



**Report on the Review of the  
Unlawful Gambling Act 1998  
Gambling (Two-up) Act 1998  
Racing Administration Act 1998**

**November 2004**

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## Attachment

## Consultation Paper

## 1 Executive summary

- 1.1 This report presents the process and outcomes of the statutory review of the *Unlawful Gambling Act 1998*, the *Gambling (Two-up) Act 1998*, and the *Racing Administration Act 1998*.
- 1.2 The Review was conducted by the Department of Gaming and Racing on behalf of the Hon Grant McBride, MP, Minister for Gaming and Racing.
- 1.3 The Review also had regard to the recommendations of the Independent Pricing and Regulatory Tribunal's report published in June 2004 *Gambling: Promoting a Culture of Responsibility* (the "IPART report").
- 1.4 The Review concluded that, in general, the policy objectives of the Acts remain valid, and that in general the terms of the Acts remain appropriate for securing those objectives.
- 1.5 The Review has proposed a number of changes to the terms of the legislation in order to improve the effectiveness of the Acts, and to provide greater clarity.
- 1.6 In regard to the Unlawful Gambling Act, the Review has recommended that the Act be amended:
  - 1.6.1 so that the definition of *senior police officer* includes the rank of sergeant;
  - 1.6.2 to strengthen and clarify the unlawful bookmaking provisions insofar as they relate to the activities of turf commission agents. In this respect, further consultation is to be undertaken with relevant authorities and various industry stakeholders;
  - 1.6.3 to include a specific prohibition on the conduct of accounting/administrative/marketing functions in this State by wagering operators not licensed in New South Wales and/or their associates;
  - 1.6.4 to make it an offence for a minor to accept bets and or pay dividends on behalf of an agent of a licensed totalizator operator or a licensed bookmaker;
  - 1.6.5 to enhance the offence provision in section 8(3) to put beyond any doubt that the act of a person physically present in NSW placing a bet (either backing or laying contestants) with an overseas betting exchange on an Australian racing event is prohibited;
  - 1.6.6 to include a regulation making power to allow for the exemption of gaming devices on cruise ships from the operation of the Act, provided the gaming devices are not in operation whilst the cruise ships are in NSW coastal waters, or moored or berthed at a NSW port.

1.7 In regard to the Unlawful Gambling Act, the Review has also recommended that :

1.7.1 no changes be made to existing restrictions on the use of credit for gambling;

1.7.2 further examination be undertaken regarding the possible mode of operation in NSW of pre-paid/remotely stored value cards and the options for legislative response;

1.7.3 consultation be undertaken with the NSW Police, the Ministry for Police and relevant amusement arcade game industry representatives to formulate effective measures that will resolve any legal uncertainty regarding the status of amusement arcade games under the legislation.

1.8 In regard to the Gambling (Two-up) Act, the Review has recommended that:

1.8.1 the proposal to allow for the playing of Two-up in registered clubs on special commemorative days, other than Anzac Day, be discussed with the NSW Police and club and hotel industry associations, with any associated issues being clearly identified prior to the possible options for implementation of the proposal being canvassed.

1.9 In regard to the Racing Administration Act, the Review has recommended that the Act be amended to:

1.9.1 clarify the effect of the legislation in respect of warned off and disqualified persons entering a racecourse;

1.9.2 update the current provisions regarding cross-border advertising to specifically encompass activities such as forwarding e-mails to persons in NSW and to proscribe the publication in NSW of website addresses of wagering operators not licensed in NSW;

1.9.3 exempt the publication of sports betting information by authorised NSW sports betting bookmakers.

## 2 Background to the Review

### 2.1 General purpose of the legislation

- 2.1.1 The Unlawful Gambling Act, the Gambling (Two-up) Act and the Racing Administration Act commenced on 1 March 1999.
- 2.1.2 The Acts were enacted to provide a modern framework for long-established prohibitions on certain gambling activities. Collectively, these Acts replaced the *Gaming and Betting Act 1912*.
- 2.1.3 Gambling involves staking money on uncertain events driven by chance. There are two broad categories of gambling, and both are covered by the legislation. The categories are:
- gaming, which involves playing games of chance for money and broadly includes all non-wagering gambling activities; and
  - wagering, which involves placing a bet on the outcome of a racing or other event (usually a sporting event).<sup>1</sup>
- 2.1.4 An inter-agency task force that had been established in the 1990s to examine the gambling laws acknowledged in its published report that the Gaming and Betting Act had shortcomings.<sup>2</sup> The Act was no longer considered to be an effective instrument for the detection of, and taking of action against, serious unlawful gambling activities.
- 2.1.5 The Government accepted the task force's report and developed legislation that would modernise the 1912 Act. Three interrelated Acts emanated from the task force's report.
- 2.1.6 The Unlawful Gambling Act carried forward many provisions of the 1912 Act, but these provisions were rewritten to recognise the more sophisticated means by which illicit gambling could be conducted and detection avoided.
- 2.1.7 The Gambling (Two-up) Act carried forward the provisions of the 1912 Act that applied specifically to the conduct of Two-up at Broken Hill, and at other locations on Anzac Day.
- 2.1.8 The Racing Administration Act carried forward many provisions of the 1912 Act relating to the licensing of racecourses and other racing and wagering regulatory measures. At the same time the provisions were modernised to take account of the use of new betting technologies, in particular the Internet.

