

SUBMISSION TO THE PRODUCTIVITY COMMISSION ON ITS

DRAFT REPORT ON GAMBLING, OCTOBER 2009

From:

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NSW

December 17th, 2009

PREAMBLE

The first I heard of the finalisation of the Productivity Commission report was when I got an email from a friend regarding the almost instantaneous riposte to the report which emanated from Racing NSW. So rapid was the riposte that it was obvious that the author could not possibly have read the report, nor, for that matter, properly considered the contents of his/her riposte. For example, the riposte included “*The Productivity Commission allowed presentations from a myriad of wagering operators but at no time sought to provide Racing NSW with the opportunity to make a presentation on behalf of its 50,000 participants.*”¹

As Bruce Clark pointed out² “*But Racing NSW did make a 10-page submission to the Commission. It was logged at #228 of the 264 entries....*”

Other Racing NSW statements such as “*If the recommendations of the Productivity Commission were to be implemented it would mean a massive reduction to the level of funding for the NSW Thoroughbred Racing Industry...*” proved to be just the usual hyperbole which inevitably seems to emanate from that body whenever any alternative to the status quo is suggested.

The Racing NSW response, both in tone and content, suddenly filled me with an unexpected optimism. Had the Commission actually seen through all the bull droppings and reached a rational conclusion? A quick read of the executive summary set the heart all a-flutter. A read of the chapter of major importance to me (Chapter 13 – Development in the racing and wagering industries) was quickly followed by disbelief, until a second and a third read, and a couple of conversations with others of like mind, convinced me I wasn’t in fact dreaming. Someone had actually seen through all the fabrications, exaggerations, spin and obfuscation and made solid recommendations that made absolute sense.

The feeling was not quite like the fall of the Berlin Wall must have felt like to the Germans, but to punters at large, it can’t have been too far from it. At least a major brick had been removed from the wall.

Whilst this may sound all very emotive, rest assured it was, and is. George W Bush may have had his alleged “axis of evil”, the equivalent to punters has been the “unholy” alliance of Racing NSW, Tabcorp and (to a lesser extent) the Australian Racing Board. The thought that they may finally be brought to heel and be forced to give the punter a “fair go” is nothing short of extraordinary. The fact that they are continuing to fight against that basic concept of fairness to consumers (punters) is simply to be expected.

¹ <http://www.racingsw.com.au/default.aspx?s=article-display&id=7719>

² Winning Post, October 31, 2009

INTRODUCTION

By way of background, I was until a few months ago President of the Australian Punters' Association ("APA"). Due to some considerable uncertainty over my future movements, I felt unable to continue in the role, and stepped down. As no replacement was forthcoming, the Association was voluntarily disbanded.

During the four years of its existence, the APA raised the profile of punter concerns with many of those in positions of authority. I note, with appreciation, that the Commission has quoted on a number of occasions from our submissions, and as I will be referring to one of those later³, I have taken the liberty of including it with this submission for completeness' sake.

The genesis of the APA, the "straw which broke the camel's back" if you like, was the "TV-war", between the newly formed TVN and the duo of Sky Channel and Racing NSW. Racing NSW's role in this fiasco is now history, indeed legendary, and Justice Bergin's scathing commentary on same is freely available (refer also Craig Young's article included as Appendix A to the APA 2008 submission attached hereto).

At this stage, it became very clear that neither of the main State racing bodies, Racing NSW and Racing Victoria, had much regard for punters. Thankfully, much has changed in Victoria following the move to Tabcorp of Robert Nason, and we are unlikely to again hear threats of shutting down the Melbourne Spring Carnival due to the arrival of a new wagering operator. Unfortunately, nothing much has changed in NSW.

In this submission, the thoughts expressed are my own, although I am fully aware that they are widely shared by many punters.

As most of the relevant arguments have already been expressed in the APA 2008 submission, there is no point in wasting everyone's time in re-hashing them here. In preparation, I have read the submissions and transcripts relating to wagering, and think that most of my intended arguments have been very well put forward via the submissions of the likes of the AIBA and Betfair, whose arguments against the status quo are surely compelling.

I would also like to commend the initial two submissions by Bruce Teague, which I thought were tremendous (I confess to being slightly bemused by his subsequent one).

I have seen no compelling evidence that punters are deserting totalisators in droves.

So, in this submission, as the "bigger picture" has already been covered in the attached APA 2008 submission, I would like to concentrate on three areas. These are Racing NSW, Tabcorp and some more general points. In particular, I would like the Commission (or some other body) to closely examine, if at all possible, the relationship which exists between Racing NSW and Tabcorp.

³ APA submission to the NSW Independent Review of Wagering, August 15th, 2008

RACING NSW⁴

One of the greatest anachronisms of the modern era is surely Racing NSW.

To quote from Bruce Teague's submission⁵ *"Of course, racing has always been much more about administration than modern management. It seems clear that the establishment does not distinguish between the two."*

Apparently not a single thing has sunk in at Racing NSW from the debacle that was the "TV war". Despite new boards coming and going, and a savage dressing down from Justice Bergin in that case⁶, nothing has apparently been learnt. Senior management continues in what appears to be a relentless "my way or the highway" approach to running the operation, with stubbornness and confrontation rather than negotiation inevitably the order of the day.

