

DRAFT

**NSW RACING INDUSTRY CONSULTATION
GROUP**

**SUBMISSION IN RESPONSE
TO PRODUCTIVITY
COMMISSION DRAFT
REPORT ON GAMBLING**

18 December 2009

1. INTRODUCTION

The NSW Racing Industry Consultation Group (RICG) welcomes this opportunity to provide a written submission in response to the Productivity Commission's Draft Report on Gambling, following our appearance at public hearings in Sydney on 1 December 2009.

By way of background, RICG is a statutory body established by the Thoroughbred Racing Amendment Bill 2008 under the NSW Thoroughbred Racing Act 1996. RICG has the function of consulting with and making recommendations to Racing NSW — the regulating body for thoroughbred racing in NSW — on matters concerning horse racing in NSW.

Membership of RICG is made up of a representative from each of the Australian Jockey Club, Sydney Turf Club, provincial race clubs in NSW, country race clubs in NSW, thoroughbred racehorse owners, thoroughbred racehorse trainers, NSW jockeys, thoroughbred breeders in NSW, and NSW unions. As such, RICG is the representative body for the NSW thoroughbred racing industry.

This submission focuses on the analysis, findings and recommendations presented in Chapter 13 of the Draft Report, titled 'Developments in Racing and Wagering Industries'. It is presented in five sections, as follows:

- Section 2 summarises RICG's understanding of the Productivity Commission's key findings and recommendations in relation to wagering;
- Section 3 explains our views and position in relation to the Commission's draft recommendation to establish a new national regulator;
- Section 4 explains our view and position in relation to the proposed design of a national racing industry levy; and
- Section 5 concludes.

2. OVERVIEW OF THE COMMISSION'S KEY FINDINGS AND RECOMMENDATIONS IN RELATION TO WAGERING

The Commission has recommended that a national regulator should be established to set a single, uniform levy to be paid by wagering operators to the racing industry in a manner that approximates the function of a competitive market.

In other words, the Commission is proposing that a national body be set up to determine the price that the industry can charge for one of the products it produces; namely, race fields information. The Commission appears to be satisfied that the price of other equally important products produced by the industry - such as the provision of a racing and training venue for horse owners and racing spectacles for punters and non-betting patrons – should continue to be priced by the Race Clubs.

The effect of this recommendation is to substantially reduce the industry's influence over the setting of the price on an important output and important source of revenue.

The Commission justifies this recommendation on the grounds that:

1. There are arrangements in the industry that the Commission has judged to be anticompetitive; namely: (a) the granting of monopolies in the past (e.g. to TABs); and (b) the provision in race fields legislation for mandatory payments by wagering operators to state-based regulators in return for their use of the information service that is produced by Race Clubs. The Commission believes these arrangements reduce the scope for entry by innovative suppliers offering lower prices to consumers (page 13.1);
2. Differences in regulatory arrangements across states and territories under the current arrangement have led to costs, which the Commission describes as “undue” and presumably believes are avoided with the establishment of a national regulatory regime (page 13.1);
3. The current funding arrangements do not efficiently allocate resources to the racing industry at a national, state or local level (page 13.5); and
4. There is a lack of clearly enforceable property rights, which suggests that instituting a unregulated free-market would be an inappropriate solution to the issue of funding the racing industry (page 13.27).

In terms of how the national funding model would work, the Commission envisages that:

1. The national regulator would set the single, uniform levy to be paid by wagering operators on a gross revenue basis (page 13.31);
2. The levy should replace all other product fees currently paid by the wagering industry to the racing industry, but need not affect other funding channels, such as sponsorship of race meetings (page 13.33);
3. An appropriate range for a product fee might be between 5 and 20 per cent of gross revenue (page 13.32);
4. The rate of the levy should be set so as to maximise consumer interests and be the same for all wagering operators (pages 13.1 and 13.32). However, the Commission has signalled that if it is anticipated that it may be appropriate that TABs pay a premium on top of the levy if they “continue to enjoy” a significant degree of market power (page 13.32); and
5. The Commission prefers that state and territory racing authorities should distribute levy proceeds to Racing Clubs (page 13.36).

We cannot support the recommendation to establish a national regulator. Even if we did support such a recommendation, we would not support the proposed funding model. More specifically, we do not support the charging of a single, uniform levy irrespective of the quality of racing events and we do not support the setting of the levy as a percentage of gross revenue.

In the remainder of this submission, we explain why we have reached this position.

