National Competition Policy review of racing and betting legislation in Victoria

Final report

2 November 1998

Centre for International Economics

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Glossary

AFL	Australian Football League
AHA	Australian Hotels and Hospitality Association
ARQHA	Australian Racing Quarter Horse Association
BBCRC	Bookmakers and Bookmakers' Clerks Registration Committee
CIE	Centre for International Economics
CPA	Competition Principles Agreement
EGM	Electronic Gaming Machine
GRCB	Greyhound Racing Control Board
HRB	Harness Racing Board
IVR	Interactive voice response
LCA	Licensed Clubs Association of Victoria
NCP	National Competition Policy
parimutuel	totalisator system of betting
Racing Victoria[a]	Comprises Victoria Racing Club, Victoria Amateur Turf Club, Moonee Valley Racing Club and the Victorian Country Racing Council
SP	Starting price
TAB	Totalisator Agency Board
TRB	Thoroughbred Racing Board
TROA	Thoroughbred Racing Owners' Association

VAJC	Victorian Arabian Jockey Club
VBA	Victorian Bookmakers Association
VBBA	Victorian Bloodhorse Breeders Association
VCGA	Victorian Casino and Gaming Authority
VRC[a]	Victoria Racing Club

[a] References to the submission by the VRC refers to its submission to the Issues Paper to this review. References to Racing Victoria refer to their submission to the Discussion Paper to this review.

Executive summary

Background

- In March 1998, the Victorian Minister for Sport and the Minister for Gaming called for a review of Victoria's racing and betting legislation as part of its commitment to National Competition Policy (NCP) and the Competition Principles Agreement (CPA). The Centre for International Economics (CIE) was commissioned to conduct this review.
- Under the CPA, all Australian governments agreed that legislation should not restrict competition unless it can be shown that:
  - the benefits of the restriction to the community as a whole outweigh the costs (of the restriction); and
  - the objectives of the legislation can only be achieved by restricting competition.
- The pieces of legislation under review are:
  - *Racing Act 1958*;
  - *Gaming and Betting Act 1994* as it relates to betting;
  - *Lotteries Gaming and Betting Act 1966* – Part 3, Part 4 (except Division 7) and Part 5 (except sections 69, 72 and 73); and
  - *Casino Control Act 1991* – Part 5A and other provisions as they relate to the conduct of approved betting competitions.
- Key steps in the review process involved:
  - identifying and describing the critical linkages in the racing and betting industry in Victoria;
  - identifying restrictions to competition contained in the legislation under review;
  - identifying the objectives for these restrictions to competition;
  - weighing up the costs and benefits associated with these restrictions; and
  - evaluating alternative regulatory arrangements for meeting these objectives in a more pro-competitive manner.

- This report presents the findings and recommendations of the review process which involved:
  - the publication of an initial Issues Paper;
  - the publication of a Discussion Paper based upon submissions to the Issues Paper, consultation with key stakeholders and other research by the CIE;
  - consideration of written submissions to the Discussion Paper; and
  - further consultation following release of the Discussion Paper.

The Victorian government's *Guidelines* on NCP reviews (1997, p. 47) refers to the financial quantification of costs and benefits as being most effective 'where there is sound information on which to base the analysis'. For the most part, such information is not available and strict quantification has not been possible in this review. A qualitative approach has been adopted – one which tries to come to a judgement on where the balance of benefits and costs is likely to lie.

The racing and betting industry in Victoria

- The racing industry in Victoria currently comprises three codes — thoroughbred, harness and greyhounds — provides jobs for over 33 000 Victorians and contributes around 0.5 per cent of the state's Gross State Product. Other codes such as quarter horses also race but are limited to 'mixed sports gatherings'.
- Through its ownership of VicRacing Pty Ltd, a partner in a Joint Venture arrangement with TABCORP, each year the racing industry receives:
  - 25 per cent share of the Joint Venture's total profit from gaming and wagering;
  - a product fee of 18.8 per cent of net wagering revenue;
  - a $2.5 million marketing fee; and
  - a $50 million racing program fee for supplying the racing product.

  In 1997-98 the racing industry is expected to receive nearly $190 million in total from these sources.
- Groups representing other codes such as quarter horses and Arabians and proprietary racing groups such as Teletrak have expressed an interest in establishing racing on an ongoing basis but are restricted in doing so by current regulatory arrangements.

- TABCORP manages its wagering business on behalf of the Joint Venture. TABCORP has an exclusive licence for off-course totalisator betting and exercises this right through a network of agencies, hotels and licensed clubs. Its licence also permits TABCORP to offer fixed odds betting. Currently this is limited to sports betting through selected venues and pre day betting on feature races.
- Bookmakers represent TABCORP's main Victorian competition. There are approximately 220 registered bookmakers in Victoria generating $366 million in wagering turnover in 1996-97. Bookmakers are restricted to operating 'on-course' and the competition they provide to TABCORP is largely restricted to the middle and higher ends of the consumer market due to minimum betting requirements placed on telephone betting with bookmakers.
- Victorian betting service providers also compete with interstate and international services. This is restricted to telephone and internet account betting.
- Racing by the three established codes is controlled by the codes' respective controlling bodies — the Victoria Racing Club (VRC), the Harness Racing Board (HRB), and the Greyhound Racing Control Board (GRCB). The bodies have regulatory and business management roles and the VRC also has an operator function. Appeals over penalty decisions imposed by the controlling bodies are heard by the Racing Appeals Tribunal.
- The Minister for Sport assisted by the Office of Racing authorises a broad range of racing and sports events including racing by 'new' codes such as quarter horses and Arabians.
- The regulatory responsibility for TABCORP lies with the VCGA. The Bookmakers and Bookmakers' Clerks Registration Committee (BBCRC) has responsibility for registering bookmakers who are also licensed by the controlling bodies for the racing codes.

