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1.1 INTRODUCTION

1.1.1 In NSW the racing and associated betting industry is regulated by the Department of Gaming and Racing, and the three controlling bodies of racing (ie. Thoroughbred Racing Board, Harness Racing New South Wales and the Greyhound Racing Authority).

1.1.2 At the end of 1998, the Minister for Gaming and Racing, the Hon J R Face MP, called for the review of the NSW racing and betting laws as part of the State's commitment to National Competition Policy (NCP) and the Competition Principles Agreement (CPA).

1.1.3 The pieces of legislation under review are the:

- *Racing Administration Act 1998*;
- *Bookmakers Taxation Act 1917*¹ (*non-tax matters only*);
- *Thoroughbred Racing Board Act 1996*;
- *Harness Racing NSW Act 1977*; and
- *Greyhound Racing Authority Act 1985*.

1.1.4 The Terms of Reference for the Review required an assessment of whether the public benefits of the legislation under review exceed the costs, and whether the legislative objectives can only be achieved by restricting competition.

1.1.5 The Steering Committee for the Review included representatives from the Department of Gaming and Racing (Chair), The Cabinet Office and NSW Treasury.

1.1.6 The Review Steering Committee prepared and distributed an issues paper in April 1999. At the same time notices were placed in the press and trade publications calling for submissions. This was done after key stakeholders were asked to identify issues that should be included for review. A total of 23 submissions were received. The Review steering committee invited 6 submission makers to speak to their submissions at a meeting for that purpose held on 19 October 1999.

1 The *Bookmakers Taxation Act 1917* was repealed with effect from 1 July 2001. The tax matters were transferred to the *Betting Tax Act 2001*, and the non-tax matters (mainly dealing with Bookmaker Revision Committee procedures) were transferred to the *Racing Administration Act 1998*. For the purposes of this review, future references to the *Bookmakers Taxation Act 1917* should be read in the light of such legislative action.

- 1.1.7 The Review Steering Committee identified the key restrictions in the legislation and assessed them against the public benefits and costs of each. In summary, those restrictions were grouped as *Barriers to Entry*, *Cross Border Restrictions* and *Restrictions on NSW Licensed Bookmakers*. A summary of the assessments against those headings is set out below.
- 1.1.8 The Review Steering Committee's conclusions and recommendations are based on its assessment of the information obtained during the course of the review. While it has been possible to scope the financial significance of the existing racing and betting industry and to note the information made available by the submission makers, it has not generally been possible to conduct a strict quantification of the costs and benefits of various restrictions in this field. This is because much of the information is simply not available. Accordingly, a qualitative approach has been used and the Review Committee has made informed judgements, as necessary, as to the relative merits of benefits and costs.
- 1.1.9 The Review Steering Committee has also had due regard to the significant community concern about gambling matters that has recently arisen, particularly since the Productivity Commission's draft report on *Australia's Gambling Industries*. In particular, the committee has noted:
- The 'pause' on new gambling that the Premier of NSW declared in August 1999, and support for the Commonwealth Government's national moratorium on new gambling services;
 - The consequent passage of the *Gambling Legislation Amendment (Responsible Gambling) Act 1999* and subsequent 'freeze' on gaming machine numbers in NSW, and the 'gaming reforms package' announced in July 2001;
 - The Prime Minister's establishment of a national Ministerial Council on Gambling to address problem gambling matters;
 - The position taken at the Council of Australian Governments' (COAG) meeting on 3 November 2000 that NCP reviews of gambling legislation should take appropriate account of the potential public detriment arising from increased competitive pressures in the gambling market; and
 - The implications arising out of the Commonwealth's *Interactive Gambling Act 2001* which from 28 June 2001 banned interactive gambling services, and the advertising of such services, but exempted wagering and lotteries services from such a ban.

1.2 BARRIERS TO ENTRY

Restrictions on Alternative Codes of Racing

Description

- 1.2.1 The *Racing Administration Act 1998* defines a race meeting as being horse, harness and greyhound specific. The complementary *Thoroughbred Racing Board Act 1996*, *Harness Racing NSW Act 1977* and the *Greyhound Racing Authority Act 1985* reinforce these breed specific restrictions including by authorising the relevant controlling bodies to grant the necessary licences, race club registrations, permits and other official approvals to be able to conduct race meetings in conjunction with lawful betting. The rules of racing, which apply to licensed racing industry participants, prohibit a jockey or trainer from participating in alternative codes of racing.

Assessment

- 1.2.2 The Review Steering Committee notes that, in principle, there is no objection to the conduct of alternative forms of racing *without* betting, and that the Government has imposed a pause on new forms of gambling. Such a policy is in line with the Government's duty of care to the people of NSW to provide a safe and responsible gambling environment.
- 1.2.3 Further, all Australian jurisdictions are currently reviewing gambling public policy independently of their NCP reviews. Such reviews are in relation to both on-line and off-line gambling, and all jurisdictions are participating, to varying extents, in the Ministerial Council on Gambling. The Review Steering Committee further recognises the national importance of such separate and specific processes, and that it is appropriate for them to report in due course.
- 1.2.4 The Review Steering Committee also recognises that other jurisdictions have foreshadowed in their NCP reviews of racing and betting laws the relaxation of restrictions on betting on alternative codes of racing. Such relaxation (in Victoria at least) is, however, subject to alternative codes of racing demonstrating that, at their expense and as a prerequisite to obtaining access to lawful betting revenues, the proposed activity is viable and is subject to appropriate integrity and control measures.
- 1.2.5 Accordingly, in the present circumstances, it is generally considered appropriate to retain the status quo subject to the conclusion of the other processes by which the Government is revising its gambling public policy.

1.2.6 Nevertheless, should gambling policy be revised to permit betting on alternative codes of racing, the Review Steering Committee has identified a number of core principles that are applicable. The proponents of alternative codes of racing demonstrate, at their expense, that:

- (i) The alternative form of racing, under the governance of the proposed controlling body for such racing, meets appropriate integrity, viability and occupational health and safety standards;
- (ii) The proposed lawful form of betting (ie. off-course or on-course totalizator, or bookmaker) will make a contribution to the NSW economy and regional development in a similar manner to the existing racing industry, and that overall there is a net benefit to the community;
- (iii) Access to existing racing industry infrastructure is obtained on the basis of commercial agreement with the existing racing industry; and
- (iv) The proposed lawful form of betting (ie. off-course or on-course totalizator, or bookmaker) will not have an unduly adverse impact on the arrangements in place for the existing racing industry.

RECOMMENDATION 1

1.2.7 The Review Steering Committee recommends that the:

- (1) Current arrangements for alternative code racing (ie. without associated betting) continue in accordance with existing principles for *Unregistered Race Meetings*; and
- (2) Restrictions on alternative codes of racing (eg. camel, arabian and quarter horse racing) which proscribe access to lawful betting, be retained.

Restrictions on Proprietary Racing

Description

1.2.8 Section 5 of the *Racing Administration Act 1998* provides that a race meeting must not be held at a racecourse unless the racecourse is licensed, the race meeting (ie. horse, harness and greyhound racing) is conducted by a non-proprietary association and the race meeting is conducted in accordance with the Act.

Assessment

1.2.9 In principle, the Review Steering Committee notes that there is no objection to the conduct of proprietary racing. Where it is proposed that such racing be conducted with associated lawful betting, there are issues of whether such an activity would lead to an expansion of gambling. Accordingly, it is a matter for such interests to demonstrate to government that proprietary racing, and associated lawful betting, can be organised in co-operation with the existing industry, and that it is capable of delivering the appropriate level of community benefit – comparable to that of the existing *non-proprietary* racing industry.

1.2.10 The principles in favour of establishing proprietary racing, after the public policy on gambling has been settled, are very similar to those in relation to alternative codes of racing set out in paragraph 1.2.6 above.

1.2.11 Additionally, the authorisation of proprietary racing would have a profound impact on the racing industry. Competition between existing *non-proprietary* racing and *proprietary* racing would place pressure on the levels of prize money, employment and capital infrastructure. A similar position has been taken in other Australian jurisdictions where the onus has been placed on the proponents of the proprietary system to demonstrate appropriate benefits.

RECOMMENDATION 2

1.2.12 The Review steering committee recommends that:

- (1) The legislative restrictions on *proprietary* racing (in respect of horse, harness and greyhound racing), be retained.

Controls Over Racing Industry Participants

Description

1.2.13 Within the existing racing industry regulatory framework the three controlling bodies of racing under their respective legislation (ie. *Thoroughbred Racing Board Act 1996*, *Harness Racing NSW Act 1977* and the *Greyhound Racing Authority Act 1985*) undertake:

- (i) A supervisory or control function over the conduct of racing and licensed racing industry participants; and
- (ii) A strategic role to lead the business development and ensure the ongoing economic development and future of the racing industry.

Assessment

1.2.14 In recent years the Government has restructured the controlling bodies of racing to give them increased autonomy, and provide for direct industry representation. The rationale is that such steps provide the industry with self determination, and therefore the carriage of their future viability. At the same time, the Government recognises that regulatory and integrity functions, while carried out by the controlling bodies, ultimately are the Government's responsibility. Accordingly, appointees to the controlling bodies are chosen on the basis of the need for a Board to be able to meet an appropriate range of commercial and regulatory responsibilities.

- 1.2.15 The recent Independent Commission Against Corruption (ICAC) report (*The greyhound report: Investigation into aspects of the greyhound racing industry*) found generally that there were deficiencies in the Greyhound Racing Authority's exercise of some of its responsibilities. In that report, the ICAC recommended that the Government and the three controlling bodies for racing examine the possibility of combining certain regulatory and drug testing functions across the three codes of racing. The purpose of those recommendations is to examine whether there might be benefits in terms of greater accountability, consistent practices and economies of scale.
- 1.2.16 The Review Steering Committee acknowledges the ICAC's report, and that it is appropriate for the Government to progress the implementation of the ICAC recommendations. The Review Steering Committee also acknowledges that these matters may proceed independently of its task.
- 1.2.17 Accordingly, the Review Steering Committee concludes that a licensing regime for the control of racing industry participants is of net benefit to the community, although current licensing arrangements may be open to review or reform.

RECOMMENDATION 3

- 1.2.18 The Review Steering Committee recommends that:

- (1) The licensing of racing industry participants (eg. bookmakers, jockeys, trainers, drivers, etc); and
- (2) The registration of, and associated powers over, race clubs and the conduct of racing,

exercised by the controlling bodies for racing in NSW, and which are contained in the Acts which establish those bodies, be retained.

1.3 CROSS BORDER MARKET RESTRICTIONS

Cross Border Restrictions Applicable to Horse, Harness & Greyhound Betting

Description

- 1.3.1 Part 4 of the of the *Racing Administration Act 1998* contains provisions which restrict advertising into NSW by non-NSW licensed betting operators. This is underpinned by the criminal sanctions in the *Unlawful Gambling Act 1998* on unlicensed persons operating as betting providers. Both Acts commenced on 1 March 1999, and a number of their provisions were carried forward from the now repealed *Gaming and Betting Act 1912*. At the same time the Racing Act was updated to introduce parallel 'electronic betting' provisions.

Assessment

- 1.3.2 The purpose of the cross border restrictions on betting information and advertising is to:
- (i) Control the extent of the advertising of gambling services within NSW, and therefore the potential for such services to cause social harm; and
 - (ii) Assist the racing industry to minimise the opportunity for betting operators to use NSW racing as a betting platform without contributing to its costs (ie. free ride).
- 1.3.3 Reference is made to the Government's pause on new forms of betting and that all Australian jurisdictions are reviewing gambling public policy independently of their NCP reviews (para. 2.5.5 onwards) Such reviews are in relation to both on-line and off-line gambling, and all jurisdictions are participating, to varying extents, in the Ministerial Council on Gambling and the Council of Australian Governments scrutiny of gambling issues.
- 1.3.4 One of the significant issues in relation to problem gambling, and hence the review of gambling public policy, is public access to gambling services. If Government is to pursue the objective of ensuring a safe and responsible gambling environment for its gambling consumers, then it must have regard to the marketing and advertising of gambling products into NSW by out of jurisdiction gambling operators (see para. 5.3.33).
- 1.3.5 The Review Steering Committee notes that, in recent years, the convergence of gambling with new on-line and telephone technologies and the growth of gambling entrepreneurs (whether licensed in Australia or elsewhere), has resulted in the targeting of NSW consumers by such operators.
- 1.3.6 The Review Steering Committee further notes the passage of the *Interactive Gambling Act 2001* through the Commonwealth Parliament on 28 June 2001. Section 15 of the Act is the principal offence provision. It provides that a person is guilty of an offence if the person intentionally provides an interactive gambling service and the service has an Australian customer link. Essentially, any interactive gambling service provider, either within or outside Australia, would commit an offence if it had customers in Australia. Telephone betting, wagering, lotteries and certain other purely communications or networks services have been excluded from the definition of an interactive gambling service.
- 1.3.7 Part 7A of the Commonwealth Act provides for a prohibition of advertising of interactive gambling services. This is said to be based on the principles that apply in respect of tobacco advertising.

1.3.8 On the opening page of the Explanatory Memorandum to the Commonwealth Act the following rationale is given:

The Government is concerned that new interactive technology, such as the Internet and datacasting has the potential to greatly increase the accessibility to gambling and exacerbate problem gambling among Australians.

1.3.9 The Review Steering Committee considers that the Commonwealth's approach has merit and, accordingly, believes that there is a community benefit in restricting the presence in NSW of out of jurisdiction operators, and also gambling advertising into NSW by such operators, because without such controls it is likely there would be a significant increase in marketing and advertising of gambling with consequential adverse impacts.

RECOMMENDATION 4

1.3.10 The Review Steering Committee recommends that:

- (1) The existing restrictions on the physical – or agency – presence applicable to a race betting operator not licensed in NSW, be retained.
- (2) The existing cross border (betting information and advertising) restrictions that relate to betting operations on horse, harness and greyhound racing, be retained.
- (3) The restrictions in (2) should be reconsidered if it is possible to make alternative national arrangements which are consistent with:
 - (i) The Government's policy that there should be no expansion in gambling and that, if permitted, such gambling services are subject to strict responsible gambling standards; and
 - (ii) The delivery of community benefits commensurate with those that currently apply, and in particular to the NSW racing industry.

Cross Border Restrictions Applicable to Sports Betting

Description

1.3.11 Same as for recommendation 4 above.

Assessment

1.3.12 The 'free rider' argument does not apply to sports betting. However, the cross border betting information and advertising restrictions should not be removed until satisfactory national agreements are made which are consistent with:

- (i) The ‘ring fencing’ of sports betting from race betting (ie. to prevent the ‘backdoor’ entry of sports bookmakers to race betting clients);
- (ii) The Government’s policy that there should be no expansion in gambling and that, if permitted, such gambling services are subject to strict responsible gambling standards; and
- (iii) The delivery of community benefits commensurate with those that currently apply, and in particular to the NSW racing industry.

RECOMMENDATION 5

1.3.13 The Review Steering Committee recommends that:

- (1) The existing restrictions on the physical – or agency – presence applicable to a sports betting operator not licensed in NSW, be retained.
- (2) The betting information and advertising restrictions, to the extent that they apply to Australian licensed sports betting operators, be eased *but only after* satisfactory agreements are reached between Australian jurisdictions in relation to:
 - (i) Differentiating between sports betting and race betting;
 - (ii) The supervision of betting operators by way of licence conditions that ensure that such operators do not exploit the lifting of sports betting advertising restrictions to solicit race betting clients;
 - (iii) Participation in national consumer protection arrangements with particular reference to consistency with Government’s policy that there should be no expansion in gambling and that, if permitted, such gambling services are subject to strict responsible gambling standards; and
 - (iv) Participation in national inter-governmental sports betting tax sharing arrangement.

1.4 RESTRICTIONS ON NSW LICENSED BOOKMAKERS***Time and Location, and Telephone and Electronic Betting Authorities*****Description**

1.4.1 Racing bookmakers may only operate on events at a location and time for which it is lawful to do so [ie at a licensed racecourse when a lawful race meeting is in progress (Rules of Betting made pursuant to an Act which establishes a controlling body of racing), or at an approved betting auditorium (section 24, Racing Administration Act 1998)].

- 1.4.2 Bookmakers may only conduct ‘telephone’ or ‘electronic’ betting’ if authorised by the Minister [Section 16, *Racing Administration Act 1998*].

Assessment

- 1.4.3 The bookmaker ‘time and location’, and associated ‘telephone’ and ‘electronic’ betting, restrictions are an essential part of the longstanding control philosophy that requires bookmakers to operate on-course. The reasons for this are that supervision and accountability are paramount in a cash flow business which may attract interest from criminal influences, including unlawful bookmakers. The restrictions also have the general effect of quarantining bookmaker betting, which includes credit betting, to those persons who attend a race course, or have pre-established arrangements with a bookmaker.
- 1.4.4 Electronic betting authorities are granted by the Minister pursuant to section 16 of the *Racing Administration Act 1998*. Such wagering has been exempted from the criminal offence provision in the *Commonwealth Interactive Gambling Act 2001*, i.e. interactive wagering services that are merely an extension of current offline betting services. However, the Commonwealth’s legislation does not exempt the introduction of new services that offer real-time betting after a sporting event has commenced. The reasons for that approach are that such services have the potential to impact significantly on the incidence of problem gambling in Australia.
- 1.4.5 The Review Steering Committee notes the implications of the *Commonwealth’s Interactive Gambling Act 2001*, including that different regulatory approaches are to be taken in respect of online and offline gambling, and that interactive wagering and lotteries have been exempted. Nevertheless, the underlying rationale (see para. 1.3.8 above) is that the prevalence of problem gambling has a correlation with the availability and advertising of gambling services.

RECOMMENDATION 6

- 1.4.6 The Review Steering Committee recommends that the bookmaker betting ‘time and location’ restrictions, and the associated ‘telephone’ and ‘electronic’ betting permit approval and control requirements, be retained.

Racing Bookmaker Minimum Telephone Bet Limit

Description

- 1.4.8 Bookmaker telephone betting on racing is subject to a minimum telephone bet level (\$200 for metropolitan gallops, \$100 elsewhere and no limit for sports betting). [A condition imposed on the relevant authorisation granted by the Minister pursuant to section 16, *Racing Administration Act 1998*].

Assessment

- 1.4.9 The racing bookmaker minimum telephone bet limit has the effect of curbing public access to bookmakers' services. At present, only a race-goer and a bookmaker telephone account client are able to wager with a bookmaker (the latter only within the limits of the \$200 minimum bet framework).
- 1.4.10 The policy conforms with the intention that bookmakers are restricted to on-course operations (para. 1.4.3) for reasons of integrity and harm minimisation. The Review Steering Committee notes that a reduction in the racing bookmaker minimum bet telephone limit would provide greater accessibility to the betting public of bookmaker services, and hence the potential for an expansion of gambling.
- 1.4.11 It is likely that increased competition between licensed bookmakers (whether in NSW or interstate) and TABs for the off-course market would ensue. Logically, such action would tend towards increasing gambling activity overall. Further, the possible extension of traditional bookmaker credit betting to betting consumers who bet in small denominations (ie. less than \$200) is of concern, and requires close consideration in terms of the Government's responsible gambling legislation and policy.
- 1.4.12 The Review Steering Committee concludes that overall it is likely there would be greater costs than benefits associated with abolishing the bookmaker minimum telephone bet limit, ie. because it would tend to expand gambling.

RECOMMENDATION 7

- 1.4.13 The Review Steering Committee recommends that:
- (1) The minimum telephone bet restriction on racing betting, be retained.
 - (2) A reconsideration of the relaxation of the minimum telephone bet restriction occur only if the relevant stakeholders submit detailed proposals to Government on the following:
 - (i) Appropriate bookmaker responsible gambling/harm minimisation standards are implemented to balance the enhanced access to bookmaker telephone betting by off-course betting clients; and
 - (ii) A revised betting tax and revenue structure that would ensure that revenue streams to the racing industry and government were maintained.
 - (3) The NSW Government consult further with other jurisdictions on this matter with the view of monitoring the national implications of the minimum telephone bet restriction policy.

Off-course Dissemination of Bookmaker Odds Fluctuations***Description***

1.4.14 Bookmakers (and other persons) may not disseminate on-course betting fluctuations on racing – except in very limited circumstances – off-course. [Part 4, *Racing Administration Act 1998*].

Assessment

1.4.15 A specific purpose review of this restriction was commenced by the NSW Government Department of Gaming and Racing prior to the NCP review of NSW racing and betting laws. The Departmental review (known as the *Off-Course Dissemination of Bookmaker Odds Fluctuations: A review of the costs and benefits of releasing off-course pre-race bookmakers' odds fluctuations*) involved considerable consultation, with an issues paper and a stakeholder round-table discussion prior to the final report.

1.4.16 The Review Steering Committee considers it appropriate for the specific purpose review and submissions made to the NCP Review, to be considered together for the purposes of this Review.

1.4.17 To remove the restriction would expose betting consumers, the racing industry and NSW licensed wagering operators to significant potential adverse consequences. The nature of these adverse consequences is that the dissemination of the odds would facilitate illegal SP bookmaking activities and hence tend to create an expansion of undesirable betting activity, some of it with criminal elements. Therefore, the Report concludes that to remove the restriction would result in a greater overall cost than its retention.

RECOMMENDATION 8

1.4.18 The Review Steering Committee recommends that the existing restrictions on the off-course dissemination of bookmaker odds fluctuations, be retained.

NSW Licensed Bookmaker Advertising***Description***

1.4.19 Bookmakers are subject to controls over the advertising of their services (section 30 of the *Racing Administration Act 1998*), and responsible wagering advertising guidelines prescribed by regulations made under the *Racing Administration Act 1998* and the *Totalizator Act 1997*.

Assessment

- 1.4.20 The need to control such advertising for public purposes is appropriate. The responsible advertising of gambling services has been prescribed, and the various measures are set out in Appendix D.

RECOMMENDATION 9

- 1.4.21 The Review Steering Committee recommends that the restrictions contained in Parts 3 and 4 of the *Racing Administration Act 1998* (ie. to impose conditions over the advertising of betting services by licensed bookmakers), be retained.

Registration and Probity/Financial Scrutiny of BookmakersDescription

- 1.4.22 Bookmakers must be registered/licensed by the relevant controlling body before they may field on one or any of the three codes of racing. Controlling bodies conduct financial probity and capacity scrutiny, and may make rules in relation to the operation of bookmakers [The relevant Act which establishes one of the three controlling bodies of racing].
- 1.4.23 Bookmakers are subject to scrutiny by the Bookmakers Revision Committee (BRC) in respect of their taxation liabilities to Government. A bookmaker may not operate without a current tax receipt issued by the BRC [Parts 5 and 6, *Bookmakers (Taxation Act) 1917*].

Assessment

- 1.4.24 The public benefit of having a licensing regime in place backed by a system of fidelity guarantees, not only benefits the public interest, but also benefits the direct interests of the racing industry as whole.

RECOMMENDATION 10

- 1.4.25 The Review Steering Committee recommends that these restrictions (ie. registration and probity/financial scrutiny of bookmakers), be retained.

Sole Trader Status of BookmakersDescription

- 1.4.26 Bookmakers are registered to operate as sole traders, the Rules administered by the controlling bodies for racing do not permit them to operate other than as a sole trader [Rules of Betting made pursuant to an Act which establishes a controlling body of racing].

Assessment

1.4.27A specific purpose review of this restriction was commenced by the NSW Department of Gaming and Racing prior to the NCP review of NSW racing and betting laws. The Departmental review arose out of a Government's election policy undertaking:

(To) provide for alternative structures for bookmaking operations, including partnerships and incorporated bodies as well as allowing bookmakers to operate from more than one venue at a time.

1.4.28The basis for the Departmental review (known as the *Departmental Special Purpose Review: Benefits and Costs of Alternative Operating Structures (eg companies, partnerships) for NSW Bookmakers*) is that the restriction has the potential to cause disadvantages in terms of viability and profitability.

1.4.29The Departmental review involved considerable consultation with the NSW Bookmakers Co-operative and the relevant licensing bodies, the Thoroughbred Racing Board, Harness Racing NSW and the Greyhound Racing Authority.

1.4.30The Review Steering Committee considers it appropriate for the specific purpose review and submissions made to the NCP Review, to be considered together for the purposes of the Review.

1.4.31It should be noted that the structure proposed by the Departmental review does not envisage that such structures would be public companies seeking funds by public float, or that any existing restrictions on licensed bookmakers would be eased – as is the case in other jurisdictions where corporate structures for bookmakers have been created. This is because such unrestricted corporate bookmaking entities create an expansion of gambling by the aggressive marketing of their services, and particularly to the more populous Australian States.

1.4.32The Departmental Review proposal, however, recognises that the licensed bookmaker industry is in decline. Consequently, there are benefits in the proposal in terms of fairer income tax arrangements and in more than one person managing the risks associated with bookmaking, and the possibility that betting consumers may obtain better odds or services as a result.

1.4.33The Review Steering Committee supports the recommendations made in the specific purpose review undertaken by the NSW Department of Gaming and Racing.

