construction of the following list of opinions formed by this commentator:

- Prior to the 1960 decision to legalise off-course bookmakers' shops there was but minimal evaluation of a TAB-style alternative.
- Following the 1960 decision there were more than 10,000 individual off-course shops in the UK.
- By 1991, through takeover and other attrition, there were only three major chains running the vast majority of the thousands of shops.
- This was hastened by the Government decision of 1986 to ease the regulations governing the shops. The original regulations sought an uninviting interior hidden from the view of the passing public while the new allowed a great range of facilities obvious to the street. The major chains had the capital resources to take advantage of the changes.
- Price competition, strong early, was minimised by the 1990s.
- Illegal (street) betting operations disappeared after 1960 but reappeared once the betting duty, incorporating the levy, was introduced in 1966. Thus some consumers wanted only a zero sum fee.
- Each version of the levy, there have now been 48, has been the subject of acrimonious debate amongst the parties and the UK Government has frequently needed to make a King Solomon style determination.
- Twice the UK Government has set out to abolish the levy. The most recent decision being in March 2000.¹⁰ On 14 December 2006 the Government acknowledged its attempt had failed.¹¹

¹⁰ Home Office

<http://www.homeoffice.gov.uk/documents/cons-2001-horserace-betting?view=binary>(accessed 3 December 2009)

¹¹ Department Culture, Media and Sport

<http://www.culture.gov.uk/images/publications/levywrittenstatement-14december.pdf>(accessed 3 December 2009)

- The current trend for major bookmakers to move offshore is a repeat of their actions in 2000-2001. This was reversed when the Government abolished the duty + levy and replaced it with a 15 per cent profits tax, including a levy, in 2002.¹²
- A view has been formed that the UK racing industry is inferior to that of Australia. It is, however, rare for such a negative statement to be made by an interested party in the UK. This commentator though is aware of the following:

Summary and Conclusions

The off-course betting industry in the UK is labouring under unnecessary cost pressures which are detrimental to the interests of both employees and customers. The former suffers from low wages, the latter from the bookmakers' emphasis on margins rather than turnover and the consequent high take-out rates.

These pressures on the betting industry affect the racing industry too. All over the world horse racing is either funded substantially from the revenues of the betting industry or is lacking the funds to reward participants adequately and sustain industry viability. The UK horse racing industry is in the latter situation.¹³

These comments now return to the examination of the Commission's report.

Page13.34:

...a racing and wagering tribunal should be established to set the levy that the wagering industry pays the racing industry...It should be headed by a three person panel selected on the basis of their background (with a particular focus on consumer affairs) and independence. If necessary, the panel may also be supported by a secretariat that provides research and advisory services.

Apart from the emphasis on consumer affairs an arrangement much like that which has existed for decades in the UK. The UK arrangement is one that has caused endless arguments, dissatisfaction on all sides, and is one that the Government has tried to abandon.

Who are the consumers?

The Commission has heavily emphasised the need for primary attention to consumer needs. But who are the consumers and what are their needs? The NSW Cameron Review also took a view of a single group of homogenous punters. This commentator's response was:

These observations (by Cameron) are, it appears, based upon the premise that all punters are equal. This is not the position and consequently flaws are to be seen in the views. The majority of punters in NSW do not have an account with any of Interstate TABs, Corporate Bookmakers in the Northern Territory or even in NSW, or Betfair. The mean average bet made with TAB Ltd is for \$10.¹⁴ The mode average is almost certainly even lower. A study of 1995 sales showed that 88% of all TAB bets were for amounts of \$10 or less.¹⁵ It can be considered highly unlikely that Bookmakers or Betfair are desperately seeking to place this majority of punters on their books.¹⁶

The vast majority of TAB punters and thus consumers bet that way for convenience. They would have little concern for the fact that on race one at Royal Randwick, Saturday 28 November 2009,

¹² BBC Sport

http://news.bbc.co.uk/sport2/hi/front_page/1207748.stm(accessed 4 December 2009)

¹³ David Dillon, 1995, *The Bookmaker, the Totalisator, and the Future of the UK Betting Industry*, Report commissioned by the Marquess of Zetland, Richmond, North Yorkshire.