### 2.2 Why review the Acts?

- 2.2.1 The Minister for Gaming and Racing has an obligation to review and report to Parliament on whether the policy objectives of these Acts remain valid.

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<sup>1</sup> Independent Pricing and Regulatory Tribunal (1998), *Report to Government: Inquiry into Gaming in NSW*, p2, as cited in Independent Pricing and Regulatory Tribunal (2004), *Gambling: Promoting a Culture of Responsibility*, p9, available at <<http://www.ipart.nsw.gov.au>>

<sup>2</sup> NSW Government (1995) *Report of the Review of New South Wales Gaming and Betting Laws* (Gaming and Betting Laws Task Force)

- 2.2.2 The Minister must also review whether the terms of the Acts remain appropriate for securing the stated objectives.
- 2.2.3 These obligations arise from a provision contained in each Act. The review must be undertaken as soon as possible after the period of 5 years from the date of assent. A review report must be tabled in Parliament within 12 months of the end of this 5-year period.
- 2.2.4 One, combined review of these Acts was undertaken in light of the linkages between the legislation.

### 2.3 What are policy objectives of these Acts?

- 2.3.1 The general policy objectives of these three Acts were outlined in the second reading speech made when the Government introduced the Bills for the legislation to Parliament in 1998.<sup>3</sup>
- 2.3.2 The objectives of these Acts, like those of other gambling legislation, are generally to minimise negative social impacts, ensure integrity of the activity, deter criminal involvement and ensure proper amounts of revenue are derived from the gambling activity.
- 2.3.3 The specific objects of the Unlawful Gambling Act, the Gambling (Two-up) Act and the Racing Administration Act are stated in section 3 of each Act. The stated objects of the **Unlawful Gambling Act** are listed at paragraph 4.1.1 of this report, the stated objects of the **Gambling (Two-up) Act** are listed at paragraph 5.1.1 of this report, and the stated objects of the **Racing Administration Act** are listed at paragraph 6.1.1 of this report.
- 2.3.4 In the gambling policy area, objectives help to ensure that legislation is consistent with the principle of maximising community benefits,<sup>4</sup> or with the principle of balancing a reduction in the likelihood of people developing gambling problems against the community's general freedom to gamble as a legitimate social activity.<sup>5</sup>

### 2.4 What are the terms of these Acts?

- 2.4.1 The 'terms' of an Act are the specific provisions written into the legislation enacted by the Parliament. The terms support the policy objectives of an Act, by stating in some detail how the objectives are applied.
- 2.4.2 The main terms of the Unlawful Gambling Act are discussed in Chapter 4 of this report. The main terms of the Gambling (Two-up) Act are discussed in Chapter 5, and the main terms of the Racing Administration Act are discussed in Chapter 6.

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<sup>3</sup> NSW Parliament, Legislative Assembly *Hansard* 26 June 1998, available at <<http://www.parliament.nsw.gov.au>>

<sup>4</sup> Productivity Commission (1999) *Australia's Gambling Industries*, p 12.1, available at <<http://www.pc.gov.au>>

<sup>5</sup> Independent Pricing and Regulatory Tribunal (2004) *Gambling: Promoting a Culture of Responsibility*, p26, available at <<http://www.dgr.nsw.gov.au>> or at <<http://www.ipart.nsw.gov.au>>

## **2.5 The IPART report**

- 2.5.1 At the Government's request, the IPART recently completed an inquiry into the effectiveness of existing and proposed gambling harm minimisation measures.
- 2.5.2 IPART found that the effectiveness of gambling harm minimisation efforts in NSW would be improved by developing a coherent, integrated responsible gambling policy framework. IPART considered that the overall aim of the integrated policy framework should be to promote a 'culture of responsibility' in relation to gambling.
- 2.5.3 It recommended that, as a general principle, the measures implemented under this policy should aim to reduce the likelihood that gambling will become a problem for participants, without imposing unnecessary limits on people's general right to enjoy gambling as a legitimate social activity. In addition, a culture of responsibility should recognise and clarify the roles and responsibilities of various stakeholders in reducing problem gambling – including the general community, gamblers themselves, the gambling industry, counselling services and the Government.
- 2.5.4 In this light, IPART made recommendations falling into three main areas: promoting the level of 'informed choice'; protecting gamblers to discourage risky behaviours and reduce the prevalence and negative consequences of problem gambling; and improving the effectiveness and efficiency of the problem gambling counselling program in NSW.
- 2.5.5 This Review recognised that the Government is currently considering the recommendations in the IPART report, and noted that the Government will be announcing its intentions in the near future.
- 2.5.6 The Review complemented the IPART report by providing for examination of the objectives and terms of current legislation governing unlawful gambling activity, lawful conduct of Two-up, and lawful conduct of racing and the operation of racecourses. The Review process also provided stakeholders and members of the public an opportunity to comment on the existing objectives and other provisions of the three Acts governing these activities.