3. NO NEED FOR A NATIONAL BODY TO SET RACE FIELDS FEES

In our view there is no need for a national regulator to set a single, uniform racing industry levy because:

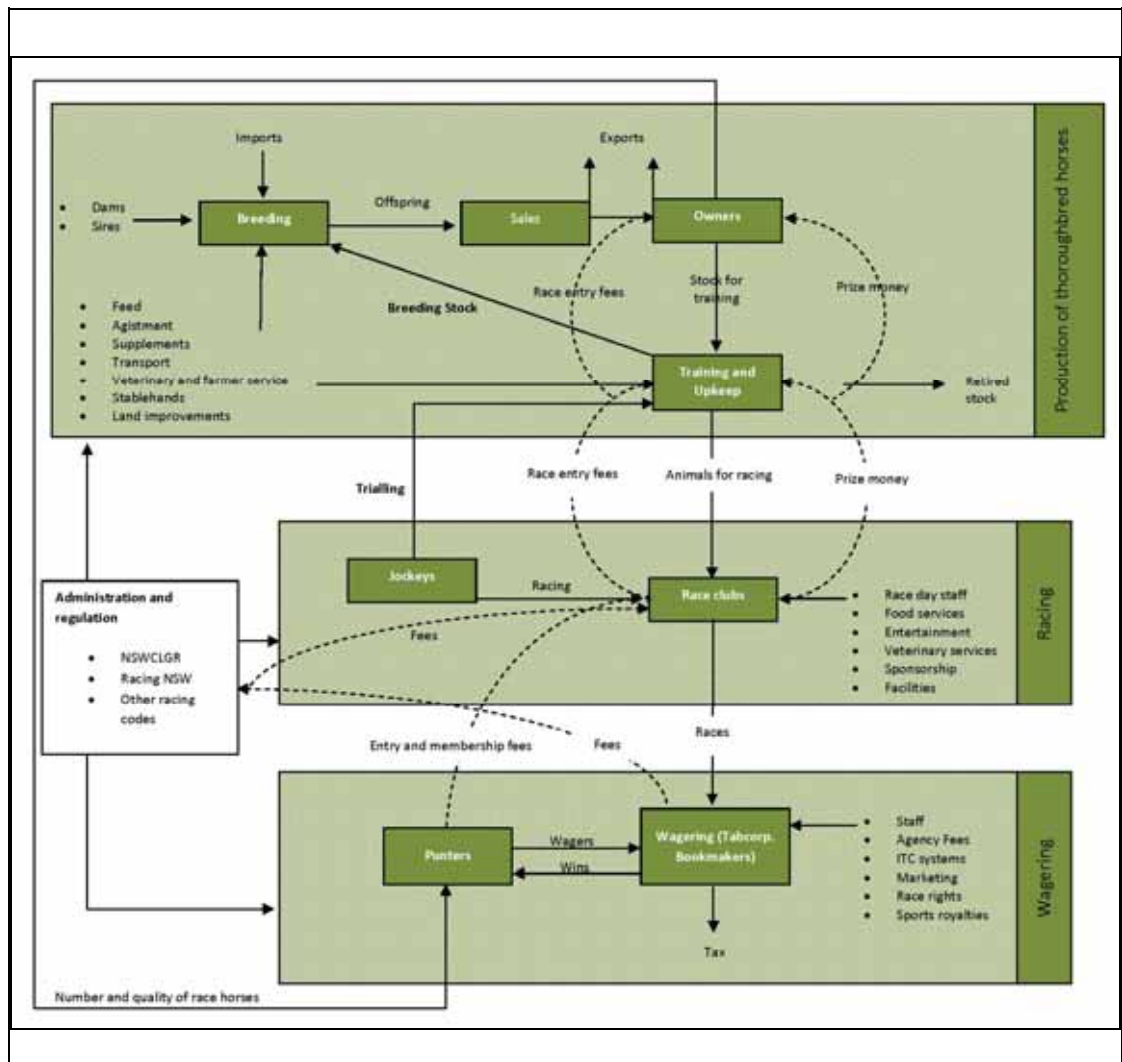
- Race Clubs in New South Wales are in an ideal position to set race fields fees and play a key role in the setting of such fees through their close working relationship with Racing NSW;
- We do not find the concept of a 'retail monopoly on off course betting' at all useful as it ignores the existence of other products and providers that are disciplining the price and level of service provided by TABs. In any event, TABs exclusive rights are due to expire in 2012 — around the time that the Commission's proposed national regulator would open for business;
- There is now sufficient and (importantly) growing competition in the wagering market to discipline price and service offerings provided by the industry. It is therefore difficult to justify the proposed intervention as an act to overcome anticompetitive (monopoly) outcomes;
- The Commission overstates the "burden" placed on wagering operators to participate in a system that allows the race fields fee to vary across states, types of race and seasons;
- The Commission does not acknowledge the likely and potential economic costs of its proposed regulatory arrangement, including administration costs and the consequences of "regulatory failure". We believe that these costs could be very high, particularly if the Commission retains its preference for a single, uniform levy; and
- There is a potentially less costly, more market-based alternative policy solution than the one proposed in the Draft Report.

