

# AUSTRALIAN *PUNTERS'* ASSOCIATION

August 17<sup>th</sup>, 2008

NSW Office of Liquor, Gaming and Racing

Dear Review Committee

## **INDEPENDENT REVIEW OF WAGERING IN NSW, 2008**

We attach the revised Submission from the Australian Punters' Association "(APA)" to the above review. We would like to point out that any criticisms of Racing NSW contained in the Submission (and there are many) should not be taken to include any criticism of the Stewards.

### **Summary**

- Despite many misleading claims to the contrary, the TAB is NOT the primary funder of the racing industry. Instead, it is the punter. The TAB is merely an administrator which deducts money from a pari-mutuel pool, then allocates it in contractual fixed proportions to winning punters, government, the racing industry and to itself. No part of the TAB distribution received by the industry comes from Tabcorp Limited coffers, 100% comes from punters. Despite this, the "industry leaders" choose not to listen to punters, instead focusing solely on maximising revenue extraction from that group;
- The Government has a conflict of interest. That is between maximising taxation revenue and maximising benefit to consumers (i.e. punters). It has to date clearly chosen the maximum taxation revenue option. We believe that alternatives to a single pari-mutuel licence should be independently explored;
- We believe that, particularly in NSW, we have a classic case of the "tail wagging the dog". The TAB is merely one wagering operator, yet Racing NSW appears to operate in a manner which places protection of the revenue it receives from the TAB as its over-riding goal. There appears to be no willingness to explore other options and no clear growth strategy whatsoever;
- Continued over-reliance on pari-mutuel funding is a recipe for disaster, as is any short-term strategy designed to artificially handicap Tabcorp's competitors;
- The APA supports free and open competition, without State borders, or artificial props to defend the established quasi-monopolies which prevail in all States and Territories.

**Structure of the APA Submission**

Part 1 General Observations

Part 2 The Issues Paper

Part 3 The Background Paper

We look forward to participating in the next stage of this process.

Yours etc.

**AIDRIAN O'DOMHNAILL**

**President**

**Australian Punters' Association**

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# **PART 1**

## **GENERAL OBSERVATIONS**

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## PART 1

### GENERAL OBSERVATIONS

#### **1.1 Who are “Punters”?**

The Glossary to Volume 1 of the 1999 Productivity Commission AGI Report<sup>1</sup> had a rather simplistic method of dealing with the question. Punters could simply be divided into “problem gamblers” and “recreational gamblers”.

Fortunately, it is not quite so simple.

We note Mr. Alan Windross has suggested<sup>2</sup> that punters can be classified into groupings based on their betting selection methods:

- Logical (Complex Ratings, Multiple Parameters);
- Naïve (Fluctuations, Names, Followers, Simple Form, Tipsters, Other)
- Superstitious (Numbers/Colours, Names).

The latter two groups are usually combined to form the group commonly disparagingly known as “Mug Punters”.

These latter have quite different traits to their “Logical” counterparts, usually bet smaller, have less success, are ignorant of the concepts of “price” or “value” in betting and are in dire need of protection, both from themselves and from some less scrupulous wagering operators.

The more seasoned group has generally some awareness of the concepts of “price” and “value”, and will usually shop around to find the best avenue for their bets.

Obviously, most “Logical” punters began life as “Naïve”, and due to human frailty often slip back into that incarnation, particularly when losing.

For the purposes of this Submission, where we need to differentiate between punter types, we will simply refer to “sensible” and “more vulnerable”.

As we will explain throughout this Submission, punters are the backbone of the industry, fund almost 100% of it, yet are continually denied the opportunity to have any voice in the manner in which their funds are used. The industry sees a decline in its funding, as the punters correctly judge the current funding model to be far too expensive, and wonders what is to be done? The industry leaders’ response - increase the price!

<sup>1</sup> *Australia’s Gambling Industries*, Productivity Commission Inquiry Report, 1999

<sup>2</sup> Mr. Windross’ submission to this Review

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## **1.2 The Role of the NSW State Government**

Let us begin by quoting directly from the 1999 AGI Report<sup>3</sup>, Chapter 14 (emphasis APA):

### **“Key messages**

#### **Exclusivity arrangements:**

- Governments derive substantial revenue through licensing and taxation of gambling;
- there is an interdependence between exclusivity arrangements and tax policy;
- but providing exclusivity to maximise tax revenues *is unlikely to be good policy*.
- *Exclusivity can disadvantage consumers by raising prices and restricting choice.*
- *The provision of appropriate funding for the racing industry does not appear to require TAB exclusivity.”*

We believe that this Review should examine - in detail - the consequences of the granting of an exclusive pari-mutuel licence to Tabcorp, as opposed to the alternative of non-exclusive. To the best of our knowledge, the results of any such review that may have been undertaken – and surely at least one Government would have done so – has not been made public. One can only suspect that the over-riding concern has been to maximise the value of the licence, and that it would be inopportune and potentially embarrassing for the Government to have to come clean.