RECOMMENDATION 11

1.4.34 The Review Steering Committee recommends that:

- (1) The restrictions which limit NSW licensed bookmakers to operate as sole traders be removed;
- (2) The alternative operating structures for bookmakers, proposed by the NSW Department of Gaming and Racing, be implemented in their place, including that:
 - (i) Such companies may only be proprietary companies;
 - (ii) Directors of such companies to be NSW licensed bookmakers;
 - (iii) Shareholders to be either a Director, or close family member or *associate* bookmaker;
 - (iv) Such companies betting risks to be fully secured by appropriate financial guarantees;
 - (v) A licensing fee for corporate sports betting be examined; and
 - (vi) The legislative, licensing and rules of betting framework underpinning such alternative operating structures be consistent;
- (3) That prior to establishing alternative corporate structures for licensed bookmakers, the NSW Department of Gaming and Racing consult with the Police Service and the NSW Crime Commission with the view to ensuring that such structures have appropriate integrity controls, particularly in relation to the possibility of money laundering.

Sports Bookmaker Time and Location, and Sports Betting Authorities**Description**

1.4.35 Sports bookmakers may only:

- (i) operate from a licensed racecourse; and
- (ii) conduct 'sports' betting' if authorised by the Minister to do so.

[Division 2, *Racing Administration Act 1998*].

Assessment

1.4.36 The benefits of restricting sports bookmakers to operate from a supervised location (ie. a racecourse) are considerable, and they exceed the overall costs. The restrictions are essential to ensuring the integrity of betting, and of controlling what continues to be a highly cash-oriented business. The relaxation of such controls would also tend to expand gambling opportunities by providing greater access to a larger number of gambling operators. Such a course of action would likely result in higher adverse consequences for some betting consumers.

1.4.37 The Review Steering Committee concludes that that overall there are more benefits than costs in retaining the restrictions.

RECOMMENDATION 12

1.4.38 The Review Steering Committee recommends that the provisions which restrict NSW licensed sports bookmakers operations to a racecourse, be retained.

Declared Sports Betting Events and Approved Bet FormsDescription

1.4.39 Bookmakers may only:

- (i) bet on sports events declared by the Minister to be available for betting purposes; and
- (ii) offer those bet forms approved by the Minister.

[Division 2, *Racing Administration Act 1998*].

Assessment

1.4.40 The relevant Government policy is to ensure that the consumer is protected from unfair practices. In other words there is the possibility that consumers can be exploited by being offered fanciful betting opportunities which may only possibly occur at some distant point in the future.

1.4.41 The alternative to the existing restrictions would not be appropriate because the criteria would be difficult to construct in such a way that they could always be objectively interpreted. The existing approach is certain and can be amended as necessary in response to public interest considerations.

RECOMMENDATION 13

1.4.42 The Review Steering Committee recommends that the existing approach (ie. the Minister's approved list of sports betting events, and the associated bet forms), be retained.

2.1 PURPOSE OF THIS REPORT

2.1.1 The regulation of the NSW racing and associated betting industry has been examined as a part of the National Competition Policy (NCP) review of legislation that restricts competition.

2.2 NEED FOR REVIEW

2.2.1 NCP was endorsed by the Council of Australian Governments in 1995. One of the major components of NCP is the Competition Principles Agreement (CPA) which commits the NSW Government to review all of its legislation which restricts competition by the end of the year 2000.

2.2.2 The CPA requires that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs, and
- the objectives of the legislation can only be achieved by restricting competition.

2.2.3 In accordance with the CPA all NSW legislation has been examined to determine whether it establishes market entry barriers or requires conduct which has the potential to restrict competitive behaviour in the marketplace. Nearly 200 pieces of NSW legislation were identified as potentially restricting competition and scheduled for review, including specific legislation relating to racing and betting. All such reviews are now to be completed by 30 June 2002.

2.2.4 Within that framework the Hon J Richard Face MP, Minister for Gaming and Racing, directed that a review of racing and betting legislation be conducted in accordance with NCP requirements.

2.3 NATIONAL COMPETITION POLICY

NCP Principles

- 2.3.1 NCP aims to increase consumer and business choice and reduce production and transportation costs in an effort to lower prices for goods and services. It consequently aims to create an overall business environment that will improve Australia's international competitiveness.
- 2.3.2 The presumption underlying NCP is that, in many circumstances, a free market is the most efficient mechanism for industry to service the needs of the community. However, there are some circumstances where unrestricted markets fail and then legislative intervention to restrict competition is necessary to deliver benefits to the community.
- 2.3.3 NCP requires a careful examination of the restrictions on competition imposed by legislation to determine if the public benefits outweigh the costs. In assessing the public benefits of legislation the CPA requires the following matters, as relevant, to be taken into account:
- legislation and policies relating to ecologically sustainable development;
 - social welfare and equity considerations, including community service obligations;
 - legislation and policies relating to occupational health and safety, industrial relations and access and equity;
 - economic and regional development;
 - competitiveness of Australian businesses; and
 - the efficient allocation of resources.²

2 Competition Principles Agreement, Clause 1(3)

2.4 REVIEW PROCESS

Terms of Reference

2.4.1 The below listed legislation is identified for assessment by the terms of reference for this Review:

- (i) *Racing Administration Act 1998;*
- (ii) *Bookmakers Taxation Act 1917;*
- (iii) *Thoroughbred Racing Board Act 1996;*
- (iv) *Harness Racing NSW Act 1977; and*
- (v) *Greyhound Racing Authority Act 1985.*

2.4.2 Without limiting the scope of the Review, its methodology should:

- (i) clarify the objectives of the legislation, and their continuing appropriateness;
- (ii) identify the nature of the restrictive effects on competition;
- (iii) analyse the likely effect of any identified restriction on competition on the economy generally;
- (iv) assess and balance the costs and benefits of the restrictions identified; and
- (v) consider alternative means for achieving the same result, including the use of non legislative approaches.

2.4.3 The Review should also:

- (i) identify any issues of market failure which need to be, or are being addressed by the legislation;
- (ii) consider whether the effects of the legislation contravene the competitive conduct rules in Part IV of the *Trade Practices Act 1974 (Cth)* and the NSW Competition Code;
- (iii) consider and take account of relevant regulatory schemes in other Australian jurisdictions, and any recent reforms or reform proposals, including those relating to competition policy in those jurisdictions; and
- (iv) consult with and take submissions from persons and organisations associated with the racing industry and other interested parties.

2.4.4 The approved terms of reference for this Review are at Appendix A.

Steering Committee

2.4.5 The Review was oversighted by a NSW Government steering committee with representatives from the Department of Gaming and Racing (Chair), The Cabinet Office and NSW Treasury (the 'Review Steering Committee').

Public Consultation

2.4.6 The Review Steering Committee examined public and stakeholders' submissions in accordance with NSW Government consultation guidelines: *Consulting on reform – A consultation framework for the review of anti-competitive legislation*.

2.4.7 The Review Steering Committee prepared and distributed an issues paper in April 1999. At the same time notices were placed in the press and trade publications calling for submissions. This was done after key stakeholders were asked to identify issues that should be included for review. A total of 23 submissions were received. A list of the submission makers is attached (Appendix B).

2.4.8 The Review Steering Committee invited 6 submission makers to speak to their submissions at a meeting for that purpose held on 19 October 1999.

2.5 CONTEXT OF REVIEW

2.5.1 Several other policy and inquiry processes into gambling are relevant to this Review. Overall, these suggest that there is presently a heightened community concern about the expansion of gambling and the consequent adverse social consequences for some members of the community.

2.5.2 Noting these processes in chronological order, they are:

- CIE NCP *Review of TAB Privatisation Legislation* (April 1998);
- IPART *Inquiring into Gaming* (November 1998);
- NSW Premier's 'Pause' on new forms of gambling (August 1999), the *NSW Gambling Legislation Amendment (Responsible Gambling) Act 1999* which imposed a 'freeze' on gaming machine numbers (March 2000) and the 'gaming reform package' (July 2001);
- Productivity Commission Report *Australia's Gambling Industries* (November 1999);
- Prime Minister's *Ministerial Council on Gambling*;

- Senate *Netbets* Report (March 2000);
- The position taken at the Council of Australian Governments' (COAG) meeting on 3 November 2000 that NCP reviews of gambling legislation should take appropriate account of the potential public detriment arising from increased competitive pressures in the gambling market;
- The implications arising out of the Commonwealth's *Interactive Gambling Act 2001* which from 28 June 2001 banned interactive gambling services, and the advertising of such services, but exempted wagering and lotteries services from such a ban.
- NCC Third Tranche Assessment of NCP reviews (2001); and
- CoAG Committee on Regulatory Reform interstate co-ordination of NCP reviews aimed at minimising cross border impacts.

CIE NCP Review of TAB Ltd Legislation

- 2.5.3 In 1998 a NCP review of the *Totalizator Act 1997*, which provides for exclusive on and off-course totalizator wagering licences for a period of 15 years, was undertaken by the Centre for International Economics (CIE) on behalf of the NSW Government.³ Broadly speaking, the CIE review concluded that the TAB Ltd arrangements resulted in a net public benefit, and that the arrangements were the only means of achieving such an objective.
- 2.5.4 While the *Totalizator Act 1997* is not identified in the terms of reference for this review, the TAB Ltd arrangements regarding on and off-course totalizator wagering and the associated payment for racing product arrangements with the NSW racing industry (ie. the Racing Distribution Agreement), form the cornerstone of regulatory and business arrangements for the racing and betting legislation under review.

Responsible Gambling Reviews

- 2.5.5 In November 1998, the Independent Pricing and Regulatory Tribunal (IPART) released its findings on gaming in NSW. Generally, the IPART report⁴ recommended greater account be taken of the social impacts of problem gambling, that appropriate support services be developed for problem gamblers and that responsible gambling be fostered through appropriate research and regulatory measures.

3 *The proposed TAB privatisation* - A net public benefit case to the NCC with respect to enabling legislation, CIE (April 1998)

4 *Report to Government: Inquiry into Gaming in NSW*, IPART (November 1998)

- 2.5.6 In August 1999, the Premier of NSW announced a 'pause' on new forms of gambling, this was to allow time for the reconsideration of gambling public policy and regulation. In the same month, the Minister for Gaming and Racing introduced Australia's first responsible gambling legislation, ie the *Gambling Legislation Amendment (Responsible Gambling) Act 1999*.
- 2.5.7 Subsequently, and with effect from 28 March 2000, the Premier of NSW also announced, by means of the *Gambling Legislation Amendment (Gaming Machines Restrictions) Act 2000*, the imposition of a 'freeze' on gaming machine numbers. This was followed in July 2001 by the announcement of a comprehensive 'gaming reform package' to deal with the increasing number of poker machines in NSW, and further reducing any harm associated with problem gambling.
- 2.5.8 The Productivity Commission's Report *Australia's Gambling Industries* published in November 1999 has been the spark for a wide ranging debate on problem gambling and on how Governments should respond.
- 2.5.9 The Productivity Commission makes a number of observations about racing and sports wagering, and about the monopoly arrangements in place for State and Territory TABs. Of particular relevance, the Productivity Commission acknowledges:
- In short, there is a case for government intervention to overcome the particular market failures which affect the racing industry.
- Interactive home gambling and the increasing availability and popularity of sports betting will increase the pressures on TAB monopolies in each jurisdiction. But TAB exclusivity and the restrictions which underpin it do not appear necessary to ensure an appropriate level of funding for the racing industry.
- Any changes to the exclusivity arrangements for TABs would need to take into account the role of the betting agencies which offer betting on racing but do not contribute to the funding of racing.⁵
- 2.5.10 On 16 December 1999 the Prime Minister announced the formation of the Ministerial Council on Gambling as a forum by which a national approach might be developed in relation to problem gambling. The Ministerial Council has met twice, in April 2000 and April 2001. Its aim is to minimise the negative impacts of problem gambling by exchanging information on responsible gambling strategies, and providing a forum for discussing common issues with the objective of developing suitable regulatory approaches.

5 *Australia's Gambling Industries*, Productivity Commission (Vol. 2, Page 14.25)

- 2.5.11 In March 2000, the Senate Information Technologies Committee published its *Netbets*⁶ report which proposed that Federal, State and Territory Governments work together to develop uniform and strict regulation for online gambling, with a particular focus on consumer protection through the Ministerial Council on Gambling.
- 2.5.12 On 19 May 2000 the Commonwealth Government announced that it would be introducing legislation to impose a twelve month moratorium on interactive gambling services, with effect from that date. The *Interactive Gambling (Moratorium) Bill 2000* was introduced into the Senate on 17 August 2000 and was referred to the Senate Environment, Communications, Information Technology and the Arts Legislation Committee. That Committee reported on 4 September 2000 but the Bill failed to pass the Senate on a tied vote on 9 October 2000. The Bill was recommitted later, and passed both houses of the Commonwealth Parliament on 6 and 7 December 2000. The Act includes an exemption for interactive wagering services that are merely an extension of current offline betting services. The Act specifically does not exempt the introduction of new services that offer real-time betting after a sporting event has commenced, on the basis that such services have the potential to exacerbate problem gambling.
- 2.5.13 As foreshadowed by the announcement of the moratorium legislation, the National Office for the Information Economy (NOIE) conducted a study into the feasibility and consequences of banning interactive gambling services. The NOIE study was released on 27 March 2001, generally finding that it is possible to introduce legislation aimed at banning interactive gambling services.
- 2.5.14 The *Interactive Gambling Act 2001* passed the Commonwealth Parliament on 28 June 2001. Section 15 of the Act provides that a person is guilty of an offence if the person intentionally provides an interactive gambling service and the service has an Australian customer link. Essentially, any interactive gambling service provider, either within or outside Australia, would commit an offence if it had customers in Australia. Telephone betting, wagering, lotteries and certain other purely communications or networks services have been excluded from the definition of an interactive gambling service. Part 7A of the Act prohibits advertising of interactive gambling services. This includes a prohibition on both online and offline advertising of interactive gambling in Australia.

6 *Netbets: A review of online gambling in Australia*, Senate Information Technologies Committee, (March 2000)

National Competition Council (NCC)

2.5.15 As part of the NCP *Third Tranche Assessment*, the NCC:

- Acknowledged that NSW had submitted a NCP review of the *Totalizator Act 1997* which provides for an exclusive wagering licence for TAB Ltd until 2012, and that the review complies with the CPA;
- Confirmed, due to the complexity of issues in relation to gambling and its regulation, that it is the NCC's intention to assess all State and Territory gambling NCP reviews in the light of the Productivity Commission's Report; and
- Acknowledged that jurisdictions are particularly concerned about removing or modifying restrictions that would expand gambling opportunities, and also that the structure of the gambling industry and availability of gambling opportunities in each jurisdiction may also be relevant to determining appropriate regulatory outcomes, and that as a result, governments' regulatory approaches may differ.

2.5.16 Further, in relation to racing and betting matters, the NCC noted that the Productivity Commission had found:

- That Arab and Quarter Horse racing faced significant restrictions and should be subject to broad public interest tests; and
- That there is no case for the \$200 minimum bet limit on bookmakers and that it should be removed forthwith.

2.5.17 The Review Steering Committee has noted those views, and has addressed them in this Review.

Interstate Coordination: Committee on Regulatory Reform (CRR)

2.5.18 On the initiative of the NSW Government, the NCP review of racing and betting legislation was raised at the December 1998 meeting of the CoAG Committee on Regulatory Reform (CRR). In summary, in terms of the obligations under Clause 5(7) of the CPA, jurisdictions agreed to discuss their potential review outcomes in this subject area prior to the public release of their NCP reviews and the corresponding Government response.

2.5.19 Consequently, States and Territory representatives attended a meeting in Sydney on 2 March 2000 to discuss the potential outcomes of their NCP reviews, with the view of minimising adverse cross-border impacts. Similarly, State and Territory representatives met again on 3 July 2000 at a meeting with the CRR and NCC.

3.1 INTRODUCTION

3.1.1 Chapter 3 is an overview of the structures, economic significance, regulatory arrangements and related features of the racing and betting industries.

3.1.2 The racing and betting industries are interrelated markets, structurally linked through legislation and financially interdependent.

The first set of activities involves the provision of racing services, which includes the maintenance and training of animals to race, the administration of racing and the conduct of races. Racing is a well-established economic and social activity, independent of the betting that is normally associated with it. Many of those who derive all or part of their livelihood from racing do not bet – indeed some are prevented from doing so – and people who go to the races often derive entertainment and enjoyment from the racing in their own right.

Racing is also an essential input into the second set of activities – the provision of wagering services. The racing industry provides some of the ‘games’ on which punters are able to place bets with a betting operator. Indeed this understates the importance of the racing industry to the betting sector as bets on racing provide the existing betting operators with what is, by far and away, their most important source of revenue.⁷

3.1.3 Further, the most significant, in terms of quantity and quality, racing is undertaken in New South Wales and Victoria. It is widely acknowledged that those two States provide the richest prize money for racing events, and that overall they account for approximately three-quarters of the Australian racing economy.

In Australia the market for racing services tends to be predominantly regional in scope. Most horses tend to be raced in the regions where they are trained in part because of the higher transaction costs of participating in race meetings in other regions. Hence the focus of most trainers, jockeys and harness drivers tends to be on races in the regions where they are based.

There is a significant amount of inter-regional trade in the services of individual animals, but it tends to be confined to the more highly rated animals and race meetings – generally those in the metropolitan regions where most of the major race meetings are held. In this regard, the attraction of Sydney and Melbourne is particularly pronounced because of the prizemoney that is on offer at race meetings in those two regions compared to the rest of the country.⁸

⁷ Submission No 11, TAB Ltd prepared by ACIL (page 24)

⁸ Ibid (page 25)

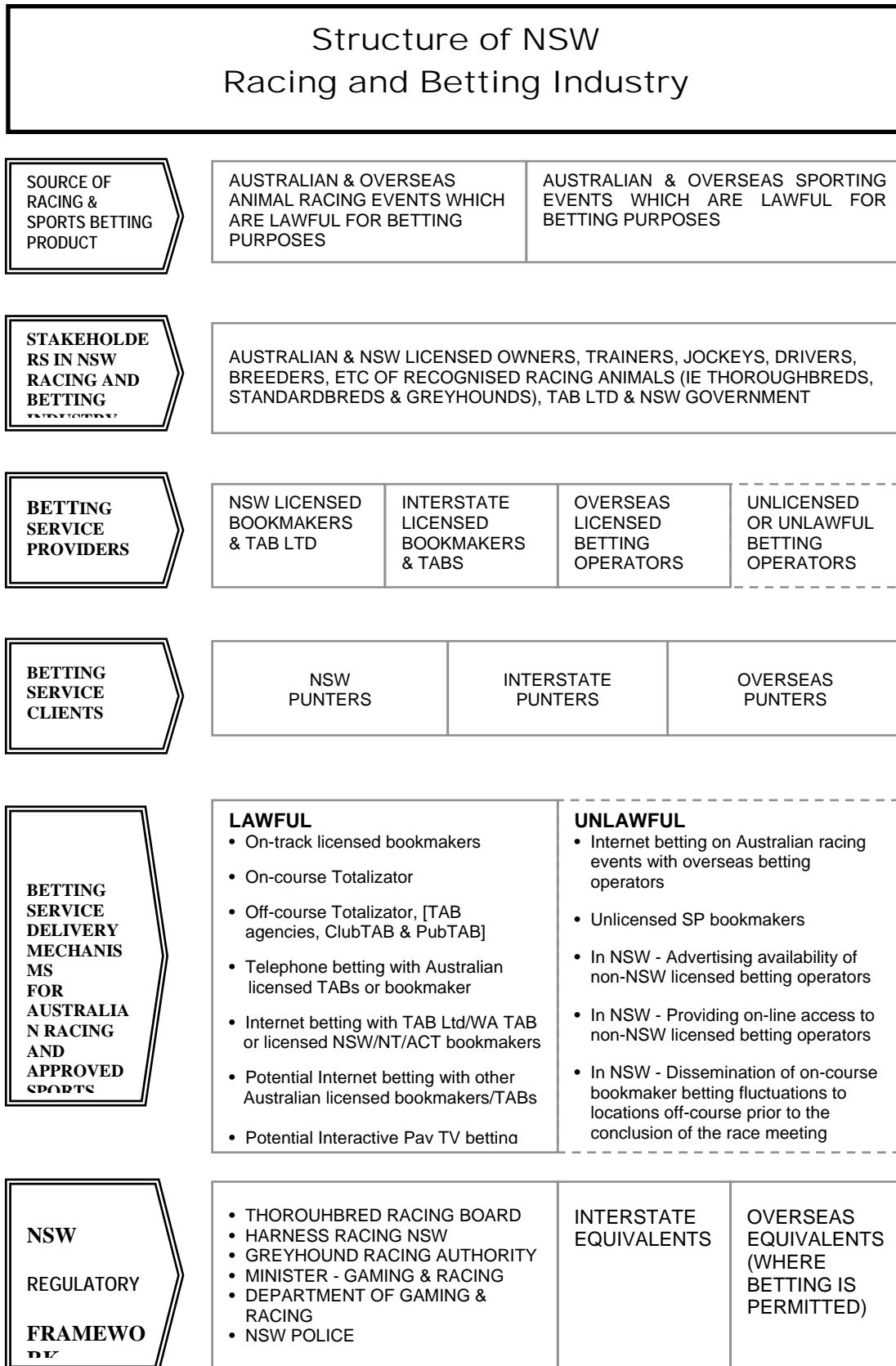


Figure 1

3.2 THE RACING INDUSTRY SECTOR

3.2.1 In Australia there are three recognised codes of racing (ie thoroughbred, harness and greyhound racing) which are regulated by separate controlling bodies in each jurisdiction. The three controlling bodies in NSW (ie, *Thoroughbred Racing Board*, *Harness Racing NSW* and the *Greyhound Racing Authority*) aim to:

- safeguard the welfare of racing participants by, for example, licensing trainers, jockeys and drivers to ensure that a minimum level of vocational competence is present;
- ensure the integrity of racing and betting by way of controls over bookmakers, other licensed persons and the conduct of racing (ie, race steward inquiries) so as to deter malpractice and the infiltration of criminal elements; and
- maintain the business viability of the respective industry sectors by the registration of race clubs, the allocation of race dates to race clubs, and (in conjunction with TAB Ltd) the designation of TAB or Non-TAB status to the events conducted by a race club.

HISTORY OF RACING IN NSW

Thoroughbred racing is the largest and oldest of the three traditional racing codes. The first official horse race was run on 15 October 1810 at Hyde Park in Sydney. The Australian Jockey Club was formed in 1842 and has sponsored the *AJC Derby* since 1861, and the *Metropolitan*, *Sydney Cup* and *Doncaster* since 1866.

Harness racing started in NSW at the Sydney Driving Club in 1885. Modern day harness racing commenced at Forest Lodge racecourse (now Harold Park) at Glebe in the 1920's. Night harness racing commenced at Harold Park in 1949.

Greyhound racing was introduced in the early days of European settlement and the first mechanical lure was used in a race at Harold Park in 1927.

Figure 2

- 3.2.2 Racing operations are dispersed throughout the State. The majority of NSW regional centres have had a racecourse at some time. In 1998 there were 224 licensed racecourses in NSW which hosted around 3,000 race meetings per year.
- 3.2.3 Racecourses are mostly on crown land which is also utilised for a variety of public, pastoral and agricultural purposes under the guidance of local trusts. Race meetings are conducted by race clubs which operate as community associations (ie non-profit and non-proprietary) and which are registered with the relevant controlling body of racing.

12 Months Ending <i>30 June 1998</i>	<i>Gallops</i>	<i>Harness</i>	<i>Greyhounds</i>	<i>Total</i>
Licensed Racecourses	135	43	46	224
Tenure of Racecourses				
- <i>Freehold</i>	27	23	24	74
- <i>Crown Land</i>	108	20	22	150
Registered Race Clubs	146	42	38	226
Race Meetings Held	912	587	1,570	3,069

Figure 3 NSW Racing Industry Statistics 1997/98

- 3.2.4 Racing is a significant spectator sport. While the introduction of broadcasting sport and racing, in particular, away from the fixture has resulted in a decline in event attendance, nevertheless such events remain a popular attraction for patrons wishing to experience the event first hand. For example, Australian Bureau of Statistics surveys indicate that out of more than 6.2 million people aged 15 years and over who attended a sporting event in the year ended March 1996, 1.7 million attended a horse racing event, which was the second most popular spectator sport behind Australian Rules.
- 3.2.5 Further, the ABS surveys also indicate that, during the 1997 year, total attendances in Australia at the top three sporting events were as follows:

Australian Rules	approx. 14.4 million
Horse, Harness & Greyhound admissions	approx. 10.6 million
Rugby League	approx. 8.5 million

- 3.2.6 Estimates of the economic significance of the racing industry (excluding gambling revenue) are primarily based on employment, training and club revenues. Figure 4 below outlines the many segments of the racing industry which are sources for business, employment and revenue.

EMPLOYMENT CATEGORY	DESCRIPTION
Administration & Control	Government administration and control functions, and controlling body type functions involved in regulating the three codes of racing (eg administrators, stewards, registrars, starters, handicappers, laboratory analysts, etc).
Breeding	New young stock for sale or lease to owners and some international purchases and sales.
Ownership	Owners collect prizemoney and pay for the purchase, training, keeping, and running of racing animals.
Training & Keeping	Educating, feeding and nurturing racing animals and pre-racing animals by trainers on behalf of owners, and by some owner/breeders themselves.
Riding & Driving	The professional services of jockeys (thoroughbreds) and drivers (harness racing).
Veterinary	Professional services of veterinarians and animal health researchers/analysts.
Farrier	Shoeing and foot trimming services.
Club	Operation of race venues and award prizemoney to winners of races.
Race Gambling	Bookmakers, on and off-course totalizators (including ClubTAB and PubTAB outlets).