Despite frequent claims of "crying poor", Racing NSW yet seems to have a bottomless pit when it comes to funding both legal action and favourable "expert reports" in order to back up its current crusades. No matter than many such "expert reports" are subsequently found severely wanting, they generally continue to be quoted.

As the AIBA have stated in their submission⁷:

*"Despite the correct data being available for some time, the press (and some racing officials) continue to claim that totalisators contribute 5 times the amount of bookmakers. ("the Tab... is required to put nearly 5 cents in every dollar back... bookmakers return less than 1 cent in every dollar" or "racing gets \$5 from every \$100 bet, and only \$1 from bookmakers.")"*⁹¹

These statements are as unhelpful as they are incorrect."

"Information" and "facts" emanating from Racing NSW have a disturbing tendency to be, well, perhaps "at times misleading" is the kindest way I can put it, particularly given that organisation's proclivity towards legal action.

It has got to a stage where one is not sure which fictional character to compare it to, Chicken Little, Don Quixote or King Canute.

⁴ I would like to make it abundantly clear that my criticisms of Racing NSW do not extend to the Stewards, who I have always found to operate transparently, professionally and in a very helpful manner. In particular, I would like to take this opportunity to thank Messrs. Ray Murrhy and Terry Griffin for their assistance over the years.

⁵ http://www.pc.gov.au/_data/assets/pdf_file/0011/87095/sub057.pdf

⁶ See industry commentary from the Virtual Form Guide <http://formguide.cyberhorse.com.au/index.php/industry/Racing-NSW-Board-Should-Resign.html> attached as Appendix A hereto.

⁷ http://www.pc.gov.au/_data/assets/pdf_file/0003/88464/sub221.pdf

(The footnote in that commentary is "For a more recent and telling example, please see the Racing NSW website, www.racingsw.com.au "The Facts about Racefields"")

Racing NSW and Tabcorp

Of most concern to me, however, is the lack of transparency in the relationship between Racing NSW and Tabcorp. Justice Bergin was pretty clear in her judgement what she thought.

That Racing NSW and Tabcorp are almost invariably “singing from the same hymn sheet” when it comes to “funding” matters, leads to inevitable speculation of secretive behind-closed-doors deals being made between the two.

“The fact that Racing NSW, the government and TabCorp wanted to keep their correspondence secret is evidence enough that it contained material damaging to their interests⁸.”

Ample material has also been written about the failure of the Racing NSW chief executive to appear as a witness in the Betfair case⁹.

A mathematician might also ponder over the fact that the Racing NSW and Tabcorp wagering submissions appear consecutively on the Productivity Commission website. Odds of over 130/1 of that happening purely by chance....

Whatever the truth, speculation will continue to be rife about possible collusion unless there is a much more publicly transparent process as to the dealings between the two organisations.

Quality of races in NSW

A number of commentators have mentioned what is in essence “too much racing” in NSW, mostly in relation to country and provincial areas. The reason for this is generally stated to be a binding agreement between Tabcorp and the NSW Government (or is it Racing NSW?) to provide X amount of races per annum.

However, what bothers me is not so much the quantity of racing, but the continued deterioration in quality of racing. Once upon a time it was unheard of to have maiden races programmed for metropolitan meetings. Now, we have midweek metropolitan racing which is comprised of at the very least over 40% races restricted to horses which either have never won a race anywhere or at the very least never won a metropolitan race. The remainder of the fields are also generally programmed to suit very low grade horses.

Even on a Saturday, it is now very rare (other than at carnivals) to have a programme without a large majority of restricted grade races.

⁸ <http://www.virtualformguide.com/cgi-bin/tvf/displaynewsitem.pl?20091016discovery.txt>

⁹ <http://formguide.cyberhorse.com.au/index.php/2009103039410/Industry/No-Show-From-V-Landys.html>

Let me quote from an email exchange I had with Paul Bloodworth, RVL's Racing Operations Manager in response to a question I had about a decrease in quality in the Eclipse Stakes meeting at Betfair Park, a few weeks ago. His response (in part):

*"I understand and agree with your point regarding Vic v NSW programming. We pride ourselves on running predominantly open handicaps on Saturdays in the metropolitan area all year round and have no plans to change this. We certainly will never move to anything like the NSW system, which has predominantly ratings/benchmark races on Saturdays all year round outside of Carnivals."*¹⁰

What has never been adequately explained by Racing NSW is why the population of racehorses in NSW is apparently so vastly inferior to that racing in Victoria that such a huge amount of poor quality racing abounds in the NSW metropolitan area in comparison to Victoria.

Against this background of diminishing quality, one would have thought that, if anything, Racing NSW would seek to discount the price to encourage people to bet on an inferior product. After all, a second-hand Holden ute and a Rolls-Royce don't exactly sell for the same price. Instead they want punters betting on the inferior NSW product to pay more than for the vastly superior Victorian product. It simply does not make sense.

There is a school of thought that Racing NSW was pressured by Tabcorp to produce greater field sizes, and the only way it could think of to do so was to reduce the quality of its product. If this is correct, then it is yet another case of the tail wagging the dog.