Let us now quote directly from a 2000 National Competition Council<sup>4</sup> report (Pages 3 & 4 – emphasis APA):

“In assessing legislation review and reform activity, the Council does not propose to make any comment on the objectives of State and Territory governments with respect to gambling legislation, except *if the objective is to restrict competition, in which case the Council would expect the objectives to be removed.*

Regimes which perpetuate past restrictive practices will be unlikely to be assessed as fulfilling the NCP obligations if there has been no attempt to identify and evaluate alternatives to the restrictions on competition. This will apply to both existing and new regulation (clause 5(5)). Clause 5(1) of the CPA requires a net public benefit from the restrictions and *evidence that the restriction is the only way of achieving the aim of the legislation*. All of the legislation review guidelines published by the jurisdictions and the NCC’s own guidelines, discuss how to meet both of these guiding principles. The second of these is sometimes neglected or underplayed. However, it is important in achieving policy outcomes consistent with NCP.”

We can find nowhere where the multitude of restrictions on competing with the TAB’s quasi-monopoly has been shown by the NSW Government to be the ONLY means of achieving the aim of the legislation.

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<sup>3</sup> Op. cit.

<sup>4</sup> *Regulating gambling activity; issues in assessing compliance with National Competition Policy*, National Competition Council, 2000

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The industry must note that the decision which Betfair won against the WA Government has changed the landscape forever. The Government, and for that matter Racing NSW, is on very shaky ground if it continues to enforce restrictions purely for the protection of Tabcorp's quasi-monopoly position.

In our view, the State Government has a conflict of interest. That is between maximising taxation revenue and its arguably greater, social role in maximising benefit to consumers (i.e. punters). It has clearly chosen the maximum taxation revenue option.

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### **1.3 The Relationship between Racing NSW and Tabcorp Limited**

We are concerned that all stakeholders may not be receiving fair treatment from Racing NSW. We are particularly concerned that Tabcorp may have undue influence on decisions made by Racing NSW.

Let us give just a couple of examples:

#### **The “TV War”**

During the “TV dispute” of 2005, during which there was a battle for control of the vision of racing, it was found by Justice Bergin of the NSW Supreme Court that Racing NSW had acted with bias in its dealings with the AJC and STC.

Sydney Morning Herald journalist Craig Young’s report on the Supreme Court ruling, which was absolutely scathing in its judgement, is reproduced as Appendix A to this Part. We do, however, strongly commend the full judgement of Justice Bergin to the attention of the Review Committee.

#### **Dealings with Other Wagering Operators**

We have noted that Racing Victoria has taken the option of entering into commercial operations with Corporate Bookmakers and the betting exchange Betfair<sup>5</sup>, whereas Racing NSW has decided to use legislation.

The proposed non-negotiable 1.5% of turnover being levied on all operators is precisely what Tabcorp has called for, and is opposed by all other wagering operators. It would be instructive to learn of the process by which Racing NSW arrived at this figure.

It is the view of the APA that a turnover-based product fee is not only inequitable, but it is unworkable. Punters are not suddenly going to pay extra to enable them to bet on NSW racing. They will simply switch to other avenues, such as Victorian racing or, indeed, sports betting. This is all the more likely to happen given that the “product” being served up to them as NSW racing has been deteriorating for many years<sup>6</sup>.

We attach as Appendix B to this Part an opinion piece by highly respected industry commentator, Mr. Bill Saunders of Cyberhorse.

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<sup>5</sup> It is also our understanding that Betfair has accumulated over \$1m in product fees which it is happy to pay to the NSW industry but which Racing NSW refuses to accept. How this refusal can be in the industry’s interests should form part of this Review.

<sup>6</sup> E.g. maiden races being served up on metropolitan programmes; a major (and increasing) proportion of restricted grade races which neither punters, wagering operators, or trainers are happy with.

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#### **1.4 Media**

The APA and others have been concerned about the freedom of the mainstream media (i.e. metropolitan dailies and TV stations) to accurately report on industry matters.

This is in large part due to the policy of certain individuals in senior positions within the industry threatening to either (a) withhold future access should a story unfavourable to them or their organisation be published or broadcast, or (b) cut advertising expenditure.

We are obviously not going to name names.

We do, however, feel that the industry needs to have a genuinely independent “ombudsman” or watchdog of some sort in order that the public does not have to suffer from continual censorship and a lack of genuine hard reporting.

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## **PART 1**

### **APPENDIX A**

#### **Judge gives AJC, STC free rein to start ThoroughVision revolution**

By Craig Young

May 4, 2005

Racing NSW's authority was dealt a savage blow yesterday when the Supreme Court ruled it did not have the power to prevent Sydney race clubs establishing their own thoroughbred channel.

ThoroughVision will broadcast Sydney and Victorian racing from today after Justice Patricia Bergin found in favour of the Australian Jockey Club and Sydney Turf Club in a landmark decision.