Figure 4

- 3.2.7 In a study of the racing industry commissioned by State and Territory Racing Ministers in 1992 ⁹, ACIL Consulting (using the nine main employment categories identified above) made the following financial and employment estimates:

Contribution of Racing to the NSW Economy, 1990/91		
<u>Sector</u>	<u>Contribution to GDP Value added (\$m)</u>	<u>Employment (FTE)</u>
Admin & control	11.6	170
Breeding	33.2	700
Owning	9.5	300
Training/Keeping racers	180.1	6,400
Riding/Driving	8.2	700
Veterinary	9.8	275
Farrier	12.7	200
Club	36.1	1,800
Race Gambling (On & Off Course)	624.8	6,200
TOTAL =	926	16,545

Figure 5 **The Contribution of the Racing Industry to the Economy of Australia**

- 3.2.8 Various submission makers provided the following information:

CONTRIBUTION TO NSW ECONOMY

The NSW **thoroughbred racing** Industry is a vital component of the NSW economy, employing directly and indirectly over 45,000 people and contributing approximately \$1 billion to the gross domestic product of NSW.

In fiscal 1997 wagering turnover on thoroughbred racing in NSW approximated \$3.514 billion. This generated \$525 million income – shared between the NSW Government (\$250 million), NSW TAB (\$186 million to fund operations) and Race Clubs (\$89 million).

The **harness racing** industry in NSW is a multi-million dollar business. Gambling turnover on NSW harness racing is well over \$230 million per year, while more than \$22 million prizemoney is distributed in NSW annually. The industry has over 2,500 licensed participants while thousands more choose to invest millions of hours in the industry as hobbyists or volunteers.

In NSW **greyhound racing** is more than a sport - it's a multi-million dollar business. The greyhound racing industry contributes more than \$30 million to the State economy through betting revenue alone. The industry has more than 15,000 registered participants and provides employment - directly and indirectly - for thousands more. There are 43 registered greyhound racing clubs in NSW and 41 racetracks.

Figure 5

⁹ The Contribution of the Racing Industry to the Economy of Australia – ACIL, September 1992

3.2.9 With betting turnover included, the NSW racing industry is estimated to contribute 0.7 per cent to the Gross State Product (around \$1 billion). In the 1997/98 financial year \$4.6 billion was bet on racing with approximately \$3.6 billion bet off-course with TAB Ltd. Of the remainder bet on course, approximately \$0.6 billion was with bookmakers and \$0.4 billion with the on-course tote. Racing industry betting revenues are set in Figure 6:

12 Months Ending 30 June 1998	<i>Gallops</i>	<i>Harness</i>	<i>Greyhounds</i>	<i>Total</i>
Bookmaker Turnover (\$M)	528	65	69	662
Off-Course Turnover (\$M)	2,766	406	400	3,572
On-Course Totalizator T/O(\$M)	302	40	55	397
Government Revenue (\$M)	225	35	33	293
Prizemoney Distributed (\$M)	75.9	17.9	12.7	106.5
TAB Payments to Racing Industry	*	*	*	141.2

Figure 6 ¹⁰

3.2.10 NSW, Victoria and Queensland racing industries make the largest contribution to State GDP (Figure 7).

	(% State GDP)	(\$ million)
NSW	0.70	926
Victoria	0.58	589
Queensland	0.71	407
South Australia	0.63	175
West Australia	0.47	177
Tasmania	0.66	54
Northern Territory	0.46	19
A. C. T.	0.24	18

Figure 7 ¹¹

¹⁰ The Contribution of the Racing Industry to the Economy of Australia – ACIL, September 1992

¹¹ Ibid

3.2.11 ACIL Consulting has updated this information in its submission on behalf of TAB Ltd in the following terms:

The 1992 ACIL Report on the contribution of the racing industry to the economy estimated that the racing industry in NSW contributed 0.7 per cent to Gross State Product (GSP) in 1990-91, or nearly \$1 billion.

Since this report, there have been a number of structural changes in the industry, coinciding with a decline in turnover from racing...

Betting turnover does not account for the total-value added of the racing industry. However, betting makes the largest contribution to the racing industry's value added, and therefore, a decline in betting turnover would have a notable effect on the value-added of racing.

This suggests that the industry's contribution to NSW GSP in percentage terms is likely to be around the same, if not slightly smaller, than it was in 1990-91. Assuming racing still contributes around 0.7 per cent to GSP, in dollar terms, the racing industry is likely to have contributed around \$1.4 billion to the NSW economy in 1997-98.¹²

3.3 THE BETTING INDUSTRY SECTOR

3.3.1 The Australian Bureau of Statistics in its June 1999 survey *GAMBLING INDUSTRIES, AUSTRALIA 1997-98* reported that:

- (i) during 1997-98 the net takings from gambling of businesses in Australia's gambling industries were \$11,091 million;
- (ii) the 1997-98 total represents a 42% increase on the 1994-95 total of (\$7,838 million);
- (iii) 14.7% of the 1997-98 total (\$1,624 million) represents gambling on racing and sports with TABs, on-course totalizators and licensed bookmakers.

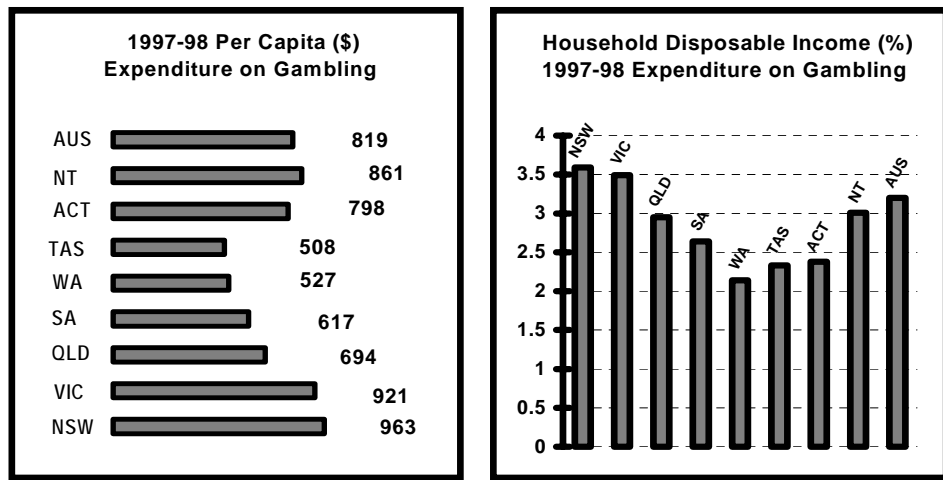
3.3.2 The Productivity Commission in its report *Australia's Gambling Industries* identified a total expenditure on gambling (ie, amount lost) at \$11.3 billion in 1997-98, from a turnover of \$95 billion. This is more than double what it was a decade ago in real terms, and triple that of 15 years ago.¹³ More recently, the Tasmanian Gaming Commission reported that for the 1999-00 year the Australian total expenditure on gambling had increased to \$13.34 billion.¹⁴

¹² Submission No 11 (page 4)

¹³ Productivity Commission, *Australia's Gambling Industries*, (Volume 1, Page 8)

¹⁴ Tasmanian Gaming Commission, *Australian Gambling Statistics (1974-75 to 1999-00)*

3.3.3 Similarly, the Productivity Commission in its Report found that, on average, Australian adults spend \$819 per capita on gambling products. In comparison with other States, NSW residents spend the highest per capita at \$963 (1997/98) as well as the highest percentage of household disposable income (Figures 8 and 9). More recently, the Tasmanian Gaming Commission reported that NSW residents spent \$1,139 per capita in 1999/00.



Figures 8 and 9

3.3.4 The Productivity Commission also noted that gambling on gaming machines had grown dramatically in recent years (Figure 10).

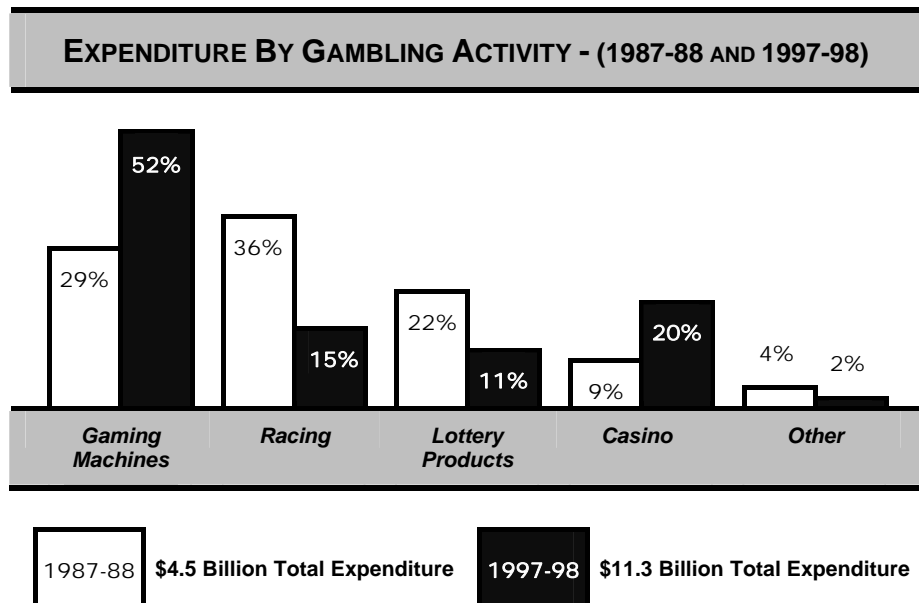


Figure 10

- 3.3.5 The New South Wales position reflects the national position, though the racing expenditure trend may be described as 'flat' (Figure 11).

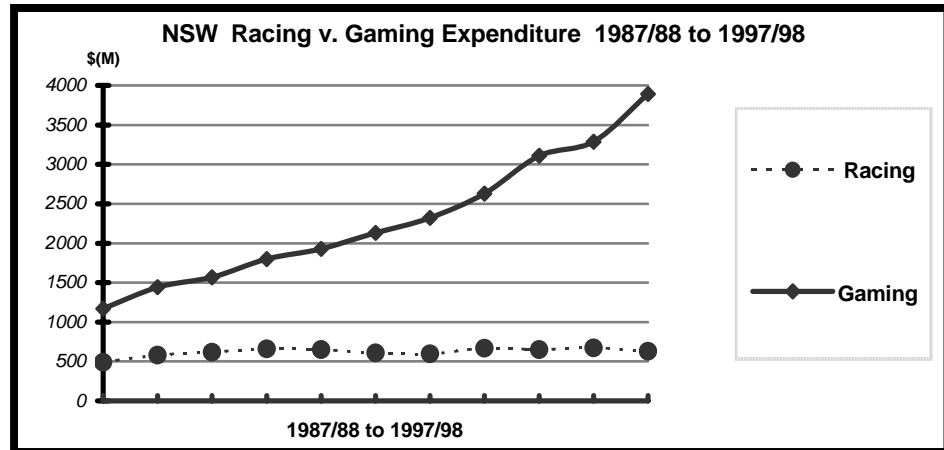


Figure 11

- 3.3.6 In NSW racing and sports betting services are provided by TAB Ltd and licensed bookmakers. TAB Ltd has a 15 year monopoly licence for off-course totalizator services. There are approximately 400 licensed bookmakers of which approximately 60 hold a telephone or sports betting authority. A further two bookmakers were granted an electronic (ie. Internet) betting authority prior to the Commonwealth imposed moratorium on such services in April 2000. Licensed bookmakers traditionally operate a 'fixed odds' service and are restricted to conducting their activities from a racecourse. As can be seen from figures 6 (above) and 12 and 13 (below) the bookmaker share of the racing and sports betting sector is a fraction (about 16% and declining) of the totalizator sector.

- 3.3.7 The following trends have been observed in New South Wales:
- Attendances at race meetings have declined since the live Skychannel broadcast of racing commenced in 1979, with bookmaker on-course totalizator turnover in similar decline;
 - Over the same period the number of licensed bookmakers has declined from about 1,200 to 400 and off-course TAB Ltd turnover has remained relatively flat; and
 - Sports betting has grown since 1991 (\$0.7/1991 to \$5.1 million/1998 – ie *player loss*), when TAB betting on sports events was first permitted. TAB Ltd and licensed bookmakers have operated on a greater number of sports betting events since 1998. This trend was confirmed with 1998/99 year NSW sports betting *turnover* approaching \$100 million (\$42 million – TAB Ltd, \$51.2 million – NSW bookmakers).

3.3.8 The above mentioned trends are reflected in Figure 12 below.

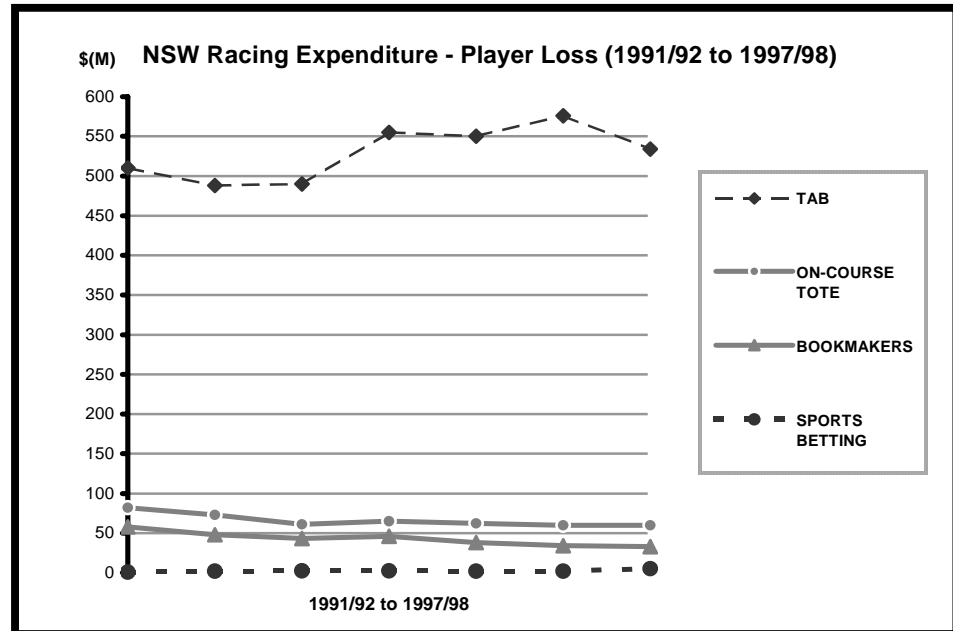


Figure 12

3.3.9 The market share divisions of racing and sports betting expenditure between betting service providers (TAB and bookmakers) are similar across the large jurisdictions (ie. NSW, Victoria and Queensland). A larger market share is held by bookmakers in the smaller jurisdictions (ie the Northern Territory and the ACT licence corporate bookmakers who are modelled on the large overseas bookmaking concerns, and have adopted, with the Territory Governments' approval, their marketing strategies) [Figure 13].

Sector x (\$M)	NSW	VIC	QLD	SA	WA	TAS	ACT	NT	Total
TAB	533.852	379.507	249.000	91.655	126.177	29.273	16.223	11.757	1,437.444
On-course Tote	59.896	35.919	21.900	7.989	12.112	1.275	1.469	1.946	142.506
On-course Bookmaker	33.586	17.338	12.900	3.757	9.135	0.819	1.121	4.700	83.336
Off-course Bookmaker	N/A	N/A	N/A	0.150	N/A	N/A	N/A	N/A	0.150
Sports Betting (Racing)	5.069	0.394	0.600	0.755	0.838	N/A	2.137	10.450	20.261
Total Racing	632.403	433.158	284.400	104.304	148.262	31.367	20.950	28.853	1,683.697

Figure 13 Tasmanian Gaming Commission, 1997-98

3.4 REGULATION OF THE RACING & BETTING INDUSTRY

Regulatory Framework

3.4.1 The Report is reviewing five pieces of legislation:

- *Thoroughbred Racing Board Act 1996*
- *Harness Racing New South Wales Act 1977*
- *Greyhound Racing Authority Act 1985*
- *Racing Administration Act 1998; and*
- *Bookmakers Taxation Act 1917.*

3.4.2 The first three are specific purpose statutes which establish and identify the powers and the purposes of the controlling bodies for each of the three codes of racing. The *Racing Administration Act 1998* provides for the licensing of racecourses and the control of bookmaking and related betting activities. The aim of the *Bookmakers Taxation Act 1917* is to ensure that bookmakers pay the correct amount of tax by the due date. The functions of these five statutes are discussed in detail in Chapter 5.

3.4.3 The five pieces of legislation represent only a part of the regulatory framework for gambling in New South Wales. Generally, the structure is underpinned by the *Unlawful Gambling Act 1998* (much of which was carried forward from the former *Gaming and Betting Act 1912*), which is the principal criminal statute for gambling offences, and is complemented by a variety of control and licensing statutes which provide for lawful gambling (eg. *Casino Control Act 1992*, *Public Lotteries Act 1996* and the *Totalizator Act 1997*).

3.4.4 The public policy rationale running through all of these statutes is that, generally speaking, gambling activity is unlawful *unless* it is provided for by law, and it is for a beneficial community purpose. Such legislation contains many licensing control and restriction provisions designed to supervise the activities of licensed gambling providers for the purposes of consumer protection and ensuring the integrity of gambling activities. Further discussion of the objectives and purposes of these five statutes is discussed in Chapter 4.

3.4.5 Other key legislation of interest to this Review is the *Totalizator Act 1997*, and the *Gambling Legislation Amendment (Responsible Gambling) Act 1999*. An overview of this legislation follows.

Totalizator Act 1997 and TAB Ltd

- 3.4.6 The Totalizator Agency Board (TAB) commenced operations in December 1964 as a statutory monopoly responsible for off-course totalizator betting. In the previous year, *the Kinsella Royal Commission into Off-The-Course Betting* in NSW recommended the creation of the TAB as the preferred means of guaranteeing funding for the racing industry and countering the problem of illegal SP bookmakers. Appendix C of the Report summarises the findings of the Kinsella Royal Commission.
- 3.4.7 The TAB provides mainly totalizator betting services on racing, and also fixed odds betting on approved racing and sports betting events (SportsTAB) which commenced in July 1998. TAB Ltd has its own agency outlets as well as ClubTAB and PubTAB outlets located in registered clubs and licensed hotels. TAB Ltd also provides account betting to its PhoneTAB and NetTAB (Internet) customers.
- 3.4.8 The TAB is said to be the fifth largest wagering operator of its type in the world. In the 1998/99 year it reported:
- Betting turnover of \$4.1 billion through approximately 1,500 outlets;
 - The employment of over 1,000 full-time equivalent staff (not including staff employed by clubs and hotels); and
 - The payment of \$166 million to the NSW racing industry under the Racing Distribution Agreement.
- 3.4.9 In 1998 the TAB was privatised, and was listed on the Australian Stock Exchange as TAB Ltd in June of that year. To enable privatisation to occur several pieces of legislation were passed, including the *Totalizator Legislation Amendment Act 1997* which (among other matters) granted:
- (i) TAB Ltd a licence to operate off-course totalizator wagering in New South Wales for 99 years (first 15 years subject to no other such licence being granted); and
 - (ii) TAB Ltd and New South Wales racing clubs licences currently in existence to operate on-course totalizators for 99 years (first 15 years subject to no such licences being issued to anyone except TAB Ltd or racing clubs).

3.4.10 Section 17A of the *Totalizator Act 1997* contains an exemption, under section 51 of the *Trade Practices Act 1974 (Cth)* and the New South Wales Competition Code, which authorises the anti-competitive provisions of that Act which provide for exclusive licences for TAB Ltd and racing clubs.

3.4.11 Prior to the introduction of the *Totalizator Act 1997*, the NSW government commissioned an NCP report¹⁵ by the Centre for International Economics (CIE). The CIE report found a net public benefit case for the proposed legislation, which the National Competition Council acknowledged in its NCP Third Tranche Assessment as complying with the CPA. Accordingly, this Report will not re-examine the matters covered by the CIE report, except where the arrangements and relationships between TAB Ltd and the racing industry are of relevance.

3.4.12 The CIE Report concludes as follows:

Overall, it is considered that the licensing arrangements with the TAB offer the greatest net public benefits and are no less competitive than any other possible model because:

- a single totalizator in New South Wales is likely to emerge over the longer term anyway if multiple licences were granted;
- a legislated maximum commission encourages the single licence holder to expand the pool size rather than to reduce it and seek higher commissions;
- monopolistic behaviour is limited by competition from bookmakers, interstate and international totalizator operators and other gambling products such as EGMs, the casino and lottery type games;
- it avoids the costs associated with short term entry and exit, and allows the exploitation of economies of scale;
- it offers more stable returns to the racing industry in New South Wales, especially over the shorter to medium term when the racing industry is adjusting to the new legislative and regulatory regime; and
- it increases competition over the longer term by preventing the emergence of a single national totalizator, increasing the choice for all punters in Australia – especially in the professional punter market.¹⁶

¹⁵ *The proposed TAB privatisation – A net public benefit case to the NCC with respect to the enabling legislation*, CIE - April 1998

¹⁶ *Ibid* (Page 26)

- 3.4.13 The CIE Report represents a strong public benefit argument for the exclusivity arrangements in place for TAB Ltd and the associated arrangements with the NSW racing industry. The Review steering committee is mindful of the implications of changes to the exclusive arrangements as noted by the Managing Director (TAB Ltd):

As for its effect on TAB Ltd, such change would in our view represent a fundamental and adverse shift in the prevailing regulatory and economic climate into which the new company was floated less than 18 months ago. Apart from the extreme ramifications this would have from the perspective of a breach of trust between Government and the shareholding citizens of New South Wales, TAB Ltd would obviously have to review all available options in seeking compensatory payments or taxation adjustments to safeguard the value of its government issued licence.¹⁷

- 3.4.14 Similarly, the Secretary of NSW Racing Pty Ltd (ie. the three codes of racing for the purpose of the Racing Distribution Agreement with TAB Ltd) indicated that in similar circumstances the issue of compensation for the racing industry would receive close consideration.¹⁸

- 3.4.15 The Productivity Commission has, in relation to exclusivity arrangements and the possibility of compensation for early termination, indicated as follows:

Some forms of gambling are locked into exclusive arrangements for some time to come...with no indication that this is likely to change in the near future. As a number of participants have noted, it would be expensive for governments to extricate themselves from these contractual arrangements. The NCC noted, in the context of NCP reviews:¹⁹

... because most monopoly licences include provision for compensation for early termination, the approach favoured by governments is to consider the need for less restrictive arrangements as exclusivity arrangements expire (NCC 1998b, p.125).

- 3.4.15 Given that early termination of such arrangements would in all likelihood attract a significant compensation claim against the NSW Government and consequently NSW taxpayers, changes to restrictions on competition that directly impact on exclusivity arrangements are regarded for the purposes of this Report as a public cost.

¹⁷ Mr Warren Wilson, Managing Director, TAB Ltd. (Submission No 11)

¹⁸ Mr Merv Hill, is also Chief Executive of the NSW Thoroughbred Racing Board. (Submission No 13)

¹⁹ Productivity Commission, *Australia's Gambling Industries*, (Volume 2, Page 14.17)

Responsible Gambling Legislation

3.4.16 The *Gambling Legislation Amendment (Responsible Gambling) Bill 1999* was released for public comment on 16 July 1999. It passed both houses of Parliament in October 1999 and various harm minimisation initiatives have been implemented by regulations made pursuant to the Act.

3.4.17 Generally, the legislation reflects the NSW Government's commitment to gambling harm minimisation, and the need to prevent and address the adverse social consequences that gambling creates for some members of the community.

3.4.18 The *Totalizator Amendment (Responsible Gambling) Regulation 2001* and the *Racing Administration (Responsible Gambling) Regulation 2001* commenced on 1 May 2001. The regulations apply – as at May 2001 - to the State's 206 racecourses 1,748 TAB outlets (see Appendix D).

3.4.19 The main elements of the responsible wagering regulations are:

- Gambling consumer information brochures to be made available in all TAB Limited outlets and at every part of a racecourse where betting is conducted;
- The G-line (NSW) counselling service poster to be displayed in all TAB Ltd outlets and in the case of a race club, at the main entrance and wherever betting is conducted;
- A G-line (NSW) notice to be displayed on all ATMs and EFTPOS machines at all TAB Limited outlets and race clubs;
- Gambling advertising restrictions for race clubs, licensed bookmakers and TAB licensees and their agents/employees;
- A prohibition on gambling inducements (in the form of free or discounted liquor);
- The inclusion of the G-line help message in any written gambling advertising by a race club, a licensed bookmaker, a TAB licensee or their agents/employees.

3.5 FINANCIAL RELATIONSHIP BETWEEN THE RACING & BETTING INDUSTRY

3.5.1 The cornerstones of the New South Wales racing and betting industries are the:

- exclusive off-course totalizator licence granted to TAB Ltd pursuant to the *Totalizator Act 1997*;
- business arrangements (ie. the Racing Distribution Agreement – RDA) between TAB Ltd and the racing industry; and
- separate agreement between the RDA partners and Government.

3.5.2 The interdependent relationship is well characterised by the following quotes:

In economic terms, the racing industry produces a joint service. Its races enter final consumption as direct entertainment for racegoers and television and radio audiences. Some of its races are also an intermediate service to the wagering sector.

.....

In NSW, the Racing Distribution Agreement (RDA) between TAB Ltd and the NSW racing industry covers, among other things, the conduct of the race programs in each racing code for betting purposes. The RDA requires TAB Ltd to pay the NSW racing industry for the races. Equivalent arrangements are in place in Victoria. In other jurisdictions similar arrangements exist but have not needed to be formalised as the totalisator operator and the racing organisations were all statutory authorities appointed by the relevant government.