Now why, you might well ask, is the quality of racing important? It appears to me that to Racing NSW it isn't. A classic case of "never mind the quality, feel the width". It is important because punters need to have some confidence in what they are betting upon. Animals race in restricted grade either because they are too slow or too inconsistent to progress much further. Alternatively, they may be "on their way through the ranks", but those are few and far between. So, in essence, it becomes in effect a lottery, and it is pure luck on the day that determines the winner of such races. There is really no point in studying the form, no advantage can reliably be gained. That matters not one iota to either Racing NSW or to Tabcorp. The contract has been fulfilled and the pound of flesh duly extracted from the punters.

The amount of money I personally bet on NSW racing has declined considerably over the last several years. This is totally due to the quality of product on offer. It doesn't matter what odds the corporate bookmakers, Betfair or anyone else is offering, I will not bet on rubbish races. I am far from alone in this. Quality deterioration alone would cause a reduction in the turnover on NSW racing which is completely unrelated to new entrants. Racing NSW should take a good look much closer to home in assessing the reasons for any deterioration in its funding.

¹⁰ I am quite happy to make the full email discussion available to the Commission on request

Owners versus punters

If it was not abundantly clear to me following the “TV-war” as to whose “side” Racing NSW stood, it became even clearer following an Informa racing conference a few years ago (2007 I think). Following a presentation by a senior Racing NSW administrator, the usual post-presentation questions from the floor ensued. One question was from a corporate bookmaker. The bookmaker was told in no uncertain terms that he had the wrong business model as the vast majority of punters didn’t even know what a “margin” was and that the bookmaker should therefore increase his price. This exchange was duly noted by several punters in attendance and was the subject of some debate on a number of the internet discussion forums.

The clear implication was that, rather than educate punters as to what they were actually paying, it would be better for business to up the price and bleed them more.

This displayed both a complete lack of understanding as to the rationale for the existence of corporate bookmakers and to the reality of the new era in technology.

I have attached as Appendix B hereto “print screens” from Betchoice and Betfair, the only Australian wagering organisations which I am aware of which show the betting margins. Rather than hide these, I recommend that the Commission consider making it mandatory for all published betting markets (including totalisators) to display the prevailing margin – and calculated in a consistent manner. After all, you don’t buy your groceries without knowing the price, why should consumers of wagering products be treated differently?

As to the relatively newfound “obsession” with owners, the current Racing NSW “mantra”, it is to be lamented that in some mindsets owners apparently need to be subsidised even further by punters. The statistics trotted out by Racing NSW need to be treated with a great deal of caution, as they ignore the many millions which are made by selling horses to stud duty at the end of their racing career.

It is not up to punters to subsidise owners who enter into a risky investment any more than it is for them to subsidise those who lose money in the stockmarket. Prior to entering into their decision to invest, owners are (or should be) aware that, just like a wager, they stand to lose everything in their investment. I really can’t put it any better than Rob Waterhouse did *“there seems to be something wrong with the general widespread belief that rich people who race and breed horses must be subsidised by poor people who like to bet on them.”*¹¹

¹¹ Transcript Melbourne presentations, page 27

TABCORP¹²

I will preface this by saying that in no way do I claim to be an expert on Tabcorp. I can't recall the last time I placed a bet with them, but it would certainly be over two decades ago. During the duration of the APA's existence we had many members who, for some reason which was never clear to me, did actually use their products.

There are however a number of issues which are so contentious that they deserve comment, even from a non-expert.

Inability to recognise reality

As is evident from its submission, and indeed the transcript of its presentation to the Commission post the Draft Report, Tabcorp does not appear to understand that the administrative action of deduction of monies from punter funds and transferring a portion of them to others does constitute Tabcorp funding the racing industry. On page 8 of the Melbourne transcript, for example, we have Robert Nason claiming almost ad nauseum "the totalisators fund form guides, the totalisator funds radio stations..." etc. etc.

Judging by some comments, apparently neither does a number of prominent racing administrators. Tabcorp is merely the administrator of what should be a simple add-subtract-divide process and as such a small cog in the overall scheme of things, which should be easily replaceable by an alternative administrator. Continued media speculation over the future of the NSW TAB adds fuel to the fire, and suggests that rather than welding itself to that organisation, Racing NSW would be well advised to maintain a more open mind.

A further comment made by Robert Nason at the very least bears investigation. "*There is not a totalisator in the world with a lower commission take-out rate than ours*", he states¹³. It is my understanding – and I may well be incorrect – that Hong Kong has a lower deduction rate than Tabcorp.

*"At the 41st IFHA Conference in Paris on the 8 October 2007, Bobby Chang, in a paper entitled "Impact of Takeout Rate on Revenue" said that the lowering of the effective takeout rate from 17.5% to 15.7% had increased revenue in 2006 from HK\$49B (US\$6.3B) to HK\$53B (US\$6.8B)" can be found in the article from BettingMarket.com "***Totalisators - An anachronism sustained by monopolistic protectionism***"¹⁴*

¹² I suppose UNiTAB would also be subject to most of the criticism which follows, however as my sole focus in Australian racing is on NSW and Victoria, I have had no dealings with them.