We elaborate on each of these points in the subsections below.

3.1. RACE CLUBS THROUGH LOCAL RACING AUTHORITIES ARE IN THE BEST POSITION TO SET RACE FIELDS LEVIES

Race Clubs perform a key role in racing and gaming markets as market facilitator (see Chart 1). They bring together the racehorse owners by providing a program of competitive races for their horses upon which the wagering consumer bets. Racehorse owners provide the racing product and are paid by the Race Clubs for their service through the provision of prize money. Prize money is paid by the Race Clubs largely from revenue they receive, via the TAB distribution, from wagering by punters on the races they provide.

Chart 1 The key role played by Race Clubs in the NSW thoroughbred racing and wagering industry



Source: Modified version of a chart presented in Boston Consulting Group 2008, *Report to Racing NSW: Response to the Independent Review on Wagering in NSW*, July, p. 5.

As market facilitator, Race Clubs understand that a successful racing event, and racing industry, requires the careful balancing of the interests of punters and horse owners. Clubs strive to strike the right balance between these interests so as to maximise the overall value of racing events. In other words, Race Clubs understand that the interests of each side of the racing equation is dependent on the other. Without owners, punters would have no horses upon which to wager and without punters there would be no wagering returns to convert into prize money and therefore no incentive to race. Higher prize money attracts larger race fields and race fields of higher quality. Conversely, larger race fields provide greater betting opportunities and a greater spectacle for punters and non-betting patrons.

Race Clubs have several devices or levers at their disposal to ensure that the interests of both sides of the racing equation are balanced. These devices, represented by the dotted

lines in Chart 1, include prize money per race, race entry fees¹, track training fees, venue quality, patron entrance and membership fees and race fields fees (see Chart 1).

With respect to race fields fees we note that such fees currently are not directly set by Race Clubs in New South Wales. However, Racing Clubs have worked closely with Racing NSW and the NSW Government to set the newly introduced race fields fee and believe they can play an even greater role (individually and through RICG) in the setting of this fee at an appropriate level in the future.

It is important to understand that the fee does not simply recover the cost of disseminating race fields information. It also makes a significant contribution to the cost of producing this information (i.e. the costs of running the relevant event) along with other fees charged by Race Clubs, which vary across events and over time to reflect demand-side and supply-side conditions.

When adjusting any of these devices, including race fields fees, Race Clubs know that the interests of each side of the racing equation are dependent on the other and that the maximisation of the value of racing events requires a balancing of the interests of both sides of the racing equation.

On the consumer side, Race Clubs rely on the race fields fee as a device for influencing the attractiveness of both on course and off course consumption of their racing product by punters. The Clubs know that if the race fields fee is set too high they will render an event relatively unattractive to punters and will attract lower wagering returns and, hence, lower prize money for producers. This would make the event less attractive to producers, resulting in a lower number of starters. Conversely, if the race fields fee is set too low, the Clubs know that they will render an event highly attractive to consumers but at the expense of horse owners, who may have to accept lower prize money in order for the Racing Club to recover costs. Events that are relatively unattractive to producers will attract fewer starters and hence reduce the spectacle for punters and non-betting patrons and also reduce betting opportunities for punters.

The Commission's recommendation that the setting of the racing industry levy be transferred to a single, national regulator effectively removes from Race Club influence one of the key devices available to Clubs to balance the interdependent interests of punters and non-betting patrons, on the consumer side of the racing equation, and racehorse owners, on the producers side of the racing equation.

This will undermine the ability of Clubs to influence the attractiveness of their racing product to punters (i.e. by varying the mix of revenue they receive from non-betting patrons versus punters). Consequently, the arrangement would make it more difficult for Race Clubs to maximise the value of racing events and, hence, joint returns to consumers and producers.

This is especially the case because the Commission proposes that in setting the level of this one price in a two-sided racing equation, the national regulator should only aspire to maximise the consumer interest – i.e. one side of the two-sided racing equation that Racing Clubs coordinate. We discuss the appropriateness of the proposed regulatory objective in section 4.2 below.