¹⁴ IPART

<http://www.ipart.nsw.gov.au/files/TAB%20Limited-S5678.pdf>(accessed 3 April 2008)

¹⁵ NSW TAB, 1996, *Minimum Bet Review*, unpublished.

¹⁶ NSW OLGR op. cit.

the winner paid TAB \$14.90, and bookmakers SP \$15.00. The latter was also best fluctuation. A \$1 difference on the outcome of a \$10 bet would not have sent them into state of fixation to immediately sign up with an on-line corporate bookmaker. On the other hand the minority of consumers using Betfair or a corporate bookmaker and outlaying hundreds or even thousands of dollars would be most concerned. On which group of consumers must the Levy Panel concentrate its attention: the vast majority looking for convenience or the frequently vocal big-betting minimal minority?

‘Tote-odds betting’ pages 13.38 to 13.41

Before looking at the specific points and findings within these pages an obvious question has to be put to the Commission. Did not anyone in this inquiry find it incongruous that on-line corporate bookmakers have a claimed take-out of six per cent as opposed to the TAB minimum, as found by the Commission, of 16 per cent, yet ‘tote-odds’ betting by the bookmakers is an attractive product for consumers? In gambling the difference is huge. This commentator deliberately omits a solution to the conundrum. The answer is not the infinitesimal amount the corporate bookmaker offers over the best TAB dividend.

At pages 13.38 and 13.39 the Commission finds two advantages for punters in ‘tote-odds’ betting: value and the avoidance of crushing. The first, as has been set out above, is often an illusion while the decision to ‘crush’ or not remains with the bookmaker and is thus out of the punter’s control. The Commission overlooks two other issues here: betting on credit and rebating. The Commission concludes its consideration of the issue with an opinion on the interpretation of copyright law that essentially warns if preference for on-line corporate bookmakers is not accepted then it:

...would set a highly problematic precedent for competition in Australian markets more generally.

Credit Betting

Almost uniquely in this Section the issue is seen to the subject of balanced consideration. One element though has been overlooked. The TAB in NSW was able to provide credit betting from its early years of operation through the simple process of a bankers guarantee. The process overcomes most of the problems of potential harm for consumers and duty-of-care for operators by transferring the due diligence to the banker who is best placed to determine the suitability of the applicant for credit and the monetary threshold that should apply.

Inducements to Bet

The discussion at page 13.44 overlooks the largest inducements of all: rebates. These are typically given only to the biggest betting consumers. It might be noted though that rebating in totalisator operations is a basic contradiction of the ‘pari mutuel’ concept that the winners share the pool equally based upon the size of their input. If the totalisator operator can afford to pay significant rebates why not apply the available funds to an overall reduction in the take-out rate so that all consumers benefit equally?

Exclusivity Arrangements

At page 13.46 the Commission finds:

The arguments for renewing TAB retail exclusivity are not compelling.

If valid then this logic should presumably also be applied to lotteries, casinos, keno and even EGMs. No doubt supermarkets would be pleased to compete with hotels to place the machines in their premises just as is done in Las Vegas.

Section 14 Regulatory processes and institutions

This researcher found absolute agreement with the statement at page 14.13:

Local councils may need more expertise to represent the views of their local community on gambling issues.

While local government intervention into gambling issues appears to be a highly significant matter only in Victoria the statement is valid for many representative bodies and even those that seek to help gamblers with a problem.

Cognitive problems are not confined to EGM players and this researcher is frequently dismayed by media statements made by persons who obviously lack the knowledge but who still want to represent themselves as an 'expert' on some gambling issue.

Section 15 Gambling policy research and evaluation

Nothing found within the draft report causes this researcher to vary the views expressed in his original submission or in the introduction to these comments.

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