The ruling means TVN's exclusive agreement with the STC, AJC and Victorian clubs will leave its long-established rival Sky Channel to televise other state and territory race meetings.

Punters will need to tune into two separate channels to view all meetings held in Australia, with Racing NSW taking the court action fearing a fractured network would cost it several million dollars in wagering revenue.

Racing NSW believed it had the power to prevent the AJC and STC signing with TVN and went to the Supreme Court for a ruling, with Bergin finding in favour of the clubs on all fronts.

Executives from NSW's most powerful race clubs launched a scathing attack on Racing NSW following the decision, which was brought down after five days of evidence and one eight-hour mediation session ordered by Bergin.

"We take no joy in this decision," AJC chief executive Tony King said yesterday. "While it vindicates our position, the fact our governing body chose to drag down the whole industry is bewildering and disappointing. Certain individuals have brought the entire organisation into disrepute."

STC chief executive Michael Kenny said: "All along they [Racing NSW] have been a law unto themselves. They claim to be protecting the industry but all they're doing is squandering its money to protect Tabcorp's monopoly."

In handing down her judgement, Bergin found Racing NSW had dealt with Sky Channel and the broadcaster's parent, Tabcorp, without informing the AJC and STC. She said the notes of a Racing NSW board meeting on February 16 were "quite devastating".

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"It evidences the continuation of the plaintiff's [Racing NSW's] clear intention to force the AJC and STC into a contract with Sky and out of a contract with TVN," she said. Bergin said this was carried out without the clubs knowing "what it [Racing NSW] had done in detail in respect to negotiations with Sky/Tabcorp in respect of their rights".

At the same meeting it was proposed by Racing NSW board member Don Hopkins that an administrator be appointed to the AJC and STC should they ignore a directive not to sign with TVN.

Bergin said the proposal "plummeted the plaintiff's [Racing NSW's] lack of professionalism to an all-time low", while adding: "This was not a principled approach but rather strong-arm tactics to force contracts upon clubs operating pursuant to statutory and contractual obligations."

Bergin detailed an email from Racing NSW chairman Gary Pemberton to its chief executive, Peter V'Landys, on February 1 which suggested the AJC and STC must retain total income levels if they signed with Sky.

"So that if the competition evaporates, we can't be accused of screwing our own clubs to prop up Sky," Bergin quoted Pemberton as saying.

V'Landys said the Racing NSW nine-member board would meet today to discuss Bergin's decisions and the option of appealing.

"I don't feel sorry for Racing NSW," he said. "I feel sorry for the 63,000 participants that we let down by not protecting their income streams. Time will tell if we are right or if we are wrong, but we had to take the action like any responsible regulators who are entrusted by our participants to look after and protect their income streams. From the financial figures that have been given to us, they [clubs] are going to incur significant financial losses in the first year and we believe that money should be going into prizemoney for the participants."

Bergin made note of Racing NSW's intent to maximise wagering and stated: "I have little doubt that there was an aim akin to that buried somewhere in all of this. What is troubling is that in exercising its powers the plaintiff seemed to forget that it had to be fair to interested parties."

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## **PART 1**

### **APPENDIX B**

#### **You Catch More Flies with Honey Than With Vinegar**

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Section 13(1) of the Thoroughbred Racing Act (NSW) 1996 sets out the functions of the Board or Racing NSW.

Sub-section (c) says :-

to initiate, develop and implement policies considered conducive to the promotion, strategic development and welfare of the horse racing industry in the State and the protection of the public interest as it relates to the horse racing industry.

According to last year's Racing NSW Annual Report about 6,000 people are employed as licensed persons. However many hundreds of thousands of NSW residents, if not millions, are interested in horse racing as punters.

So to hear Racing NSW CEO Peter V'Landys invoking the plight of the stablehand on \$33,000 a year as justification for its draconian race fields regulations makes one wonder if he actually understands the legislation his body operates under.

Clearly the public interest relates to all of the public, not just a few thousand trainers, jockeys and stablehands.

A very significant part of the public interest is ensuring that they are not subject to retail price maintenance in the context of having to pay more for their wagers on NSW racing than they should.

The entire flavour of Racing NSW's regulations is to force a high takeout wagering regime on the NSW punter, to the benefit of one company, TabCorp.

It is obvious that Racing NSW has consulted extensively with TabCorp on every aspect of the new regulations. They clearly suit TabCorp because it has been quick to point out to financial analysts that it expects to be \$40 million a year better off because of the changes.

However Racing NSW has failed yet again in one of its most important duties, which is to consult widely with all interested parties in the process of making its strategic decisions.

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In her scathing judgement of Racing NSW's actions in relation to trying to prevent the AJC and STC signing a vision rights agreement with TVN, Judge Patricia Bergin observed:

"The plaintiff has placed much emphasis on its alleged motivation to act in the public interest of protecting wagering revenue. It has been suggested by the Chief Executive that the plaintiff was acting to ensure that the revenue distributed to the racing industry was maximised. I have little doubt that there was an aim akin to that buried somewhere in all of this. What is troubling is that in exercising its powers the plaintiff seemed to forget that it had to be fair to interested parties whose rights may be affected by its conduct and decisions ..."