In all cases, the arrangements between the betting and race operators are confined to the jurisdiction in question. The NSW racing industry does not receive any payments from or on behalf of interstate totalisators or bookmakers in respect of the races that the NSW industry conducts and on which the interstate operators offer betting services to their clients.

Equally, neither TAB Ltd nor bookmakers make any payments to the racing organisations in other jurisdictions.²⁰

3.5.3 In general terms, the revenue streams for the racing industry are, first and mainly, by way of payments from TAB Ltd under the RDA, followed by income from the conduct of race meetings which includes payments to the race club by fielding bookmakers. On the expenditure side, prize money is followed by racecourse maintenance and the funding of the three controlling bodies (see figure 6 above).

²⁰ Submission No 11 (page 25)

The industry funding arrangements...consist of a Daily Product Fee paid within 3 days after the race meeting, a Quarterly Product Fee paid at the end of every quarter and a Wagering Incentive Fee paid every 6 months. These funds are paid in return for the staging of an agreed program of thoroughbred race meetings in NSW. They are generated according to both TAB turnover and profitability. ...[T]he racing industry has received increased funding as the government taxation on wagering has been reduced from 52% to 28.2% of the Net Revenue [ie player loss].²¹

- 3.5.4 There is also a relationship between the quality of racing and the amount of associated betting that takes place. Betting consumers are attracted to racing associated with champion jockeys and racing animals, and high profile races such as the Melbourne Cup or Golden Slipper.
- 3.5.5 The participation rate of racing animals in race meetings is largely determined by the availability of prizemoney. For example, prior to the privatization of the NSW TAB, the Victorian TABCorp (which had been privatised a few years earlier) enjoyed a lower tax rate (and substantial revenue from its gaming operations) and provided a comparatively higher revenue stream to the Victorian racing industry. That industry was consequently able to offer better prizemoney at all levels of racing. The effect in NSW, due to lower prizemoney levels, is said to have been smaller race fields, ie a lower participation rate of racing animals in NSW racing.
- 3.5.6 The racing of lesser quality racing animals and smaller race fields tends to have a negative impact on betting activities. This in turn affects TAB turnover and profitability and hence racing industry revenues and prizemoney levels (Figure 14).

Number of Runners Per Race	Average Sales (\$)
4	15,185
6	111,884
8	246,986
10	348,245
12	427,553
14	498,587
16	591,525
18	846,495
20	797,742

Figure 14²²

²¹ NSW Thoroughbred Racing Board Annual Report 1997-98 (page 8)

²² Saturday Races in Sydney, Melbourne, Brisbane, Adelaide and NSW Provincial Races over the period March 1996 to December 1998 (Source TAB Ltd 1999)

- 3.5.7 Another important distinction that needs to be taken into account is that between the 'parimutuel' (also known as totalizator) and 'fixed odds' forms of betting, and the greater level of state government and racing industry revenues that are derived from parimutuel betting with TAB Ltd.
- 3.5.8 **Parimutuel betting** is also known as 'pool' or 'totalizator' wagering/betting. Bets of a particular type (eg win, place, trifecta, etc) on an event are collated in an 'investment pool'. An amount calculated according to a predetermined takeout percentage is then deducted from that investment pool – leaving a 'dividend pool'. The payout to ticket holders on the successful outcome (the 'dividend') is calculated by dividing that pool by the number of 'units' bet on that outcome.
- 3.5.9 The characteristics of a parimutuel system are that an operator cannot lose - as the takeout is extracted from the pool before payouts are made. The driving strategy is therefore to increase turnover and therefore encourage 'price stability' through large pools, a feature which is attractive to betting consumers. While a betting consumer may place a very large bet on a selection, that action - particularly if the pool is relatively small - will tend to reduce the odds on offer.
- 3.5.10 In NSW, TAB Ltd is limited to an overall takeout rate not exceeding 16%, and a specific takeout rate on any one betting form not exceeding 25%. The takeout on the two traditional/popular forms of betting is 'Win' pools - 14.25% and on 'Place' pools - 14.25%.
- 3.5.11 **Fixed odds betting** is based on the opinion of a bookmaker in setting a market, composed of a price for each outcome based on the perceived probabilities of those outcomes and the likelihood of punters making a bet at such prices. The bookmaker's market is set on the basis of each outcome being assigned a probability of success. For example, a runner assessed as having a 40% chance of winning would equate to win odds of 6/4 (20% equals 4/1, etc).
- 3.5.12 In theory, the odds on offer should add up to 100%. However, a bookmaker will set a betting market so that the aggregate of odds is in excess of 100%. The excess is the bookmaker's margin. Betting consumers on-course observe the different odds posted by various bookmakers, and at different times during the betting. Betting consumers seek to obtain 'top odds' to achieve an advantage over bookmakers. Accordingly, a bookmaker can sustain a loss.

3.5.13 It is difficult to compare fixed odds and totalizator operations because of the difficulty in assigning a value to the risk of loss associated with fixed odds activities. For the same reason, the totalizator approach is favoured as a less risky means of securing racing industry funding. It also follows that the lower risk option is able to absorb higher take outs over time to fund payments to the racing industry, and for taxes. The following table demonstrates the basis for such reasoning and estimates some comparative benchmarks:

Category	Parimutuel	Fixed Odds
State Taxes	4.5%	1%
Racing Industry	4.0%	$1\frac{1}{2}$ to $1\frac{1}{4}$ %
Operating Costs	5.5%	3 to 7%
Return Shareholder/Operator	2.0%	1 to 2%
TOTAL	16.0%	VARIABLE

Figure 15

Comparison of Expenditure expressed as % of turnover wagered

3.6 OUTLINE OF EMERGING ISSUES

3.6.1 The main issues affecting the future of the racing industry are:

- increased competition from other gambling operators;
- new forms of gambling; and
- emerging technologies.

3.6.2 Competition comes from a range of sources:

- Corporate bookmakers licensed by some Australian jurisdictions who aggressively market their services into more populous Australian jurisdictions, particularly NSW. They enjoy a favourable local tax regime and contribute no revenue to the quality racing conducted in NSW. The term 'free-riding' has been coined to describe the opportunistic activities of such operators.
- Bookmakers licensed overseas who specialise in 'free-riding' on Australian racing events, ie. almost exclusively servicing Australians betting on Australian racing. Examples include the bookmaking operations based in Vanuatu which enjoy a nominal rate of tax and light regulation.

- British bookmaking firms such as Ladbrokes, William Hill, SportingBet.Com and Victor Chandler which have moved to offshore locations such as Gibraltar or the Alderney Islands to avoid British gambling taxes. Such operators are said to be positioning themselves for an international presence and are likely to be interested in operating on quality racing in the South East Asia region and simultaneously expanding their markets.
- 3.6.3 As noted in paragraph 3.3.4 above, the racing industry competes with other forms of gambling now available in Australia. Gaming machines and casino gaming represent the greatest growth areas in gambling expenditure.
- 3.6.4 Emerging technologies have also had a significant impact, and are expected to continue to compete with traditional racing products.
- 3.6.5 Further details of these issues are examined later in section 5 of this Report.

4.1 IDENTIFICATION OF OBJECTIVES OF RACING & BETTING LEGISLATION

4.1.1 All competition policy reviews are required to clarify the objectives of legislation which restricts competition. This means clearly identifying the intent of the legislation in terms of the problems it is intended to address. Clarification of the objectives will also involve:

- Assessing if all objectives are consistent with each other and with other policy objectives of government;
- Determining whether the objective now being pursued is the original objective targeted when the legislation was first promulgated and, if not, determining the appropriateness of the objective; and
- Assessing whether the objectives are focussed, practical in terms of ability to be monitored and tested, and achievable.

Stated Objectives of NSW Racing and Betting Legislation

4.1.2 The stated objectives in the five pieces of racing and betting legislation provide a starting point for an assessment of appropriate objectives.

Racing Administration Act 1998 (the 'RA Act')

4.1.3 The RA Act replaces Part 4 of the *Gaming and Betting Act 1912*, it commenced on 1 March 1999. The objects of the RA Act are:

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

4.1.4 The Hon. Mr Face, Minister for Gaming and Racing, stated in the second reading speech for the Act that:

These provisions are aimed at protecting the racing industry, government revenue streams and the interests of the consumer.²³

23 Second Reading Speech, Racing Administration Bill 1998, NSW Legislative Assembly Hansard, (p. 6456, 24 June 1998)

Bookmakers Taxation Act 1917 (the 'BT Act')

4.1.5 Only the restrictions associated with the administration of bookmakers by the Bookmakers Revision Committee are subject to competition review.²⁴ The pure tax aspects of the BT Act are not subject to review. The objects of the BT Act are not stated in the modern practice, but are essentially:

- (a) To impose a tax on bookmakers, and
- (b) To ensure the integrity of the conduct, and the associated financial capacity, of licensed bookmakers by way of the Bookmakers Revision Committee.

Thoroughbred Racing Board Act 1996 (the 'TRB Act')

4.1.6 The TRB Act establishes the NSW Thoroughbred Board as the representative body to control thoroughbred horse racing in NSW. The Act sets out the functions of the TRB. They are:

- (a) The functions of the principal club for NSW under the Australian Rules of Racing (the 'ARR');
- (b) To control, supervise and regulate horse racing in NSW;
- (c) To initiate, develop and implement policies considered conducive to the promotion, strategic development and welfare of the horse racing industry in NSW and the protection of the public interest as it relates to the horse racing industry;
- (d) Certain functions involving the insuring of participants in the horse racing industry;
- (e) Such functions as may be conferred or imposed on the TRB by the ARR or any other Act; and
- (f) Such functions relating to horse racing in NSW prescribed by regulation.

Harness Racing NSW Act 1977 (the 'HRNSW Act'); and

4.1.7 The HRNSW Act establishes Harness Racing NSW as the body which controls and regulates harness racing in NSW. The HRNSW Act describes the functions of HRNSW as:

²⁴ The *Bookmakers Taxation Act 1917* was repealed with effect from 1 July 2001. The tax matters were transferred to the *Betting Tax Act 2001*, and the non-tax matters (mainly dealing with Bookmaker Revision Committee procedures) were transferred to the *Racing Administration Act 1998*. For the purposes of this review, future references to the *Bookmakers Taxation Act 1917* should be read in the light of such legislative action.

- (a) To control and regulate harness racing;
- (b) To register clubs and associations and allocate meeting and race dates, and to make rules;
- (c) To initiate, develop and implement policies considered conducive to the promotion, strategic development and welfare of the harness racing industry in NSW and the protection of the public interest;
- (d) To affiliate with other organisations as HRNSW deems appropriate; and
- (e) To grant or advance on loan money from funds as set out in Part 4 of the Act.

Greyhound Racing Authority Act 1985 (the 'GRA Act').

4.1.8 The GRA Act establishes the Greyhound Racing Authority and defines its functions. The GRA's functions are:

- (a) To control and regulate greyhound racing;
- (b) To register clubs and tracks;
- (c) To make rules of greyhound racing;
- (d) To affiliate with other organisations as the GRA deems appropriate; and
- (e) To, either at the direction of the Minister or of its own motion, to investigate, report and make recommendations on any matter relevant to the greyhound racing industry.

Unstated Objectives of NSW Racing and Betting Legislation

4.1.9 There is a close relationship between racing and betting (across the codes), with the two activities being interdependent. The relationship is one that is mutually beneficial which sees the racing industry supply a product, which forms the basis for the TAB's wagering business. In return, the TAB provides significant funding to the racing industry as well as providing totalizator services to racing patrons.²⁵

4.1.10 In recognition of the close relationship between the wagering industry and the racing industry (their interdependence), the *Totalizator Act* requires wagering licensees to have, and give effect to commercial arrangements with an entity nominated as the 'racing industry' by certain racing bodies²⁶ (see Chapter 3 for more detail).

25 & 26 CIE (1998) *The proposed TAB privatisation – A Net public benefit case to the NCC to the enabling legislation*, p 4

4.2 CONSIDERATION OF MARKET FAILURES

4.2.1 Market failures occur where the operation of the market delivers outcomes that do not maximise collective welfare. These conditions provide the justification for governments to intervene in markets. There are several forms of market failure:

- Imperfect competition – where there is unequal bargaining power between market participants;
- Externalities – where the costs of a particular activity are external to the individual or business and imposed on others (eg Problem Gambling);
- Public goods – where there are goods for which property rights cannot be applied; and
- Imperfect information – where market participants are not equally informed.

4.2.2 The Review steering committee has identified a number of situations where market failure in the racing and betting industries could occur. The assessment below considers the possibility of market failure.

4.3 ASSESSMENT OF THE OBJECTIVES OF RACING & BETTING LEGISLATION

4.3.1 The Review steering committee has identified the following broad objectives of current racing and betting legislation in NSW:

- Ensure the integrity of the racing product, ie to minimise the possibility of criminals influencing the outcomes of races for personal gain;
- Ensure responsible gambling services for betting consumers;
- Address the ‘free-rider’ problem (ie. where betting operators use the racing betting platform without contributing to the cost of conducting racing) and ensure the sustainable economic development of the non-proprietary racing industry which (like the community based club movement) is seen as a ‘public good’, with – in particular – appreciable benefits to regional communities;
- Ensure that ‘safe’ racing and betting is conducted, ie in occupational, health and safety terms for racing industry participants;

Maintain integrity of the racing product

4.3.2 Integrity and probity in racing and betting activities are important in terms of consumer confidence. If betting consumers feel that a particular race or event is corruptly conducted they will be less inclined to bet. Uncertainty over the integrity of racing or other sports industries may spill over to the wagering industry, leading to less betting activity. The integrity objective is clearly behind the attempts to minimise any illegal betting activity in the current legislation.

Ensure Responsible Gambling Services – Avoidance of Problem Gambling

4.3.3 Protection of the community both from exploitative gambling services (high access has the potential to encourage problem gambling), while also preventing an expansion in the gambling industry. The expansion of access to gambling facilities has been demonstrated to increase the incidence of problem gambling. The legislation seeks to minimise problem gambling.

Free Riding and Sustainable Economic Development of Non-proprietary Racing

4.3.4 Further market failure that might exist in racing and betting markets is often described as 'free riding'. The nature of racing and sporting events is such that it is difficult to exclude parties from utilising the primary product of the event – the outcome or result of a race or sporting event as a valuable commodity for other purposes, principally betting. It is possible that betting service providers could 'free ride' on the racing and sports industries, taking bets on races and sports without contributing to the costs of running them.

4.3.5 The free riding problem is relevant to the extent that without restrictions, there would be an under-provision of racing, sports or other products that betting service providers take bets on, or that these races or sports were of a lower quality because of free riding.

4.3.6 It could be argued that the racing industry is more susceptible to free rider problems due to its historical links with betting. Because of those closer ties, racing might suffer, or be under-provided, in the absence of betting, and in the absence of requirements for betting service providers to contribute to the provision of the racing product. The requirement for TAB limited to have an arrangement with the racing industry, and for licence fees from bookmakers to be channelled directly to the racing industry, could be seen as addressing the free rider problem in racing.

- 4.3.7 Another important aspect of the free-riding problem is that betting operators in each jurisdiction are able to 'free ride' on the racing product of another jurisdiction. The NSW racing industry does not receive any payments from or on behalf of interstate totalisators or bookmakers in respect of the races that the NSW industry conducts and on which the interstate operators offer betting services to their clients. In all cases, the legislative arrangements between the betting and race operators are confined to the jurisdiction in question.
- 4.3.8 The relatively low and decreasing cost of telecommunications and information technology has meant that a totalisator or bookmaker can offer its services to betting consumers in any part of the country at relatively little additional cost. In the absence of restrictions on this practice, returns to industry through the Racing Distribution Agreement are threatened (See Chapter 5 for more detail).
- 4.3.9 Under current arrangements the majority of racing clubs are located in regional areas. Even for metropolitan clubs, many racing inputs (eg livestock, feed, transport) are sourced from regional areas within the State. Therefore, to the extent that the market failure associated with the free riding problem is corrected, the size and distribution of the various racing industries throughout the State will be maintained.

Ensure the safety of racing participants

- 4.3.10 Racing is inherently a risky activity for participants, notably jockeys and drivers. The setting of minimum competency standards is aimed at reducing the incidence of events that could endanger the safety of participants.

Assessment

- 4.3.11 The Productivity Commission, in its recent review of gambling in Australia, concluded that there is a case for government intervention to overcome the particular market failures which affect the racing industry. However, the Commission questioned the means for achieving such an objective:

Exclusively licensing a single TAB in each jurisdiction, heavily restricting the competition it faces, and requiring it to direct some of its revenues to the racing industry are the means by which this (free rider) problem is currently addressed. But while it is a convenient and effective way of raising tax revenue and providing secure funding to the racing industry (and may have other benefits with respect to assuring punters of the integrity of the betting activity), it is a blunt instrument for overcoming such 'market failure'.²⁷

27 Productivity Commission (1999), *Australia's Gambling Industries*, Report No. 10, AusInfo, Canberra, Section 14, p 24.

4.3.12 Furthermore, the Productivity Commission identified that there was evidence to suggest a significant connection between greater accessibility and the greater prevalence of problem gambling.²⁸

4.3.13 The Review Steering Committee has identified from submissions that a range of policy principles should guide the selection of policy objectives:

- individuals are generally best placed to determine which economic activities they should engage in and the extent of their engagement;
- free choice may not deliver socially optimal outcomes if there is 'market failure'. Some constraints on voluntary outcomes may be worthwhile in these circumstances;
- some people (such as children or the mentally unfit) may be judged not to be competent to exercise free choice;
- however, minimal interference in markets generally ensures that consumers and suppliers are able to make the economic decisions that are in their best interests;
- intervention by government to correct market failure always has side effects; and therefore
- intervention by government to correct market failure does not necessarily yield a net benefit to the community.

4.3.14 The above criteria are consistent with the NCP principle that presumes that as a rule, voluntary exchanges in unrestricted, competitive markets lead to efficient and fair outcomes. However, NCP recognises that for certain transactions this presumption may not hold and markets are said to 'fail' sometimes prompting government intervention. The benefits of addressing market failure arise primarily through improved resource allocation.

4.4 RESPONSIBLE GAMBLING AND HARM MINIMISATION

4.4.1 In Australia, the association between racing and betting is well established and represents a mature component of the overall gambling industry. The racing 'scene' is also part of the social fabric of Australian society, particularly in rural and regional areas.

28 Productivity Commission (1999), *Australia's Gambling Industries*, Report No. 10, AusInfo, Canberra, Section 8, p 30.

4.4.2 In the last three decades there has been a greater acceptance of, and more relaxed attitude to, wider forms of legalised gambling. Despite this trend, there has been recent increasing concern regarding the impact of an expanded gambling industry, reflected in the Productivity Commission inquiry report *Australia's Gambling Industries*.

4.4.3 The Productivity Commission suggested that the entertainment value of gambling to most participants is a net benefit, but not for problem gamblers because:

It is unrealistic to believe that problem gamblers are not only receiving benefits equivalent to their spending, but are also receiving a consumer surplus.²⁹

4.4.4 The Productivity Commission identified problem gambling as a social consequence for a small proportion (approximately 2%) of the population, however this small proportion contributes approximately one third of all expenditure on gambling.

4.4.5 The social impacts of gambling strongly suggests that gambling is an industry which requires Government regulation, as 'unrestricted' or 'free' gambling market would be unlikely to respond to community expectations or provide the best social and economic outcomes.

4.4.6 As a result of concerns regarding the social impacts of gambling, the NSW and Commonwealth Governments have instituted a number of responses:

- August 1999, Premier of NSW announced a 'pause' on new gambling, and later supported the Commonwealth Government's call for a national moratorium on new gambling services;

²⁹ Productivity Commission (1999), *Australia's Gambling Industries*, Report No. 10, AusInfo, Canberra, Section 5, p. 3)

- September 1999, *Gambling Legislation Amendment (Responsible Gambling) Act 1999*. Under this Act three broad strategies were pursued to achieve an overall “harm minimisation” policy approach. These are: funding a range of research, awareness, education counselling and treatment programs through the Community Benefit Fund; fostering individual industry initiatives; and ensuring the optimal level of legislative controls;³⁰
- The *Gambling Legislation Amendment (Responsible Gambling) Act 1999* and subsequent ‘freeze’ on gaming machine numbers in NSW (March 2001), and the Gaming Reform package (July 2001);
- The Prime Minister’s establishment of a national Ministerial Council on Gambling to address problem gambling matters;
- The position taken at the Council of Australian Governments’ (COAG) meeting on 3 November 2000 that NCP reviews of gambling legislation should take appropriate account of the potential public detriment arising from increased competitive pressures in the gambling market;
- The *Totalizator Amendment (Responsible Gambling) Regulation 2001* and the *Racing Administration (Responsible Gambling) Regulation 2001* which commenced on 1 May 2001. The regulations apply – as at May 2001 - to the State’s 206 racecourses 1,748 TAB outlets (see Appendix D).
- The implications arising out of the Commonwealth’s *Interactive Gambling Act 2001* which from 28 June 2001 banned interactive gambling services, and the advertising of such services, but exempted wagering and lotteries services from such a ban.

4.4.7 These measures are part of ongoing initiatives designed to minimise the harm associated with problem gambling, including within the racing and betting industry. The Ministerial Council on Gambling is expected to develop national strategies that will complement current and future NSW Government initiatives.

4.4.8 Further detail on the regulatory framework for gambling in NSW is set out in Section 3.2.

30 Hon. J J Della Bosca, Debate, *Gambling Legislation Amendment (Responsible Gambling) Bill 1999*, NSW Legislative Council, (12 October 1999, p. 1284)

5.1 INTRODUCTION

5.1.1 Each restriction is reported on in terms of the points of view put by submission makers, assessed in terms of its costs and benefits, and whether alternative means are possible to achieve the outcomes desired. The overriding principle is that National Competition Policy requires that for restrictions to continue to apply, the benefits should exceed the costs.

5.1.2 The examination of the identified restrictions is grouped according to the following three categories:

(i) *Barriers to Entry*

(ii) *Cross Border Market Restrictions*

(iii) *Restrictions on the Operations of NSW Licensed Bookmakers.*

5.1.3 Section 5.4, which deals with *Restrictions on the Operations of NSW Licensed Bookmakers*, is further grouped under the headings:

(i) *Off-Course Access*

(ii) *Licensing; and*

(iii) *Sports Betting.*

5.1.4 Section 5.5 provides an overview of the outcomes, where available, of other Australian reviews of racing and betting legislation.

The table below (Figure 16) briefly identifies the restriction type, describes the nature of the restriction and identifies the legislative provision that establishes the restriction.