¹³ Transcript Melbourne presentations, page 16

¹⁴ The article can be found here, and is well worth a read, if only for an alternative opinion as to the future of totalisators. Note also the increase in revenue following the drop in deduction rate... <http://www.bettingmarket.com/nesohnetored030506.htm>

Rounding-down and take-out increase¹⁵

This (legalised) scam has been going on for decades. As my understanding is that the benefit goes to Tabcorp coffers, then I have never understood why State Governments permitted this to happen in the first place. It is a clear transfer of wealth from punter to corporate wagering operator.

Imagine going into a supermarket to purchase your weekly groceries. At the end of the day, your purchases are totalled and instead of being rounded to 5c as currently happens (if paying cash – no rounding whatsoever otherwise) they were rounded up to the next 5c, with the profit from rounding going entirely to the supermarket.

No big deal, you might say. But that is not a fair comparison. A far fairer comparison is going to the supermarket and finding each and every single one of the purchases in your trolley had been rounded up at the check-out to the next 10c and the grand total of this rounding goes to the supermarket. You wouldn't exactly be a happy consumer. Naturally, the supermarket would go out of its way not to publicise this practice until it's too late, then point to the fine print if it receives any complaints.

There is absolutely NO excuse for this scam being allowed in the totalisator industry. There should be zero rounding for account betting and nearest 5c in cash. When one considers that this rounding rip-off occurs (usually) three times when place dividends are considered, the amount of money being fleeced from punters becomes more apparent. Every single winning bet made by a punter is reduced.

Other things being equal, the shorter the price of the winning bet, the greater is the percentage deduction that comes from this rounding-down scam. For example, with a correctly priced dividend of \$4.59, rounded down to \$4.50, a punter's winnings has been subjected to a further deduction of 2.5%. With a correctly priced dividend of \$1.29 (far from uncommon for e.g. place punters), rounded down to \$1.20, a punter's winnings has been subjected to a massive further deduction of 31%!¹⁶

The Commission must surely recommend that this practice be legislated against.

A further point. It was not widely publicised, but the 16% limit on the total deduction which could be taken across all bet types by Tabcorp was quietly removed in each jurisdiction. This means that "end-of-year sales" which Tabcorp needed to undertake to ensure it stayed within this total boundary are a thing of the past. The fact that this was not publicly railed against by the media at large is an example of "muzzling by sponsorship" – commented upon further below.

¹⁵ It should be abundantly clear that when corporate bookmakers offer "Tote+" odds, they too are indirectly taking advantage of the rounding-down rort.

¹⁶ Some commentators frequently make the mistake of basing their calculation of the deduction from the dividend. This is mathematically incorrect, as \$1 of the dividend is simply a return of the punter's stake. Thus the calculation should be $(\$1.29 - \$1.20) / (\$1.29 - \$1)$.

A touch of hypocrisy?

It is to be noted that in addition to its pari-mutuel operation Tabcorp runs not just one fixed odds operation, but two, being TAB Sportsbet and Luxbet. So, for all the bleatings about funding of the racing industry etc., it is clear that Tabcorp is itself as guilty as any of draining money from the pari-mutuel pools that it is overtly so keen to prosper “for the benefit of the industry”. A cursory look at what Luxbet offers (Appendix C) shows a Tabcorp subsidiary offering the very “Tote+” enticements it wants banned!

It is also interesting to note that Tabcorp has a trade mark¹⁷ (registered as far back as 2003) over the word “TABEXCHANGE”. One can only speculate as to what it has in mind in that regard.

Media

A number of contributors have commentated on the indirect “muzzling” of the media via corporate advertising etc. emanating from Tabcorp.

This is certainly most evident in, but far from confined to, the Murdoch-controlled media.

As just one example, “The Sportsman”, one of the better form guides, used to provide thoroughbred horse-racing fields and form only. Following recent sponsorship from Tabcorp, it has increased that coverage to other forms of racing and sports. Before it received this major new funding, it used to refer to “Betfair Park” in Victoria (renamed from “Sandown” following a sponsorship agreement between the MRC and Betfair) by that title. It almost immediately reverted to using “Sandown” once again – all mention of “Betfair Park” has disappeared from the form guide. This despite the substantial funds paid in good faith by Betfair to the racing industry for the naming rights.

Similarly, a cursory glance of the major dailies will find no mention of “Betfair Park”, and just about the only time the name is used is in the TVN-owned publications, and even then sparingly.

All the Commission members are surely aware of the “cash-for-comment” scandal that emanated from Alan Jones’s Westpac-related about-face. One only has to look at the racing pages of the Murdoch press to draw one’s own conclusions as to what is happening. Betchoice made mention of their experience with the media in their submission, as did Robbie Waterhouse in his Melbourne presentation.

In relation to Sky Channel, punters are fed the corporate spin. Rarely are opposing views allowed to be aired, and even then those expressing such views are “gang-tackled” by a large number of vociferous Sky Channel employees. One only has to look at footage of the “interview” (I hesitate to dignify it with that word) carried out by Richard Freeman with Mark Davies from Betfair during their initial set-up phase.

¹⁷ Trade Mark #966308

Others have commented on the pervasive influence of Sky Channel (which is an effective monopoly outside the family home) on retail audiences, and I really have nothing to add to those comments.