Regulatory arrangements and the restrictions on competition

Restrictions on suppliers of products upon which betting is or could be based

- The *Racing Act 1958* regulates the conduct of race meetings and governs the licensing of racing clubs and racecourses. The Act defines a racing club for the purposes of a racing club licence as one which is registered in accordance with the rules of the VRC, HRB or the GRCB.

- This definition effectively transfers regulatory control to the controlling bodies of the respective codes who write, administer and control the rules pertaining to the operation of a racing club defined in the Act. Those rules exclude other racing codes so the outcome is that only thoroughbred, harness and greyhound racing breeds can have registered racing clubs.
- Under the *Racing Act 1958* only three established codes (through their registered racing clubs) are entitled 'as of right' to conduct race meetings. Other racing codes require Ministerial approval for permits under Section 19 relating to 'mixed sports gatherings'. These permits which are intended to allow bookmakers to attend rural community gatherings are not intended or suited to providing a vehicle for the launching of new codes.
- Other restrictions on the ability of new codes to establish themselves are:
  - a restriction created by the Australian Rules of Racing and exercised by the VRC preventing persons licensed by the VRC (such as race track owners, jockeys and other personnel) from participating in the race meetings of these alternate codes;
  - the exclusion, under Section 3 of the Act, of jockeys licensed by the VRC and drivers licensed by the HRBC from controlling horses racing at mixed sports events; and
  - a lack of access to TABCORP wagering revenues as a result of a joint venture arrangement between TABCORP and the Victorian racing industry, which is required under the *Gaming and Betting Act 1994*.
- The *Racing Act 1958* prohibits 'for profit' racing.
- Under the current regulatory regime there are no requirements for TABCORP to have agreements with the suppliers of other platforms for betting such as sporting events.

Restrictions on betting service providers

- The *Gaming and Betting Act 1994* provides TABCORP with an exclusive licence to conduct off-course and on-course totalisator betting and also provides for TABCORP to operate fixed odds betting.
- Bookmakers are required under the *Racing Act 1958* to be registered with the BBCRC which must ensure that bookmakers meet certain probity and competency requirements. The rules governing the registration of bookmakers also limit the conduct of betting to:
  - certain locations (fielding at a race course while a race meeting is in progress, including for the acceptance of sports bets);

  - certain hours of operation;
  - certain betting events (registered race meetings only, which excludes the taking of bets on racing other than thoroughbred, harness or greyhound racing, with the exception of events with Ministerial approval);
  - restricted means of communication (that is, limiting telephone bets to a closed mobile telephone system operated and monitored by the VRC with minimum bets); and
  - lodging a security bond for each class of bookmaker varying from $25 000 (for example, bookmakers operating at mixed sports gatherings) to $400 000 (for example, thoroughbred racing metropolitan rails bookmakers who recorded betting turnover in the previous financial year exceeding $15 million).

- In addition to registration with the BBCRC, bookmakers must be licensed by the controlling bodies for the three existing racing codes. The *Racing Act 1958* provides for the controlling bodies to make rules with respect to the issue of a club bookmakers' licence.
- The *Lotteries Gaming and Betting Act 1966* prevents bookmakers from displaying real time betting odds to clients via the internet and other electronic media. Bookmakers are also prevented under the *Racing Act 1958* from incorporating or establishing partnerships.
- The *Casino Control Act 1991* established the right for Crown Casino to operate approved betting competitions provided it does not impinge upon TABCORP's exclusive licence in respect of betting on racing. Punters must be present in the casino to place a bet and telephone betting is prohibited. For commercial reasons, Crown has yet to take up this right.
- The *Lotteries Gaming and Betting Act 1966* contains extensive offence provisions with regard to the conduct of betting, and restricts the advertising and other communications relating to betting services and odds. TABCORP and Victorian registered bookmakers are exempt from the provisions.

Regulatory objectives

- There are many possible objectives for government regulation of gambling activities, many of which are not consistent with the objectives of NCP. The three objectives identified as being consistent with market failure — the primary rationale for government intervention in markets under NCP — are:
  - ensuring the integrity of the racing product;

- capturing the benefits of economies of scale in the supply of totalisator betting services; and
- addressing possible free rider problems faced by racing whereby people are able to take bets on a race without contributing to the cost of producing that contest.