RESTRICTION TYPE	DESCRIPTION	LEGISLATION
<p>Barriers to Entry</p>	<p>Non-Proprietary Racing</p> <p>Only 'non-proprietary associations' may lawfully conduct animal racing events on which betting is permitted. The rationale is that such organisations are community based and therefore there is a public interest benefit.</p> <p>Proprietary Racing involves racing conducted by private interests for the profit of shareholder(s). The prohibition on proprietary racing is carried forward from the Gaming and Betting Act, the predecessor to the Racing Administration Act.</p>	<p>Section 5 of the of the Racing Administration Act provides that a race meeting must not be held at a racecourse unless the racecourse is licensed, the race meeting is conducted by a non-proprietary association, and the race meeting is conducted in accordance with the Act.</p> <p>Additionally, the non-proprietary association conducting the race meeting must be registered as a racing club by the relevant controlling body under that controlling body's Act.</p> <p>The Act also provides definitions for licensed racecourse, non-proprietary association, race meeting and racecourse.</p>
	<p>New Forms of Racing</p> <p>Only thoroughbred, harness and greyhound racing is permitted to be conducted in conjunction with lawful betting.</p> <p>In other parts of the world other animals (eg afghans, whippets, quarter horses, arabians, camels) are officially raced.</p> <p>Racing Participants</p> <p>The trainers of racing animals and jockeys and harness drivers, are required to be licensed for the reasons of industry integrity and vocational competence. Equally, riding or driving competence is a significant safety issue.</p>	<p>The Racing Administration Act defines race meeting as horse, harness and greyhound specific. The Thoroughbred Racing Board Act, the Harness Racing NSW Act and the Greyhound Racing Authority Act similarly reinforce these restrictions including by authorising the controlling bodies to make rules of racing and betting (which include provision for the licensing of racing participants).</p> <p>The net effect is that alternative 'codes' of racing may not obtain the necessary licences, club registrations, permits or other official status to be able to conduct race meetings in conjunction with lawful betting.</p>

.../continued over

RESTRICTION TYPE	DESCRIPTION	LEGISLATION
<p>Cross Border Market Protection</p>	<p>Advertising Restrictions</p> <p>Although it is lawful to bet with a licensed betting operator from any Australian jurisdiction, in NSW - like most jurisdictions - there is a general prohibition against advertising - by print and traditional broadcast media - the availability of bookmaker or totalizator services from another jurisdiction.</p>	<p>Part 4 of the of the Racing Administration Act carries forward from its predecessor (the Gaming and Betting Act) provisions which restrict advertising into NSW by non-NSW licensed betting operators.</p>
	<p>Electronic Betting Restrictions</p> <p>Similarly, a new provision has been enacted which prohibits a person from providing by telephone or the Internet, subscription TV or other on-line communications system:</p> <ul style="list-style-type: none"> - access to gambling operations other than those provided by TAB Ltd or authorised NSW licensed bookmakers, and - access to information relating to such non-NSW licensed gambling operations (includes Internet banner headline advertising and hypertext links). <p>These prohibitions are designed to prevent advertising into the NSW market by non-NSW licensed betting operators. The rationale is that non-NSW licensed operators and unlawful bookmakers must not be given the opportunity to 'free-ride' on the good reputation of the NSW racing industry and access to NSW based customers. Free-riding means that although such operators are generating their income from NSW customers, they do not contribute to the revenue streams of the NSW racing industry or Government.</p>	<p>Section 30(3) of the Act introduces parallel 'electronic betting' prohibitions associated with the advertising and access to non-NSW licensed Internet, etc betting operators.</p>

.../continued over

RESTRICTION TYPE	DESCRIPTION	LEGISLATION
Restrictions on the operations of licensed bookmakers	<p>NSW licensed bookmakers provide fixed odds betting on racing and sports events. Such activities are in competition with TAB Ltd offcourse parimutuel and fixed odds services on racing and sports events. TAB Ltd has an exclusive licence to provide its services off-course for a 15 year term.</p>	<p>Rules of Racing made under the TRB Act 1996, HRNSW Act 1977 and the GRA Act 1985.</p>
	<p>(1) Bookmakers must be registered/licensed by the relevant controlling body before they may field on one or any of the three codes of racing. Controlling bodies conduct financial probity and capacity scrutiny of, and may make rules in relation to the operation of, bookmakers.</p>	<p>Rules of Racing made under the TRB Act 1996, HRNSW Act 1977 and the GRA Act 1985.</p>
	<p>(2) Bookmakers are subject to scrutiny by the Bookmakers Revision Committee (BRC) regarding their tax liabilities to Government, and may not operate without a current tax receipt issued by the BRC.</p>	<p>Parts 5 & 6, Bookmakers (Taxation Act) 1917. <i>Note: The Bookmakers (Taxation Act) 1917 was repealed on 1 July 2001 and the provisions dealing with the Bookmakers Revision Committee were transferred to the Racing Administration Act 1998.</i></p>
	<p>(3) Bookmakers may only operate on events and at a location and time that for which it is lawful to do so (ie at a licensed racecourse when a lawful race meeting is in progress).</p>	<p>Rules of Racing/Betting made under the TRB Act 1996, HRNSW Act 1977 and the GRA Act 1985 are consistent with the criminal prohibition in section 9 of the Unlawful Gambling Act 1998.</p>
<p>(4) Bookmakers may only conduct 'telephone', 'electronic' or 'sports' betting if authorised by the Minister to do so.</p>	<p>Part 3 of the of the Racing Administration Act carries forward from its predecessor (the Gaming and Betting Act) provisions relating to telephone/sports betting.</p>	

.../continued over

RESTRICTION TYPE	DESCRIPTION	LEGISLATION
<i>(continued)</i>	(5) Bookmaker telephone betting on racing is subject to the use of a specified closed mobile telephone system, and to a minimum bet level of \$200.	Conditions of Ministers authorisation to conduct telephone betting, ie section 16 of the Racing Administration Act.
Restrictions on the operations of licensed bookmakers	(6) Bookmakers may only bet on sports events declared by the Minister to be available for betting purposes.	Section 18 of the Racing Administration Act 1998.
	(7) Bookmakers are subject to controls over the advertising of their services.	Part 4 of the Racing Administration Act carries forward such provisions (advertising and betting odds fluctuations) from its predecessor (the Gaming and Betting Act).
	(8) Bookmakers (and other persons) may not disseminate on-course betting fluctuations on racing – except in very limited circumstances – off-course.	

FIGURE 16 – SUMMARY OF RESTRICTIONS

5.2 BARRIERS TO ENTRY

Restrictions on Alternative Codes of Racing*Description*

5.2.1 The *Racing Administration Act 1998* defines a race meeting as being horse, harness and greyhound specific. The complementary *Thoroughbred Racing Board Act 1996*, *Harness Racing NSW Act 1977* and the *Greyhound Racing Authority Act 1985* reinforce these breed specific restrictions including by authorising the relevant controlling bodies to grant the necessary licences, race club registrations, permits and other official approvals to be able to conduct race meetings in conjunction with lawful betting. The rules of racing, which apply to licensed racing industry participants, prohibit a jockey or trainer from participating in alternative codes of racing.

5.2.2 In NSW lawful betting is permitted only in conjunction with thoroughbred, harness and greyhound racing. In other parts of the world the racing of other animals such as afghans, arabian horses, camels, quarter horses and whippets is permitted. However, associated betting is not permitted in some countries.

Submissions

5.2.3 The Review received several submissions on this subject.

- (i) *Australian Camel Racing Association (ACRA)*³¹ and *DGF Morgan*³² submissions in respect of camel racing;
- (ii) *Australian Racing Quarter Horse Assoc. (ARQHA)*³³, *Australian Quarter Horse Association (AQHA)*³⁴, and *H W Graham (Goulburn Sprint Racing Club)*³⁵ in respect of quarter horse racing;
- (iii) *National Arabian Racehorse Assoc. Inc. (NARA)*³⁶, *Ms Patricia Smith (in support of NARA)*³⁷ and the *Arabian Horse Society of Australia Ltd (AHSA)*³⁸;
- (iv) *Mr Peter Roberts (multicultural and quarter horse racing)*³⁹ and
- (v) *NSW Racing Pty Ltd.*⁴⁰ in respect of the existing racing industry.

31 Submission No 9
 32 Submission No 10
 33 Submission No 2
 34 Submission No 21
 35 Submission Nos 19 & 22
 36 Submission No 6
 37 Submission No 8
 38 Submission No 7
 39 Submission Nos 3 & 4
 40 Submission Nos 13 & 23

5.2.4 In summary, the submissions from the proponents 'other codes' of racing put forward a variety of alternatives for change to the racing and betting industries:

- (i) all such submission makers seek access to lawful betting - and the associated revenue streams - on their sport;
- (ii) submission Nos 9 (ACRA) and 19 (Goulburn Sprint Racing Club) seek the restructure of the existing controlling body regulatory structure to a state controlled racing commission which would also include representation for 'other' racing codes;
- (iii) submission Nos 6 (NARA), 7 (AHSA), 9 (ACRA) and 19/22 (Goulburn Sprint Racing Club) seek to conduct racing at thoroughbred venues and share infrastructure;
- (iv) submission No 2 (ARQHA) seeks to construct its own purpose built facility but only if access to lawful betting revenues is permitted; and
- (v) submission Nos 6 (NARA) and 7 (AHSA) seek to conduct their racing as a part of an existing thoroughbred race meeting.

5.2.5 In relation to camel racing, submission No 9 (ACRA) states that camel racing is strongly supported by the United Arab Emirates Government as part of its cultural and goodwill program. It also states that access to lawful betting would enable a self-sustaining camel racing infrastructure, and new ideas and entertainment options for the racing industry. In addition, it is proposed that camel racing occur on an existing race course, and that the existing regulatory structure (ie. the three controlling bodies for racing) be replaced by a state controlled racing commission. Submission No 10 (DGF Morgan) proposes that proprietary racing would increase funds available to the industry.

5.2.6 In relation to quarter horse racing, submission No 2 (ARQHA) proposes that:

- (i) A quarter horse racing industry could readily co-exist alongside the thoroughbred racing industry, and that it would add to industry and government benefits; and
- (ii) If permitted to race with on and off course wagering, sprint racing interests could construct their own purpose built quarter horse race course rather than use existing thoroughbred race courses.

5.2.7 In a similar vein, submission No 19 (Goulburn Sprint Racing Club) states that:

- (i) The restrictions on the racing of quarter horses and associated betting, are impediments to the growth of the sport;
- (ii) Such restrictions are seen as preserving the monopoly position of the thoroughbred racing industry to the exclusion of alternative codes of racing; and
- (iii) The existing regulatory structure should be replaced by an independent racing commission to ensure that all codes of racing would be treated in an impartial manner.

5.2.8 Submission No 19 also notes that a cooperative arrangement exists in the USA between the thoroughbred and quarter horse industry, and that in that market the alliance is beneficial and does not result in a loss of participants to either group. The Goulburn Sprint Club in supplementary submission No 22 also draws attention to recent developments in Victoria which have relaxed some restrictions in this area.

5.2.9 Submission No 21 (AQHA), which advises that it is setting itself up as the national quarter horse body, in general supports a reduction in the existing restrictions on quarter horse racing.

5.2.10 Submissions 6 (NARA) and 7 (AHSA), which represent Arabian horse racing interests, echo most of the proposals made by submission makers associated with camel and quarter horse racing. However, NARA proposes that Arabian racing, together with other non-thoroughbred racing codes, combine to become the fourth code of racing and that there should be a sharing of infrastructure and resources with the thoroughbred racing industry. Alternatively, the AHSA proposes the creation of an Arabian Racing Board which would oversight the conduct of such racing in NSW.

5.2.11 Submission No 23 (NSW Racing Pty Ltd) puts the argument for retaining the status quo as follows:

The current regulations provide participants with a degree of confidence that they can rely on events being conducted in accordance with a standard set of rules, which meet high safety and probity standards and inspire the confidence of the public that the underlying event is fair.

(cont'd)

The current structure maximises the return to the industry and the New South Wales Government of all revenue.

The racing industry has invested a large amount of money in developing its reputation of high integrity, probity and fairness with recognised success both domestically and internationally.

The benefits of maintaining the current restrictions are not only to protect the integrity and structure of the existing racing industry by maintaining present limits on the other racing codes, but also to preserve the revenues generated by the racing industry and avoid an increase in the operating costs, which the industry would necessarily incur to effectively manage a large number of codes. Removal of the restrictions would be at the expense of the benefits the industry provides to the NSW public.

It is not in the public interest to introduce new forms of gambling activities when there is no evidence from consumers or participants in the industry of any demand for additional events or contingencies on which to gamble.

To do so would risk the social, economic and revenue contributions the New South Wales racing industry currently makes to the economy and community generally.


Assessment

5.2.12 For the purposes of this Review, the Review Steering Committee has treated camel racing as one of the alternative codes of racing. It is considered that such an approach is the fairest and most logical.

5.2.13 Nevertheless, the Review Steering Committee notes that camel racing is restricted in different ways, ie. the form of camel racing in Australia is structured on a proprietary basis. Also, camel racing is not caught – like quarter horse and arabian horse racing – by the restrictions contained in:

- (i) The definition of ‘race meeting’ in the *Racing Administration Act* (ie. *a meeting for horse racing, meeting for greyhound racing or meeting for harness racing*); and
- (ii) The condition of each racecourse licence which stipulates that – *Race meetings may only be conducted by clubs registered with the relevant controlling authority of racing.*

5.2.14 The Review Steering Committee also notes the position taken by the Government in 1993 to recognise a legal means for alternative racing in the form of mixed sports events, without betting, to be conducted:



Unregistered Race Meetings

Policy Statement

Section 61 of the Gaming and Betting Act 1912 provides that no race meeting shall be held on any racecourse unless the racecourse is licensed under the Act.

Race meetings may only be conducted on licensed racecourses by race clubs under the Rules of the Australian Jockey Club, the Rules of the Harness Racing Authority of NSW or the Rules of the Greyhound Racing Control Board.

Where an organisation conducts a mixed sports meeting on land not licensed as a racecourse and horse or greyhound racing events form part of that program, such meetings shall be deemed by the NSW Department of Sport, Recreation and Racing to be race meetings in cases where:

- more than six horse or greyhound racing events are held; or
- horse or greyhound racing events constitute more than 30% of the total number of events or activities conducted at the meeting; or
- the meeting is advertised or promoted as a race meeting; or
- proceeds from the meeting are directed to any person or organisation other than as part of a fundraising appeal as defined within section 5 of the Charitable Fundraising Act 1991; or
- the meeting would not have taken place but for the horse or greyhound racing events; or
- illegal betting or wagering is conducted at the race meeting;

and action may be initiated against the organisers of such meetings.

CHRIS DOWNY MP
NSW Minister for Sport, Recreation and Racing

Figure 17

5.2.15 The Government's intention in moving to accommodate such alternative 'horse' and 'greyhound' breed racing is consistent with permitting enthusiasts or hobbyists to enjoy social or picnic style racing, and for such events to be conducted for charitable purposes (the decision was also taken on the basis of legal advice obtained on the definition of a race meeting). It is clear that there is no intention to permit betting, or to establish an alternative to the traditional racing industry. Section 8 of the *Racing Administration Act 1998* provides that a racecourse licence (including that held by a non-proprietary association) is subject to statutory licence conditions such as the prohibition of betting on all but horse, harness, greyhound or sports betting events.

5.2.16 In other words, the closer that an alternative racing event is to being a substitute product for traditional racing and betting forms, the more unlikely it is that it will be permitted to be conducted.

5.2.17 Alternative code racing events - in certain limited situations - may be conducted 'at' and 'away' from a racecourse as follows:

- (i) At licensed racecourses only if it is with the agreement of a race club (registered by the relevant controlling authority), and it may be accommodated within the racing calendar and due concern for race track usage; or
- (ii) On other land if certain conditions are met (eg. such as those in the 1993 Ministerial notice) the purpose of which is to ensure that the event is for a cultural or social purposes, and that racing is not the major purpose of the event.

5.2.18 Submission makers have put to the Review a number of alternative approaches to the status quo - these are set out in paragraph 5.2.4. Foremost and universal among the submissions is the desire to conduct betting on alternative forms of racing, and to grow the alternative sport with the assistance of betting revenues. The other approaches are from the perspective of:

- (i) Being accommodated within the traditional arrangements (eg. share infrastructure, race at a thoroughbred race meeting); or
- (ii) Setting up alternative structures (eg. include a fourth controlling body for other codes of racing, construct purpose built racecourse for quarter horse racing).

5.2.19 The Review Steering Committee notes that, in principle, there is no objection to the conduct of alternative forms of racing. However, the combination of such forms of racing with access to lawful betting (ie. off course totalizator, on-course totalizator, or bookmaker) adds considerable complexity to the issue. The principal issue is that providing access to lawful betting on alternative forms of racing would represent a considerable opportunity for an expansion in gambling.

5.2.20 The Review Steering Committee has also noted that betting on racing events is not lawful in some countries, and that the cultural argument in that respect that does not support the introduction of betting in the Australian context.

5.2.21 Given the Government's pause on new forms of betting - and its duty of care to the people of NSW to provide a safe and responsible gambling environment - the Review Steering Committee concludes that it would be inappropriate, at this time, to recommend the introduction of betting on alternative codes of racing.

5.2.22 Further, all Australian jurisdictions are currently reviewing gambling public policy independently of their NCP reviews. Such reviews are in relation to both on-line and off-line gambling, and all jurisdictions are participating, to varying extents, in the Ministerial Council on Gambling. The Review Steering Committee further recognises the national importance of such separate and specific processes, and that it is appropriate for them to report in due course.

5.2.23 The Review Steering Committee also recognises that other jurisdictions have foreshadowed in their NCP reviews of racing and betting laws the relaxation of restrictions on betting on alternative codes of racing. Such relaxation (in Victoria at least) is subject to a number of core principles. They include that:

- (i) The alternative form of racing, under the governance of the proposed controlling body for such racing, meets appropriate integrity, viability and occupational health and safety standards;
- (ii) The proposed lawful form of betting (ie. off-course or on-course totalizator, or bookmaker) will make a contribution to the NSW economy and regional development in a similar manner to the existing racing industry, and that overall there is a net benefit to the community;
- (iii) Access to existing racing industry infrastructure is obtained on the basis of commercial agreement with the existing racing industry; and
- (iv) The proposed lawful form of betting (ie. off-course or on-course totalizator, or bookmaker) will not have an unduly adverse impact on the arrangements in place for the existing racing industry.

RECOMMENDATION 1

5.2.24 The Review Steering Committee recommends that the:

- (1) Current arrangements for alternative code racing (ie. without associated betting) continue in accordance with existing principles for *Unregistered Race Meetings*; and
- (2) Restrictions on alternative codes of racing (eg. camel, arabian and quarter horse racing) which proscribe access to lawful betting, be retained.

Restrictions on Proprietary Racing*Description*

5.2.25 Section 5 of the *Racing Administration Act 1998* provides that a race meeting must not be held at a racecourse unless the racecourse is licensed, the race meeting (ie. horse and greyhound racing) is conducted by a non-proprietary association and the race meeting is conducted in accordance with the Act.

5.2.26 A brief examination of the history of the governance of thoroughbred racing in NSW is appropriate to demonstrate the changes that have occurred to date. Prior to the Second World War, proprietary racing and unregistered race meetings were common place. While the Australian Jockey Club held Principal Club status there were many race clubs operating in proprietary interests. The government of the day (followed closely by other Australian governments) abolished proprietary racing in order to overcome criminal influence that had infiltrated proprietary racing, and to secure a revenue stream for the non-proprietary racing industry.

5.2.27 In 1943 the *Sydney Turf Club Act* established a body by that name, which was required to register with the AJC. Then existing proprietary clubs were de-licensed and the new club acquired new race courses (ie. Rosehill and Canterbury). The purpose of such action was to stem the decline of the racing industry which had suffered from the proliferation of 'unregistered' race dates and illegal gambling.⁴¹

5.2.28 The matters in the two preceding paragraphs form the historical bases for current policy and are central to the objectives contained in the legislation (under competition review) which establishes the three controlling bodies for racing in NSW.

Submissions

5.2.29 The proponents of proprietary racing known to this Review include the submission makers *Australian Camel Racing Association Inc (ACRA)* and *DGF Morgan & Associates* (in the interests of camel racing) and *Teletrak Pty Ltd*, the latter declining to make a submission although invited to do so. The camel racing submissions are referred to above in the section dealing with restrictions on alternative codes of racing.

⁴¹ *Review of Thoroughbred Racing in NSW, (TEMBY) Final Report October 1995 (Page 3)*

5.2.30 The *Teletrak* approach is to develop a straight track form of horse racing which would be used as the basis for Internet and pay TV betting in markets outside Australia. The approach requires substantial seed funds and the development of betting markets outside Australia. The benefits are primarily attributed to the creation of employment in regional areas, and the provision of choice to the betting consumer and the owners of thoroughbred horses interested in such alternative racing.

5.2.31 Submission Nos 13 & 23 (NSW Racing Pty Ltd) essentially argue that the racing industry is a 'public good' with close links to, and therefore is a provider of benefits to, the community. Submission No 23 (page 12) summarises the position as follows:

Restrictions on Proprietary Racing

The principal benefits to the public of prohibiting the conduct of racing by any proprietary associations stem from the common objective of all three controlling bodies to promote the development and welfare of the New South Wales racing industry and the protection of the public interest. The principal benefits are:

- (a) Non-proprietary racing is conducted by non-profit bodies and provides a social or community benefit, especially in regional areas. These events also assist in boosting the economy of regional communities by creating employment opportunities in areas where races are held. This is evident from the fact that more than half of the people directly employed in the racing industry are employed outside the metropolitan areas in New South Wales. These events also contribute to local industries such as printing and publishing businesses, catering services and suppliers of food and equipment for animals;
- (b) Non-proprietary racing maximises the return to the industry participants who have assisted in the development of physical and regulatory infrastructure to establish a successful racing industry in New South Wales. All profits derived by the New South Wales racing industry are put back into the industry to maintain its infrastructure. The benefits derived by the industry from this revenue include providing support to breeders, whose activities represent an integral part of the racing industry and a major contributor to the economy of New South Wales. An increase in the quality of the animals being bred for racing increases the patronage of the industry and contributes to the prize money available, which is most important to the viability of the racing industry as it acts as an incentive to owners to participate in the New South Wales racing industry.
- (c) Non-proprietary racing removes the incentive to operators to manipulate race events for the purposes of obtaining a profit. The prohibition on proprietary racing avoids an increase in supervisory costs, which would necessarily be incurred by the industry to supervise proprietary racing to prevent manipulation of race events. It would be essential for the industry to incur these costs to ensure that proprietary operations do not undermine the industry's reputation and preserve the revenue essential for the industry's existence and growth.

(cont'd)

If the restrictions which control who may conduct racing activities were lifted, the opportunity would be created for parties to conduct racing activities on a for-profit basis which would in turn provide for private, as opposed to public benefits. This in turn would be more likely to promote, or at least increase the scope for, illegitimate and corrupt practices to develop.

Assessment

5.2.32 In principle, the Review Steering Committee notes that there is no objection to the conduct of proprietary racing. Where it is proposed that such racing be conducted with associated lawful betting, there are issues of whether such an activity would lead to an expansion of gambling. Accordingly, it is a matter for such interests to demonstrate to government that proprietary racing, and associated lawful betting, can be organised in co-operation with the existing industry, and that it is capable of delivering the appropriate level of community benefit – comparable to that of the existing *non-proprietary* racing industry.

5.2.33 Separately and in general terms, the relevant historical experience has been that there are significant issues in permitting proprietary racing with associated lawful betting. The reasons for past Government intervention are set out earlier (para. 5.2.26) and have revolved around:

- (i) Integrity *(eliminating criminal influence)*
- (ii) Viability *(ensuring that betting operators contributed to the cost of conducting racing, and that the racing industry is optimally managed)*
- (iii) Impact on economy *(contribution of the racing industry to employment and the regional economy).*

5.2.34 The controlling bodies for racing have developed their strategic plans for the advancement of their sectors' future interests in accordance with the present regulatory arrangements. The government has chosen this model of self management for the racing industry on the basis that it best provides the business acumen and strategic thinking for the industry to manage its resources and its future.

5.2.35 The *Teletrak* scenario also creates issues associated with the availability of thoroughbred horses, jockeys and trainers for its straight track racing. A concern is that such resources continue to be available to the existing racing industry. The Review Steering Committee has no direct information from *Teletrak* as to how such issues may be resolved in the short or longer term.

5.2.36 While the straight track racing system is said to be developed for export and aimed primarily at the Asian Internet and pay TV betting market, it is nevertheless incumbent on the host jurisdiction to ensure appropriate standards for occupational, health and safety and integrity assurance purposes. The regulatory costs of ensuring compliance with such standards are not small.

5.2.37 Additionally, the authorisation of proprietary racing would have a profound impact on the racing industry. Competition between existing *non-proprietary* racing and *proprietary* racing would place pressure on the levels of prize money, employment and capital infrastructure. A similar position has been taken in other Australian jurisdictions where the onus has been placed on the proponents of the proprietary system to demonstrate appropriate benefits.

5.2.38 In summary, in the light of the Government's pause on new forms of betting, it would be inappropriate, at this time, to recommend in favour of introducing proprietary racing and betting. Nevertheless, should gambling public policy be revised in a way that allows for betting on proprietary racing, the Review Steering Committee has identified a number of core principles that are applicable. They are, in essence, those that would apply, in similar circumstances, to alternative forms of racing and are set out in paragraph 5.2.23.

RECOMMENDATION 2

5.2.39 The Review Steering Committee recommends that the legislative restrictions on *proprietary* racing (in respect of horse, harness and greyhound racing), be retained.

Controls Over Racing Industry ParticipantsDescription

5.2.40 Within the existing racing industry regulatory framework the three controlling bodies of racing under their respective legislation (ie. *Thoroughbred Racing Board Act 1996*, *Harness Racing NSW Act 1977* and the *Greyhound Racing Authority Act 1985*) perform a variety of control functions such as:

- (i) Registering non-proprietary race clubs;
- (ii) Allocating race dates and conferring TAB or Non-TAB status on a club;
- (iii) Ensuring that racing industry participants are subject to appropriate standards of vocational competence and occupational, health and safety through the licensing system for trainers, jockeys, drivers, bookmakers, etc;
- (iv) Ensuring integrity in the racing and betting industry by supervising the conduct of racing and betting by way of rules of racing and betting, and the activities of race day stewards and the drug testing laboratory;

5.2.41 In addition, through the medium of the entity NSW Racing Pty Ltd (essentially the combination of the three racing codes) and the Racing Distribution Agreement (RDA), the controlling bodies fulfil their statutory obligations to foster the ongoing viability, and future economic development, of the racing industry. Essentially, NSW Racing Pty Ltd ensures the business interests of the racing industry and represents it in dealings with government and TAB Ltd.

5.2.42 The objectives of the legislation that establishes the three controlling bodies is set out in section 4.1 above. Broadly, these may be summarised as:

- (i) A supervisory or control function over the conduct of racing and licensed racing industry participants; and
- (ii) A strategic role to lead the business development and ensure the ongoing economic development and future of the racing industry.

5.2.43 Also, section 3.5 of the Report sets out in detail the nature of the racing industry and the betting industry, and the interdependent financial relationship between the two. In the context of this competition review it is essential to note the relationship that exists between the racing industry and the betting industry, with the former operating as a betting platform funded from gambling revenues.

5.2.44 The controlling bodies' considerable activities are funded by a combination of registration and licensing fees and a share of the racing industry revenue from TAB Ltd.

RACING INDUSTRY PARTICIPANT LICENSING AND AUTHORITY FRAMEWORK***Bookmakers***

A prospective bookmaker may apply to one of the three controlling authorities of racing (ie Thoroughbred Racing Board, Harness Racing NSW and Greyhound Racing Authority) for registration as a bookmaker pursuant to the controlling authority's establishing legislation. After a process of probity and financial capacity scrutiny and the arrangement of a financial guarantee, a bookmaker's licence may be granted.

A bookmaker can only field at a race meeting of the code(s) of racing for which registration has been obtained from the relevant controlling authority. If a bookmaker wishes to field at a race meeting of all three codes of racing the relevant registration must be obtained from each controlling authority.