### **3. Review process**

3.1 On 18 August 2004 a Consultation Paper was released to assist interested parties to prepare submissions to the Review.

3.2 The commencement of the Review and the availability of the Consultation Paper were advertised in the print media. The advertisements invited submissions to the Review. A notice was also placed on the Department's website, indicating that the Review would be undertaken and that the Consultation Paper was available for downloading.

3.3 A submission to the Review was received from each of the following organisations:

- AMD Nominees Pty Ltd
- Australian Hotels Association (NSW)
- Australian Subscription Television and Radio Association (ASTRA)
- Clubkeno Holdings
- ClubsNSW
- Jupiters Gaming
- Mr Con Kafataris
- Leisure and Allied Industries
- Ministry for Police
- National Amusement Machine Operators' Association (NAMOA)
- NSW Casino Control Authority
- Premier Media Group Pty Ltd
- Services Clubs' Association
- Star City
- TAB Limited
- Wesley Community Legal Service



## 4. Unlawful Gambling Act 1998

### 4.1 Policy objectives

4.1.1 The stated objects of the Act are to:

- prohibit, in the public interest, certain forms of gambling;
- prevent the loss of public revenue that is derived from lawful forms of gambling; and
- deter criminal influence and exploitation in connection with gambling activities.

4.1.2 The Review examined the terms of the Act against each of the broad policy objectives to assess their appropriateness for securing the objectives. The Review found that the policy objectives of the Act remain valid and the terms of the Act remain appropriate for securing those objectives.

4.1.3 Submitters to the Review supported the terms of the Act generally. Some submitters advanced proposals for amending the terms of the Act – these proposals are discussed in paragraphs 4.2.1 to 4.6.8.

### 4.2 General provisions

4.2.1 The forms of unlawful gambling described in the Act continue to appropriately characterise the modern-day forms of these gambling activities. Also, the enforcement procedures and existing penalties in the Act continue to deter the criminal influence and exploitation that can be connected with gambling activities.

4.2.2 The definitions are comprehensive and continue to effectively support the terms of the Act. The Act is written in clear and contemporary English.

4.2.3 No submissions to the Review proposed that any new forms of gambling should be included in the legislation.

4.2.4 A submission from the Wesley Community Legal Service proposed that certain penalties in Part 3 of the Act relating to declared gambling premises should be significantly increased, specifically those penalties applying to owners, occupiers or organisers of declared gaming premises.

4.2.5 The NSW Police did not raise any concerns relating to the effectiveness of these penalties. Neither has Departmental experience indicated any clear need for an increase in such penalties. The Review found that further examination of this matter is not warranted.

4.2.6 In its submission, the Ministry for Police proposed that the definition of *senior police officer* be expanded to include the rank of sergeant, as this would be desirable from a practical policing point of view. This proposal is supported.

4.2.7 Some submitters suggested that existing restrictions on the use of credit cards should be expanded. Others expressed the view that greater controls over the use of credit cards were not possible. One submitter proposed making any credit card transactions used in relation to prohibited forms of gambling void, in a similar manner to unlawful gambling agreements under section 56 of the Act.

- 4.2.8 The IPART report concluded that there was strong support for the existing prohibitions on the use of credit for gambling. The report recommended that the existing prohibitions should continue without amendment.<sup>6</sup>
- 4.2.9 In regard to the proposal to make unlawful gambling-related credit card transactions void, this would require consultation with the financial and banking industries in addition to the Australian Government, which regulates these industries.
- 4.2.10 In early 2004 the Federal Government conducted a review of the Interactive Gambling Act 2001.<sup>7</sup> As part of that review, the feasibility of regulating financial transactions associated with interactive gambling was examined. The Review report was tabled on 16 July 2004.
- 4.2.11 That review did not find a case supporting the regulation of financial transactions relating to interactive gambling. It concluded that Australian card-issuing financial institutions would become liable for any dishonoured debts, and that the institutions would respond by attempting to block all gambling-related transactions, including services currently permitted under Federal legislation.
- 4.2.12 That review also noted that there was a range of measures that gambling providers could use, such as failure to accurately code gambling transactions, which could circumvent the effectiveness of using the financial payments systems to this end.
- 4.2.13 In a similar fashion, if credit card transactions for unlawful gambling were made unenforceable, the cardholder could effectively be legally exempt and the card-issuing financial institution would become liable for any gambling-related debts the cardholder had accumulated once the credit card payment had been processed. In order to recover these funds, the card-issuing financial institution would be forced to pursue the unlawful gambling provider, which could be an expensive and tortuous procedure.
- 4.2.14 Furthermore, in the case of unlawful gambling it is highly unlikely that a merchant would identify the transactions as gambling-related, making identification of such transactions extremely difficult. It is also possible that unlawful gambling-related credit card debts could arise from the use of cash advances, and not from direct credit payment to a merchant. Once again, the card-issuing financial institutions could become liable for any gambling debts, and would be forced to take steps to recover funds from the unlawful gambling provider.
- 4.2.15 In effect, this would force financial institutions to play a significant, if not pivotal, role in this aspect of the regulation of unlawful gambling. This would not be appropriate and the potential success of utilising such measures is dubious. Accordingly, the introduction of measures to make gambling-related credit card debts unenforceable along the lines suggested was not supported by the current Review.

