

BETFAIR AUSTRALASIA

**SUPPLEMENTARY SUBMISSION TO
THE PRODUCTIVITY COMMISSION
INQUIRY INTO GAMBLING – 2009/10**

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INTRODUCTORY COMMENTS

Betfair welcomes the Commission's draft recommendations and the thorough analysis given to some of the most challenging issues facing the wagering and gaming industries in Australia. This submission supplements the views expressed by Betfair at the Commission's public hearings in Melbourne on 7 December 2009. It also addresses various assertions about Betfair and its business model that were made by third parties during the course of the public hearings process (see Appendix 1) and provides an independent summary of the state of the UK racing industry (see Appendix 2).

SECTION 12

DRAFT RECOMMENDATION 12.1

The Australian Government should repeal the Interactive Gambling Act, and in consultation with state and territory governments, should initiate a process for the managed liberalisation of online gaming.

The Australian Government should evaluate the effectiveness of [harm minimisation] measures, as well as the regulator overseeing the national regulatory regime, on an ongoing basis.

Betfair broadly supports the draft recommendation for the reasons outlined in our initial submission.

DRAFT RECOMMENDATION 12.2

The Australian Government should assess the feasibility and cost effectiveness of:

- *Australia-wide self-exclusion and pre-commitment options for equivalent online providers;*
- *the capacity for extending self-exclusion through the payments system or through software solutions selected by problem gamblers; and*
- *the scope for agreement on international standards on harm minimisation and their enforcement through self-regulatory or other arrangements.*

Betfair broadly supports the draft recommendation for the reasons outlined in our initial submission.

We suggest that the assessment of self-exclusion and pre-commitment options should also encompass the cash and credit-based activities of offline wagering providers, having regard to the nature and scope of personal information maintained by those providers.

SECTION 13

DRAFT RECOMMENDATION 13.1

The Australian Government should work with state and territory governments to develop a national funding model for the racing industry. This model should be underpinned by national legislation and should replace state and territory based arrangements.

The key element of this model would be a single levy, universally paid on a gross revenue basis:

- *The levy should replace all other product fees currently paid by the wagering industry, but need not affect other funding channels, such as sponsorship of race meetings.*
- *The levy should be set and periodically reviewed by an independent national entity with the object of maximising long-term consumer interests.*
- *In setting the levy, the entity should engage in public consultation, and the bases for its decisions should be detailed in a public document.*

Betfair broadly supports the draft recommendation for the reasons outlined in our initial submission, provided a supplementary levy is paid by any operator enjoying exclusive rights within the retail/cash-based environment.

DRAFT RECOMMENDATION 13.2

The Australian Government should request that the Australian Competition and Consumer Commission examine any adverse implications for competition associated with the ownership arrangements for Sky Channel.

Betfair would be prepared to participate in any such examination conducted by the ACCC.

DRAFT FINDING 13.2

There are grounds for state and territory governments to cooperate when setting taxes on wagering revenue, in order to avoid destructive tax competition. However, the increased capacity for competition from lowly-taxed offshore online suppliers will, in any case, increasingly limit the capacity to tax wagering activity.

Betfair agrees with the draft finding.

DRAFT FINDING 13.3

Tote-odds betting should not be prohibited as there are better ways of dealing with the risks it involves.

Betfair makes no comment in relation to this finding.

DRAFT FINDING 13.4

Offering inducements to wager through discounted prices is not necessarily harmful, and may primarily serve to reduce switching costs between incumbent wagering operators and new entrants. The risks for problem gamblers should be assessed and, regardless of whether prohibition or managed liberalisation is the appropriate action, a nationally consistent approach would be warranted.

Betfair agrees with this finding. We believe a national approach is warranted following a careful assessment of the risks by relevant authorities.

Betfair refers to and repeats the arguments set out in our initial submission, namely that account-based wagering provides a safer environment for gamblers than cash-based wagering and, as such, bans on offering inducements to gamblers to open betting accounts should be removed as they do not achieve their intended policy objective.

DRAFT FINDING 13.5

The arguments for renewing TAB retail exclusivity are not compelling.

Betfair makes no comment in relation to this finding, other than to say that a premium should be attached to any such exclusivity if it is to continue.

OTHER MATTERS

Transparency of Pricing

There has been some discussion during the Commission's public hearings about the degree of price sensitivity of punters on horse racing. We believe all rational punters exhibit varying degrees of price sensitivity. What some may argue is a complete lack of price sensitivity on the part of some punters is, we believe, more likely to be price ignorance as a result of a lack of transparency on the part of most wagering operators.