Well here we go again.

One would have thought that with that judgement ringing in his ears, V'Landys and his Board would be more careful in future to consult widely and well before using Racing NSW's powers to favour TabCorp against its competitors.

But in framing the NSW race fields legislation and its accompanying regulations Racing NSW has definitely not consulted any of those parties adversely affected - a clear breach of its obligations under the Act.

In spite of repeated requests over the past few years, Betfair and the corporate bookmakers affected by Racing NSW's decision have never had a proposal put to them which was capable of consideration, let alone acceptance.

Instead they have been treated to a public display of invective and insult led by V'Landys, coloured by more than a few statements which are downright untrue.

For instance V'Landys continually obscures the fact that TabCorp pays the NSW racing industry a percentage of gross profits, not a percentage of turnover.

He makes out that the whole of the amount which is paid is for "the product" when in fact the product fee element is only \$12 million a year.

In his latest display of petulance, V'Landys when interviewed on 2KY by Greg Radley and Mark Lambourne, accused bookmakers of driving around in Mercedes and Porsches, while simultaneously suggesting that they were incompetent if they did not make a 6% margin.

If they do so well perhaps V'Landys would like to explain the reduction in bookmaker numbers while he was running Harold Park?

In any event, by his obvious antipathy to any wagering operator which is not TabCorp combined with his frequent references to "we" as in Racing NSW and TabCorp as some sort of combined operation, V'Landys has exposed a bias in decision making which sits very badly with his responsibility to "be fair to interested parties" as Bergin put it.

By any measure, V'Landys time at Racing NSW has not actually been much good to the direct industry employees he professes such concern for, with prizemoney stagnant, crowds down and people leaving the industry in droves.

It's not as if Racing NSW is incapable of negotiating with other wagering operators when the mood takes it.

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For instance, not having enough racing of its own that anyone is interested in betting on, Racing NSW is a party to agreements with Hong Kong and New Zealand which actually see it contributing to a product fee paid to those countries.

More than half of the product fee 3% of turnover paid to Hong Kong and New Zealand is actually paid by Racing NSW, rather than TabCorp. Contrast this to the situation with Victoria which accounts for 38% of the racing bet on by NSW punters and for which Victoria does not receive a cent.

Similarly, Racing NSW has re-negotiated its product fee agreement with TabCorp 4 times in the past 8 years, showing that when it suits the body is perfectly capable of sitting down around the table and cutting a deal.

With Betfair and the corporate bookmakers the major target of the race fields legislation, its not as if Racing NSW has operators who are not prepared to contribute to racing.

Betfair for instance still has more than \$1 million sitting in a trust account representing product fees set aside when it operated on NSW racing before setting up in Australia.

V'Landys has never gone looking for that money, even though it could be used to set up a fund to support strappers injured in the course of their hazardous work, even if he couldn't stomach the thought of using it to fund prizemoney.

All of the major corporate bookmakers are currently headed by men who cut their teeth on race wagering and who love the sport and want to see it prosper. In ten years time, younger executives will have taken over and there is every probability that they will focus their firm on other wagering markets.

Horse race betting is messy and complicated to administer, both in terms of systems and staff knowledge. The racing industry is doing an appalling job of educating new racing fans. All the growth in betting is in sports and online.

As has been seen in Victoria, where the race fields legislation was conceived with the misguided idea of banning Betfair, the corporates are prepared to negotiate when reasonable terms are on the table.

In the latest round of agreements, the 4 largest corporate bookmakers and Betfair have negotiated gross profit based deals, in marked contrast to Racing NSW's assertion that only turnover based arrangements exist in the racing industry.

TabCorp CEO Robert Nason's insistence that TabCorp will move its profit based deal in NSW to a turnover based one so as to support Racing NSW's stance is looking more stupid by the minute.

He also supports the idea of TabCorp's new aNTi-TAB operation in the Northern Territory paying a fee based on turnover. I'm sure Racing Victoria will be happy to take that.

I'm not so sure that paying a turnover based fee in NSW is going to work well when TabCorp is paying rebates up to 4% of turnover to Australia's largest punters.

In a gross profit regime, if TabCorp pays a 4% rebate all of this amount is deducted from the profit before the racing industry is paid its share. In a turnover based payment system, the 4% is paid first, leaving TabCorp seriously out of pocket.

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All of which raises the most compelling issue for consideration by the Racing NSW Board, even if its CEO has the blinkers on.

In a world where the big punters go where the price is best, how is Racing NSW going to force them to bet on NSW racing with TabCorp in NSW?

Victoria's new gross profit product fee regime is a direct incentive for the corporates to focus on getting their clients to bet on Victorian racing. Markets on Victorian races will become ever more competitive and liquid while higher cost markets like those on NSW racing will wither on the vine.