Benefits and costs of regulation

- With respect to the restrictions on the supply of racing products, as long as new codes were run well and could offer integrity, the review team found no justification for the exclusion of new codes. While it is difficult to predict the likely impact of allowing additional codes to race, it is more likely that potential entrants will generate increased employment and incomes, than reduce or harm the existing level of employment and income generated under the existing structure.
- While there seem to be few NCP relevant arguments in principle for the exclusion of proprietary racing, there are very strong arguments for ensuring high standards of integrity, and ensuring that the costs of meeting and demonstrating these standards be met by the provider.
- The main benefit from restricting the activities of jockeys and other personnel to the established codes lies in the quarantining of club racing from possible adverse spillover impacts as a result of any breakdown in integrity assurance in other codes. As things stand, the cost of this restriction is likely to be low as there are relatively few opportunities that licensed jockeys and trainers forego. While these opportunities might increase if new codes were granted a right to race, there seems little justification for forcing competing codes to cooperate to a level where key staff are required to be available to new codes. Furthermore, occupational restrictions are embedded in the Australian Rules of Racing, amendments to which require multilateral action across states.
- The existing legislation recognises and enshrines the existing cooperative club structure in the Victorian racing industry. The current regulatory structure established multiple roles for the controlling bodies. In contrast to the other controlling bodies and in addition to regulatory and business management roles, the VRC also has a club operator function. It seems to the review team that this current arrangement leaves open the possibility for conflict of interest. But the major concern appears to be about the balance of decision making power within the present administrative structure and, within the confines of a cooperative model for the racing industry, this is an issue best left to be addressed by a separate review with a single purpose.

- A key issue in assessing the relative merits of restrictions on bookmakers' activities is the dimensions of TABCORP's exclusive licence and the extent to which bookmakers' activities impinge upon that licence. The Victorian Bookmakers Association (VBA) presented a fair case that the two groups service different client groups with bookmakers servicing fixed odds credit bettors and TABCORP catering for parimutuel cash bettors.
- There seems little evidence that the public interest is best served through the maintenance of restrictions on bookmakers' hours of operation. Similarly, restrictions on the ability of bookmakers to incorporate are difficult to justify.
- In the case of restrictions on *where* bookmakers are able to operate, the justification for their retention is stronger. While consumer choice is likely to be enhanced if bookmakers were allowed to operate off-course, the ability to effectively monitor their operations is an issue. In the absence of any firm suggestion as to how this monitoring might be achieved and at what cost, there would seem to be a case for the retention of some locational restrictions on bookmakers.
- In the case of sports bookmakers, the VBA has suggested that they operate from racecourse tabarets with computer links to sporting venues where bets could be placed. This proposal would be consistent with increasing consumer choice while maintaining monitoring costs at near their current levels.
- Justification of an exclusive licence for TABCORP has been offered in terms of the benefits it delivers in the form of:
  - providing a mechanism to recoup the costs of providing the racing product (via the requirement of the licence that it have a joint venture arrangement with the racing industry); and
  - its ability to guarantee an adequate pool size in Victoria.
- However, the exclusive licence also brings with it some of the usual costs associated with a single seller in the market. While customers are protected to some degree by legislated minimum returns to punters, submissions to this review suggested that TABCORP's uncontested status allows it to drive harder bargains with retail agents than would otherwise be the case had the agents had access to other service providers. It was also suggested that TABCORP's position eases pressure on it to meet the market. That is, there are unserviced consumer demands which potential entrants would cater to.
- Despite TABCORP's contentions to the contrary, the balance of evidence suggests that the sports betting market is under-serviced and that existing arrangements prevent the market from being better serviced. To an extent, TABCORP is prevented from exploiting any

market power it might have with respect to its totalisator activities by minimum pay-out conditions, although were there greater competition in the market, minimum pay-out ratios may differ. But there is no comparable force at work to ensure that TABCORP 'meets the market' with respect to the scope of its sports betting services.

- The review team is not persuaded that advertising and communication restrictions are either an effective way of achieving the objectives of restrictions or that some of the restrictions on competition are justified. The restrictions on non-exempt betting service providers to advertise their products in Victoria are being undermined by the pace of technological advance, so that they now mainly affect the amateur or small punter. At the bigger end of the market, punters are well aware of rival services and are sensitive to differences in dividends on offer.
- Moreover, the consequences of advertising and communication restrictions have gone beyond the meeting of the quality assurance objective of the restriction. It appears that the restrictions on advertising by betting service providers other than TABCORP, Victorian bookmakers and Crown serve merely to protect the interests of those parties. While the arrangements do have benefits, it is unlikely that they outweigh the costs generated by these restrictions, except in the case of restrictions on alterative parimutuel wagering providers where reciprocal access is not available.

Alternative arrangements and recommendations

Alternative arrangements

- A summary of the alternative arrangements that have been canvassed have been provided in table E.1.