Most operators do not present their markets in a way that allows customers to readily identify the price of the market they are betting into. We believe this creates a significant disadvantage for consumers who are not properly schooled in the economics of gambling and/or are not capable of readily working out, for instance, the over-round of a betting market.

We recommend that all operators be required to highlight the price of each market they offer – at least in gross terms – wherever the market is displayed on betting boards, on the transactional pages of internet sites and on screens in retail outlets. We believe the same standards should be applied to other forms of gambling, including lotteries and raffles.

BETFAIR'S RESPONSE TO VARIOUS ORAL SUBMISSIONS MADE TO THE PRODUCTIVITY COMMISSION

Submission	Comment	Betfair Response
Tabcorp 26/11/09 page 19	Mr Nason: "The commission asserts that the ruling favouring Tabcorp in the Supreme Court of Victoria would apply equally to product fees based on turnover; completely false".	<p>We invite the Commission to review the decision of Davies J in TAB Limited v Racing Victoria Limited & Greyhound Racing Victoria which can be found at: http://www.austlii.edu.au/au/cases/vic/VSC/2009/338.html</p> <p>At paragraph 31, her Honour states:</p> <p><i>The fees charged by RVL and GRV were not stipulated as quantified sums but as fees determinable by the application of a formula. In my view, the imposition of fees in that way was not in compliance with the authority conferred on the controlling bodies under s 2.5.19D(7), as limited by s 2.5.19D(4) in relation to a fee condition. Accordingly I conclude that s 2.5.19D(7) did not authorise RVL and GRV to impose fees determinable by the application of a formula.</i></p> <p>It is our view that a fee based on turnover would also be found invalid due to it requiring a formula. Page 7 of Racing Victoria's Annual Report states: "The court's finding also has the affect of invalidating a fee calculated on the basis of a percentage of turnover."</p>
Tabcorp 26/11/09 page 20	Mr Nason: "Revenue is not a product based fee arrangement anywhere in racing".	<p>Tabcorp pays product fees to the racing industry in both Victoria and New South Wales on a revenue basis as per their current licensing arrangements.</p> <p>A revenue based product fee is in place in South Australia for all 3 codes. Western Australia has recently introduced legislation to allow operators to pay on revenue. Racing Victoria based its fixed fee on revenue. Greyhound Racing NSW also raises fees based on revenue.</p> <p>The United Kingdom requires their wagering operators to pay on revenue. The Hong Kong Jockey Club, which has a monopoly on all wagering, pays all of its taxes (which amount to product fees as the majority goes to fund the racing industry) based on a revenue formula. Singapore does the same.</p>

Tabcorp 26/11/09 page 20	Mr Nason: "Interestingly, the corporate bookmakers and the betting exchanges to our knowledge do not pay any product fee to Hong Kong".	Betfair does not cover Hong Kong racing, therefore does not pay it product fees.
Tabcorp 26/11/09 page 20	Mr Nason: "So we pay 3 per cent of turnover for Hong Kong racing. We pay 3 per cent of turnover for Singapore racing. We pay 3 per cent of turnover for New Zealand racing".	These fees do not confer the "right" to conduct wagering on racing. They are fees paid for exclusive broadcast rights in the Australian territory. In agreeing to Betfair streaming Australian races into parts of Europe, Tabcorp (which has the exclusive overseas online rights) charges Betfair a percentage of gross revenue for that right. The actual product fee is confidential, but Betfair will provide details to the Commission if Tabcorp consents.
Tabcorp 26/11/09 page 21	Mr Nason: "Sport codes don't charge, so basically 99 per cent of our sports betting is product fee free".	Tabcorp elects not to pay sports a product fee – despite the sports wanting a product fee from wagering – other than pursuant to Victoria's "sports field" legislation, which was modelled on race fields legislation. All sports that have the right to charge under that legislation do so based on a standard gross revenue formula.
Tabcorp 26/11/09 page 22	Mr Nason: "The Supreme Court has agreed with us that for a totalisator, a revenue model is not capable of calculation with certainty".	The Supreme Court of Victoria found that in relation to the specific revenue fee charged by RVL and GRV it could not be ascertained with certainty. This does not prevent a more accurate definition of revenue being used, much like the way Tabcorp pays all of its taxes and fees under its licensing arrangements in NSW and Victoria, which are based on revenue. It is significant to note that all wagering operators pay GST based on revenue.
Tabcorp 26/11/09 page 22	Mr Nason: "In New South Wales we're paying \$30 million of product fees because of product fees levied by Racing New South Wales".	In the current court proceedings between Betfair v Racing NSW & Harness Racing NSW, the peak racing bodies confirmed that TAB Limited have received a full credit under their licensing arrangements for any race fields fee levied between 1 September 2008 and 30 June 2009. TAB and the racing bodies are still in dispute about the payment of the fee post 30 June 2009. The Respondent's Senior Counsel confirms this at page 349 of proceedings transcript (27/11/09 Betfair Pty Ltd v Racing NSW & Harness Racing NSW).