¹ As part of the process of balancing the interests of consumers and horse owners, race entry fees currently are set at zero except for a limited number of elite races.

3.2. OVERSTATEMENT OF DETRIMENTAL IMPACT ON COMPETITION OF TAB RETAIL OFF COURSE BETTING MONOPOLY

We do not find the concept of a “retail monopoly” in off course betting appropriate as it does not take account of other avenues for off course betting that are available to punters in each jurisdiction. For example, in New South Wales bookmakers are now able to take off course bets over the phone provided that they field bets at a racecourse or betting auditorium. The Minister has recently announced changes to allow these same bookmakers to also take off course bets via the Internet and for 24 hours a day.

We submit that a broader definition of the market than the one defined by the Commission is called for. We suggest that it should at least encompass all forms and sources of off course betting and all off course betting providers, not just TABs. For convenience, we will call this the ‘market for off course betting’.

From Race Clubs’ perspective, the market for off course betting is competitive. We believe the ability of bookmakers, who have lower cost structures than TABs, to take bets off course is limiting the ability of TABs to sustain monopoly prices on off course betting services. We consider this further in section 3.3 below.

We are also concerned that the Commission does not give due recognition to the fact that the “retail monopoly” rights that were granted to TABs were sunsetted and are due to expire in 2012 – probably about the same time that a national regulator, if endorsed by government, would open for business. There is widespread expectation in our industry that more liberalised arrangements will apply from 2012 onwards

In our view, this means that the relevant counterfactual for assessing the need for a national regulator is the world that will exist from 2012 onwards. In other words, we believe the Commission should focus on competitive conditions that are likely to prevail from the time that the proposed national regulator would open for business. We accept that these are difficult to anticipate as there is uncertainty about the nature of any new administrative arrangements that will apply to TABs once their “retail monopoly” expires.

For this reason, we believe it would be prudent to delay any final decision on whether to establish a national regulator until at least 2012 when the new administrative arrangements for the TABs after 2012 are known.

3.3. THE WAGERING MARKET IS COMPETITIVE AND SET TO BECOME EVEN MORE COMPETITIVE

RICG recognises that competition and efficiency in the provision of racing and gaming services in the past may have been deficient. RICG also believes that the industry is very much aware that it cannot stand still and that it is under challenge from competitive forces.

These competitive forces and the industry’s own desire for improved performance have led to a period of internal review and improvement that is ongoing. This is evidenced by the development of race fields legislation, merger activity, consideration of take-up of opportunities for shared processing, rationalisation of staff numbers, etc.

Given the momentum for review and reform within the industry, it is very surprising that the Commission has so quickly dismissed the option of market-based solutions to remaining competition and efficiency concerns.

We are concerned that the Draft Report has not given due regard to the pro-competitive forces within the market as a result of, for example, recent technological developments, liberalisation of off course bookmaking and competition in the horse racing industry (discussed further below). As competition continues to develop, it is reasonable to expect that industry participants will face greater pressure to seek out and address any residual inefficiency in the industry so that the racing industry levy, and indeed other charges in the system, are set to recover only efficiently incurred costs.

3.3.1. Recent technological developments

Prior to the development of the Internet and ICT innovations that facilitate non face-to-face (MOTO) transactions, each state effectively had a monopoly on its racing product largely because it was very costly for a punter from one state to place a bet in another state.

With the widespread access to the Internet and remote payment facilities, punters and wagering operators are able to transmit information over long distance at very high speeds at relatively low cost. These technological developments, coupled with the deregulation of off course bookmaking, have prompted significant new entry in the wagering market in the form of alternate wagering outlets such as corporate book makers and betting exchanges.

3.3.2. Liberalisation of off course bookmaking

The establishment of corporate bookmakers in the Northern Territory, Tasmania and the ACT has provided substantial competition for traditional wagering outlets such as the TAB and on course bookmakers.