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<sup>6</sup> Independent Pricing and Regulatory Tribunal (2004) *Gambling: Promoting a Culture of Responsibility* pp66-67, available at <<http://www.dgr.nsw.gov.au>> or at <<http://www.ipart.nsw.gov.au>>

<sup>7</sup> Report by the Federal Department of Communications, Information Technology and the Arts, available at <<http://www.dcita.gov.au>>

- 4.2.16 Submissions by the Australian Subscription Television & Radio Association (ASTRA) and TAB Limited raised the issue of pre-paid/remotely stored value devices to access gaming, sports betting and wagering products.
- 4.2.17 ASTRA suggested that should the legislation be amended to govern the use of such devices, then it should be carefully drafted so as to not adversely affect the use of pre-paid interactive television products such as amusement games.
- 4.2.18 TAB Limited's submission warned of the potential for such devices to be used for unlawful betting purposes.
- 4.2.19 The Review recognised the potential for the use of pre-paid/remotely stored value devices to effectively circumvent the general requirement that only NSW licensed wagering operators be permitted to operate in NSW. The Review found that this matter should be further examined and the possible legislative options explored.
- 4.2.20 While the Consultation Paper specifically raised the unlawful bookmaking provisions regarding the activities of turf agents in NSW, none of the submitters commented on these provisions. In other processes, concerns have been expressed regarding the legality of certain conduct at NSW race meetings by persons receiving betting instructions by mobile telephone from off the racecourse. The Review supported clarification and strengthening of existing unlawful bookmaking provisions. The Review noted that the Department has entered into discussions with various industry stakeholders and relevant authorities on this issue.
- 4.2.21 In respect of the question of non-NSW licensed gambling operators basing their administrative or back office operations in NSW, submissions by licensed NSW bookmaker Mr Con Kafataris and TAB Limited commented on this subject.
- 4.2.22 Mr Kafataris argued that it was not appropriate for an offence provision to be used for revenue protection and to hamper the lawful activities of other operators licensed in Australia.
- 4.2.23 Conversely, TAB Limited submitted that such back office operations located in this State encourage and facilitate greater access to NSW punters by wagering operators not licensed in this State.
- 4.2.24 The Review noted, for example, the current use of a NSW base by a senior representative of the UK Internet wagering operator Betfair for the advocacy of Betfair's services.
- 4.2.25 It is noted that the Victorian *Gambling Regulation Act 2003* includes a provision which makes it an offence to knowingly offer or provide accounting, administrative or other services related to unauthorised betting.
- 4.2.26 Many overseas and interstate wagering operators specialise in offering wagering products which are illegal under NSW law. For example, interstate bookmakers base payouts on totalizator dividends, which is proscribed under section 88 of the *Totalizator Act 1997*. This practice has been identified as giving rise to significant wagering integrity concerns. The Review supported a prohibition on the operation in NSW of accounting, administrative or other services as relates to unauthorised betting.

- 4.2.27 In its submission to the Review, TAB Limited also raised the issue of minors (persons aged under 18) being employed by an agent of a licensed totalizator operator to accept bets and pay dividends on their behalf in the normal course of the agent's operations.
- 4.2.28 TAB Limited pointed out that it is that company's policy to restrict minors from selling bets and paying dividends in its agencies. This policy was introduced as part of the company's harm minimisation strategies and following an occurrence involving a minor who was involved in credit betting while employed by an agent.
- 4.2.29 This policy was later challenged in the Administrative Decisions Tribunal, which determined that the "minimum age requirement of eighteen years is reasonable and appropriate".
- 4.2.30 TAB Limited submitted that the legislation should be amended to remove any doubt that a minor cannot accept bets and pay dividends on behalf of an agent.
- 4.2.31 It might be noted that RacingNSW requires that a licensed bookmaker must have attained the age of 21 years and that a licensed bookmaker's clerk must be over 18. Both the Unlawful Gambling Act and the Totalizator Act prohibit betting by or with a minor.
- 4.2.32 The Review has proposed amending the Unlawful Gambling Act to make it an offence for a minor to accept bets and/or pay dividends on behalf of an agent of a licensed totalizator operator or a licensed bookmaker. This is not to say that a minor could not be employed by a licensed bookmaker or a TAB agent to perform other duties.