E.1 **Alternative arrangements that were considered for meeting objectives**

Objectives	*Existing arrangements*	*Alternative arrangements*
Ensure integrity of the racing product	▪ Self regulation of established codes ▪ Limits on new codes	▪ *Remove restrictions on new codes (allow racing 'as of right') ▪ Remove restrictions on 'for profit' racing ▪ **Self regulation with audit for new codes ▪ VRC fee for service regulation ▪ Racing Commissioner to oversight – new codes – all codes ▪ Establish a Thoroughbred Industry Racing Board
Ensure integrity of the betting product and achieve economies of scale	▪ Exclusive totalisator license ▪ Limits on bookmakers ▪ Limits on advertising	▪ *Allow bookmakers to incorporate ▪ *Reduce restrictions on bet size, hours and place of bookmaking operations ▪ Place bookmakers under a single regulator ▪ **Remove restrictions on advertising ▪ **Allow retail outlets access to other betting service providers
Give gambling product providers a basis to negotiate with betting service providers — control 'free riders'	▪ Requirement that TABCORP enter into an arrangement with the racing industry but the nature of the arrangement not stipulated ▪ No arrangement required for other codes or sporting events	▪ *Allow TABCORP to negotiate a product fee with new codes ▪ *Let codes and betting services reach their own arrangements — with pay TV, internet and so forth ▪ Encourage TABCORP to enter into arrangements with other sports

* Alternative arrangement recommended by the review.

** Alternative arrangement recommended by the review on a conditional basis.

Summary of recommendations

Restrictions on other codes

It is recommended that:

- other codes be given an opportunity to demonstrate to a committee convened by the Minister that they have an adequately constituted controlling body, rules of racing and integrity assurance architecture to offer their sports as a potential totalisator betting product;
- the elements of integrity assurance put forward by these codes be scrutinised using the standards of the traditional codes as benchmarks for acceptance;
- all costs of implementing quality assurance be borne by the respective prospective codes; and

- provisional licences be issued to clubs under the controlling bodies of these codes to allow racing to occur on presently licensed racecourses, but with totalisator wagering opportunities withheld while integrity assurance provisions are scrutinised.

Access of other codes to existing racecourses, track infrastructure and race meetings

To open up the possibility of other codes utilising facilities where capacity permits, the legislation should be changed to allow for the licensing of clubs from other codes to extend the provisions of the Act to those that have satisfied the Minister of the adequacy of their control and quality assurance structure. The requirement on the Minister to revoke racecourse licences should then only apply if none of the approved codes require their use.

Access of other codes to totalisator betting

The legislative obstacles to betting on other codes, provided those codes demonstrate adequate integrity assurance, should be removed. TABCORP should be free to provide parimutuel and fixed odds betting services on events staged by these codes using the same commercial criteria it would apply to any other sport. Access by these codes to a share of totalisator revenue should be a matter of commercial negotiation between TABCORP and the controlling body of the code.

This may involve testing the consistency with trade practices legislation of those elements of the Joint Venture Agreement that prevent TABCORP from dealing with other suppliers of racing products.

Alternatively, the Victorian government should give consideration to altering the legislation to maintain the requirement of the holder of the TABCORP licence to have an agreement with VicRacing, but with the provision that any such agreement should not restrict TABCORP's use of Victorian racing product to that offered by VicRacing exclusively.

Proprietary racing

Until such a time as proprietary racing interests can provide detailed, costed recommendations for their independent regulation, it is recommended that the ban on proprietary racing remain.

Access to personnel licensed by the traditional codes

It is recommended that, in the interests of competitive access and occupational mobility, the Victorian Minister takes up with his counterparts in other states the benefits of allowing personnel to demonstrate their fitness to participate in any particular code, with a view to encouraging amendments to the Rules of Racing.

Restrictions on sports and race betting operators

Advertising restrictions should be removed on fixed odds sports betting provided by licence holders in Victoria, or entities licensed by other states. Advertising restrictions on parimutuel race betting providers in other jurisdictions should be maintained unless reciprocal access can be agreed. Advertising restrictions on fixed odds race betting providers whose principal business is *not* parimutuel wagering should be removed. For non Victorian fixed odds race betting providers whose principal business is parimutuel wagering, advertising restrictions should be maintained unless reciprocal access can be agreed.

Alternative Victorian fixed odds sports betting providers should be issued a non-exclusive licence by the Minister, where the Minister is satisfied that the potential provider(s)

- meet appropriate probity requirements and are — or could be — adequately regulated; and
- can demonstrate they have sufficient financial resources both for the establishment of sports betting operations and running costs.

The licence, once offered, should not distinguish between modes of service, which should be a commercial decision of the licence holder. The existing licence available to Crown should be amended to reflect this view and thereby permit Crown to accept telephone bets.

It is not appropriate to expect the Victorian government to be responsible for the licensing and regulation of interstate betting service providers. For the above liberalisation of licensing provisions to be extended to non-Victorian fixed odds sports betting service providers, a national system for licensing service providers and reviewing taxation rates would need to be established. Extending the above recommendation to non-Victorian fixed odds race betting service providers would also be subject to these provisions.

Further consideration should be given to allowing hotels and clubs to enter into contracts with licensed Victorian fixed odds betting service providers.

Such an arrangement would be subject to the recommendations made in this report with regard to locational conditions for bookmakers.

Licensed sports bookmakers should be permitted to field at sporting events, provided they communicate bets taken through approved links to their representatives in racecourse auditoriums or other approved and monitored locations. Licensed sports bookmakers should be allowed to operate on a 24 hour basis without restriction on bet size, from premises approved by the Minister, to compete with non-Victorian operators. Licensed bookmakers should be free to choose whether or not, and how, to disseminate their betting odds.