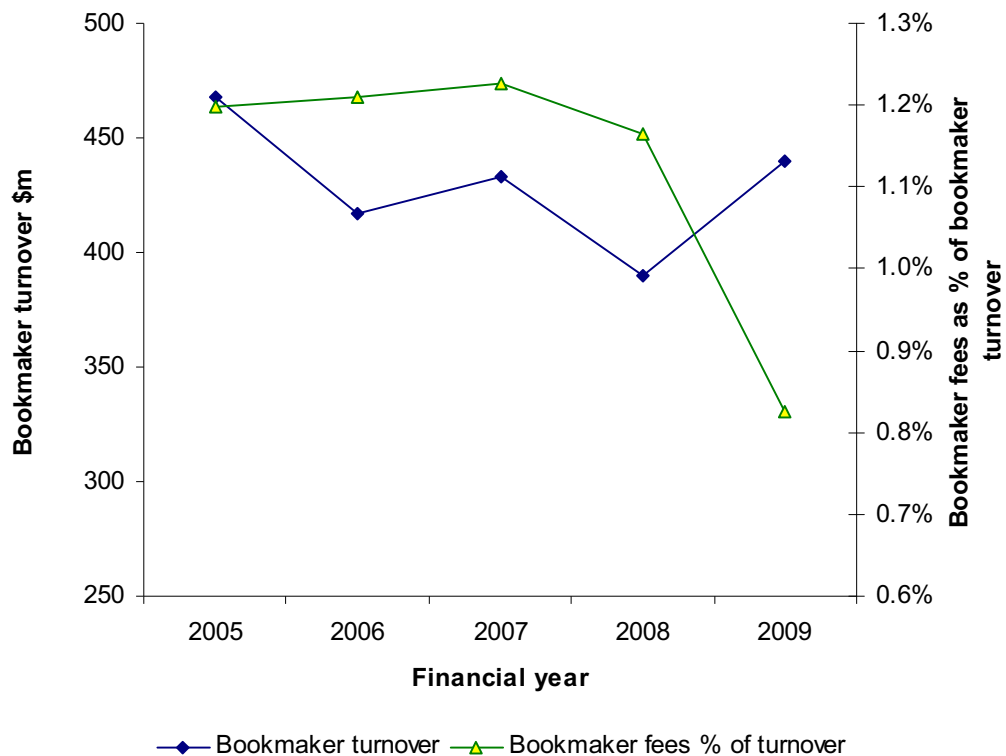
As the Northern Territory experience demonstrates, corporate bookmakers currently can and do actively contest the price and service offering of traditional wagering outlets such as state-based TABs and on course bookmakers by virtue of their lower cost structure and their ability to locate in jurisdictions that offer the most attractive taxation arrangements.

Earlier this decade the Northern Territory Government began lowering its tax on corporate bookmakers. It also did not require corporate bookmakers to make a contribution to the racing industry. Consequently, the cost of a wager in the Northern Territory dropped dramatically relative to the cost of a wager in other Australian states. This meant that, for example, a punter located in NSW and seeking to bet on a NSW racing event could earn a higher return by placing their bet online with a corporate bookmaker located in NT rather than through the NSW TAB. As a direct result, the Northern Territory has rapidly increased its share of national racing turnover from less than 1 per cent in 2002-03 to 17% by 2006-07 and 22% by 2008-09.

At page 13.7 the Commission refers to the 25% market share (in terms of turnover) that is accounted for by corporate bookmakers but simply dismisses this as “relatively small”. As the Commission is no doubt aware, in many markets producers collectively accounting for less than a quarter of the relevant market can impose a very strong competitive discipline on price and levels of service offered in the market.

Indeed, in response to the growth and competitive advantage that corporate bookmakers have in certain jurisdictions, the Sydney Turf Club and the Australian Jockey Club in September 2008 lowered their fees charged to on course local bookmakers from approximately 1% cent of net bookmaker turnover to about 0.33% of net bookmaker turnover for bookmakers whose turnover was below the Race Fields Legislation threshold of \$5 million per annum. Chart 2 shows the downward trend in fees charged to on course bookmakers over the last 5 years.

Chart 2 On course bookmaker turnover and bookmaker fees at AJC and STC events



Source: Australian Jockey Club 2008-09 Annual Report, p. 49 and Sydney Turf Club 2008-09 Annual report, p.21.

3.3.3. Competition in the horse racing market

Additionally, competition in the horse racing market is disciplining the price and service offering in the wagering market. Horse owners are reasonably mobile in their decisions on where and when to race their horses (events and jurisdictions). Any Club that set prize money too low, would find it difficult to attract a large field to the relevant event. Prize money may be relatively low in situations where race fields levies are set too high and, as a result, deter betting on the relevant event.

In our view there is compelling evidence of significant and growing competition in the wagering market. Consequently, we do not believe any jurisdiction will be able to sustain race fields fees that are substantially above the level that would prevail in a competitive market, taking into account the quality of the racing event that Race Clubs supply.

3.4. OVERSTATEMENT OF REGULATORY BURDEN ASSOCIATED WITH CURRENT ARRANGEMENT

In our view, the Commission has overstated the “burden” placed on wagering operators to participate in a system that allows the race fields fee to vary across states and regions, types of races and seasons.