Racing in NSW is so badly run these days that the trend for NSW punters to bet on Victorian racing in preference is already evident. On the basis that a dollar for Victorian racing is a dollar less for NSW, it actually becomes 2 dollars worse off every time a punter bets down south.

Given that there is considerable activity in the TabCorp NSW pools generated by market movements on course, this phenomenon can only have a negative affect on TabCorp turnover.

Combined with that is the looming demolition of cross border advertising restrictions now being challenged in the NSW courts on constitutional grounds.

The impact of this will be that the corporates and Betfair with combined annual turnover of \$4 billion and growing at 40% a year, will suddenly be able to advertise for the first time.

Considering Racing NSW's antipathy to these operators, it is not hard to imagine that they will be keen to sponsor races in Victoria rather than in NSW. In return the Victorian industry will happily promote the corporates.

With its management problems hopefully sorted out by the appointment of high calibre candidate Rob Hines, Victoria is poised to go from strength to strength. Even with the recent difficulties, the recent announcement of \$23.6 million prizemoney increases shows the underlying strength of the Victorian industry.

Much of the loss of momentum in Victoria over the past few years has in my opinion been caused by the reign of Robert Nason at Racing Victoria. It was characterised by empire building and a single minded campaign to crush Betfair and the corporates.

The demolition of Nason's Taj Mahal and working out ways to work co-operatively with TabCorp's competitors has taken years to complete but has now turned full circle.

Nason's discredited strategy has now moved north of the border, still with him in the centre of the web.

The new Board of Racing NSW will by all accounts not be very new at all. It is to be hoped that they can take a leaf out of Victoria's book and consider the futility of the antagonistic path they have embarked on with bookmakers.

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## **PART 2**

## **ISSUES PAPER**

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## PART 2

### ISSUES PAPER

#### Chapter 2

##### General Comments

We would make the general observation that the facilities available to the ordinary punter at NSW racecourses are well below standard. Food and drink are very much over-priced, and the quality of food is generally poor (outside the members' area). The marketing strategy of metropolitan race clubs over many years has gone from trying to attract the punter via quality of racing to what we have termed the "boozie floozie" strategy, i.e. a lawn party for wealthy young socialites. This is no way to develop long-term patronage.

*Q2.1 Looking at the information presented in this chapter, do you consider the NSW racing industry to be in good health?*

The NSW racing industry is in dire straits and getting worse.

*Q2.2 What other information would be of value in describing the industry's current health?*

The quality of metropolitan racing on non-carnival days is appalling. Race after race of restricted quality, in stark contrast to Victoria, where a restricted race (other than by age/sex) on a Saturday is a rarity. Punters prefer to bet on quality racing, and it is generally not being served up in Sydney.

*Q2.3 What additional evidence exists regarding the economic significance of the racing industry?*

Outside the purview of the APA.

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## **Chapter 3**

### **General Comments**

We agree with contributor Mr. Peter Mair<sup>7</sup>, who suggests that TAB distributions should be made to the relevant controlling body in the jurisdiction in which the event took place.

We can see no reason why racing should obtain any funding from betting on sports, and in particular from gaming. Attempts to classify gambling on “virtual racing games” as wagering are immoral. Virtual racing games, such as “Trackside” are gaming, pure and simple, irrespective of misleading advertising to the contrary.

We note that the 16% overall cap on maximum take-out was removed in a most underhand manner, with absolutely no warning to, or consultation with, punters.

We also note that here has been no mention in the Issues Paper of the absolutely abhorrent practice of rounding down dividends, or the “rounding-down rort” as it is commonly referred to amongst the punting community. This has a particularly savage effect on place punters, where e.g. a pre-rort correctly calculated dividend of \$1.19 becomes \$1.10, a startling 47% theft from the punter’s fair *after-takeout* winnings!

#### *Q3.1 Has this chapter accurately addressed the key funding inter-relationships in the NSW racing industry?*

We would like to spell something out, which would be insulting if it weren’t for the frequent misrepresentations. When the TAB is described as “the primary funder” of racing, this is misleading. Punters are the primary source of funding. Any money invested in a pari-mutuel pool is divided four ways, a portion back to winning punter(s), a portion to the TAB, a portion to racing and a portion to the Government. At no stage does the TAB dip into its own pocket to pay the distribution to racing.

It is therefore vitally important that the 3 distinct types of wagering operator be classified correctly, and recognised that a “one size fits all” model, as appears to be central to Racing NSW’s latest escapade, is inappropriate.

|                   |                                       |
|-------------------|---------------------------------------|
| TAB pari-mutuel:  | zero risk to operator, quasi-monopoly |
| TAB fixed-odds:   | risk taken                            |
| Bookmakers:       | risk taken                            |
| Betting Exchange: | zero risk to operator                 |

#### *Q3.2 What are the implications of the incentives due to the allocation of TAB Ltd distributions in fixed percentages across the codes? Does this hamper the efficient delivery of racing product given the break in the nexus between demand and supply?*

We can see no reason why distributions should be made other than to the code, and to the jurisdiction, in which the event took place.