GENERAL ITEMS

The appropriate %

It is very clear from most submissions received that, unless a Government/administration wants to discriminate for protectionist reasons, the appropriate product fee paid be a % of profits. However, I don't see why the % should be the same across the board. For example, differing %s could be applied to:

- Totalisators
- On-Course Bookmakers
- Corporate Bookmakers
- Betting Exchanges

It might also be worth considering a scaling, such as in the Commonwealth personal income tax model, where the greater the dollars operators earn from punters, the greater the percentage contributed to the industry. There may also be a case for those who take risks (bookmakers) to pay a lower rate than those who do not.

“Free-riding”

This is a highly emotive term, used ad nauseum by certain administrators to almost infer fraud. As the Commission is well aware, both betting exchanges and corporate bookmakers have expressed a willingness to pay “product fees”. It is simply a case that certain jurisdictions refused to accept them, lest it provide legitimacy to the existence of those they wished to ban.

“Free-riding” could equally be applied as a term to those that don't pay their fair way. In this context, just about every State and Territory has been “free-riding” off Victoria for decades, thanks to the now defunct “Gentlemen's Agreement”. Especially the State whose representatives use the term the loudest.

Intellectual Property (“IP”)

I freely confess to not understanding IP law. I looked up the Government's definition¹⁸:

“Intellectual property represents the property of your mind or intellect. It can be an invention, trade mark, original design or the practical application of a good idea. In business terms, this means your proprietary knowledge - a key component of success in business today. It is often the edge which sets successful companies apart and as world markets become increasingly competitive, protecting your intellectual property becomes essential.

Confidential information (also referred to as trade secrets), patents, registered designs, trade marks, copyright, circuit layout rights and plant breeder's rights are all legally classified as IP rights.”

¹⁸ <http://www.ipaustralia.gov.au/ip/index.shtml>

I may well be stupid, but for the life of me I can't see how simply compiling a race field falls under that definition. Race field compilation has been going on since well before NSW even existed. Where is the "intellectual property"? However, I will leave that for greater minds than mine to decide.

Similarly with totalisator odds. The calculation of the dividend requires mathematics of almost pre-school level. How a dividend resulting from such a calculation becomes valuable "intellectual property" is again a puzzle for greater minds than mine. One could, perhaps, cynically add that the rounding-down scam is where the intellect comes in.

Entitlement (?) to income from operators

As has been alluded to (if I read it correctly) the preferred approach of the Commission is that the level of funding provided to the racing industry is arrived at by consensus. This is entirely sensible in normal circumstances, as has been witnessed e.g. in Victoria, however Racing NSW is involved, so in practice it is highly unlikely that it will be done in that manner on a national basis.

The concept of the State administrators of racing being entitled to receive income from the wagering operators is however, of some philosophical interest. Who, for example, has a corresponding entitlement to receiving income on e.g. betting on an election? Will the Australian Electoral Office now force the introduction of "electoral candidate list legislation"?

APPENDIX A

COMMENTARY FROM “THE VIRTUAL FORM GUIDE” SHORTLY FOLLOWING THE “TV-WAR” JUDGEMENT

Racing NSW Board Should Resign

Written by Bill Saunders Tuesday, 17 May 2005 10:00

The call by both the AJC and STC for the entire Board of Racing NSW to resign in the wake of its abortive Supreme Court bid to assert control over the Club's right to sign contracts with TVN is just the most visible sign of discontent with that state's Principal Club.

More muted grumbling is also emanating from among the provincial and country clubs, not to mention significant numbers of the 63,000 industry participants whose interests Racing NSW claims to represent.

AJC Chief Executive Mr Tony King said “Almost irreparable damage has been inflicted upon the NSW racing industry by its governing body's blatant power grab.

“In acting in a pre-emptive and biased fashion, Racing NSW has treated the AJC, the STC, and indeed the entire NSW racing industry with contempt.

“The evidence revealed in court is damning and renders it impossible for any club, trainer, owner, jockey, or bookmakers to believe that Racing NSW will in the future act impartially, within its powers and for the benefit of the industry.

The Supreme Court case judgement, handed down by Justice Patricia Bergin was scathing in its conclusions, with the judge meticulously demolishing almost every premise upon which Racing NSW based its case.

The lack of fairness demonstrated by Racing NSW in not informing the Clubs of their negotiations with TabCorp and Sky Channel, combined with sloppy housekeeping in keeping accurate minutes of its Board meetings and even skating perilously close to breaches of the Trade Practices Act, led Justice Bergin to conclude that not only did Racing NSW not have the powers it sought to assert, but even if it did, its procedures would have rendered the exercise of those powers invalid.

Given that Racing NSW was created under an Act of Parliament to take over the Principal Club duties in New South Wales from the AJC, Justice Bergin quite rightly expected that the exercise of its powers would be in accordance with the Act and best practice in terms of corporate governance.

That this did not happen is a direct indictment of the Racing NSW Board.

The courtroom debacle reveals that the Board is so lacking in commercial judgement that hardly any observer would believe it is capable of running the New South Wales racing industry.

On virtually every day of the trial, the judge asked Mr Taylor, counsel for Racing NSW to tell her the legal basis for the powers it purported to exert. He was unable to tell her, leaving the learned judge to examine all of the various Acts of Parliament, legal precedents and agreements herself. As expressed in her judgement, she was unable to find anything to sustain the powers claimed by Racing NSW.