### **4.3 Betting exchanges**

- 4.3.1 Section 8 of the Act provides for a general prohibition on betting on any event or contingency, but this is qualified to allow certain forms of betting on approved events, such as betting on races at licensed racecourses on approved days, or betting at an authorised auditorium. Specifically, section 8(3) prohibits betting on Australian races via electronic communications systems (telephone, Internet etc) with a wagering operator not licensed in Australia.
- 4.3.2 The submission from TAB Limited expressed serious concerns about the manner in which these betting exchanges operate, and the potential for such operations to damage the integrity of the NSW racing industry. Betting exchanges allow customers to bet amongst themselves on opposing outcomes of a race or sporting events. Effectively, a customer may back a contestant to lose, rather than win. TAB Limited suggested that allowing betting exchanges to operate would have grave consequences for the future of the racing industry.
- 4.3.3 TAB Limited proposed that "betting exchange services" be defined in the Act and be specifically prohibited.
- 4.3.4 ClubsNSW's submission supported the expansion of unlawful betting provisions to proscribe overseas-based Internet gaming services.

- 4.3.5 The Review noted that, in this State, all three codes of racing have now introduced rules prohibiting licensed industry participants from placing bets on overseas betting exchanges. At the national level, the Australian Racing Board is presently considering a national rule of racing to similar effect. Currently no betting exchanges are licensed in Australia.
- 4.3.6 It is now widely acknowledged that betting exchanges, by their very nature, pose serious threats to the integrity of the racing and sporting events upon which they operate.
- 4.3.7 Since February 2003, overseas Internet betting exchanges (eg: Betfair in the UK) have been targeting NSW and Australian punters betting on Australian racing and sporting events. Particularly in the case of racing, this has occurred against the wishes of the racing industry and the NSW Government.
- 4.3.8 In addition to undermining racing integrity, overseas Internet betting exchanges pose serious threats to racing industry revenue streams from wagering and, hence, racing's viability.
- 4.3.9 The Review has proposed amending the Act to put beyond any doubt that the act of a person physically present in NSW placing a bet (either backing or laying contestants) with an overseas betting exchange on an Australian racing event is prohibited;

#### **4.4 Amusement arcade games**

- 4.4.1 Amusement arcade games are games designed for entertainment only, and not for the purpose of gambling. Some of these devices issue vouchers that can be redeemed for prizes, or issue prizes with a clear monetary value. The Act does not, and was never intended to, directly govern the operation of amusement arcade games.
- 4.4.2 Mechanical games that issue prizes, such as those known as "Skilltesters", are not regarded as gaming machines. Yet it is reported that some of these mechanical devices have been used to provide cash prizes in the form of currency notes attached to stuffed toys. These devices are sometimes located in areas that are easily accessible to minors, such as in the entrances to supermarkets or cinemas.
- 4.4.3 Despite the intention that these devices are not to be used for the purposes of gambling, the cash prizes clearly have a monetary value, and the non-cash prizes or vouchers issued may have a monetary value. Therefore, there has been ongoing uncertainty about whether these devices may constitute prohibited gambling devices under the existing definition of *prohibited gaming device* in the Act.
- 4.4.4 During the course of the Review, the appropriateness of permitting video and other games that award prizes (of any kind) with a monetary value to be operated in the current unregulated manner was considered. Of particular concern was that minors have ready access to these devices.

- 4.4.5 Industry participants argued strongly that the Act is not an appropriate statute for the regulation of amusement arcade games. This view is not disputed. Industry participants also opposed the introduction of any restrictions on the value of prizes that can be won from such games. At the same time, the National Amusement Machine Operators' Association (NAMOA) stated its opposition to the use of cash prizes.
- 4.4.6 Other submitters sought greater legal clarity for games that are not intended to be operated for the purposes of gambling, but that have some similarities to unlawful games or otherwise prohibited gaming devices.
- 4.4.7 One submitter argued that amusement arcade games that provide any form of prize - whether it be vouchers, tokens or cash - are gaming devices. This submitter was of the view that only those machines offering additional free games as prizes should be permitted.
- 4.4.8 Given the varying views on the status of amusement arcade games, and the appropriateness of such devices offering prizes, the Review concluded that there is a clear need to resolve the existing uncertainty about this issue.
- 4.4.9 For example, this could be achieved by amending the Act and introducing a regulation to exempt these games and devices from the definitions of *unlawful game* and *prohibited gaming device* in the Act, if certain conditions are met. These conditions could include a requirement that no cash prizes are to be offered, or a limit could be imposed on the value of prizes.
- 4.4.10 The Review acknowledged that any proposed amendment that impacts on the definition of a *prohibited gaming device* under section 6 of the Act may affect the policing of unlawful gambling and the ability of the NSW Police to carry out investigations and prosecutions. The Review has recommended that the NSW Police be consulted as part of a process to formulate effective measures to resolve any legal uncertainty regarding the status of amusement arcade games.
- 4.4.11 It is also important that consultation with representatives of the amusement arcade game industry be undertaken at the same time, to gain a full understanding of the range of amusement arcade games currently in use, and the full impacts of any measures developed to manage this issue. This will help ensure the effectiveness of possible new measures.

## 4.5 Gambling on visiting cruise ships

- 4.5.1 Some large cruise ships that visit NSW coastal waters contain gambling facilities.
- 4.5.2 The operation of these facilities is not permitted, as they are not licensed by the appropriate State body for operation in NSW. In addition, the mere possession of unapproved and unauthorised gaming equipment on board these vessels may be considered to be a breach of the Act. This is because NSW gaming laws are part of the substantive criminal law of the State and can stand alone beyond the baseline of the State. Hence, they are applicable to ships in NSW waters.