Restricting control to the present controlling bodies

The existing administrative structure of thoroughbred racing is one based on co-operation rather than competition within the state. Criticism has been directed at the distribution of power between the principal clubs and others and the resulting business arrangements within the industry. Criticism has emphasised these elements rather than the NCP-related issues of strict regulator-operator conflicts of interest. The review team believes these latter conflicts to be relatively minor. The relative efficiency or inefficiency of present administrative arrangements is a question best addressed by a separate review with a single purpose.

Minimum bet size for bets placed by telephone with bookmakers

It is recommended that minimum bet restrictions be removed and that bookmakers be permitted to determine the bet size they accept on commercial grounds.

Incorporation of bookmakers

If Victorian bookmakers are to compete more effectively with other betting operators, they should be free to structure their business along the most efficient lines, including the use of partnerships and incorporation. The appropriate method of determining the contribution to the guarantee fund by a bookmaker's corporation or partnership would have to be settled before this restriction was removed.

Restrictions on race bookmakers' activities

To improve their competitive position vis a vis interstate and overseas bookmakers, Victorian race bookmakers should be permitted to accept appropriately monitored telephone or internet bets on a 24 hour basis at premises approved by the Minister.

Restrictions on advertising of tipping services

It is recommended that restrictions on the advertising of tipping services and any restrictions on publications of critiques of these services be removed.

1 Introduction

The Victorian Government, as part of its commitment to the National Competition Policy (NCP), is conducting a review of Victorian racing and betting legislation. Such reviews flow from the *Competition Principles Agreement* (CPA), in which all Australian governments agreed to review and, where appropriate, reform by 2000, legislative restrictions on competition. Victorian Minister for Sport and Minister for Gaming have called for the review. The Centre for International Economics (CIE) has been commissioned to conduct the review.

Public consultation is an important aspect of any NCP review. In July 1998 an issues paper was prepared and distributed to interested parties. This final report follows an issues paper and a discussion paper released in September, submissions to which formed part of the basis for our findings. This review has been managed by a Victorian government steering committee representing the Department of State Development, the Department of Premier and Cabinet, and the Department of Treasury and Finance.

NCP requirements

A key objective of the NCP is to develop more open and integrated markets throughout the economy. A wide range of activities in different states are being reviewed in this way ranging from the marketing of barley and the harvesting of fish, to the provision of real estate agents services.

The rationale for doing this is that competition encourages more efficient use of resources, stimulates cost reductions and brings quality improvements with gains to both the affected industry and the wider community. An underlying tenet is that competition is generally desirable unless it can be shown on a case-by-case basis that it will not deliver beneficial outcomes. Governments have agreed under the CPA that legislation should not restrict competition unless it can be shown that:

- the benefits of the restriction to the community as a whole outweigh the costs (of the restriction); and

- the objectives of the legislation can only be achieved by restricting competition (Clause 5(1) of the *Competition Principles Agreement*).

The Victorian government's *Guidelines on NCP reviews* refers to the financial quantification of costs and benefits as being most effective 'where there is sound information on which to base the analysis'.

- For the most part, such information is not available and strict quantification has not been possible in this review. A qualitative approach has been adopted – one which tries to come to a judgement on where the balance of benefits and costs is likely to lie.