This is firstly because the Commission does not appear to recognise that the observed difference in the race fields levies is a normal market response to product heterogeneity. In short, differences in race fields fees reflect differences in the cost and value of racing events and, hence, in the extent of costs to be recovered through the devices used by the industry to recover costs, which include the racing fields levy. The cost and value of racing events varies depending on a variety of factors, including: the quality of the event (which is influenced by prize money); the type of race (thoroughbred horse racing, dogs, trots, etc); and the timing of the event (e.g. during Spring carnival or not).

In other markets, the Commission appears to accept the need for differential pricing across and within jurisdictions as an efficient and pro-competitive response to differences in cost and in consumer valuations. The Commission appears to understand that sometimes competition looks messy and does not result in a single, universal price. What is it about the racing industry that has caused the Commission to regard “inconsistent race fields fees” as per se problematic as the wording on page 13.16 suggests?

Secondly, the Commission makes reference to Tabcorp’s statement that it has to comply with up to 72 domestic race fields agreements – with different charging methods, compliance and reporting requirements. While 72 may seem a high number, we would be surprised if this imposed significant administration costs on a TAB given the availability today of sophisticated and high speed data handling, manipulation and storage systems at relatively low cost.

3.5. THE COSTS OF REGULATION AND REGULATORY FAILURE CANNOT BE IGNORED

We believe that the economic costs associated with the proposed intervention could be very high, particularly if the Commission retains its preference for a single, uniform levy.

We were surprised to find that at no stage does the Commission acknowledge the likely and potential economic costs of the proposed intervention, including (additional) administrative costs and the consequences of “regulatory failure” – i.e. outcomes that are inferior to those that would prevail absent the proposed intervention. Indeed, the Commission does not mention the possibility of regulatory failure or disclose the potential adverse consequences of such failure for horse owners, punters and patrons attending race events in the short and long run.

3.5.1. Additional administrative costs

The Commission is proposing that the national arrangement should replace existing state-based arrangements for the setting of race fields fees. However, the Commission recommends state regulatory authorities retain responsibility for distributing racing industry levy revenues to Race Clubs (page 13.35).

The Commission makes no comment on whether it expects that the administrative cost associated with the proposed national arrangement would compare with the administrative cost of either the current arrangement or an arrangement that allowed Race Clubs to play a direct role in the setting of racing industry levies. We encourage the Commission to address this omission in its Final Report.

If there is no need for this body (for the reasons set out in sections 3.1 to 3.4 above) and no savings from the downsizing or abolition of state-based regulatory authorities, then is it not the case that all the costs of establishing and running the national body represent a loss in productivity for the Australian economy?

3.5.2. Consequences of setting the levy too high or too low

We do not believe that the costs borne by the industry (and ultimately consumers) will be trivial if the regulator sets the levy too high or too low.

RICG submits that the outcome of a pricing mechanism that set the racing industry levy too low or set it to recover the costs to provide the cheapest product without regard to differences in the level of service, is very similar to the consequence of permitting free-riding by wagering providers as articulated by the Commission at page 13.1 of the Draft Report. That is, it “poses a risk to the longer-run viability of the racing industry and would have detrimental consequences for the communities where racing plays a key role. More importantly, such a decline would also adversely affect consumers of wagering and racing products.”

From New South Wales’ perspective, the proposed arrangement has the potential to reduce investment and employment in the industry, which would further challenge industry sustainability and reduce the racing industry’s capacity to contribute tax revenue to government. It could possibly lead to an overall reduction in tax revenues to New South Wales to the extent that resources (capital and labour) that otherwise would have been employed in the racing industry are reallocated to less taxed uses.

Moreover, we find it very difficult to conceive of how even a well-informed and well-intentioned national regulator could come up with a single levy that simultaneously achieves greater efficiency at national, state and local levels than an arrangement where Race Clubs play a direct role in the setting of the racing industry levy.

We expect that a national regulator will struggle to distinguish differences in the quality of racing information and racing events, as well as Race Clubs. This is important because providers of higher quality racing information and racing events are likely to incur higher costs and therefore require higher compensation and the racing industry level is an important source of such compensation.

Even if the national regulator could perfectly distinguish the quality of racing information and racing events, the requirement that the levy be uniform increases the risk that a Club that offered a superior quality product would not receive fair compensation and increase the likelihood that a Club that offers lower than average quality will receive excessive compensation. Even if state racing authorities were to distribute levy revenues within their jurisdiction on some quality-sensitive basis, the overall funding that state racing authorities receive will tend to over compensate jurisdictions that, on average, offer lower quality racing

products and under-compensate jurisdictions that, on average, offer higher quality racing products.