<p>Racing NSW 1/12/09 page 173</p>	<p>Mr Brown: “We know that funds we’d receive under a turnover model would be greater than under a gross revenue model”.</p>	<p>Racing NSW has failed to present details of any analysis supporting this assertion to either Betfair (as part of the process that led to it adopting a turnover-based model for race fields), to the “Independent Review of Wagering in NSW” conducted by Alan Cameron in 2008, to the 2008 Asian Racing Conference (where its CEO gave a presentation on industry funding issues) or to the Federal Court as part of its defence to Betfair’s claim that its turnover-based product fee is discriminatory.</p>
<p>Racing NSW 1/12/09 page 174</p>	<p>Mr V’Landys: “Tabcorp, through its contractual obligation, is going to pay \$4.70 and it is currently paying the \$1.50 on top of that, so it goes to \$6.20 in every \$100”.</p>	<p>This statement is patently false. In the current court proceedings between Betfair v Racing NSW & Harness Racing NSW, the peak racing bodies confirmed that TAB Limited have received a full credit under their licensing arrangements for any race fields fee levied between 1 September 2008 and 30 June 2009. In other words, the additional \$1.50 asserted by Mr V’Landys to the Commission is not retained by Racing NSW. TAB and the racing bodies are still in dispute about the payment of the fee post 30 June 2009.</p> <p>The Respondent’s Senior Counsel confirms this at page 349 of proceedings transcript (27/11/09 Betfair Pty Ltd v Racing NSW & Harness Racing NSW).</p>
<p>Racing NSW 1/12/09 page 175.</p>	<p>Mr Brown: “The CEO of Betfair has admitted under cross-examination that the 1.5 per cent of turnover levied on Betfair is unlikely to and does not have a tendency to deter or hinder their trade”.</p>	<p>This statement is false and misleading. During cross-examination, the CEO of Betfair stated the Betfair had absorbed the cost of race fields product fees pending the outcome of the Federal Court challenge to the validity of Racing NSW’s decision to impose a turnover-based fee. The evidence clearly showed that in doing so, Betfair had suffered an enormous and disproportionate (compared to the NSW TAB) impact on its profitability.</p>
<p>Racing NSW 1/12/09 page 175.</p>	<p>Mr V’Landys: “(Betfair) had a premium charge that’s spread over all the betting transactions. They bet on sport, they bet on – how do you apportion that between racing, sport and political – they are finding it difficult”.</p>	<p>Betfair pays taxes and product fees (when they are based on gross revenue) on all Premium Charge generated. We are able to, and do, apportion that charge over all sports and racing and pay the appropriate percentage to authorities.</p>

<p>Racing NSW 1/12/09 page 176</p>	<p>Mr V'Landys: "They can pay their marketing expenses out of gross profit or giving free bets out of gross profit".</p>	<p>Issues of this sort can easily be dealt with in the definition of gross revenue. A number of jurisdictions, including NSW, have been able to overcome concerns of this nature by applying an appropriate definition. Again, it is significant to note that all wagering operators currently pay taxes and GST based on revenue.</p> <p>It should also be noted that Racing NSW racing has full rights to audit the figures of wagering operators to identify any reporting discrepancies. The fees for such audits are required to be paid for by the wagering operator. Racing NSW has exercised these rights during the term of Betfair's approval.</p>
<p>Racing NSW 1/12/09 page 177</p>	<p>Mr V'Landys: "In the court, I was stunned in the evidence to find that punters on a betting exchange only get 80 per cent back of their turnover".</p>	<p>This is completely false and contradicts Racing NSW's own submissions in the Federal Court. In its submission, Racing NSW states that Betfair's commission equates to 2.5% of its "back bet turnover". Therefore, on average and in aggregate, Betfair returns 97.5% of betting "turnover" (as defined in the race fields legislation) to customers.</p> <p>Appendix 5 of Betfair's initial submission to the Productivity Commission contained an independent report of the Allen Consulting Group. This report explains the operation of Betfair in detail and outlines how its business model results in it being a low margin operator.</p>
<p>Racing NSW 1/12/09 page 178</p>	<p>Mr V'Landys: "The people that are layers on these betting exchanges are professional punters and bookmakers".</p>	<p>There is no basis for this assertion. Every single bet on Betfair must have a backer and a layer and punters of all types are involved in both sides of betting on Betfair.</p>
<p>Racing NSW 1/12/09 page 178</p>	<p>Mr V'Landys: "So if the layer wins, he gets charged between 2 and half per cent and 5 per cent, but because the layers have got the majority of the turnover in the betting exchange, they then pay a less fee because they discount them down because of the Betfair points".</p>	<p>This statement shows a complete lack of understanding of how Betfair operates. Layers do not have an advantage over backers in respect of reducing their commission rates.</p> <p>Information about how Betfair's commission rates are calculated is readily available on Betfair's website.</p>