- 4.5.3 It is understood that no action has been taken against cruise lines for possessing these devices, as it is customary practice for the vessel operators to address possible compliance issues by shutting down the gaming facilities while the ships are present in NSW coastal waters.
- 4.5.4 Under international law, all ships have a right of innocent passage through any territorial seas or high seas. This means that a country cannot interfere with a ship's passage, but can place some requirements on that passage, eg: customs, quarantine, safety of navigation, etc.
- 4.5.5 Legal advice indicates that foreign ships in NSW waters (12 nautical miles from the baseline of the State) are subject to State laws, which would include gambling laws. The legal advice also indicates that NSW does not have primary responsibility for investigating and prosecuting offences by foreigners on foreign ships in NSW waters. This responsibility resides with the Australian Government.
- 4.5.6 Under international law, the jurisdiction of a cruise ship's next port of call would generally apply. However, the current terms of the Unlawful Gambling Act do not appear to have anticipated how these circumstances could best be handled.
- 4.5.7 Submitters to the Review were generally supportive of the introduction of an exemption for cruise ships, on the condition that the gaming devices are not in operation while the ship is in NSW coastal waters, or moored or berthed at a NSW port.
- 4.5.8 The Act already allows the making of regulations to declare that devices are not prohibited gaming devices. However, the wording of the Act as it currently stands does not provide for the introduction of a regulation specifically allowing cruise ships to possess unauthorised gaming devices on the grounds that they are not in operation.
- 4.5.9 The Review proposes that this situation be rectified to allow for the introduction of an appropriate exemption.

#### **4.6 Interactive games**

- 4.6.1 Submitters to the Review raised the issue of interactive games and games available through digital or other broadcasting services on a subscription basis.
- 4.6.2 The NSW Government remains opposed to interactive gambling, while recognising that it is appropriate for such forms of gambling to be regulated by the Australian Government.
- 4.6.3 That Government's review of the Interactive Gambling Act also considered all issues related to interactive gambling services, whether or not already prohibited. The Review did not recommend that any changes be made to existing Federal legislation.
- 4.6.4 The submission from ASTRA expressed concern that the definitions in the Unlawful Gambling Act would capture amusement games that are available from digital subscription television units, or interactive games, such as the Internet version of the "Who wants to be a Millionaire" television game show.

- 4.6.5 The submission from Premier Media Group Pty Ltd expressed support for the contents of the ASTRA submission, and opposed prohibitions on new and interactive forms of gambling.
- 4.6.6 From available evidence, the Review found that the games available by subscription do not entail any stake or risk of money. Hence, they are unlikely to be considered to be unlawful games.
- 4.6.7 The interactive version of the “Who wants to be a Millionaire” television game show was also raised by submitters. In order to play, a player must subscribe to the games, and cash prizes are awarded. It is accepted that subscribing to play the game does not equate to a wager, or stake or risk of money. Accordingly, the Review concluded that this game would not be captured by the definition of an “unlawful game” in section 5 of the Act.
- 4.6.8 In its submission, ASTRA sought a meeting with representatives of the Department to discuss concerns in regard to the possible impact of the provisions of the Unlawful Gambling Act on subscription television services.
- 4.6.9 The Review accepted that consultation along these lines should occur, both to provide the Department with a full understanding of these types of subscription services and to provide industry with certainty regarding the legal status of such services under NSW legislation.

## 4.7 Recommendations

- 4.7.1 It is recommended that the Act be amended:
- so that the definition of *senior police officer* includes the rank of sergeant;
  - to strengthen and clarify the unlawful bookmaking provisions insofar as they relate to the activities of turf commission agents. In this respect, further consultation is to be undertaken with relevant authorities and various industry stakeholders;
  - to include a specific prohibition on the conduct of accounting/administrative/marketing functions in this State by wagering operators not licensed in New South Wales and/or their associates;
  - to make it an offence for a minor to accept bets and/or pay dividends on behalf of an agent of a licensed totalizator operator or a licensed bookmaker;
  - to enhance the offence provision in section 8(3) of the Act to put beyond any doubt that the act of a person physically present in NSW placing a bet (either backing or laying contestants) with an overseas betting exchange on an Australian racing event is prohibited;
  - to include a regulation making power to allow for the exemption of gaming devices on cruise ships from the operation of the Act, provided the gaming devices are not in operation whilst the cruise ships are in NSW coastal waters, or moored or berthed at a NSW port.



4.7.2 It is also recommended that:

- no changes be made to existing restrictions on the use of credit for gambling;
- further examination be undertaken regarding the possible mode of operation in NSW of pre-paid/remotely stored value cards and the options for legislative response; and
- consultation be undertaken with the NSW Police, the Ministry for Police and relevant amusement arcade game industry representatives to formulate effective measures that will resolve any legal uncertainty regarding the status of amusement arcade games under NSW legislation.