As a result, Race Clubs may under-invest in higher quality racing products, including race fields information services, relative to the level of quality that would prevail in a competitive market that is not subject to such regulation.

We also cannot conceive of any way in which a single, uniform levy can be more efficient, when it is set at the same level, irrespective of the level of other fees and charges associated with a racing event. We know that better quality fields (e.g. as a result of higher prize money) and more starters per field lead to higher turnover at individual events. A single, uniform levy arrangement by definition will not take account of differences in these variables. The effect of the single, uniform levy model is therefore to remove one of the levers currently available to Race Clubs to balance the interdependent interests of consumers and producers.

3.6. POTENTIAL FOR A LESS COSTLY ALTERNATIVE POLICY SOLUTION

The Draft Report proposes that an ideal funding model should serve consumer interests, have some degree of flexibility, promote competition, should reflect value and should be uniformly applied.

The Draft Report then only goes on to consider variations on a national regulator model.

RICG submits that the most competitive approach to the setting of an industry levy is for each jurisdiction to establish its own pricing regime based upon the value of the product it is offering for sale, with Race Clubs playing a key role in the setting of such levies.

The consumer would then decide on what to wager, depending on the prices. If NSW was too expensive relative to Victoria and other jurisdictions then turnover would fall and prices would have to be adjusted to meet the market.

If the wagering product as a whole was deemed to be too expensive compared to other wagering or gaming products then consumers would choose to wager elsewhere and racing would have to respond with cheaper prices.

If the product on offer was of sufficient quality that it commanded a higher price then why should the producer of that premium product be forced to accept a price based upon a lesser offering?

This is a more market-based solution than the one proposed by the Commission because it would allow the parties who bear the risk when the racing industry levy is set too high or too low (i.e. Race Clubs) play a greater role in the setting of such levies.

We further submit that in arguing for a national approach to funding in the wagering market, it was not the industry's intention that a third party set a national price for the race fields information product (or any other racing industry product), but rather that national laws could be enacted to enforce the right of each jurisdiction to set the price of the product and to enforce the registration of only legitimate wagering operators.

4. WE DO NOT AGREE WITH THE PROPOSED DESIGN OF A NATIONAL ARRANGEMENT

In this section of our submission we consider three aspects of the proposed design of a national arrangement:

- The setting on the levy on the basis of gross revenue;
- The appointment of only consumer advocates to head up the national regulator; and
- Expression of the proposed regulatory objective only in terms of consumer interest.

4.1. GROSS REVENUE VERSUS TURNOVER

The Productivity Commission has recommended that the racing industry levy be based on a percentage of the gross revenue received from punters (i.e. punter expenditure).

We note that punter expenditure varies across wagering products from approximately 17% of TAB turnover, about 6% of bookmaker turnover down to possibly 3.3% of turnover of betting exchanges.²

The Commission has justified the setting of the levy on the basis of gross revenue as opposed to turnover on the grounds that gross revenue:

- is already widely used as a basis for payment to racing and sporting authorities in Australia and internationally (page 13.31) and therefore offer greater flexibility in that they can support alternative business models;
- can be applied universally without disproportionately burdening certain types of wagering operators and is therefore more likely to promote competition (page 13.31); and
- is more likely to deliver better value to consumers and a wider range of wagering products (page 13.32).

We disagree with each of these propositions.

In our view, if there is to be a single, national levy – something that for the reasons I have already set out, we are strongly opposed to – turnover is a more appropriate basis for the levy than gross revenue. However, we believe that each jurisdiction should be at liberty to establish its own method of charging. Over time, if there are benefits to be gained from a harmonised approach as the Commission suggests then it seems reasonable to expect that harmonisation will occur via normal commercial negotiations between racing clubs, racing authorities and wagering providers.

It is important to keep in mind that the racing industry levy is designed to recover some of the cost the racing industry incurs in providing the race fields that the punter can wager on. It is not a tax but, rather, a fee that is paid by wagering operators in exchange for a product generated by the racing industry.

² Data source is Boston Consulting Group 2008, *Report to Racing NSW: Response to the Independent Review of wagering in NSW*, July, Table 6, p. 15.

Under a turnover approach wagering providers pay the same dollar fee for a piece of race fields information.