<p>Racing NSW 1/12/09 page181</p>	<p>Mr Brown: “The fees have now been in operation for over 12 months and there’s no evidence of any wagering operator ceasing activities or drastically altering its business models”.</p>	<p>Betfair and most corporate bookmakers are paying the race fields fees to Racing NSW under protest awaiting the outcome of the current court proceedings with Betfair and Sportsbet. Success in the proceedings will see the fees repaid, with interest.</p>
<p>Racing NSW 1/12/09 page 188</p>	<p>Mr V’Landys: “when the Hong Kong jurisdiction sells its races to the New South Wales TAB, it pays 3 per cent of turnover. That’s the internationally regarded rate”.</p>	<p>These fees relate to media rights; not the right to conduct wagering on Hong Kong racing. When Tabcorp sold Betfair the right to stream five major meetings during the Melbourne spring carnival, it charged Betfair a fee based on the gross revenue earned from customers who viewed the races.</p>



STATISTICS ON GROWTH IN THE BRITISH HORSERACING INDUSTRY

The following figures were published by the Racing Post in December 2009 as part of its yearly review.

A DECADE IN FIGURES 1999-2008			
	1999	2008	% change
Horses in training	12,737	15,154	19
Owners	8,731	9,537	9
Levy yield	£59.4m	£91.6m	54
Prize-money	£69m	£106m	54
Prize-money per race	£9,165	£11,165	22
Racecourse attendances	5.18m	5.72m	10
Attendances (average)	4,497	4,015	(11)
Attendances Flat	3.22m	3.66m	14
Attendances jumps	1.95m	2.06m	6
Attendances Flat (average)	4,848	3,981	(18)
Attendances jumps (average)	4,015	4,074	1
Fixtures	1,151	1,424	24
Fixtures (Flat)	665	918	38
Fixtures (jumps)	486	506	4
Races	7,528	9,494	26

Figures relate to Britain only

The British Horseracing Authority in 2008 commissioned Deloitte to undertake a study of the economic impact of British horseracing. *The Economic Impact of British Racing 2009* was published in September 2009. Key findings include:

- Racecourses generated expenditure of £361m by racegoers, corporate customers and sponsors.
- £99m was generated from horseracing's punters by the statutory 10% Levy applied to the profits of British betting operators, and betting exchanges – paid to the Levy Board.
- Over £100m was generated from media channels – primarily broadcasting through terrestrial services, Racing's two dedicated horseracing TV channels and picture sales to Licensed Betting Offices.

- Owners incurred direct gross expenditure of £367m whilst receiving income of £92m through prize money and sponsorship. This resulted in net expenditure of £275m (excluding horse purchases).
- The expenditure of the breeding industry, primarily the 300 full time stud farms, was estimated as being £207m.

The key figure is that the economic impact of the racing industry in the UK grew from £2856mn in 2005 to £3393m in 2008. The full report can be found at:

http://www.britishhorseracing.com/resources/media/publications_and_reports/Economic_Impact_of_British_Racing_2009.pdf

Figure A: Key measures of Racing – 2008

Total economic impact of British Racing	£3.39bn
Core British Racing industry expenditure	£1.05bn
British Racing's capital expenditure	£106m
British Racing's tax contribution	£325m
Core industry employment (FTE)	18,600
British betting industry's gross win on British Racing	£1.05bn
Average no. of horses in training	15,349
Number of owners	9,539
Total racecourse attendances	5.7m

Source: Deloitte analysis.

Figure B: Summary of economic impact of British Racing – 2008 and 2005

	2005 £m	2008 £m
Core industry expenditure		
Racecourses	262	361
Media	88	104
Levy	103	99
Owners	200	275
Breeding	217	207
Total core	870	1,046
Off-course racing expenditure	180	222
Secondary expenditure		
Business to business	851	1,002
Consumer	955	1,123
Total secondary	1,806	2,125
Total Economic Impact of British Racing ¹	2,856	3,393
Capital expenditure	565	317
Overall Economic Impact of British Racing inc capex	3,421	3,710

Note 1: Excluding capital expenditure.