<sup>7</sup> Mr. Mair’s submission to this Review.

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*Q3.3 Are there other potential funding sources for the industry that have not been identified in this chapter?*

Yes. Sponsorship and advertising, particularly from interstate wagering operators. And we refer you back to our comments under 1.3 above.

The removal of the “exclusive” licence should be considered and pari-mutuel betting opened up to genuine competition. Rather plaintive arguments that Tabcorp does not really run a monopoly as punters can use the internet or the phone do not break ice, when considering the physical environment in which most of the more vulnerable punters place their bets.

*Q3.4 Are there any other reviews of which the review team should be aware? Are there any particular lessons that should be drawn from similar experiences in other jurisdictions?*

The model which has been adopted in Victoria – whereby Corporate Bookmakers and Betting Exchanges mostly pay as a percentage of gross profit should be strongly considered.

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## **Chapter 4**

### **General Comments**

Rivalry amongst firms could be made a lot stronger if some of the arcane restrictive practices adopted purely to protect the TAB and to attempt to maximise taxation revenue were repealed.

The expressed opinion that bargaining power of punters is high needs a great deal of qualification. Bargaining power of the better-off and sensible punters is high, in the sense that they can select wagering operator reasonably easily. Bargaining power of the more vulnerable punters is extremely low. They are to all intents and purposes forced to bet with their local TAB.

The bargaining power of “the industry” is certainly falling, primarily because its “leaders” appear unable to awake to the realities of the 21<sup>st</sup> Century.

The margins being offered to punters on racing – particularly by TABs – are exorbitant (and rising!). TAB takeout rates have increased from 12% on establishment to a capped 16%, and are now uncapped (other than by product) and average a little over 17%. Such new Tabcorp products as do exist, such as “jockey challenge”, enthusiastically promoted by, among others, TVN, are invariably priced to margins of between 125% and 130%. Yet those doing the promotion are either unaware of this, incapable of performing the simple calculation, or just don’t care, it’s good TV. Sports betting invariably offers a much lower margin than betting on racing (Betfair excepted, as margins are invariably low for both). We see no reason for the trend away from racing not to continue, and increasing the price, as Racing NSW appears hell-bent on doing, will certainly exacerbate that trend.

We caution against believing that entry has “by and large, already occurred”. The consequences of the Betfair win over WA in the High Court are far reaching indeed. The inevitable removal of restrictions on advertising (clearly a restraint of trade) will hasten the demise of the “old” TAB-funded model and the industry needs to fully realise that a period of enormous change is at hand. It is a time not for the current denial mode stance, but for re-positioning to take best advantage of the changing environment.

*Q4.1 Is the review team’s summary of the identification forces shaping the industry, and their relative strengths, accurate?*

Subject to the above. We also feel it is incumbent upon the Review, to get to the bottom of the true rationale for the move by Tabcorp to establish a fixed-odds bookmaking business in the low-taxed Northern Territory jurisdiction. Mr. Robert Nason’s response to date<sup>8</sup> has been less than forthcoming, and downright confusing: *“Tabcorp’s corporate bookmaking licence application in the Northern Territory is also part of our strategy to address this issue. Through our presence we plan to demonstrate that the Victorian Government and Racing Industry should act. If they decide not to, then the NT operation will naturally evolve into a major component of our future Australian wagering business”*.

<sup>8</sup> From a paper to Melbourne radio station Sport 927, available here:  
<http://www.sport927.com.au/sport927/newsItem.asp?id=1&item=4255>

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*Q4.2 The implication of this five forces analysis is that, absent some unforeseen intervening change, the market for wagering services in NSW will become even more competitive, TAB Ltd will see more of its market share eroded, and the revenue provided to the NSW racing industry by TAB Ltd under the RDA will further decline over time. Is this a reasonable conclusion?*

Very much so.

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## **Chapter 5**

*Q5.1 Stakeholders are invited to consider what the NSW racing industry will look like in five, ten and 20 years in a 'do nothing' scenario. That is, what would be the size and structure of the NSW racing industry if the current regulatory and market environment and trends continue unchanged?*

In a scenario of “do nothing” (or further adoption of protectionist tactics and legislation) the NSW racing industry will become irrelevant.

In 10 – 20 years, we expect racing to substantially increase its globalisation. This may or may not include one or more global pari-mutuel pools, but it will certainly be to the benefit of those who have planned for it, which does not include the current executive team at Racing NSW. Betting exchanges and multi-national corporate bookmaking firms can be expected to dominate.

However, 20 years is a considerable period of time, and there will almost certainly be another major system shock (perhaps an alternative to the internet?) within that time.