Almost any suburban solicitor could have come to the same conclusion, without Racing NSW incurring the hundreds of thousands of dollars of legal expenses it must have incurred and without the Clubs having to pay the best part of \$700,000 of their own money to defend the spurious claims.

While the whole Board of Racing NSW must bear responsibility for the disaster, particular blame attaches to the actions of its Chairman Gary Pemberton, conspicuous by his absence for the whole trial and his Chief Executive Peter V'Landys, who bore the sorry burden of telling the Court about Racing NSW's tacky intrigues with TabCorp and Sky Channel, not to mention his own inability to get the Board minutes properly documented.

One can only wonder about what else Racing NSW does not do properly, but by all accounts the very appointments of V'Landys and Pemberton could do with more scrutiny.

For instance, after the resignation of Merv Hill from the position of CEO of Racing NSW, it was announced that Peter V'Landys was his replacement on the same day that advertisements for the position appeared in the daily press.

A statement issued by the Board on the day of his appointment read:

"The decision as to the appointment was unanimous by the Board of Racing NSW and although the position was advertised today, it was felt that Mr V'Landys be appointed immediately, as the NSW Racing industry has an extremely important time ahead with the possible takeover of the NSW TAB," the statement said.

Contrast this with the approach taken by Racing Victoria upon the resignation of Neville Fielke as its CEO.

An exhaustive executive search was undertaken over a period of several months with the successful candidate, Robert Nason selected from a field of well over 100 candidates. As head of the strategic consulting firm AT Kearney in the USA, Nason had wide experience both in Australia and overseas in a range of other businesses which the Board of Racing Victoria quite rightly thought was essential to guide the organisation through the challenges now facing racing.

In contrast V'Landys had spent virtually all his working life in the comparative sheltered workshop of the NSW Harness Racing Club, where his major achievement appears to have been the installation of 204 poker machines.

But it gets worse.

After Tony Hartnell retired as Chairman of Racing NSW in mid-2003, the Board spent quite a few months without a Chairman. Then according to Pemberton, he was rung up by Peter V'Landys who persuaded him to take the position. This revelation, disclosed by Pemberton in an [interview with Jennifer Byrne](#) in the Bulletin on 20th of April, is curious because Racing NSW is governed by the Thoroughbred Racing Act 1996, which says under Part 2 (Racing NSW) Clause 6 (Membership) sub clause 2 :-

(2) The nominated members of Racing NSW are to select, by majority vote, the Chairperson from among candidates identified by recruitment agencies as having suitable expertise to hold that office. Racing NSW must commission at least 2 recruitment agencies to identify candidates from whom the selection is to be made.

The reason for using at least two recruitment agencies to identify candidates is clearly to ensure that the widest possible selection of suitable candidates is found. While it is possible that Pemberton was short listed using this process, it is very odd indeed that a CEO would be personally involved in recruiting what would effectively be his own boss. In fact, while a harmonious working relationship between Chairman and CEO is always desirable, too close a friendship is dangerous as ultimately the Chairman and Board are responsible for the performance of the CEO and hence the whole organisation. A certain distance needs to be maintained.

In the case of Racing NSW, it is obvious that the injection of executive talent at both the Chairman and CEO level has been enormously destructive. Not only has whatever working relationship it had with the AJC and STC been ruined, but the commercial premise upon which Racing NSW has been acting is fatally flawed.

For V'Landys who has never known a month at the NSW Harness Racing Club when a cheque from the TAB did not arrive and Pemberton whose Chairmanship of TAB Limited led him to refer to it at Racing NSW as "my wagering network", the established TAB funding model is the only way they know for making racing pay.

But times are changing and top level racing administrators are beginning to realise that the TAB gravy train is coming to an end.

For instance, Nason stated in Inside Racing magazine this month:

"Significantly, Victorian race clubs are being encouraged to broaden their income base and reduce dependency on wagering returns for prizemoney. The TVN plan provides clubs with new opportunities such as improved returns for their media rights, expanded sponsorships and advertising, promotion of on-course attendance and new income streams from telecommunications sales, internet and mobile telephony."

What is the New South Wales equivalent directive?

Essentially it is to cuddle up ever closer to TabCorp and Sky Channel.

Any appreciation of the way technology is headed will tell the informed observer that the success of TabCorp and Sky Channel is rooted in the old way of doing things. And they show little sign of being able to adapt to the new environment.

Sky's dominance of the distribution of racing vision is only possible because until recently no-one else could afford to invest in a parallel network.

TVN just did. Soon every viewer will be a different channel.

TabCorp's dominance of wagering was because no-one else could afford to invest in a parallel distribution network.

The internet renders TabCorp's ownership of agency outlets increasingly irrelevant.

Both examples show that those running Racing NSW were out of touch and out of date when they sought to force racing clubs in that state to deal only with TabCorp and Sky Channel and worse, to lock out alternatives.

Now the cost of that rash action is coming home to roost. Not only will Racing NSW have to pay the legal costs of the AJC, STC and TVN, but TVN has heralded a damages claim reputed to be of the order of \$5 million.