The task for the review

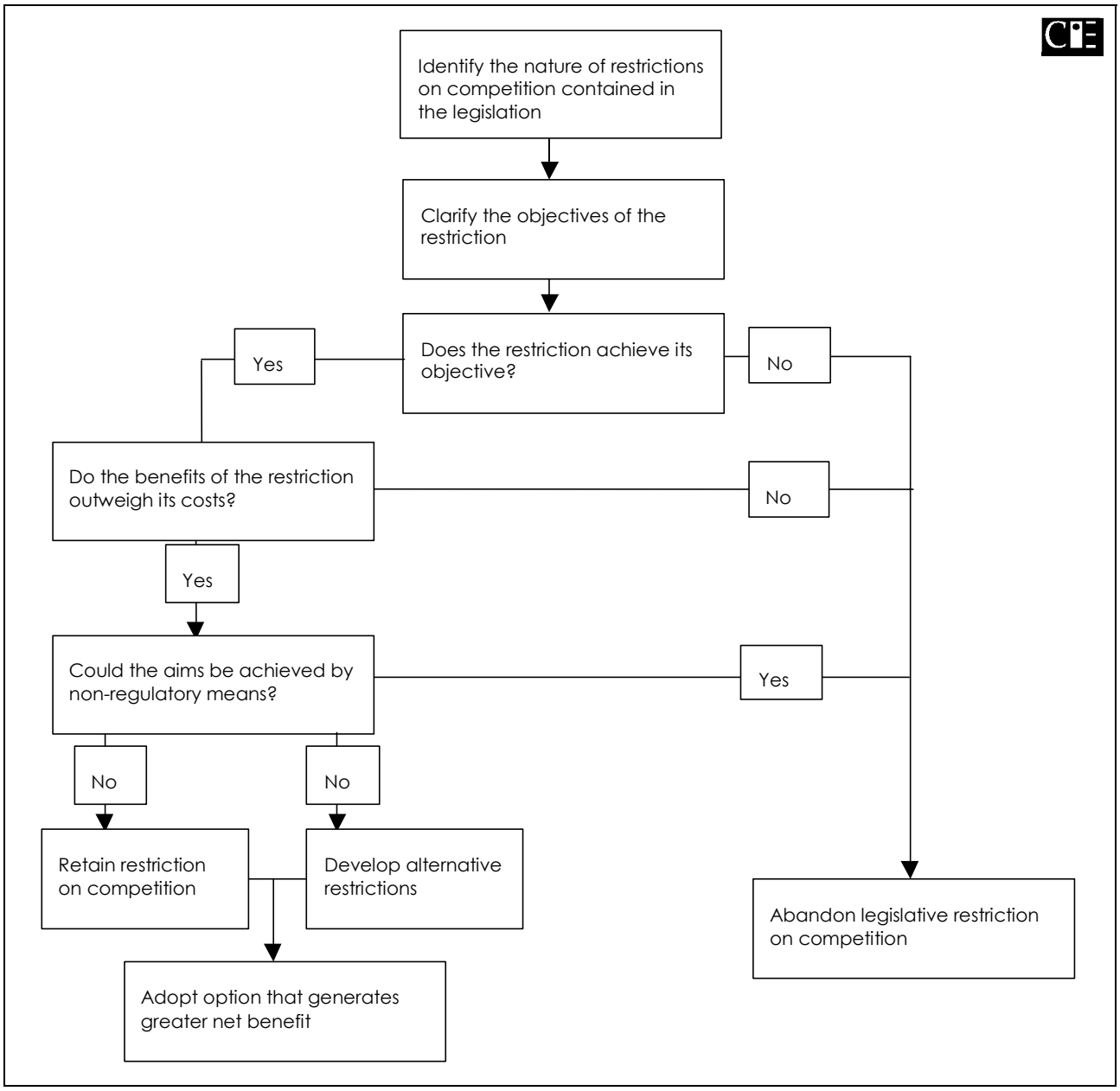
In Victoria, racing and betting markets, products and market participants are regulated by extensive and frequently longstanding legislation. The three controlling bodies — the Victoria Racing Club (VRC), the Harness Racing Board (HRB) and the Greyhound Racing Control Board (GRCB) — are responsible for the management and supply of a specified and limited number of different kinds of racing products. Others' products are excluded in one way or another. A single entity, TABCORP, is responsible for all off-course totalisator betting in Victoria, which it offers through its agencies and through PubTABs and ClubTABs, and via telephone accounts. Given that no racing clubs are taking up their option of conducting on-course totalisators, this single entity is also responsible for all on-course totalisator betting. Racing Products Victoria stages events by thoroughbred, harness and greyhound clubs — and is thus a supplier in a licensed environment as a platform for betting on racing. Other racing codes are by and large excluded. TABCORP and sports bookmakers can offer fixed odds betting services on other sporting events. Bookmakers (both race and sports) must be licensed and can only operate at race meetings, under certain conditions, some of which may place bookmakers at a disadvantage to the totalisator operator, or to their rivals in other states and territories or to competitors overseas.

In the main, these restrictions apply to the number and type of product suppliers upon which betting may take place, and the number and type of betting service providers and the services they can offer, their points of access, and conditions for their acceptance of bets. Whether such provisions are in the public interest and whether the objectives of these restrictions could be satisfied in some other way are key questions for the review. All restrictions created by the legislation under review need to be put to the tests mentioned above.

NCP review process

Chart 1.1 summarises the review's assessment process. An NCP review must identify the parts of the Acts that restrict competition. The review will assess whether the restriction contained in the Acts offer a net benefit to the community and whether the aim of the restrictions could be achieved by other more pro-competitive means.

1.1 **The review assessment process**



Scope of this review

This review covers the legislative restrictions on competition that apply to racing and betting in Victoria. Specifically, these restrictions are contained in the following pieces of legislation.

- *Racing Act 1958*;
- *Gaming and Betting Act 1994* as it relates to betting;
- *Lotteries Gaming and Betting Act 1966* – Part 3, Part 4 (except Division 7) and Part 5 (except sections 69, 72 and 73); and
- *Casino Control Act 1991* – Part 5A and other provisions as they relate to the conduct of approved betting competitions.

The Rules of the Harness Racing Board and the Rules of the Greyhound Racing Control Board, where relevant, have also been considered.

The four Acts as far as they relate to racing and betting in Victoria are described in box 1.2.

The review is about restrictions relating to racing and betting flowing from the above pieces of legislation. Thus restrictions related to gaming machines or the casino (other than provisions relating to the operation of approved betting competitions) lie outside the terms of reference for the review. However, in some cases restrictions intersect. For example, sports betting by bookmakers can only be conducted at registered race meetings.

1.2 **The Acts being reviewed**

The *Racing Act 1958* regulates betting at race meetings, and provides for licensing of racing clubs and racecourses and permits for minor race meetings (for example, picnic meetings). Section 29 of the Act prohibits the for-profit operation of race meetings. The Act also establishes the Harness Racing Board (HRB), Greyhound Racing Control Board (GRCB), Racing Appeals Tribunal, and the Bookmakers and Bookmakers' Clerks Registration Committee.

The *Lotteries Gaming and Betting Act 1966* contains enforcement provisions against illegal gaming and betting, and regulates the communication and advertising of racing information.