The bookmaker must then pay a once only \$100 fee pursuant to the *Bookmakers Taxation Act 1917*. The fee is paid to the Department of Gaming and Racing and covers record keeping and administrative costs.

Additionally, a bookmaker may apply for separate authorities to conduct telephone, sports or electronic (ie Internet) betting. These are granted by the Minister pursuant to the *Racing Administration Act 1998* subject to certain operational conditions including the use of a closed loop telephone monitoring system and minimum standards for electronic betting systems.

In summary, a bookmaker (including a bookmaker's clerk) is subject to the:

- *Unlawful Gambling Act 1998, Racing Administration Act 1998* and the *Bookmakers Taxation Act 1917*;
- Conditions contained in their licences and, if they hold them, Ministerial authority(ies) to conduct telephone, sports and/or electronic betting;
- Rules of Betting which are made pursuant to the controlling authorities' establishing legislation and are administered by stewards appointed by the controlling authority; and
- Bookmakers Revision Committee - has disciplinary powers over bookmakers who fail to properly record bets and/or pay the correct amount of bookmaker turnover tax on time.

Jockeys, Drivers, Trainers, etc

This group of racing industry participants is also licensed by the controlling authorities for integrity, vocational competence and occupational, health and safety reasons.

The method of supervision of this group is by way of the Rules of Racing which are made pursuant to the controlling authorities' establishing legislation and are administered by stewards appointed by the controlling authority. The Rules of Racing are, by convention, in harmony with the National Rules adopted by the racing controlling bodies in each Australian jurisdiction.

Racing Clubs

Initially, racing clubs are registered on the basis of the need for racing in a particular region, their business performance and ability to sustain that performance. A controlling body will also consider the ability of each racing club to conduct racing with integrity and safety in respect of its administration of race day activities.

Consequently, a controlling authority will allocate race dates and designate a racing club as having TAB or Non-TAB status, which impacts on the racing club's revenue earning capacity.

Figure 18

Submissions

5.2.45 Submission No 23 (NSW Racing Pty Ltd) describes the licensing role of the controlling bodies as follows:

The controlling bodies are authorised to make rules for racing and betting including provision for the licensing of racing participants. As with restrictions on who may be eligible for a bookmaker's licence, riders, drivers and trainers are subject to similar restrictions.

The trainers of racing animals and harness drivers are required to be licensed for reasons of integrity, competence and safety. Restrictions on who may ride a horse in a race or drive a harness obviously involve questions of safety and any removal of restrictions would result in serious concerns for the safety of harness drivers or horse riders.

There is a clear benefit in maintaining the restrictions on who may ride a horse, drive a harness or train either horses or greyhounds. These professions are highly skilled and take many years of training in order to attain the specialisation.

5.2.46 The provision of a 'safe' racing and betting environment is fundamental to the racing industry. The controlling body activities to ensure appropriate vocational and occupational standards are necessary given that competitive racing may result in loss of life and injury. Accordingly, the imposition of such requirements on racing under the supervision of the three controlling bodies to minimise such injury is justified. By way of illustration, the following assessment of this subject matter by the Temby Review is relevant:

The licensing system has three main functions. The first is to ensure that licensed persons have the skills, ability and resources required to carry out their roles. The second is to ensure that persons likely to engage in criminal or improper conduct are not licensed. Thirdly, the system provides a basis for discipline for misconduct by suspension of the licence or disqualification. Jockeys are suspended with some frequency, most often for careless riding. They participate in a pursuit which is fast, dangerous and highly competitive, and from time to time in the course of tight racing a mistake will be made and harm done for which punishment is appropriate.⁴²

Human nature being what it is, weaknesses in any system, especially one involving large sums of money, are bound to be exploited. Questions such as just when, by whom, and how can be asked, but malpractice is inevitable if the opportunities are there.⁴³

⁴² *Review of Thoroughbred Racing in NSW, Final Report October 1995* (Page 51)

⁴³ *Ibid*, (Page 10)

5.2.47 Infrequently, the controlling bodies would entertain applications for the registration of new non-proprietary race clubs. Occasionally, the controlling bodies would also consider the provision of additional race dates to a registered race club or the allocation of TAB status to meetings which were not formerly classed as being suitable for betting on the off-course TAB platform.

5.2.48 On rare occasions, the controlling bodies would consider the de-registration, or the non-renewal of the annual registration, for a race club. In fact, apart from the situation in the middle of the twentieth century when there was a move from a proprietary to a non-proprietary basis for race clubs (see para. 5.2.26) the only other occasion when this has arisen has been in the last few years. At that time the relevant controlling body assessed the economic performance of a race club in the context of the development of an industry wide business strategy and, in close consultation with the club, it was decided to not renew the club's registration.

5.2.49 On such occasions the fullest opportunity is given by the controlling body to the affected club to devise a strategy by which to trade out of its difficulties before the ultimate decision is taken to close it down. It is essential for a controlling body to exercise such a function if it is to meet its statutory responsibility of ensuring the economic development and future of the industry for which it is responsible.

5.2.50 Submission No 23 (NSW Racing Pty Ltd) sets out (page 15) the benefits of the registration role of the controlling bodies as follows:

Restrictions on the Registration of Racing Clubs

In summary, the benefits of maintaining the restrictions ensure that:

- (a) the opportunity for criminal conduct to be undertaken at race courses is limited;
- (b) participants in the industry are given a degree of confidence that races will be conducted fairly in accordance with a uniform set of rules;
- (c) the public's confidence in the industry is maintained, thus preserving the revenues returned to the industry and to the New South Wales Government.

Any racing club may be registered by the relevant controlling body if it satisfies the objective criteria set out in each relevant Act.

The restrictions on who can conduct racing activities restrain competition only to the extent required to allow the industry to maintain a certain level of control over the racing events to ensure that the public receives what it is entitled to expect, that is, the exclusion of persons who cannot and do not meet the necessarily strict criteria of integrity and probity.

(Cont'd)

NSWR submits that there is no basis upon which it could reasonably be said that removal of the restrictions would produce benefits to the community which would outweigh any costs created by the restrictions for the following reasons:

- (a) there is already a very wide range of events and contingencies upon which New South Wales residents can wager;
- (b) there are already many forms of wagering and gaming already available in New South Wales;
- (c) new technologies and games have emerged which again increase availability and access to gaming and wagering in New South Wales;
- (d) there is no evidence of the need for any increase in choice of available racing and betting products;
- (e) there is no public (as opposed to private, self interested) demand for increased facilities for the provision of racing activities;
- (f) there is no evidence that the present restrictions on racing and participants are unfair or inefficient;
- (g) the removal of the restrictions is likely to lower standards associated with the industry resulting in a consequential loss of consumer confidence in all forms of racing; and
- (h) anything that impacts on the revenues returned to the racing industry will have an impact on the New South Wales breeding business, which in itself generates a large amount of employment and international sales.

Assessment

5.2.51 In recent years the Government has restructured the controlling bodies of racing to give them increased autonomy, and provide for direct industry representation. The rationale is that such steps provide the industry with self determination, and therefore the carriage of their future viability.

5.2.52 At the same time, the Government recognises that regulatory and integrity functions, while carried out by the controlling bodies, are ultimately the Government's responsibility. Accordingly, appointees to the controlling bodies are chosen on the basis of the need for a Board to be able to meet an appropriate range of commercial and regulatory responsibilities.

5.2.53 The Review Steering Committee notes that independent of this Review, the Government has commenced a review of the composition and activities of the Boards of Harness Racing NSW and the Greyhound Racing Authority. Such a review is consistent with the undertaking given in 1998, at the time of the restructure of those Boards, that there would be an evaluation towards the end of their three year terms. Separately, a section 53 review under the *Thoroughbred Racing Board Act 1996* requires examination, after five years of operation, of whether the objects of that Act remain appropriate.

5.2.54 Accordingly, the Review Steering Committee concludes that the present licensing arrangements for the control of racing industry participants is of net benefit to the community, although they may be open to review or reform arising out of the reviews identified in the following paragraphs.

Independent Commission Against Corruption: The greyhound report

5.2.55 The recent Independent Commission Against Corruption (ICAC) report (*The greyhound report: Investigation into aspects of the greyhound racing industry*) found generally that there were deficiencies in the Greyhound Racing Authority's exercise of some of its responsibilities.

5.2.56 In that report, the ICAC recommended that the Government and the three controlling bodies for racing examine the possibility of combining certain regulatory and drug testing functions across the three codes of racing. The purpose of those recommendations is to examine whether there might be benefits in terms of greater accountability, consistent practices and economies of scale.

5.2.57 The Review Steering Committee acknowledges the ICAC's report, and that it is appropriate for the Government to progress the implementation of the ICAC recommendations. The Review Steering Committee also acknowledges that these matters may proceed independently of its task.

5.2.58 Accordingly, the Review Steering Committee concludes that a licensing regime for the control of racing industry participants is of net benefit to the community, although current licensing arrangements may be open to review or reform.

RECOMMENDATION 3

5.2.59 The Review Steering Committee recommends that the restrictions in relation to the:

- (1) Licensing of racing industry participants (eg. bookmakers, jockeys, trainers, drivers, etc); and
- (2) Registration of, and associated powers over, race clubs and the conduct of racing,

exercised by the controlling bodies for racing in NSW, and which are contained in the Acts which establish those bodies, be retained.

5.3 CROSS BORDER MARKET RESTRICTIONS

Cross Border Restrictions applicable to Horse, Harness and Greyhound Betting

Description

- 5.3.1 Part 4 of the of the *Racing Administration Act 1998* (Racing Act) contains provisions which restrict advertising into NSW by non-NSW licensed betting operators. This is underpinned by the general criminal sanctions in the *Unlawful Gambling Act 1998* on unlicensed persons operating as betting providers. Both Acts commenced on 1 March 1999, and a number of their provisions were carried forward from the now repealed *Gaming and Betting Act 1912*. At the same time the Racing Act was updated to introduce parallel 'electronic betting' provisions.
- 5.3.2 Although it is lawful to bet with a licensed betting operator from any Australian jurisdiction, in NSW - like most jurisdictions - there is a general prohibition against publishing - by print and traditional broadcast media - certain betting information, or advertising the availability of such bookmaker services from another jurisdiction.
- 5.3.3 Similarly, a new provision [section 30(3) of the Racing Act] has been enacted which prohibits a person from providing by way of the Internet, subscription TV or other on-line communications system:
- (i) access to gambling operations other than those provided by TAB Ltd or authorised NSW licensed bookmakers; and
 - (ii) access to information relating to such non-NSW licensed gambling operations (includes Internet banner headline advertising and hypertext links).
- 5.3.4 The restrictions on print and media advertising are longstanding, and such restrictions are in place in most other major Australian states. The 'electronic' restrictions are simply an extension of the existing print and media rules which operated for many years under the former *Gaming and Betting Act 1912*.
- 5.3.5 These prohibitions are designed to prevent advertising into the NSW market by betting operators not licensed in NSW. The rationale is that such operators should not be given the opportunity to 'free-ride' on the attractive product of the NSW racing industry, and access to NSW based customers. Free-riding means that although such operators are generating their income from using NSW racing as a betting platform and betting with NSW customers, they do not contribute to the costs of the NSW racing industry in conducting such racing.

5.3.6 The background to this reasoning and policy position are set out earlier in this Report. The relevant earlier parts are the interdependent relationship of the racing and betting industries (section 3.5), the significance of the racing industry to the NSW economy (section 3.2 generally), the significance of the racing industry to regional development, the Productivity Commission's assessment of the racing industry as a special case, the issue of free-riding and the exclusivity arrangement in place between TAB Ltd, the racing industry and the NSW government (para. 3.4.15 and 4.3.4 onwards).

5.3.7 A further significant and more recent basis for such provisions is the protection of consumers from the expansion of gambling services and consequently the Premier's 'pause' on new forms of gambling (see para. 1.1.9 and para. 2.5.5 onwards).

Submissions

5.3.8 Several submissions were received in relation to cross border matters. This includes from the Northern Territory licensed corporate bookmaking concerns *Jupiters Ltd (Centrebet)*⁴⁴ and *Mark Read's Darwin All Sports*.⁴⁵ Submissions were also received on this subject from *NSW Racing Pty Ltd*⁴⁶, *News Ltd*⁴⁷ and a joint submission from the *NZ Racing Industry Board* and *NZ TAB*.⁴⁸

5.3.9 The main points, on cross border restrictions, made by Submission No 12 (Jupiters Ltd) are:

(i) **Advertising restrictions do not benefit probity in betting**

Non-NSW licensed operators do not pose a risk to probity in betting, therefore probity is not enhanced by advertising restrictions.

(ii) **Free riding is a problem for racing but present regulation is costly**

A free riding problem appears to exist with regard to race betting which should be addressed. It exists largely because of the dependence on wagering revenue to fund quality and integrity in racing.

However, restrictions on competition do not produce net benefits and alternative arrangements for addressing the free rider problem in racing should be developed. Taxation of market participants rather than their exclusion is one such possibility.

44 Submission No 12

45 Submission No 20

46 Submission No 23

47 Submission No 1

48 Submission No 16

- (iii) **Restricting interstate providers neither reduces nor addresses problem gambling**
The difficulties associated with obtaining sufficient revenue to address the adverse impacts of problem gambling reflect the inadequacies of the current regulatory arrangements for funding problem gambling. These difficulties are in no way a justification for the restrictions, nor do the restrictions alleviate the problem.
- (iv) **Restrictions on the free flow of information impose net costs**
Restrictions on the free flow of betting information for fixed odds [sports] betting produce net costs for consumers and non-NSW licensed betting service providers.
The benefits for government are limited to the protection of totalizator revenue. However, protecting the fixed odds activities of state totalizators (which are protected only because their parimutuel activities need to generate an adequate pool size to be effective) is an irrelevant and inappropriate objective of restrictive legislation. Alternative arrangements for securing government and industry revenues should be developed.
- (v) **Restricting the media imposes many costs without offsetting benefits**
Restrictions on the media that prevent publication of the odds of non-NSW licensed operators are self-serving. Any restrictions on the right to publish and distribute information must be emphatically demonstrated to produce net benefits. There are no such benefits here. Consistency with the Competition Principle Agreement would require that such restrictions be dismantled.
- (vi) **Internet delivery should be available to all licensed operators**
Where a betting service provider has already satisfied all requisite probity and financial criteria checks as part of the licensing process, regardless of jurisdiction, licensing protocols should not try to distinguish between various methods for betting.

5.3.10 The main points, on cross border restrictions, made by Submission No 20 (Darwin All Sports) are:

- (i) Under New South Wales law it is lawful for a person in New South Wales to bet with an interstate licensed operator but it is unlawful for the interstate operator to advertise such services in New South Wales.
- (ii) The objectives of integrity, probity and harm minimisation are shared by all States and Territories, and are reflected by the conditions attached to gambling licences by such jurisdictions. The protection of one State's revenues – which is the rationale for the New South Wales advertising restrictions on interstate bookmakers – is inappropriate under NCP.
- (iii) The prohibition on advertising is either unenforceable (having regard to the characteristics of the Internet) or appears to operate on a quasi extraterritorial basis by prohibiting legal activity in other States and Territories.
- (iv) Section 30(3) of the Racing Act is poorly drafted and may apply to other gambling operators such as on-line casinos.

- (v) There is no compelling policy rationale to underpin the government subsidy of the New South Wales racing industry creating barriers to effective competition in the market for gambling services.
- (vi) The assumption that removal of the New South Wales advertising/betting information restrictions would have a negative impact on New South Wales racing and betting revenues is false. A more competitive market would tend to generate an overall increase in the size of the market and hence revenues, much of which would be sourced from international gamblers. Also, that non-New South Wales licensed operators regularly contribute, by betting back, into the New South Wales market to reduce their risk.
- (vii) There is a strong case to suggest that the New South Wales advertising restrictions are in breach of section 92 of the Australian Constitution.

5.3.11 Submission No 1 (News Ltd – from the editor of *Sportsman*) stated that:

- (i) The restrictions on advertising interstate betting services and betting information have a significant adverse impact on national publications such as the *Sportsman*. Such adverse impacts include, it is estimated, the loss of 90% of advertising revenue and potential closure of the business.
- (ii) The betting public is also disadvantaged because they are not able to compare odds from interstate betting operators, and therefore obtain the optimum price on a contingency.
- (iii) Also, by opening up the legislation – on a national basis – to permit advertising from all states (and territories) it is predicted that interest would be stimulated, turnover would increase and the overall market would grow. It is argued that this would be of benefit to the betting public, the racing and betting industry, and government revenue streams.

5.3.12 Submission No 16 (New Zealand TAB and the New Zealand Racing Industry Board) states that:

- (i) New Zealand and Australia are parties to the Closer Economic Relations Trade Agreement and its related protocols (ie, the CER Services Protocol), and that the NSW Government is a party to that agreement; and
- (ii) certain aspects of NSW Racing and Betting legislation have Trans-Tasman anti-competitive effects which are serious breaches of the CER Services Protocol.⁴⁹

5.3.13 The joint submission argues that:

- (i) [I]t is now illegal for a NSW resident to use the NZ TAB's Internet service to bet on Australian horse and greyhound races.

The problem is compounded by section 30(3) of the *Racing Administration Act 1998* under which it is illegal for a NSW internet service provider to carry the NZ TAB's internet betting service. They can only offer such services to licensed NSW bookmakers or totalizator licensees, which have statutory monopolies under the *Totalizator Act 1997*.

⁴⁹ The Review Steering Committee, after taking advice, concluded that the CER issue was outside its terms of reference and advised the joint submission makers accordingly.

- (ii) The NZTAB's access rights and treatment are less favourable than those accorded to the NSW totalizator service provider, and totalizators in other Member States. S. 8(3) of the Unlawful Gambling Act discriminates against the NZTAB because it prohibits persons in NSW from Internet betting on Australian racing events with offshore operators (which includes the NZTAB), but permits such betting with betting operators licensed by an Australian jurisdiction; and
- (iii) The ban on NZTAB advertising also breaches Articles 4 and 5 of the CER Services Protocol. In essence NSW betting service providers are given an advantage in the market because they can advertise. Section 30 of the Racing Administration Act 1998 contains a general prohibition on advertising betting information and betting services, except for licensed NSW bookmakers and TAB Ltd – in specified circumstances.

5.3.14 The submissions from *TAB Ltd*⁵⁰ and *NSW Racing Pty Ltd*⁵¹ put the view in support of the status quo on cross border restrictions.

5.3.15 Submission No 11 (TAB Ltd) notes that interstate betting operators (both bookmakers and totalizators) are prohibited from advertising their wagering services in NSW. The reason for this is, in NSW and similarly in other jurisdictions, to protect government and racing industry revenues derived from wagering.

5.3.16 Submission No 11 further notes that:

- (i) In the case of totalizators, the overall effect of these arrangements on interstate competition between totalizators is unlikely to involve any significant competitive disadvantage for NSW totalizators. Totalizator taxes in Victoria are the same as in NSW and the totalisators in these two States comprise a large proportion of total wagering turnover. Moreover as TAB Ltd operates the largest pool in Australia, it should be able to reap as many of the economies of scale as are any of the other totalizator operators...
- (ii) In the case of bookmaking, the picture is quite different. As the tax rates on bookmaking turnover in all states and territories are between 0.3% and 2.17%...bookmakers in all jurisdictions enjoy a significant tax advantage over the NSW totalizators. For this reason there is a risk of competitive misallocation were the restrictions on interstate advertising to be removed in isolation from any offsetting changes in the regulation or taxation of NSW totalizators. The risks are essentially as severe as (the possible relaxation of bookmaker minimum telephone bet levels).

50 Submission No 11

51 Submission No 13 & 23

5.3.17 Submission No 11's pivotal point is that 5% of TAB Ltd's wagering turnover could be lost to interstate bookmakers if crossborder restrictions were removed:

[T]he amount NSW Government would lose in bets placed on NSW races with interstate totalizators would probably be similar to the amount NSW gains from bets placed on interstate races with TAB Ltd. Indeed it may gain slightly overall given the greater size of the TAB [Ltd] pool compared with the interstate totalizators.

[T]he competition between NSW and interstate jurisdictions in the area of taxes on bookmakers should result in approximately equal gains and losses of revenue for the NSW Government, as tax rates on bookmaking across Australia are similar in most states and territories.

On the other hand, there is likely to be significant detrimental impact on government [and racing industry] revenues if interstate bookmakers were able to take some of the market share held by NSW totalizators.

5.3.18 In contrast, submission No 20 (Darwin All Sports) argues that the free-rider problem is irrelevant, and that betting operators should not be subsidising the racing industry. Accordingly, the submission maker has advised the Review that no relevant distinction is made between race and sports betting in the Northern Territory, and consequently in the submission maker's business operations.

5.3.19 However, Submission No 12 (Jupiters Ltd), which is another Northern Territory corporate bookmaker, acknowledges the free-rider problem but does not accept that it justifies the NSW cross border restrictions. It argues that the free-rider market failure does not apply to sports betting because it does not derive its funding in the same way as the racing industry, and that alternative means should be developed to address the market failure in relation to the racing industry.

5.3.20 Submission Nos 1 (*News Ltd*), 12 (*Jupiters Ltd*) and 20 (*Darwin All Sports*) argue that the restrictions on betting information, and advertising of interstate bookmaker services, are a cost to the betting consumer as they deny choice of betting options, and are also costly to the business of non-NSW licensed betting service providers. The view is also put that restricting the media and Internet delivery in this way also imposes costs without offsetting benefits.

Suggested Alternatives – Productivity Commission

5.3.21 The Productivity Commission and submission No 12 have suggested alternative approaches to address the free-rider problem which would not have the adverse costs on consumer choice and media reporting of betting information, but which guarantee returns to the NSW racing industry and government.

5.3.22 There are three such proposed alternatives (Review Steering Committee comments follow each bolded alternative):

- (i) **An inter-governmental agreement based on the sharing of betting taxes between the gambling operator's jurisdiction and the betting consumer's jurisdiction.** [Productivity Commission]

It is presumed that the proposed sharing of betting taxes refers to the revenue collected by government from a licensed bookmaker.

While repatriating a share of tax to the home jurisdiction of the player has been considered by some Australian jurisdictions for on-line gaming, the same 'greenfield' environment does not apply to on-line betting. Unlike Internet gaming, interstate Telephone betting on racing by way of TAB account betting or with bookmakers on-course has been available in Australia for some years.

Additionally, due to tax rivalry and business exploitation strategies, the 'corporate' bookmaker tax structure adopted by the ACT and Northern Territory is too low to support tax sharing, ie there is insufficient margin to support a viable bookmaking business and tax sharing. The revenue flow mathematics of a jurisdiction with a small population, as opposed to a large population, suggest that such arrangements would not be in the interests of a small jurisdiction because of the outflow. Equally, if a tax sharing condition were imposed it may well result in the Territory government being exposed to a claim for compensation.

Further, it is unlikely that revenue from such sources would be as profitable as that derived from the same turnover from TAB Ltd. Accordingly, there would be reduced business motivation for NSW interests to settle for the inevitably less profitable approach.

- (ii) **A levy being imposed on bets similar to that which occurs in the United Kingdom betting shop structure.** [Productivity Commission]

The UK model is not a good example for consideration in New South Wales. In the UK all off-course betting is conducted under licence by large corporate bookmaking firms with nominal returns to the racing industry which provides the betting platform. The UK racing is not in a good financial position and in recent years has survived essentially as a result of the patronage of oil rich entrepreneurs.

Also, the UK Home Office has recently released a report which favours a pro-regulatory gambling approach which is contrary to the Australian trend.

Australian racing with its system of off-course totalizators, and on-course bookmakers and totalizators is highly regarded by many in the racing world.

The comments for (i) above are also likely to apply equally to this approach.

(cont'd)

(iii) The racing industry seeking contractual arrangements with interstate bookmakers for the use of its racing broadcasts. [Submission No 12]

The broadcast of racing pictures already occurs at interstate racecourses, TAB outlets, clubs and hotels which have complex arrangements with the racing industry for the use of the racing image. This approach was developed at a time when all jurisdictions agreed that bookmakers would operate as sole traders and on-course. With the advent of the Territories corporate bookmakers, the opportunity has arisen for them to free-ride on the previously settled arrangements. It is extremely difficult, and probably impossible, to segregate the bookmakers from the existing avenues of broadcast of the racing image without adversely impacting on the existing arrangements.

Otherwise the same arguments apply as for (i).

5.3.23 Submission Nos 1 (News Ltd), 12 (Jupiters Ltd) and 20 (Darwin All Sports) argue that the lifting of the cross border information and advertising (and other) restrictions would tend to stimulate interest in betting on racing and sports events and that the result would be an increase which would benefit all stakeholders. However, the Review Steering Committee notes that if such an approach is correct, the inevitable corollary would be that an increase in revenue for wagering providers, the racing industry and Government could only eventuate if there was a corresponding increase in gambling activity.

Constitutional Issues

5.3.24 Submission Nos 1, 12 and 20 also raise legal issues relating to the cross border restrictions in NSW gambling laws. These include whether the restrictions:

- (i) Are in breach of section 92 of the Australian Constitution;
- (ii) Operate on a quasi extraterritorial basis by prohibiting legal activity in other States and Territories;
- (iii) Section 30(3) of the Racing Act is poorly drafted and may (unintentionally) apply to other gambling operators such as on-line casinos.

5.3.25 Taking each of these in turn, the Review Steering Committee notes:

- (i) The section 92 issue is subject to the principle expressed in the Castlemaine⁵² case which states that a law may not be in breach of section 92 if it is:

...necessary or appropriate and adapted either to [the solution of social or economic problems, such as] the protection of the community from a real danger or threat to its welfare or to the enhancement of its welfare.