## **5. Gambling (Two-up) Act 1998**

### **5.1 Policy objectives**

5.1.1 The stated objects of the Act are to:

- legalise the conduct of:
  - games of Two-up on Anzac Day;
  - games of Two-up in Broken Hill;
- ensure that those games:
  - are conducted honestly and with appropriate controls to prevent fraudulent activity;
  - are conducted free from criminal influence and exploitation;
- minimise, in the public interest, any adverse social effects of lawful gambling, and in particular minimise the potential for lawful gambling to cause harm to individuals and families.

5.1.2 The Review examined the terms of the Act against each of the broad policy objectives to assess their appropriateness for securing the objectives. The Review found that the policy objectives of the Act remain valid and the terms of the Act remain appropriate for securing those objectives.

5.1.3 Submitters to the Review supported the objects of the Act. Submitters to the Review supported the terms of the Act generally. Two submitters advanced proposals for amending the terms of the Act - these proposals are discussed in paragraphs 5.3.1 to 5.4.9.

### **5.2 General provisions**

5.2.1 The provisions of the Act are directed to ensuring that games of Two-up on Anzac Day and at Broken Hill are conducted in the public interest and that they strike an appropriate balance between the interests of operators, players and the general community. The provisions also continue to ensure the probity and character of persons involved in the conduct of games of Two-up, and provide for an effective compliance regime.

5.2.2 The definitions are comprehensive and effectively support the terms of the Act. The Act is written in clear and contemporary English.

### **5.3 Proof of age and inducements to gamble**

5.3.1 Wesley Community Legal Service proposed the introduction of enhanced provisions regarding proof of age requirements and a prohibition on the use of inducements to gamble. It proposed that these provisions could be similar to those already contained in the regulatory framework for the operation of gaming machines.

5.3.2 Wesley Community Legal Service also noted that it had never encountered a problem gambler with an addiction to Two-up, and that the operation of games of Two-up at Broken Hill may have some value as a tourist attraction.

- 5.3.3 The Review did not receive any evidence indicating that minors are involved in the playing of Two-up, or that there is a need to enhance the existing provisions that prohibit betting with minors, or the definition of “acceptable proof of age” as currently exist in the Act.
- 5.3.4 Equally, the Review did not receive any evidence suggesting that there is any use of inducements in relation to games of Two-up.
- 5.3.5 Accordingly, the introduction of enhanced provisions regarding proof of age requirements and a prohibition on the use of inducements to gamble was not supported by the Review.

#### **5.4 Playing of Two-up in registered clubs**

- 5.4.1 The Services Clubs' Association proposed that the playing of Two-up in registered clubs be allowed on days other than Anzac Day.
- 5.4.2 The Association stated that a number of clubs conduct services on, or are considering the extension of, commemorative days' services to other significant dates, such as Remembrance Day on 11 November and Victory in the Pacific Day on 15 August. The Association proposed that the playing of Two-up could also be allowed on these days, as it is on Anzac Day.
- 5.4.3 The Association explained that the playing of Two-up on these special commemorative days helps attract a younger generation of Australians to participate in such activities. This mix of generations is seen as a way of engendering a sense of national pride in Australia's war efforts, and passing on these traditions to younger generations.
- 5.4.4 The Association proposed that, if the playing of Two-up was allowed on other significant days, it could be conducted under the same conditions as currently apply to the playing of Two-up on Anzac Day.
- 5.4.5 The Association previously raised this proposal with the Government in 2002. At that time the Government was not convinced of the necessity of the proposal. The Government felt that allowing Two-up to be played on days apart from Anzac Day might impact upon the special respect Australians harbour for 25 April as a day commemorating lives lost, and sacrifices made, during wartime.
- 5.4.6 However, the Review noted the steadily increasing interest from, and awareness of, all members of the Australian public in commemorative occasions such as Anzac Day, Remembrance Day and Victory in the Pacific Day, as evidenced by the numbers of people attending commemorative services at many locations around Australia, and also overseas.
- 5.4.7 The Review has not seen any evidence suggesting that an increase in the availability of Two-up would be likely to lead to an increase in problem gambling associated with this activity. As noted in paragraph 5.3.2, the Wesley Community Legal Service has never encountered a problem gambler with an addiction to Two-up.

- 5.4.8 The Review envisages the special commemorative days could be specifically identified and prescribed by regulation. It is not envisaged that the playing of Two-up would be permitted outside these days of special significance. The Minister could be granted a power to authorise the conduct of games of Two-up on specified days, following an application being made by the club or club association in question.
- 5.4.9 Requiring that the approval of the Minister must be obtained for the conduct of games of Two-up on specifically listed commemorative days would continue to provide a high level of control over this form of gambling.

## **5.5 Recommendations**

5.5.1 It is recommended that:

- the proposal to allow for the playing of Two-up in registered clubs on special commemorative days, other than Anzac Day, be discussed with the NSW Police and club and hotel industry associations, with any associated issues being clearly identified prior to the possible options for implementation of the proposal being canvassed.