The *Casino Control Act 1991* sets out the framework for regulation of casino activities in Victoria. Part 5A establishes the right for the casino to operate approved betting competitions in respect of any event or contingency relating to a horse, harness, greyhound or any other race, as well as fight, game, sport or exercise, or any other event or contingency. While allowing the casino to run a sports betting competition, it is not to impinge on the exclusive licence of TABCORP in respect of betting on racing.

The *Gaming and Betting Act 1994* provides for the monopoly wagering and gaming licences held by TABCORP, and regulates the operation of totalisator and fixed odds betting.

In other cases the effects of racing and betting legislation impact on other (wagering and non-wagering) activities.

This final report describes the industry (chapter 2) and the existing regulatory framework, and the restrictions on competition contained within it (chapter 3). The costs and benefits of each restriction on competition are assessed in chapter 5. Chapter 6 of this final report explores alternative means of meeting the objectives of each restriction in a less restrictive manner, and chapter 7 outlines the recommendations of the review team.

2 Racing and betting in Victoria

The first step in this review is to understand the boundaries and definitions of racing and betting markets. These boundaries depend on the relationship between product and service suppliers, distributors, consumer groups and regulators. Chart 2.1 outlines the scope of the Victorian racing and betting industry as depicted by the review team.

Outside this market also lies a range of important interlinking industries which affect, and are affected by, the regulation of racing and betting. These include other gambling activities, tourism, agriculture, the wider entertainment market and transport and infrastructure industries. These interlinking industries are important to, but not considered part of, the racing and betting industries.

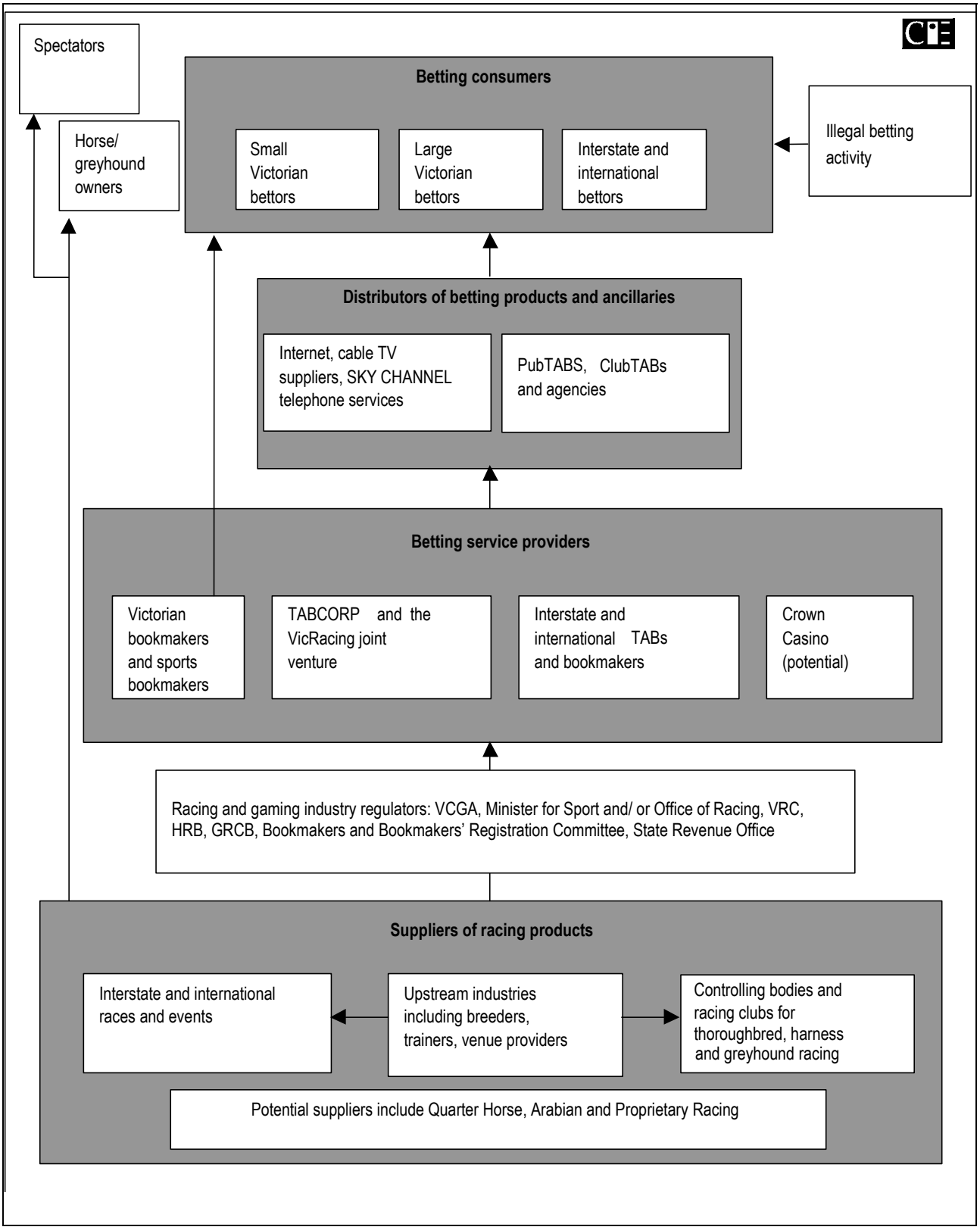
Suppliers of the racing product — the Victorian racing industry

Licensed racing activity in Victoria is big business. The most recent comprehensive study (ACIL 1992) found that in 1990-91, racing provided employment for 33 000 Victorians and contributed $590 million (0.5 per cent) to the state's gross domestic product. The Victoria Racing Club (VRC), in its submission to the review, states that almost 1.7 million people attended Victorian thoroughbred race meetings in 1996-97. The 1997 Spring Carnival alone attracted more than 60 000 interstate and 25 000 international visitors, contributing $200 million to the Victorian economy.