This dollar fee, when expressed as a proportion of total wagering provider costs differs significantly across the different types of wagering provider because some have lower cost structures than others. However, this is completely irrelevant for the design of a levy to recover some of the cost that the racing industry incurs in providing face fields.

The only way that it might be relevant is if the Federal Government were to require the national regulator to intervene so as to socially engineer the wagering market to realise a prescribed industry configuration that has a higher concentration of low cost (low quality) wagering services than would prevail absent such engineering. However, this type of social engineering should not be confused with the emulation of a competitive market.

Turnover has long been the currency in racing and wagering. It is easily understood, easily calculated and universal to all wagering operators who all calculate their operations based on turnover. The calculation of gross revenue, on the other hand, tends to differ across operators and is more readily manipulated by operators than turnover.

Setting the racing industry levy on the basis of wagering operator gross revenue also makes Racing Club revenues more exposed to market risks faced by wagering operators. It is not clear why the Commission would find this desirable, as Racing Clubs are not best placed to manage these risks. It also exposes the funding of racing events to large and unexpected variations as a result of differences in the performance of individual wagering operators.

4.2. STACKING A REGULATOR WITH CONSUMER ADVOCATES IS NOT THE SAME AS ESTABLISHING AN "INDEPENDENT" REGULATOR

The Commission has recommended that the national regulator should strive to maximise the consumer interest only (page 13.1) and should be headed by a 3 person panel with all panel members having a background in consumer affairs (page 13.34).

We respectfully submit that the relevant skills needed to maximise the consumer interest in the long run are those that enable the regulator to set fees so as to strike the right balance between the interdependent interests of consumers and producers.

4.3. CLARIFICATION OF THE REGULATORY OBJECTIVE

The Commission insists that the objective of the national regulator should be to maximise the consumer interest. We are concerned that this specification of the regulatory objective is prone to misinterpretation and creates investment uncertainty for Race Clubs by having the potential to undermine their ability to maximise the value of race events.

If the Commission retains this specification of the regulatory objective, it would be helpful it could clarify its intention. In particular:

- though the Draft Report is not clear, we assume that the Commission intends that the national regulator should maximise the consumer interest in the long run, not the short run; and

- how does the Commission intend that national regulator should manage the conflicting interests of different types of consumer? For example, there is a potential trade-off between maximisation of the consumer interest for punters versus non-betting patrons attending race events. All other things equal, a lower race field levy (which increases consumer surplus for punters) may require higher charges to patrons (and hence reduced consumer surplus for non-betting patrons) in order to recover race meet costs.

We remain of the review that the appropriate objective in the setting of the race fields information levy should be the same as for other products produced by Race Clubs and that is to strike the right balance between the interests of consumers (i.e. patrons and punters) and producers (horse owners) so as to maximise the value of race events. We do not see how a national regulator would be more capable of achieving this balance than Race Clubs in close consultation with racing authorities.

5. CONCLUSION

Much of the work of the Productivity Commission report in relation to wagering has been based upon the old funding model with TAB state-based monopolies. Race fields legislation introduced into NSW and other states has changed that old landscape forever with the breakdown of the “gentleman’s agreement”. Wagering returns will in the future be aligned more closely to the wagering product produced. Greater competition has also been introduced into the market in the last years and will continue and drive out any remaining inefficiencies.

We do not agree with the Commission’s finding that race fields legislation “poses significant risks for effective competition in wagering, potentially affecting the longterm future of racing and wagering, and, more importantly, the punters who ultimately finance both of these industries” (page 13.23).

We believe that the Commission is wrong in its assertion that the market is incapable of setting race fields levies at appropriate rates and in fact we assert that it is imperative that the market does set appropriate rates through the local industry authorities.

While there is scope for further improvement in state-based governance arrangements, we believe the Commission is too dismissive of the momentum for structural reform within industry, has not provided a rigorous assessment of the nature and degree of competition in the industry, and has failed to recognise the incentives that exist within Race Clubs to set race fields information levies so as to balance the interdependent interests of consumers and producers of racing products.

In our view the Commission’s call for a single, national regulator to impose a single, uniform racing industry levy poses a significant risk for effective competition in wagering by stifling incentives to innovate and offer higher levels of service.

We further submit that race fields levies should be set as a percentage of turnover and not of gross profit. However, each jurisdiction should be at liberty to establish its own method of charging a fee and the market decide its appropriateness.

Finally, we submit that the Commission has not allowed sufficient time for the changes in the funding model proposed by Racing NSW and other State based jurisdictions to take effect on

the market. We believe that those changes applied with national jurisdiction will be the catalyst for change within the thoroughbred racing industry.