## **6. Racing Administration Act 1998**

### **6.1 Policy objectives**

6.1.1 The objects of the Act are to:

- ensure the integrity of racing in the public interest;
- ensure that certain betting activities by licensed bookmakers are conducted properly;
- minimise the adverse social effects of lawful gambling; and
- protect a source of public revenue that is derived from lawful gambling.

6.1.2 The Review examined the terms of the Act against each of the broad policy objectives to assess their appropriateness for securing the objectives. The Review found that the policy objectives of the Act remain valid and the terms of the Act remain appropriate for securing those objectives.

6.1.3 Submitters to the Review supported the objects of the Act. Submitters to the Review supported the terms of the Act generally. Some submitters advanced proposals for amending the terms of the Act – these proposals are discussed in paragraphs 6.2.1 to 6.2.15.

### **6.2 General provisions**

6.2.1 The Wesley Community Legal Centre submitted that the “warning off” provisions (whereby a person found in breach of the rules or found guilty of criminal conduct in relation to racing may be “warned off” or prohibited from entering a racecourse) in section 13 of the Act have proven effective and should be maintained.

6.2.2 Over the past 2 years, a process has been undertaken to separate the regulatory and commercial governance functions in the greyhound and harness racing industries. During this process, issues arose in the context of harness racing - such as which body is responsible for policing warnings off/disqualifications and the administration and control of racecourses. The Review noted that the Department proposes to put forward relevant clarifying amendments to section 13 to improve the effectiveness of warning off/disqualification sanctions.

6.2.3 TAB Limited submitted that while the Act places discretionary power in the hands of the Minister in respect of various activities, the legislation should acknowledge that such discretion is often subject to TAB Limited’s rights under its exclusive off-course totalizator licence.

6.2.4 TAB Limited also submitted that the legislation should grant it some “approval/veto” powers in respect of applications for the conduct of a betting auditorium.

6.2.5 In exercising Ministerial discretionary powers, it is necessary that all manner of considerations be taken into account, including the well being and future viability of the racing industry as a whole.

- 6.2.6 It would only be in extraordinary circumstances that legislation would vest certain discretionary powers in a private company in relation to the regulation of an industry in which the company is a major operator. TAB Limited does in fact have certain powers in respect of betting auditorium authorisations under the terms of the Racing Distribution Agreement, to which the Minister and the three codes of racing are signatories.
- 6.2.7 Licensed NSW bookmaker Mr Con Kafataris submitted that State-based controls have their limits and that there should be a national approach to the regulation of bookmaker activities. Mr Kafataris expressed the view that the Act needs to be reviewed and unnecessary restrictions on bookmakers removed to allow NSW bookmakers to better compete with interstate rivals.
- 6.2.8 Mr Kafataris submitted that the policy of the Unlawful Gambling Act and the Racing Administration Act is ambivalent in that section 8(3) of the Unlawful Gambling Act recognises other licensed Australian wagering operators, while the Racing Administration Act is restricted to “licensed NSW bookmakers”.
- 6.2.9 In support of his argument, Mr Kafataris pointed to the provisions dealing with cross-border advertising and publication of betting information, where he claimed that no distinction is made between advertising by illegal operators and advertising by “other Australian licensed providers”.
- 6.2.10 The Review noted that the rationale for this differential treatment of Australian licensed wagering operators is attributable to the different mischief to which section 8(3) is directed on the one hand, and the cross-border wagering advertising restrictions on the other.
- 6.2.11 Advances in telecommunications technology should be taken into account in terms of the advertising of wagering products and services offered by operators not licensed in NSW. Electronic mail advertising, and what is known as “spamming”, are relatively new phenomena. The legislation currently regulates advertising in the print and electronic media (including the Internet).
- 6.2.12 The Review agreed that the question of updating the current provisions regarding cross-border wagering advertising to specifically encompass activities such as forwarding e-mails to persons in NSW, and to proscribe the publication in NSW of website addresses of wagering operators not licensed in NSW, should be addressed.
- 6.2.13 Section 29(1) of the Act provides a blanket prohibition on the publication of any betting information. Section 29(2) provides an exemption on the publication of racing betting odds by a NSW licensed bookmaker. The section does not specifically exempt the publication of sports betting information by authorised NSW sports betting bookmakers.
- 6.2.14 The Review noted that an anomaly in that section 30(2) makes provision for an advertisement relating to a NSW licensed sports betting bookmaker to include details of the sports betting odds that the bookmaker is prepared to offer.
- 6.2.15 The Review has therefore proposed that section 29 be amended to provide that sports betting odds relating to a NSW licensed sports betting bookmaker may be published. This would bring section 29 into line with the provisions of section 30(2).

## **6.3 Recommendations**

6.3.1 It is recommended that the Act be amended to:

- clarify the effect of the legislation in respect of warned off and disqualified persons entering a racecourse;
- update the current provisions regarding cross border advertising to specifically encompass activities such as forwarding e-mails to persons in NSW, and to proscribe the publication in NSW of website addresses of wagering operators not licensed in NSW;
- exempt the publication of sports betting information by authorised NSW sports betting bookmakers.