*Q5.2 Financial sustainability has at least two dimensions:*

*the required level of funding for the industry — Is the current level of income sufficient to sustain the racing industry as it is currently configured? Should sustainability be assessed against some other industry scale and configuration than presently exists?*

*the distribution of funding across the three racing codes — should sustainability be viewed in aggregate terms across the industry as a whole, or with respect to each separate racing code?*

Each person will have their own definition of “sustainability”. If it means all owners covering their costs (which Racing NSW appears to be aiming for via slugging the punters), the answer is no. Breeders have forced yearling prices to astronomical levels, well above the amount that is obtainable solely from prizemoney. A very sharp price correction is overdue.

Each code should be assessed as sustainable in isolation, there should be no cross-subsidy.

*Q5.3 Are there any social and cultural issues of importance in considering the sustainability of the racing industry?*

Racing used to have a long history of folklore, and traditional races. That has largely disappeared, with about 10 media “champions” a year, and traditional races being sold out for sponsors’ dollars. We feel that it is probably already too late to attempt to protect such heritage as did exist.

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*Q5.4 The current inter-code funding arrangements might be thought not to promote sustainability in the NSW racing industry as the fixed payout ratios for each code break the link between funding received and share of turnover generated (income and productivity). How might the arrangements be reassessed to better maximize revenue opportunities and to reward innovation and productivity?*

Pay all product fees to the jurisdiction staging the event, and preferably to the individual club (net).

*Q5.5 Are there any changes to the structure and/or operations of the NSW racing industry that would improve the efficiency of the industry and so reduce pressures on the financial sustainability of the industry?*

Refer 1.3 above.

*Q5.6 New legislation has been passed in NSW, for which regulations are currently being drafted, that allows NSW racing bodies to restrict and impose fees for the publishing of NSW race field data. How effective will these restrictions likely be? What resulting level of funding could be expected to flow to the three racing codes in NSW?*

They will not work unless Racing NSW is prepared to compromise from its current intransigent stance. Millions of dollars will instead be wasted on legal fees paid by Racing NSW and/or the NSW Government in order to protect Tabcorp.

*Q5.7 Is there a combination of concessions that could be offered to bookmakers and/or betting exchanges to create incentives to financially contribute to the NSW racing industry. What level of support should be expected? Such concessions could include, for example: allowing them to advertise in NSW; access to race field data for operators located and licensed in NSW; and so on.*

A matter for wagering operators, but a less restrictive playing field would be a good start. We would be supportive of other licensed wagering operators being permitted to open off-course retail outlets.

*Q5.8 What additional options exist for generating industry revenue from packaging broadcasting rights, particularly in terms of new media?*

We have noted that to date “new media” rights are invariably being sold with “exclusivity” attached, particularly where Telstra is involved. We feel this should be outlawed as invariably the consumer pays more and eventually loses interest.

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*Q5.9 A recent inquiry into Victoria's thoroughbred breeding industries concluded that, despite Victoria offering record levels of stakemoney for thoroughbred racing, NSW is the country's leader in thoroughbred breeding. Is there a case to be made that the breeding industry, at least with respect to thoroughbreds, should contribute a (small) percentage of all sales revenue to the racing industry as it free-rides off the existence of the racing industry? Would such an initiative have to be undertaken nationally to be effective?*

Such a scheme has merit, although, given the level of sponsorship which many breeders put in towards prizemoney we find the accusation of "free-riding" to be out of line. A levy on auction houses should also be considered.

*Q5.10 Should the NSW Government seek to protect or expand TAB Ltd's revenue on the grounds that a percentage of such revenue is used to support the NSW racing industry?*

No.

*Q5.11 If the answer to Q5.10 is positive, what options are attractive in enhancing Tabcorp's revenue? Possible options could include, for example:*

*allowing the merger of Victorian and NSW TAB pools to potentially increase TAB turnovers; and/or*

*providing TAB Ltd with access on an exclusive or near exclusive basis to new wagering products.*

We refer to Q3.1 above. It is NOT Tabcorp's revenue, it is the industry's! Tabcorp is merely a temporary administrative custodian of punters' funding.

Not mentioned in this Issues Paper has been the option of slashing take-out rates in order to compete more effectively with Sports betting. This has reportedly occurred and had the desired effect in both Hong Kong and Singapore.

We have addressed merging of pools in Part 3, Chapter 3.5 of this Submission.

We are steadfastly opposed to exclusivity.

*Q5.12 Should the NSW Government provide race clubs with access to additional sources of revenue (eg additional gaming machine licences) as a means of generating more revenue for the NSW racing industry?*

We would be vehemently opposed to gaming machines on racecourses.

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## **PART 3**

# **WAGERING BACKGROUND PAPER**

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## PART 3

### WAGERING BACKGROUND PAPER

We would like to make a preliminary comment that we found this particular paper to be less than even-handed in a number of areas, at times it displays a painful condescension towards its readers, and seems to have as its starting point that the TAB is naturally entitled to first grab at all punters' funds, all other operators being intruders on "the natural order".

#### Chapter 2

We note a number of references to "may depend to an extent on the NT wagering industry".