As reported in last Friday's Sydney Morning Herald, Peter V'Landys said:

"We have said from the outset that this agenda is driven by Victoria. This frivolous action [by TVN] now proves it, as I'm sure the AJC and STC would not be suing themselves or their country and provincial cousins."

But V'Landys is wrong. TVN's damages claim is real and while technically the AJC and STC will pay just over half the claim, they will get it back via their 50% ownership of TVN. The real penalty will be against the New South Wales provincial and country clubs and the responsibility for their loss is totally on the shoulders of V'landys and Pemberton.

As stated by STC CEO Michael Kenny in his call for the Racing NSW Board to resign:

"In relation to TVN's announcement last week that it would pursue a damages claim against Racing NSW, TVN is an independent business. It would be remiss for its directors to not seek restitution when they believe shareholder value has been destroyed."

"This possibility should have been entirely within the contemplation of Racing NSW when it sought to exercise powers it did not have in relation to commercial rights it did not own. The action has the full support of all TVN shareholders".

Which illustrates yet again how poor is the commercial judgement of the Racing NSW Board.

The incumbent Board of Racing NSW has put itself so far out on a limb regarding the vision rights issue that it has left itself with no decent way to crawl back. In fact the rhetoric emanating from its Mascot bunker suggests that it cannot see where it has done anything wrong.

Resignation en masse would be one of the more sensible commercial decisions they could make. Not only might it avert the TVN damages claim but it would open the way for the New South Wales racing industry to work constructively with Victoria to ensure that the TVN initiative is as successful as possible. That is now the only way forward for both parties.

APPENDIX “B”

“PRINT SCREENS”

ILLUSTRATING

WAGERING OPERATORS

WHO ARE UNAFRAID TO DISPLAY PREVAILING BETTING MARGINS

BETCHOICE - Betting online for Australian Horse Racing bets, Sports bets, Casino bets and Poker - Windows Internet Explorer

https://www.betchoice.com.au/racing/?eventId=373762

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Thursday, 17 Dec. 6:55:34 PM

RACING **SPORTS**

Canterbury (Fine & Good-3): **R1 R2 R3 R4 R5 R6 R7 Multis** [Go Back](#)

Race 1 (19:00) - De Bortoli Wines 3YO C&G Plt - 1100m (closes in: 4 min 24 sec) [REFRESH](#)

Win and Place (Pays 1,2,3)

Win / Place	Quinella	Exacta	Trifecta	Quadrella	Form	Details	T.C. Stats	T.SB. Stats	Colours
Click on horse name below to see its form									
Win Betting									
Place Betting									
No. 2 - Horse Name 2	Fluc	Fixed	Best Tote+	Tote+5%	Top Fluc	Best Tote	Tote+5%		
1 - Rainash	4.6, 7.5, 9, 9.5	9.00	9.70	7.51		3.10	1.95		
2 - Shapiro	2.8, 3.9, 4, 4.2	4.20	4.80	4.38		1.70	1.74		
3 - Eager Beaver	2.8, 3.6, 3.8, 3.9	3.50	7.40	7.72		2.00	2.05		
4 - Fasciano's Lad	3.3, 3.6, 3.4, 3.3	3.70	5.90	4.20		2.50	1.74		
5 - Krefeld	6, 16, 17, 18	18.00	18.00	6.88		3.20	2.88		
6 - Maaui Man	8, 10, 11, 12	12.00	21.20	22.32		5.50	5.15		
7 - Rumour And Scandal		Scratched							
8 - Savvy Choice	9.5, 18, 19, 20	25.00	25.00	15.90		3.30	3.31		
9 - Striving	10, 31, 19, 18	18.00	18.00	9.93		3.40	3.82		
10 - Sullenbazer	16, 61, 61, 71	71.00	71.00	18.33		9.00	7.61		
LIVE RACING - Laton Open Top									
nb. All tote based dividends are approximate only. All dividends shown are for a \$1 investment. All-in until the declaration									

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English - AUS & NZ

Search Markets

Popular Sports

All Sports

Horse Racing

AUS

Cant (AUS) 17th Dec

19:00 R1 1100m 3yo

19:30 To Be Placed

19:30 R2 1100m 3yo

19:30 To Be Placed

20:00 R3 1550m Mdn

20:00 To Be Placed

20:30 R4 1100m Hcap

20:30 To Be Placed

21:00 R5 1550m Hcap

21:00 To Be Placed

21:30 R6 1900m Hcap

My Markets

Search Results

Multiples

Sport on TV

Where is the Money?