The Review Steering Committee considers that there is some merit to the argument that the New South Wales gambling laws fall within the relevant exception.

- (ii) The territorial issues are governed by the principles decided in Union Steamship Company of Australia Pty Ltd v King.⁵³

...the requirements for a relevant connexion between the circumstances on which the legislation operates and the State should be liberally applied and ... even a remote and general connexion between the subject matter of the legislation and the State will suffice.

The Review Steering Committee notes that the cross border restrictions apply to activities conducted within NSW (ie. a person in NSW publishing proscribed betting information or inducements to gamble). Accordingly the laws are valid.

- (iii) This Review Steering Committee notes that the preferred interpretation of section 30(3) of the Racing Administration Act is that the words 'gambling operations' should be read down in accordance with the purposes of the Act, ie. applies to racing and sports betting.

5.3.26 In terms of the Castlemaine principles, the Review Steering Committee has examined the arguments put by the three submission makers. It is considered that there are significant social and economic reasons to support the 'burden' of the New South Wales advertising restrictions on interstate betting operators (as opposed to intrastate New South Wales operators).

5.3.27 Those jurisdictions (eg. Northern Territory, A.C.T and Tasmania) which have relaxed traditional bookmaker controls (eg. permitted corporate licensing and public listing, and relaxed betting advertising and information dissemination restrictions) have, in effect, moved away from what was an agreed national position. The purpose of 'breaking ranks' in this way is to obtain a local competitive advantage in terms of encouraging gambling business development, and consequently government gambling revenues.

52 (1989-90) 165 CLR 360

53 (1988) 166 CLR 1

5.3.28 Accordingly, that the relevant NSW laws are stricter than those in certain Australian jurisdictions, is largely a result of the relaxation of such comparative measures in those other jurisdictions. If the only purpose for NSW to also relax those laws was to facilitate an increase in bookmaker gambling activities, that would very likely result in an 'opening of the floodgate'. Such a position would constitute an undesirable expansion of gambling, and would expose the people of NSW to the possibility of increased risks from problem gambling.

5.3.29 In any event, it is doubtful that there is any compulsion on NSW to simply follow what other jurisdictions have done. Under the Australian Federal system there is no compulsion to have identical State laws on every issue, particularly in the field of gambling regulation which is a State responsibility.

Assessment

5.3.30 The purpose of the cross border restrictions on betting information and advertising is to:

- (i) Control the extent of the advertising of gambling services within NSW and therefore the potential for such services to cause social harm; and
- (ii) Assist the racing industry to minimise the opportunity to use NSW racing as a betting platform without contributing to its costs (ie. free ride).

5.3.31 Earlier in this Report (para.2.5.6 onwards), reference is made to the Government's pause on new forms of betting and that all Australian jurisdictions are reviewing gambling public policy independently of their NCP reviews. Such reviews are in relation to both on-line and off-line gambling, and all jurisdictions are participating, to varying extents, in the Ministerial Council on Gambling and Council Of Australian Governments scrutiny of gambling issues.

5.3.32 One of the significant issues in relation to problem gambling, is public access to gambling services. If the Government is to pursue the objective of ensuring a safe and responsible gambling environment for its gambling consumers, then it must have regard to the marketing and advertising of gambling products into NSW by out of jurisdiction gambling operators.

- 5.3.33 The Review Steering Committee notes that until recently, and particularly before the Productivity Commission's Report *Australia's Gambling Industries*, gambling taxation revenue was seen as one of the few remaining opportunities for State and Territory Governments to raise revenue in their own right. Such inter-jurisdictional competition for revenue gave rise to an abandonment of the traditional equilibrium that existed between jurisdictions for gambling regulation, and resulted in increased competition by some to licence new operators, and therefore increase gambling revenues.
- 5.3.34 In particular, the two Australian Territories and Tasmania have, in concert with emerging technologies and a generous gambling tax structure, sought to expand their gambling revenues by establishing 'corporate' bookmaking licences. In some respects the holders of such licences are a hybrid of the traditional Australian bookmaker and an off-course totalizator, ie. they model themselves as e-commerce betting shops using emerging technology to access previously unavailable markets.
- 5.3.35 Such an entrepreneurial approach creates issues in relation to the expansion of gambling services and the associated potential for social harm, and the 'free-rider' problem for the racing industry. Several submission makers, and the Productivity Commission in its recent report on Australia's Gambling Industries, have identified the latter problem as a special case, and that some form of intervention is necessary to address the possibility of the unfair exploitation of the racing industry.
- 5.3.36 Professor Jan McMillen (Australian Institute of Gambling Research) has noted that since about the middle of this decade there has been increasing tension between States and Territories about revenue from gambling. Professor McMillen takes the view that when the regulation of gambling is involved, the principles of free market competition reform and the traditional objectives of gambling legislation tend to be at opposite ends. Recently, Professor McMillen has stated:

You mention it [market failure], for instance with the racing industry and the potential there with horse racing and the effect of competition. But I really would like to see a bit more attention on market failure. Government failure you have identified appropriately, I think, in terms of the policy problems that have occurred and the lack of policy rationale and principles, but I think that needs to be balanced with some confrontation and addressing the issues of market failure a bit more systematically, particularly as far as competition is concerned.

(cont'd)

But certainly I think one of the things that...[The Productivity Commission's]...is the recognition that there are some areas where the government does need to take a role in the public interest where the expansion of the [gambling] market is in conflict with the public good.

What concerns me with the fragmentation [between States and Territories regarding regulatory approaches to Internet gambling] that is occurring in Australia is what I call predatory federalism.

The states are trying to raid each other's markets and they are quite feral in other forms of gambling. I make no bones about that and I think that the tendency, as it happens with a lot of other market forces, is to drive to the lowest common denominator. The Productivity Commission report has shown what is happening. Fundamentally, it is market failure in other forms of gambling and I fear that the same thing will happen with interactive gambling.⁵⁴

5.3.37 The Review Steering Committee notes that the combination of the gambling business development objectives by some Australian and overseas jurisdictions, and the availability of increasingly user friendly and affordable communications technologies, has tended towards the targeting of NSW consumers by gambling operators. Such a proposition is supported by the recent trend in per capita expenditure on gambling which puts NSW at the top (para. 3.3.3).

5.3.38 The Review Steering Committee further notes the passage of the *Interactive Gambling Act 2001* through the Commonwealth Parliament on 28 June 2001. The opening page of the Explanatory Memorandum to that Act gives the following rationale:

The Government is concerned that new interactive technology, such as the Internet and datacasting has the potential to greatly increase the accessibility to gambling and exacerbate problem gambling among Australians.

5.3.39 Section 15 of the Commonwealth Act is the principal offence provision. It provides that a person is guilty of an offence if the person intentionally provides an interactive gambling service and the service has an Australian customer link. Essentially, any interactive gambling service provider, either within or outside Australia, would commit an offence if it had customers in Australia. Telephone betting, wagering, lotteries and certain other purely communications or networks services have been excluded from the definition of an interactive gambling service in the Commonwealth Act. Also, Part 7A of the Act provides for a prohibition on advertising of interactive gambling services. This is said to be based on the principles that apply in respect of tobacco advertising.

54 Professor McMillen's evidence to the Productivity Commission, 17 September 1999

5.3.40 The Review Steering Committee considers that the Commonwealth approach has merit and, accordingly, believes that there is a community benefit in restricting the presence in NSW of out of jurisdiction operators, and also gambling advertising into NSW by such operators, because without such controls it is likely there would be a significant increase in marketing and advertising of gambling with consequential adverse impacts.

5.3.41 Further, the Review Steering Committee has also given close consideration (see page 83) to the alternatives proposed by the Productivity Commission. They are considered to be inappropriate and to a large extent have been overtaken by developments since the Productivity Commission report, ie: the work program of the Ministerial Council on Gambling, the decisions taken at COAG on 3 November 2000 and the Commonwealth's *Interactive Gambling Act 2001*.

5.3.42 Finally, the Review Steering Committee also notes the views in submission No 16 (NZ TAB/RIB). For purposes of this Report, the NZ TAB (insofar as it adversely impacts on the Australian horse, harness and greyhound racing industry) is considered to be a licensed gambling operator providing its services to NSW betting consumers, but without returning revenues to the NSW racing industry.

RECOMMENDATION 4

5.3.43 The Review Steering Committee recommends that:

- (1) The existing restrictions on the physical – or agency – presence applicable to a betting operator not licensed in NSW, be retained.
- (2) The existing cross border (betting information and advertising) restrictions that relate to betting operations on horse, harness and greyhound racing, be retained.
- (3) The restrictions in (2) should be reconsidered if it is possible to make alternative national arrangements which are consistent with:
 - (i) The Government's policy that there should be no expansion in gambling and that, if permitted, such gambling services are subject to strict responsible gambling standards; and
 - (ii) The delivery of community benefits commensurate with those that currently apply, and in particular to the NSW racing industry.

Cross Border Restrictions Applicable to Sports Betting*Description*

5.3.44 The Review Steering Committee considers it appropriate to examine sports betting separately to horse, harness and greyhound betting. The reasons for this are that:

- (i) Sports betting does not have the traditional nexus between the contest and the associated betting that occurs in the case of racing; and
- (ii) Submission makers to the Review, and the Productivity Commission, have argued that the 'free-rider' rationale does not apply in the case of sport.

5.3.45 Sports betting cross border restrictions are basically the same as those that apply generally to cross border matters (para. 5.3.1). Pursuant to section 18 of the *Racing Administration Act 1998*, the Minister declares which sporting events (other than horse racing, harness racing or greyhound racing) or classes of sporting events are approved for betting purposes. Such orders are published in the Gazette, and currently there are 23 sports so declared.

Assessment

5.3.46 This Review Steering Committee notes that the regulatory framework in some Australian jurisdictions does not – particularly in some key aspects – distinguish between racing betting or sports betting. Submission No 20 (Darwin All Sports) argues that the 'free-rider' market failure is irrelevant in the case of both types of betting, effectively that the betting industry should not be subsidising the racing industry. This Review Steering Committee considers that this defect in policy demarcation must be addressed before sports betting cross border restrictions may be treated differently under NSW racing and betting laws.

5.3.47 Equally, this Review Steering Committee identifies concerns that if the NSW cross border restrictions were to be lifted, the possibility would exist for interstate bookmakers to unfairly exploit such 'backdoor' access to the NSW racing betting market, and consequently to target NSW consumers (see para. 5.3.37). Any lifting of the relevant restrictions could enhance the opportunity for this to occur by way of currently proscribed avenues for the dissemination of betting information and gambling advertising.

5.3.48 Such a scenario would have an adverse impact on the ability of the government to control the number of operators providing gambling services to the people of NSW, and potentially exacerbate any problem gambling.

5.3.49 Nevertheless, the Review Steering Committee concludes that sports betting cross border betting information and advertising restrictions should not be removed until satisfactory national agreements are made which are consistent with:

- (i) The 'ring fencing' of sports betting from race betting (ie. to prevent the 'backdoor' entry of sports bookmakers to race betting clients);
- (ii) The Government's policy that there should be no expansion in gambling and that, if permitted, such gambling services are subject to strict responsible gambling standards; and
- (iii) The delivery of community benefits commensurate with those that currently apply, and in particular to the NSW racing industry.

5.3.50 Also, the Review Steering Committee notes that its earlier comments on interactive gambling (para 5.3.41) also apply.

RECOMMENDATION 5

5.3.51 The Review Steering Committee recommends that:

- (1) The existing restrictions on the physical – or agency – presence applicable to a sports betting operator not licensed in NSW, be retained.
- (2) The betting information and advertising restrictions, to the extent that they apply to Australian licensed sports betting operators, be eased *but only after* satisfactory agreements are reached between Australian jurisdictions in relation to:
 - (i) Differentiating between sports betting and race betting;
 - (ii) The supervision of betting operators by way of licence conditions that ensure that such operators do not exploit the lifting of sports betting advertising restrictions to solicit race betting clients;
 - (iii) Participation in national consumer protection arrangements with particular reference to consistency with the Government's policy that there should be no expansion in gambling and that, if permitted, such gambling services are subject to strict responsible gambling standards; and
 - (iv) Participation in a national inter-governmental sports betting tax sharing arrangement.

5.4 RESTRICTIONS ON NSW LICENSED BOOKMAKERS

5.4.1 Bookmakers and their clerks are subject to a wide range of probity and financial capacity scrutiny, and operational directions under:

- (i) Part 3 of the *Racing Administration Act 1998*;
- (ii) Parts 5 and 6 of the *Bookmakers Taxation Act 1917*; and
- (iii) the Rules of Racing/Betting made by the relevant controlling body under the: *Thoroughbred Racing Board Act 1996*, *Harness Racing NSW Act 1977*, or *Greyhound Racing Authority Act 1985*.

5.4.2 The objects of the *Racing Administration Act 1998* may be conveniently summarised as:

- (i) To ensure the integrity of racing and associated betting in the public interest;
- (ii) To deter criminal influence and exploitation in connection with gambling activities; and
- (iii) To ensure that the correct amount of gambling tax is paid by licensed bookmakers and TAB Ltd.

5.4.3 They are also viewed as intensive and costly in recognition of the high risks associated with maintaining the integrity of the betting/wagering industry.

5.4.4 The Review Steering Committee received submissions from *TAB Ltd*,⁵⁵ *Jupiters Ltd (Centrebet)*,⁵⁶ *NSW Racing Pty Ltd*,⁵⁷ *NSW Bookmakers' Co-operative Ltd*,⁵⁸ *Australian Hotels Association (NSW)*,⁵⁹ *Clubs NSW*⁶⁰ and *Mark Read's Darwin All Sports*.⁶¹

5.4.5 Submission No 14 (NSW Bookmakers Co-op) proposes the abolition of State turnover tax on licensed bookmakers. It also addresses the exclusivity arrangements in favour of TAB Ltd under the *Totalizator Act 1997*. The Review notes that these matters are essentially outside its terms of reference.

55 Submission No 11

56 Submission No 12

57 Submission No 13 & 23

58 Submission No 14

59 Submission No 17

60 Submission No 18

61 Submission No 20

5.4.6 For convenience, the Review Steering Committee examines the following restrictions - which comprise those identified in the issues paper and two others identified in the submissions – under the broad headings of Off-Course Access, Licensing and Sports Betting. Note: related cross border sports betting issues are examined earlier (section 5.3).

OFF COURSE ACCESS

Time and Location, and Telephone and Electronic Betting Authorities

- (1) Racing bookmakers may only operate on events at a location and time for which it is lawful to do so (ie at a licensed racecourse when a lawful race meeting is in progress, or at an approved betting auditorium).***
- (2) Bookmakers may only conduct ‘telephone’ or ‘electronic’ betting’ if authorised by the Minister to do so.***

Description

5.4.7 Part 3 of the *Racing Administration Act 1998*, and various Rules of Betting made pursuant to the Acts which establish the relevant controlling bodies, generally provide that race betting can only occur at the racecourse on the day of a race meeting. The exceptions to this are the authorisations available for the conduct of betting in an auditorium (ie. a place at a racecourse where betting may be conducted on racing held elsewhere) and by means of the telephone or Internet. There are a variety of control conditions attached to such authorisations.

Submissions

5.4.8 Submission No 14 (NSW Bookmakers Co-op.) seeks an easing of these restrictions in the following terms:

Abolition of the restrictions on bookmakers’ use of approved telephones to permit bets to be taken at times other than race meeting times or on race-courses.

And on the basis that:

Consumers are provided with limited opportunity, by placement of legislative barriers, to place bets with people of their choice, at the time of their choice, at the location of their choice, for the amount of their choice and at fixed odds.

5.4.9 Submissions 17 (AHA) and 18 (Clubs NSW) support this approach to the extent that it would allow sports bookmaking to be permitted in registered clubs and licensed hotels (paras. 5.4.67 onwards below).

5.4.10 Submission No 12 (Jupiters Ltd) also proposes that:

Time and place restrictions on bookmakers should be removed in those instances where cost effective monitoring procedures can be enforced.

5.4.11 Submission No 12 justifies such an approach as follows:

Requiring bookmakers to operate on licensed racecourses while lawful race meetings are in progress may help promote the integrity of racing and betting, and perhaps protect the racing industry by encouraging increased attendances at race meetings. This may well be the case. However, there are also significant costs associated with these time and place restrictions.

The public has limited opportunity to place bets with the bookmaker of their choice, at the location of their choice, and at the time of their choice. In addition, NSW licensed bookmakers are put at a competitive disadvantage to the NSW TAB and licensed interstate or international bookmakers, who are not subject to the same operational conditions.

There are further costs for sports bookmakers from locational restrictions in particular. Restrictions that prohibit sports bookmakers from fielding at sporting events are a restriction on trade. There is a substantial task for this review in justifying restrictions that are against the spirit of the *Trade Practices Act 1974* as well as NCP.

However, removing locational restrictions is not costless. Consumer choice would be enhanced via the operation of bookmakers' off-course, yet there remains a concern about how bookmakers would be effectively monitored, which would need to be addressed under alternative arrangements.

5.4.12 Submission No 12, on the subject of monitoring bookmakers' telephone betting, states:

It is accepted that integrity and probity – and confidence in that integrity and probity – are important for both racing and sports, and the betting that occurs on them. The need for bookmakers to use a specialised closed mobile telephone network for the taking of telephone bets is designed to achieve the probity that the industry desires. There is no available evidence that there are net costs to bookmakers from this arrangement, given they benefit from probity in their profession. To the extent that bookmakers comply with these requirements, this restriction appears to deliver benefits.

5.4.13 Submission No 23 (NSW Racing Pty Ltd) argues that adverse consequences would follow the easing of bookmaker restrictions:

NSWR submits that the restrictions and limitations imposed on bookmakers - which it might be argued restrict their ability to compete in whatever manner and whenever they see fit - are the minimum which should be imposed. They have been developed over many years, taking into account social, commercial, control and regulatory aspects, and any steps to alter the delicate intertwinings should not be taken lightly.

If the restrictions in the legislation were removed, the industry could no longer:

- (a) guarantee that bookmakers' activities will be conducted in accordance with an objective set of rules and will be closely scrutinised;
- (b) ensure that bookmakers will be able to payout all successful bets; and
- (c) limit the opportunity for criminal conduct to be undertaken in connection with the racing and betting industry.

Assessment

- 5.4.14 The bookmaker 'time and location', and associated 'telephone' and 'electronic' betting, restrictions are an essential part of the longstanding control philosophy that requires bookmakers to operate on-course. The Review Steering Committee has earlier noted the policy of limiting bookmakers to operating on-course, these are set out in Justice Kinsella's reasoning (Appendix C). The reasons for this are that supervision and accountability are paramount in a cash flow business which may attract interest from criminal influences, including unlawful bookmakers. The restrictions also have the general effect of quarantining bookmaker betting, which includes credit betting, to those persons who attend a race course, or have pre-established arrangements with a bookmaker.
- 5.4.15 The Review Steering Committee notes the developments at the Commonwealth and State level (see para. 2.5.5 onwards) regarding gambling harm minimisation policy, particularly in relation to the Internet.
- 5.4.16 In particular, it is noted that the *Interactive Gambling Act 2001* passed the Commonwealth Parliament on 28 June 2001. The opening page of the Explanatory Memorandum to that Act gives the following rationale:
- The Government is concerned that new interactive technology, such as the Internet and datacasting has the potential to greatly increase the accessibility to gambling and exacerbate problem gambling among Australians.
- 5.4.17 Section 15 of the Commonwealth Act is the principal offence provision. It provides that a person is guilty of an offence if the person intentionally provides an interactive gambling service and the service has an Australian customer link. Essentially, any interactive gambling service provider, either within or outside Australia, would commit an offence if it had customers in Australia. Telephone betting, wagering, lotteries and certain other purely communications or networks services have been excluded from the definition of an interactive gambling service in the Commonwealth Act.
- 5.4.18 However, the Commonwealth Act does not exempt the introduction of services that offer real-time betting after a sporting event has commenced. The reasons for that approach are that such services have the potential to impact significantly on the incidence of problem gambling in Australia. Also, Part 7A of the Act provides for a prohibition on advertising of interactive gambling services. This is said to be based on the principles that apply to tobacco advertising.

5.4.19 The Review Steering Committee further notes the responsible wagering measures, which are a part of the overall package of responsible gambling measures introduced by NSW, and which commenced in NSW on 1 May 2001 (Appendix D).

5.4.20 The Review Steering Committee considers that the approaches set out by Justice Kinsella and in the Commonwealth's Interactive Gambling Act have merit and, accordingly, believes that it would be appropriate to retain the current the bookmaker betting 'time and location' restrictions, and the associated 'telephone' and 'electronic' betting permit approval and control requirements.

RECOMMENDATION 6

5.4.21 The Review Steering Committee recommends that the bookmaker betting 'time and location' restrictions, and the associated 'telephone' and 'electronic' betting permit approval and control requirements, be retained.

Racing Bookmaker Minimum Telephone Bet Limit

(3) *Bookmaker telephone betting on racing is subject to a minimum telephone bet level (\$200 for metropolitan gallops, \$100 elsewhere and no limit for sports betting).*

Description

5.4.22 Bookmaker telephone betting on racing is subject to the Ministerial authorisation process described above in paragraph 5.4.7. A condition of that telephone betting authority is that for bets to be accepted by the bookmaker they must be a minimum of \$200 for metropolitan gallops, \$100 elsewhere and no limit for sports betting. Until recently, the telephone minimum bet level was applied nationally by agreement between State and Territory Racing Ministers.

Submissions

5.4.23 Submission No 14 (NSW Bookmakers Co-op.) seeks the abolition of the minimum bet telephone limit on the basis that:

...the public interest is best served by removing restraints on trade, being the restraints that directly limit the availability of bookmakers to the wider community and directly restricts the competitiveness of bookmakers. The imposition of minimum telephone bet levels on Racing events (and not sporting events) illustrates this point. With the metropolitan level generally being \$200, it has become obvious that many customers wishing to bet smaller amounts have been denied the opportunity to fixed odds credit betting with Australian bookmakers.

Bookmakers should be free to operate and trade from all and any locations and at all and any times, in keeping with the availability of their direct competitors and in keeping with the need to service the public. By opening up the opportunity for bookmakers to trade freely and without restraint, the anti-competitive legislative restraints currently placed on bookmakers will be removed. Further, the dividend paid to the public by being able to bet with bookmakers is higher than the dividend received when dealing with the TAB and the increased accessibility of bookmakers would see a greater betting return to the public.

The perceived changes by placing bookmakers on a fair and level playing field with TAB operators will see little if any transfer of betting from TABs to bookmakers. The TABs recognise that bookmaker competition stimulates their business.

5.4.24 Submission No 11 (TAB Ltd) argues to support the status quo:

All the available evidence suggests that totalizators and bookmaking are close substitutes for each other. Any decision to relax the regulatory restrictions on bookmaking competition would be likely to lead to a significant increase in competition with totalizators. If such changes were implemented in isolation policy changes in the areas under contention, the increase would be far more likely to reflect the differences in tax rates on the two forms of betting rather than the preferences of the wagering public. In such a circumstance, any increased competition would not realise the economic benefits that would normally be expected to flow to the community as a whole from increased competition.

From the point of view of NCP, the more significant restrictions on bookmaking in NSW are the restrictions on competition between NSW bookmakers and NSW totalisator operators. The notable restriction is...[that] bookmakers in NSW may only accept bets by telephone that are in excess of \$200 for metropolitan gallops and \$100 for other races...

[T]otalisators in NSW pay higher rates of tax to the NSW Government. They also make greater contributions to the NSW racing industry in product payments [per dollar of turnover] than do bookmakers, and are required to do so by the *Totalizator Act 1997*. The differences in tax and product payments are substantial – the rate of tax on totalizator betting alone is equivalent to nearly five times the tax on bookmaking turnover.

These differences clearly give bookmaking a substantial competitive advantage over the totalisator. The natural advantages that totalizators possess that might offset their tax and product fee disadvantages compared to bookmaking is irrelevant from a NCP perspective. The key requirement is neutrality of policy treatment of the totalizator and bookmaking sectors. Government is not meant to handicap one sector unless there is a demonstrated overall advantage to the whole community in doing so, and it is the only way to realise that net advantage.

At present, the extent of the tax and product fee advantages that bookmaking in NSW enjoys over the totalizators are reduced by the restrictions on competition between the two. Were those inter-sectoral restrictions on competition removed, and in the absence of any policy change, the totalisators would be put at a significant competitive disadvantage, and their disadvantage would be purely due to a lack of competitive neutrality in the government's treatment of the two sectors.

5.4.25 Submission No 11 has argued that a reduction in the minimum bet level would have direct and serious consequences for TAB Ltd turnover levels, and hence on the levels of prize money, employment and funds for capital infrastructure in the racing industry:

The removal of these inter-sectoral restrictions between bookmaking and the totalizators would lead to bookmaking gaining turnover from the totalizators. Regardless of whether the trend decline in bookmaking turnover were to continue or not, the critical point would be that bookmaking turnover would end up being higher than it would otherwise have been. This would have been a policy-induced change with adverse implications for economic efficiency and the allocation of resources in the economy.