Perhaps it would be of assistance to all concerned if Tabcorp actually came clean with its rationale for entering the NT Corporate Bookmaking market after so many years of ranting and raving against it. As noted in Part 2, Q4.1 above, the rest of the industry appears to be looking on with some bemusement, as on the surface Tabcorp appears to be telling State administrators "trust me"....

#### Chapter 3

##### **3.1 Bookmaking structures and operating conditions**

The APA advocates the removal of all restrictions as to what, when and where a licensed wagering operator of any stripes may take bets.

We, and most industry observers, have long been bemused by both Racing NSW and the State Government being quite content to play the Nero role as leading bookmakers were forced to flee the State taxation regime for a better deal. And, having bypassed the opportunity to negotiate with the Corporate Bookmakers, then decided the best course of action was to spend years continuing to refuse to negotiate sensibly. It has been yet another indication that Racing NSW has badly lost any sense of direction.

It got TVN wrong, it got Betfair wrong, it got Corporate Bookmakers wrong, and it is yet again heading in the wrong direction with its intransigent approach to "negotiating".<sup>9</sup>

##### **3.2 Publication of betting odds**

The original rationale for not disseminating on-course betting movements was so as to prevent illegal off-course bookmakers from having such access. As we all are aware, illegal off-course bookmakers have all but been eliminated, on-course betting movements are being disseminated from the course by phone, and even on TVN. The only reason for the retention of this restriction is as a further crutch for the TAB. The APA strongly supports its removal.

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<sup>9</sup> Interesting to note that in each of these it appears its main goal was to protect revenue from Tabcorp...

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### 3.3 Fixed-odds betting

The APA fully supports all wagering operators being permitted to offer fixed-odds wagering up to the jump (or indeed after, should there be sufficient demand).

### 3.4 Totalisator odds betting

We strongly suspect that section 3.4 (relating to Corporate Bookmakers offering TAB odds) has been drafted by Tabcorp, as it is extremely one-sided. We strongly support the ability of corporate bookmakers to offer TAB odds, or, as most do, “TAB+” odds. We would also support TAB fixed-odds introducing a SP or Top-Fluctuation product to its range, although we doubt they would do that.....

### 3.5 Pooling

“...to access the NSW pool a punter must place their bet in NSW”? We suggest that is incorrect.

It is generally known that some operators offer discounted schemes to “high-rollers”.

We would also like to point out that it is mathematically impossible<sup>10</sup> for a co-mingled pool to pay a higher dividend than a pro-rata weighted investment in the non-mingled pools<sup>11</sup>.

An argument also exists that, due to the greater attraction of a larger pool to professional (i.e. better informed) punters, a co-mingled pool would most likely, in fact, lead to lower average dividends.

The APA is aware that a co-mingled pool would invariably lead to significant cost savings for the operator, and would only consider supporting a co-mingling in the event of a long-term non-reversible reduction in takeout rate.

### 3.6 New technology and wagering

As alluded to in an earlier part of this Submission, the APA’s main difficulty with “new media” has been the tendency to impose an unnecessary additional burden on the punter via exclusive arrangements. We have seen Telstra being particularly active in this area, both in relation to live broadcasting on its internet site and on mobile phones. The parties involved may be maximising their own wealth, but we believe they are not behaving for the greater good. An unfortunate regular feature of the racing industry.

### 3.7 Sports betting

We have some sympathy for those who would like unfettered access to bet on whatever event they wish. However, given that a large portion of Tabcorp’s client base consists of more vulnerable punters, we feel that it is not unreasonable for it to continue to require Ministerial Approval. Whilst we can see no harm in betting on e.g. a Federal Election, we really don’t see the need for anyone to bet on reality TV, and doubt that any marginal income so foregone by an operator would be in any way substantial.

<sup>10</sup> Algebra available on request

<sup>11</sup> Other than due to no-winning investment in one pool or due to trivial distortions caused by the “rounding-down” rort.

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### **3.8 Betting Exchanges**

It is quite incredible that this same ground is gone over and over *ad nauseam*, with the obvious intention that the more an allegation is repeated the more some “mud will stick”. As we assume Betfair will be making a contribution to this process we will not be responding to these silly claims, but in the event that Betfair does not make a contribution, we request that we be permitted to put in a supplementary Submission on this matter.

### **3.9 Advertising laws in NSW**

There can be little or no doubt that the Betfair/WA case in the High Court will ensure that these are repealed. We fail to see why the taxpayers of NSW should be forced to yet again enrich the legal community chasing an obvious lost cause.

### **3.10 Responsible wagering**

One of the most useful additions to responsible wagering would be to publish the “price” of each wagering product. On-course patrons can generally see the prevailing overall bookmakers’ margin on the course screens, Betfair publishes the prevailing margin on its wagering screens. The APA is of the view that all prevailing margins should be prominently displayed at all points-of-sale. Punters of all stripes will eventually come to understand their meaning.

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