Next Horse Race

Cant (AUS) 17th Dec - 19:00 R1 1100m 3yo Matched: AUD 30,463 Refresh

Going in-play Tote

Back & Lay Market Depth More options

Selections: (9) 101.8% Back Lay 97.9%

1 (4)		1. Bashaash Jim Cassidy	8.8 \$40	9 \$27	9.2 \$41	9.8 \$22	10 \$155	10.5 \$45		
2 (10)		2. Charpoy Kerrin Mc Evoy	5.5 \$500	5.6 \$459	5.7 \$25	5.8 \$90	5.9 \$199	6.2 \$20		
3 (3)		3. Eager Beaver Tim Clark	3.75 \$81	3.8 \$160	3.85 \$285	3.9 \$273	3.95 \$75	4 \$500		
4 (2)		4. Fappianos Lad Peter Robl	3.8 \$194	3.85 \$300	3.9 \$97	3.95 \$173	4.1 \$622	4.2 \$50		
5 (6)		5. Krefeld Jay Ford	17 \$20	19.5 \$5	21 \$111	24 \$7	25 \$40	30 \$15		
6 (7)		6. Maasai Man Peter Wells	14 \$26	14.5 \$5	15 \$28	17.5 \$7	21 \$54	28 \$9		
8 (9)		8. Savvy Choice Shane Moses	28 \$9	30 \$19	34 \$16	36 \$9	38 \$5	60 \$6		
9 (5)		9. Striving Chris Munce	13.5 \$12	16.5 \$218	17 \$5	18.5 \$10	21 \$116	40 \$50		
10 (1)		10. Sullenberger Mitchell Bell	50 \$30	55 \$10	65 \$103	70 \$10	75 \$20	95 \$6		

Place Bets My Bets Rules Help

Event Start Time

2009-12-17 19:00 Australia/Sydney (GMT+11.00)

Rules

Win Only Market

The following non-runners have been removed from this market (Key: Race Card Number, Reduction Factor at time of withdrawal, Time).

Race card No.	Reduction factor	Withdrawal time
7. Rumour And Scandal	9.9%	10:20 (AEST)

FORM GUIDE RESULTS

PRICE COMPARISON THE TOTE

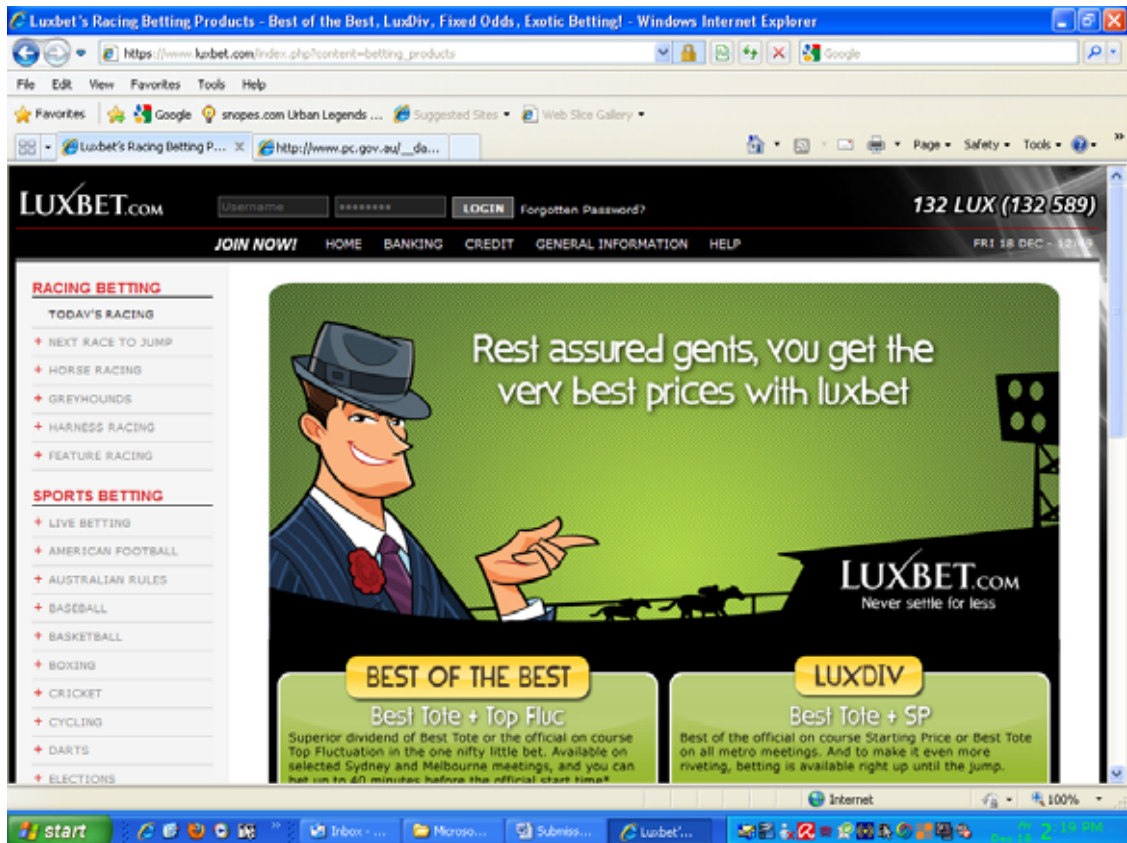
MARKET INFORMATION

For further information please see [Rules & Reqs.](#)

Who will win this race? Betfair Non-Runner Rule applies. Reduction factors may be updated periodically at the discretion of Betfair based on trading in the market, but after approximately 5 minutes from scheduled 'off' time of a given race, they will be updated only in exceptional circumstances. Odds of matched bets will only be adjusted if there are ADDITIONAL non-runners after your bet is matched. This market will turn **IN PLAY** at the off with all unmatched bets cancelled. Betting will be suspended at the end of the race. This market will initially be settled on a

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APPENDIX "C"



... continued over page

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