The abolition of the \$200 minimum on telephone bets by bookmakers would be particularly serious in this regard. It would place the vast majority of the bets with TAB Ltd at risk of competitive misallocation. The [relevant] share of TAB Ltd turnover for its four key products in 1998-99 are:

	BETS<\$200 % TOTAL NO. BETS	BETS<\$200 % OF VALUE BET
Telephone – win	99.4%	74.0%
Telephone – place	99.7%	84.2%
In person – win	99.5%	81.1%
In person – place	99.8%	89.5%

5.4.26 Submission No 11 concludes that if the subject restriction was relaxed in favour of bookmakers, there would be adverse consequences for the community as follows:

[T]he shift in demand due to such regulatory changes would probably result in an overall loss in government revenue. [R]evenue losses due to the higher tax rates paid by the totalizator would not be enough to offset any clawback due to the tax on NSW bookmakers' turnover. There would, of course, be no clawback to NSW in the case of interstate bookmakers – although the other jurisdictions would gain. [T]he community as a whole would be worse off as a result of the loss of these transfer payments. Consequently, other taxes would have to be increased or government expenditure cut. These would involve either an increase in the deadweight losses associated with government revenue or a loss of benefits to the community due to reduced public expenditure. The overall result is obviously detrimental for the community as a whole.

5.4.27 Submission No 23 (*NSW Racing Pty Ltd*) supports submission No 11 in the following terms:

The restrictions [generally] constrain the services that bookmakers can offer the customers, by not allowing them to accept telephone bets less than \$200 or bets off-course, accepting bets whenever they choose to do so, or bets for sporting events other than horse racing, harness racing and greyhound racing: without first having obtained Ministerial consent.

The purpose of the legislation is not to exclude the number of bookmakers from operating at a race meeting on an approved racecourse.

(cont'd)

Rather, the purpose is to remove the opportunity for illegal bookmakers to take advantage of the system, allow the controlling bodies to supervise the activities of bookmakers, to impose rules such as bond guarantee systems, impose sanctions for failure to comply with rules, and ensure that the bookmakers contribute to the system from which they benefit.

The racing industry nationally and across all codes believe that if the \$200 minimum bet were to be abandoned, this would have a detrimental effect on racecourse attendances, with a consequential loss of interest and reduction in participation levels.

Assessment

- 5.4.28 The Review Steering Committee recognises that, according to the business of betting, the casual or recreational punter is likely to bet in small amounts, away from the course and generally without much study of the form of races. The larger punter is much more informed and generally speaking will operate on-course, or by telephone with on-course bookmakers, in order to maximise the available odds. It follows that a fixed odds operator is more likely to win from recreational punters than informed punters.
- 5.4.29 With declining track attendances in the last twenty years, bookmaker on-course turnover has also declined, despite the introduction of telephone betting in 1994. The telephone concession is a powerful marketing tool which enables bookmakers to increase their turnover, at the expense of off-course totalizator receipts.
- 5.4.30 The racing bookmaker minimum telephone bet limit has the effect of curbing public access to bookmakers' services. At present, only a race-goer and a bookmaker telephone account client are able to wager with a bookmaker (the latter only within the limits of the \$200 minimum bet framework).
- 5.4.31 The policy conforms with the intention that bookmakers are restricted to on-course operations for reasons of integrity and harm minimisation (see para. 5.4.14). The Review Steering Committee notes that a reduction in the racing bookmaker minimum bet telephone limit would provide greater accessibility to the betting public of bookmaker services, and hence the potential for an expansion of gambling.
- 5.4.32 It is likely that increased competition between licensed bookmakers (whether in NSW or interstate) and TABs for the off-course market would ensue. Logically, such action would tend towards increasing gambling activity overall. Further, the possible extension of traditional bookmaker credit betting to betting consumers who bet in small denominations (ie. less than \$200) is of concern, and requires close consideration in terms of the Government's responsible gambling legislation and policy.

5.4.33 The Review Steering Committee notes that other jurisdictions such as the Northern Territory and Victoria have decided to reduce the limit to \$50 (in Victoria's case over three years by \$50 increments). Queensland has opted to repeal the legislated restriction altogether, although it has delegated the ability for a decision on this issue to be made by its racing industry controlling bodies.

5.4.34 The Review Steering Committee also notes that if action were taken by government which had the effect of transferring revenues from TAB Ltd and the racing industry into privately owned bookmakers there may be a compensation issue. That issue is discussed earlier at para. 3.4.13.

5.4.35 The Review Steering Committee concludes that overall it is likely there would be greater costs than benefits associated with abolishing the bookmaker minimum telephone bet limit, ie. because it would tend to expand gambling.

RECOMMENDATION 7

5.4.36 The Review Steering Committee recommends that:

- (1) The minimum telephone bet restriction on racing betting, be retained.
- (2) A reconsideration of the relaxation of the minimum telephone bet restriction occur only if the relevant stakeholders submit detailed proposals to Government on the following:
 - (i) Appropriate bookmaker responsible gambling/harm minimisation standards are implemented to balance the enhanced access to bookmaker telephone betting by off-course betting clients; and
 - (ii) A revised betting tax and revenue structure that would ensure that revenue streams to the racing industry are maintained.
- (3) The NSW Government consult further with other jurisdictions on this matter with the view of monitoring the national implications of the minimum bet restriction policy.

Off-course Dissemination of Bookmaker Odds Fluctuations

(4) Bookmakers (and other persons) may not disseminate on-course betting fluctuations on racing – except in very limited circumstances – off-course.

5.4.37A specific purpose review of this restriction was commenced by the NSW Government Department of Gaming and Racing prior to the competition review of racing and betting laws. The Departmental Review (known as the *Off-Course Dissemination of Bookmaker Odds Fluctuations: A review of the costs and benefits of releasing off-course pre-race bookmakers' odds fluctuations*) involved considerable consultation, with an issues paper and a stakeholder round-table discussion prior to the final report.

5.4.38The Review Steering Committee considers it appropriate for the specific purpose review and submissions made to the NCP review, to be considered together for the purposes of this Review.

Submissions

5.4.39The relevant submissions to this Review on the issue of 'off-course betting fluctuations' are Submission No 1 (News Ltd), Submission No 11 (TAB Ltd), Submission No 12 (Jupiters Ltd), Submission Nos 13 & 23 (NSW Racing P/L) and Submission No 20 (Darwin All Sports).

5.4.40Submission Nos 1, 12 and 20 are in favour of a relaxation of the restriction. The reasons for that position are set out above in Section 5.3 which deals with Cross Border Restrictions (para. 5.3.8 onwards).

DGR Review

5.4.41The submission makers to the Departmental Review '*Off-Course Dissemination of Bookmaker Odds Fluctuations*' included the three controlling bodies of racing, the NSW Bookmakers' Co-operative Ltd, major race clubs, TAB Ltd and Media and Consumer representatives.

5.4.42The Departmental Review findings were as follows:

1. While no stakeholder claimed to be aware of the exact outcome of lifting existing restrictions on releasing off-course bookmaker pre-race odds fluctuations, the general – but not universal - consensus among the racing industry is that such action would have adverse consequences, and any benefits would be far outweighed by the costs to the racing industry, and the community at large.
2. That bookmaker pre-race odds fluctuations should not be released off-course because of the significant risk to racing industry and Government revenues.
3. That the racing industry should examine appropriate measures to enforce the restrictions on bookmaker pre-race odds fluctuations escaping off-course.

(cont'd)

4. Recognition that, while some of the measures to be considered under 3. may not be totally effective, it is better to place deterrents in the path of opportunistic users of bookmaker pre-race odds fluctuations and that the consequential effect is likely to be positive.

Assessment

5.4.43 The Review Steering Committee noted the outcomes from the Departmental Review. The Review Steering Committee also noted the position it had taken in respect of Cross Border Restrictions (Recommendation 4, para. 5.3.43) and the Minimum Telephone Bet limit (Recommendation 7, para. 5.4.36).

5.4.44 Accordingly, the Review Steering Committee concluded that to remove the restriction would expose betting consumers, the racing industry and NSW licensed wagering operators to significant potential adverse consequences. The nature of these adverse consequences is that the dissemination of the odds would facilitate both legal and illegal SP bookmaking activities and hence tend to create an expansion of undesirable betting activity, some of it with criminal elements.

5.4.45 Therefore, the Review Steering Committee concluded that to remove the restriction would result in a greater overall cost than its retention.

RECOMMENDATION 8

5.4.46 The Review Steering Committee recommends that the existing restrictions on the off-course dissemination of bookmaker odds fluctuations, be retained.

NSW Licensed Bookmaker Advertising

- (5) *Bookmakers are subject to controls over the advertising of their services.***

Description

5.4.47 NSW licensed bookmakers are subject to Part 4 of the of the *Racing Administration Act 1998* which carries forward provisions from its predecessor (the Gaming and Betting Act). The relevant provision is section 30 which is structured to generally prohibit the advertising of betting except in certain circumstances, one of which is the instance of a licensed bookmaker. Bookmaker advertising is also subject to responsible wagering requirements.

Benefits & Costs of Regulation; Alternatives to Regulation

5.4.48 Sub-section 30 lists the advertisements and activities permitted if undertaken by a licensed bookmaker. In general, these advertisements permit bookmakers to widely advertise their activities but are subject to conditions that may be imposed by the Minister. In addition, since 1 May 2001 responsible advertising guidelines for bookmaker and TAB gambling services have been prescribed in Regulations under the *Racing Administration Act 1998* and the *Totalizator Act 1997* (see Appendix D).

Submissions

5.4.49 No submissions were received. However, it should be noted that the responsible advertising guidelines for bookmaker and TAB gambling services were promulgated after the deadline for submissions for this Review.

Assessment

5.4.50 The need to control such advertising for public purposes is appropriate. The responsible advertising of gambling services has been prescribed, and the various measures are set out in Appendix D. Such responsible wagering advertising guidelines have the support of TAB Ltd and the racing industry. Both demonstrated their support for the responsible wagering program at the Minister's launch on 23 May 2001.

RECOMMENDATION 9

5.4.51 The Review Steering Committee recommends that the restrictions contained in Parts 3 and 4 of the *Racing Administration Act 1998* (ie. to impose conditions over the advertising of betting services by licensed bookmakers), be retained.

LICENSING

Registration and Probity/Financial Scrutiny of Bookmakers

- (6) ***Bookmakers must be registered/licensed by the relevant controlling body before they may field on one or any of the three codes of racing. Controlling bodies conduct financial probity and capacity scrutiny, and may make rules in relation to the operation of bookmakers.***
- (7) ***Bookmakers are subject to scrutiny by the Bookmakers Revision Committee (BRC) in respect of their taxation liabilities to Government. A bookmaker may not operate without a current tax receipt issued by the BRC.***

Submissions

5.4.52 Submission No 23, on behalf of the three controlling bodies for racing in NSW, proposes the retention of these provisions. Similarly, submission No 14 (NSW Bookmakers Co-op.) proposes that:

It is recommended that the legislation governing the licensing of bookmakers should be retained for the purpose of regulating the bookmaking industry. The public benefit of having a licensing regime in place backed by a system of fidelity guarantees, not only benefits the public interest, but also benefits the direct interests of the racing industry as whole.

Assessment

5.4.53 The Review Steering Committee notes the views of the submission makers set out in the previous paragraph. The Review Steering Committee agrees that a licensing regime in place backed by a system of fidelity guarantees, not only benefits the public interest, but also benefits the direct interests of the racing industry as whole..

RECOMMENDATION 10

5.4.54 The Review Steering committee recommends that these restrictions (ie. registration and probity/financial scrutiny of bookmakers), be retained.

Sole Trader Status of Bookmakers

(8) Bookmakers are registered to operate as sole traders, the current framework - including the Rules administered by the three controlling bodies for racing - do not permit them to operate other than as a sole trader.

5.4.55 A specific purpose review of this restriction was commenced by the NSW Department of Gaming and Racing prior to the competition review of NSW racing and betting laws. The Departmental review arose out of a Government's election policy undertaking:

(To) provide for alternative structures for bookmaking operations, including partnerships and incorporated bodies as well as allowing bookmakers to operate from more than one venue at a time.

5.4.56 The basis for the Departmental Review (known as the *Departmental Special Purpose Review: Benefits and Costs of Alternative Operating Structures (eg companies, partnerships) for NSW Bookmakers*) is that the restriction has the potential to cause disadvantages in terms of viability and profitability.

5.4.57 The Departmental Review involved considerable consultation with the NSW Bookmakers Co-operative and the relevant licensing bodies, the Thoroughbred Racing Board, Harness Racing NSW and the Greyhound Racing Authority.

5.4.58 The Review Steering Committee considers it appropriate for the specific purpose review and submissions made to the NCP Review, to be considered together for the purposes of this Review.

Submissions

5.4.59 Submission No 12 (Jupiters Ltd) seeks that this restriction be lifted in order that consumer choice be allowed to determine the structure of the bookmaking industry. The submission also suggests that there are protection implications in relation to corporate bookmakers being permitted to compete with TAB Ltd, or that they may overshadow existing small and independent bookmakers who have little market power. Equally, the submission has reservations about the appropriateness of the controlling bodies for racing administering sports bookmakers, and potentially corporate sports bookmakers, on the basis of the remoteness of sports bookmaking to the functions of administering the racing industry.

5.4.60 The Review Steering Committee notes that the submission maker is an interstate corporate bookmaker that specialises in sports betting, and that the unstated objective of the submission may well be to test the possibility of obtaining a NSW licence.

5.4.61 The Review Steering Committee also notes that while the NSW Bookmakers' Co-operative did not seek a corporate structure in its submission to this Review, they did seek such a structure in their submission to the Departmental Review.

Assessment

5.4.62 The Review Steering Committee notes that Government policy in this area has traditionally held that the sole trader approach makes the individual holding the licence readily accountable. The same accountability cannot be exercised as easily, and as expeditiously, over a corporate entity.

5.4.63 Nevertheless, there are benefits in more than one person managing the risks associated with bookmaking, and the possibility that betting consumers may obtain better odds or services as a result.

5.4.64 The Review Steering Committee notes that the Departmental Review proposed structure does not envisage that such structures would be public companies seeking funds by public float, or that any existing restrictions on licensed bookmakers would be eased – as is the case in other jurisdictions where bookmaker corporate structures operate. This is because such unrestricted corporate bookmaking entities tend to create an expansion of gambling by way of aggressive marketing of their services, and particularly to the more populous Australian States.

5.4.65 The Departmental Review proposal, however, recognises that the licensed bookmaker industry is in decline. Consequently, there are benefits in the proposal in terms of fairer income tax arrangements and in more than one person managing the risks associated with bookmaking, and the possibility that betting consumers may obtain better odds or services as a result.

5.4.66 Accordingly, the Review Steering Committee supports the recommendations made in the Departmental Review.

RECOMMENDATION 11

5.4.67 The Review Steering Committee recommends that:

- (1) The restrictions which limit NSW licensed bookmakers to operate as sole traders be removed;
- (2) The alternative operating structures for bookmakers, proposed by the NSW Department of Gaming and Racing, be implemented in their place, including that:
 - (i) Such companies may only be proprietary companies;
 - (ii) Directors of such companies to be NSW licensed bookmakers;
 - (iii) Shareholders to be either a Director, or close family member or *associate* bookmaker;
 - (iv) Such companies betting risks to be fully secured by appropriate financial guarantees;
 - (v) A licensing fee for corporate sports betting be examined; and
 - (vi) The legislative, licensing and rules of betting framework underpinning such alternative operating structures be consistent;
- (3) That prior to establishing alternative corporate structures for licensed bookmakers, the Department of Gaming and Racing consult with the Police Service and the New South Wales Crime Commission with the view to ensuring that such structures have appropriate integrity controls, particularly in relation to the possibility of money laundering.

SPORTS BETTING***Sports Bookmaker Time & Location, & Sports Betting Authorities***

- (9) ***Sports bookmakers may only operate from a licensed racecourse.***
- (10) ***Sports bookmakers may only conduct 'sports' betting' if authorised by the Minister to do so.***

Description

5.4.68 Bookmaker sports betting on racing is subject to the Ministerial authorisation process in section 19 of the *Racing Administration Act 1998*. Section 19 of the Act restricts an authorised bookmaker to take bets on sporting events only while present at a licensed racecourse.

Submissions

5.4.69 The Australian Hotels Association (AHA) and the Registered Clubs Association (Clubs NSW) have both submitted that they wish to facilitate New South Wales licensed bookmaker sports betting services from their licensed premises.

5.4.70 Submission No 17 (AHA) seeks that hotel licensees should be permitted to become sports bookmakers in their own right, or act as agents for sports bookmakers:

[L]egislation for licensed hoteliers (and, for that matter, anyone else who can satisfy the same probity and asset tests) should be introduced which permits them to act either directly in sports betting, or as agents for others in circumstances where the hotelier agent could assume some or all of the functions and responsibilities presently held by bookmakers and TAB Ltd.

5.4.71 Submission No 18 (Clubs NSW) seeks:

The easing of restrictions sought by the RCA would lead to an extension of authorised sports betting in a manner complementary to the parimutuel activities of the TAB. The clubs are not seeking to displace the TAB existing monopoly but extend the scope and choice for their members as a complement to the TAB.

5.4.72 Both submissions argue that they are providing greater choice and therefore benefits to consumers.

5.4.73 Current law and government policy is based on the recommendations of the Kinsella Royal Commission which identified that it was in the public interest for bookmakers to be restricted to operating on-course (see Appendix C). Equally, off-course licensed bookmaker agencies are not permitted. The rationale for that position is explained by Justice Kinsella as:

I am satisfied that it is not practicable to devise any system of supervision which will effectively check the amount of the off-the-course bookmakers' turnover, whether betting be by cash or by telephone. I am also satisfied that in the absence of effective supervision and check, the temptation to evade payment would be so great and the opportunities so many that there would be widespread and substantial evasion of turnover tax by off-the-course bookmakers.

5.4.74 Additionally, if the submission makers' proposals were implemented they could be seen as an expansion of gambling and be contrary to the social policy responses of New South Wales, and the Commonwealth, to the threat from problem gambling [para. 2.5.5)]. As stated earlier in this Report, dismantling current restrictions on gambling may pre-empt the emerging social policy in this area.

5.4.75 The Review Steering Committee notes that the benefits of restricting sports bookmakers to operate from a supervised location (ie a racecourse) are considerable and that they exceed the overall costs. The restrictions are essential to ensuring the integrity of betting, and of controlling what continues to be a highly cash-oriented business (ie. TAB outlets). The relaxation of such controls would also tend to expand gambling opportunities by providing greater access to a larger number of gambling operators. Such a course of action would likely result in higher adverse consequences for some betting consumers.

5.4.76 The Review Steering Committee concludes that that overall there are more benefits than costs in retaining the restrictions.

RECOMMENDATION 12

5.4.77 The Review Steering Committee recommends that the provisions which restrict NSW licensed sports bookmakers operations to a racecourse, be retained.

Declared Sports Betting Events and Approved Bet Forms

- (11) ***Bookmakers may only bet on sports events declared by the Minister to be available for betting purposes.***
- (12) ***Bookmakers may only offer those bet forms approved by the Minister.***

Description

5.4.78 Bookmaker sports betting on racing is subject to the Ministerial authorisation process in section 19 of the *Racing Administration Act 1998*. Section 18 of the Act restricts an authorised bookmaker to take bets on only those sporting events declared by the Minister. Under section 20 of the Act the Minister may impose conditions on sports betting authorisations, including such matters as the type of bet form that may be offered by an authorised sports bookmaker.

Submissions

5.4.79 Submission Nos 12 (Jupiters Ltd) and 14 (NSW Bookmakers Co-op.) argue that the list of events prescribed for sports betting in New South Wales should be expanded in accordance with consumer preference. Submission No 12 suggests that:

Consideration should be given to removing the requirement for ministerial approval for sports able to be bet on, and replacing it with a less restrictive and more transparent process such as the development of a code of practice or criteria for appropriate sports betting events.

5.4.80 Submission No 12 acknowledges that excluding questionable events promotes the integrity of the betting regulatory system. Also, that the current platform for sports betting is broad and includes contests from across the globe.

Assessment

5.4.81 The Government policy in this area is simply that of ensuring that the consumer is protected from unfair practices. Although a wider choice of betting contingency may be available in other quarters (eg. betting on election results, on the first arrival of aliens on earth, on whether a child will become a champion athlete by a certain age, etc) the difficulty is that most betting operators consider such contests as 'cream' on the cake from recreational gamblers. In other words there is the possibility that consumers can be exploited by being offered fanciful betting opportunities which may only possibly occur at some distant point in the future.

5.4.82 The Review Steering Committee considers that the alternative proposed would not be appropriate. This is because the criteria would be difficult to construct in such a way that they would always be objectively interpreted, particularly if the suggestion is that bespoke betting contingencies were to be offered by bookmakers who might retrospectively assess whether the bet was within the proposed criteria. The existing approach is preferred as it is certain and can be amended as necessary in response to public interest considerations.

RECOMMENDATION 13

5.4.83 The Review Steering Committee recommends that the existing approach (ie. the Minister's approved list of sports betting events, and the associated bet forms), be retained.

5.5 CONSIDERATION OF CROSS-JURISDICTIONAL ISSUES

5.5.1 The Review Steering Committee has noted earlier (see Section 4.3) that recently there has been increasing public concern over the expansion of the Australian gambling industry. Both in Australia and overseas many jurisdictions are actively encouraging further expansion of their gambling industries. Incentives include generous taxation concessions and operator friendly consumer protection regimes.

5.5.2 The development of the e-commerce economy has further increased regulatory and community exposure to gambling. E-gambling has the added complication that it can easily be based outside a jurisdiction putting operators beyond the reach of legal redress.

5.5.3 In justifying expanded gambling facilities other jurisdictions, particularly in Australia, argue that they are either:

- Exporting innovative on-line gambling services to the world; and
- Engaging in free market competition as permitted under the constitutional guarantee of free trade between states.

5.5.4 The above arguments ignore the following issues that can arise from an unregulated gambling industry:

- Compromised racing integrity;
- Free-rider problem between jurisdictions;
- Sustainable development (prize money, employment levels, funding for infrastructure) of the racing industry; and
- Safe racing and betting.

5.5.5 The incentives put in place by other jurisdictions can also be viewed as tax rivalry with the objective being to exploit the market potential of larger Australian states. This places these states significantly at odds with the New South Wales and Commonwealth Governments 'responsible gambling approach' which seeks to reduce the incidence of problem gambling (see section 2.5.5).

- 5.5.6 To mitigate the adverse effects of an unregulated gambling industry the NSW Government has a number of statutory restrictions on gambling, these include on cross border betting information and advertising and on the activities of New South Wales licensed bookmakers (see Sections 5.3 and 5.4). The regulations, in essence, restrict the time and place of gambling. These restrictions on racing and betting have been implemented for public interest reasons. However, the expansion of gambling industries in other jurisdictions, coupled with the introduction of Internet gambling present new regulatory challenges.
- 5.5.7 The complex and controversial issues involved in cross-jurisdictional restrictions remain under consideration of the Ministerial Council on Gambling, a forum in which the NSW Government is a participant. More recently the Commonwealth Government has introduced legislation to ban interactive (or Internet) gambling.
- 5.5.8 The table (Figure 19) on the next page sets out a comparison of the NCP outcomes of this Review with comparable racing and betting laws from Western Australia, Victoria, Australian Capital Territory, Queensland and South Australia. Also, It should be noted that at the time of writing the Northern Territory and Tasmania had not released their NCP reviews on this matter.
- 5.5.9 Nevertheless, the Northern Territory has announced, ahead of its NCP review, that it will abolish its restrictions on bookmakers in respect of cross border advertising and betting information, and also significantly reduce its minimum telephone bet limit.
- 5.5.10 As a general observation, the Review Steering Committee notes that a number of the NCP reviews (ie. Western Australia, Victoria and the A.C.T.) predate the Productivity Commission's watershed report into Australia's Gambling Industries and, accordingly, heightened community awareness of problem gambling.

RESTRICTION	NSW	VICTORIA	WA	ACT	SA	QLD
Alternative Codes of Racing (Betting on eg. Camels, Arabian or Quarter Horses)	Affirm right to race. Retain betting prohibition.	Affirm right to race. Permit betting if proponents meet public interest test.	Abolish restriction. Permit betting if proponents meet public interest test.	Abolish restriction. Permit betting if proponents meet public interest test.	No statutory restriction. Legislation introduced to permit such racing.	Abolish restriction. Permit betting if proponents meet public interest test.
Proprietary Racing (Currently all race clubs are structured on a non-proprietary basis)	Retain racing/betting prohibition.	Retain restriction subject to detailed & specific proposals.	Abolish restriction. Permit betting if proponents meet public interest test.	Abolish restriction. Permit betting if proponents meet public interest test.	No statutory restriction. Legislation introduced to permit such racing.	Abolish restriction. Qld racing controlling bodies may conduct proprietary racing with Ministerial approval.
Cross Border Betting Information/ Advertising (Advertising & Betting Odds from Non-NSW operators not permitted in NSW)	Retain restrictions, subject to national tax & consumer agreements.	Abolish sports betting restrictions. Retain race betting restrictions subject to national tax & consumer arrangements.	No statutory restriction.	Retain restrictions, subject to national tax & consumer agreements.	Retain restrictions, subject to national tax & consumer agreements.	No statutory restriction.
Minimum Telephone Bet Limit (\$200 minimum applies to certain bookmaker telephone bets)	Retain restriction.	Abolish, staged reduction over 3 years.	Abolish restriction.	Abolish restriction.	Abolish restriction.	Abolish restriction. Supervision of telephone betting (including minimum bet levels) rests with racing controlling bodies.

FIGURE 19 – COMPARATIVE NCP OUTCOMES