Existing suppliers of the racing product

The Victorian racing industry is currently comprised of thoroughbred, harness and greyhound racing, which are the existing providers of the racing product. Thoroughbred racing is the dominant code and there are 32 500 thoroughbred horses Australia-wide. Thoroughbred racing generated $86 million in prize money in Victoria in 1996-97, more than any other state.

2.1 **Institutional arrangements in the Victorian racing and betting industry**



The VRC has submitted that Victorian thoroughbred owners invest over $430 million annually into racing, providing a net equity investment of approximately $340 million each year to Victorian racing. The relative size of the three codes is represented in table 2.2.

Upstream and downstream suppliers

The VRC also notes that each of the existing racing codes (thoroughbred, harness and greyhound) are supported by a range of upstream and downstream industries, including veterinarians, farriers, breeders, stud farmers, transport operators, feed merchants, caterers, journalists and equipment suppliers. While measuring the contribution of supporting industries is difficult, they are all important and all contribute to the existing supply of the racing product.

Interstate racing

Victoria is a net exporter of wagering product. However, turnover on interstate product is also important. Betting on interstate racing events is estimated to constitute around 40 per cent of racing betting turnover in Victoria. This makes interstate racing industries another supplier of the Victorian racing product that can be bet on.

2.2 **Victorian Racing Industry** 1996/97

	Unit	*Thoroughbred Racing*	*Harness Racing*	*Greyhound Racing*
Attendance	no.	1 635 767	500 941	160 461
Races	no.	4 407	3 835	7 710
Race meetings	no.	555	433	771
Racing animals	no.	9 035	6 061	6 119
Trainers	no.	1 494	1 487	2 975
Jockeys or drivers	no.	442	1 147	na
Stablehands/attendants	no.	1 681	na	171
Total participants	no.	3 617	2 634	3 146
Market share of racing	%	74.9	16.6	9.2
Prize money	$m	86	19	9

Source: Office of Racing, Victoria

Potential suppliers of the racing product

The existing regulatory framework restricts the suppliers of the betting product to those racing codes mentioned above. There are, however, other racing codes. Representatives from these codes have made submissions to the review, responding to the issues and discussion papers. Amongst other things, they state that they could also supply a racing product to the Victorian market under alternative regulatory arrangements upon which betting could be based. These other potential suppliers of the racing product include quarter horse and Arabian racing, as well as proprietary racing.

Other racing codes

Quarter horse racing already exists in Victoria on a small scale. However, the only betting that occurs on it is some on-course bookmaker betting. In a submission to the review, the Australian Racing Quarter horse Association (ARQHA) submitted that access to totalisator revenue would boost growth of their racing code. Quarter horse racing is conducted under the ARQHA Rules of Racing, which are similar to but not the same as the Thoroughbred Rules of Racing. The ARQHA submit that there are approximately 180 000 quarter horses in Australia, although it may be unlikely that these horses are all 'ready to race'. Quarter horse racing does not use the same racetracks as thoroughbred racing. Quarter horses typically race over distances of less than 800 metres. There is a national stud book and licensing and registration system to register horses, trainers, jockeys, stable personnel etc.

In the United States, quarter horses frequently race at the same meetings as thoroughbreds.

Arabian horse races have been conducted recently but on a small scale. No Arabian racing is occurring in Victoria at present and horses are bred principally for export and, to a lesser extent, as show horses. Australia's Arabian stud book is the second largest in the world with nearly 40 000 registered purebred Arabians. Arabian racing is conducted on thoroughbred tracks and, in other countries such as the United States, occurs within thoroughbred race meetings. Arabian and thoroughbred horses can run over the same distances and use the same jockeys and trainers, but also run longer distances and use heavier jockeys.

Some 20 other race meetings involving various breeds and types of racing (eg. mountain and bush racing) are held annually under 'mixed sports gatherings' on which bookmakers field.

Proprietary racing

Proprietary racing is described by the VRC as the conduct of a race meeting where the profits from the race meeting are paid to investors in the organisation which conducts the race meeting, rather than being paid out in prize money to the owners of the horses competing in the race meeting. One version of proprietary racing is being developed by TeleTrak, who have also submitted to this review. TeleTrak is seeking to supply a proprietary racing product to Victoria. The TeleTrak concept involves straight-line racing with parallel cameras and is seeking approval to build tracks exclusively for proprietary racing. Such racing would be transmitted via the internet to customers and would not seek spectator participation.

TeleTrak has expressed an interest in establishing its facilities in three Victorian shires. However, Victorian legislation forbids proprietary racing through the requirement to exclude 'for profit' racing (see chapter 3).

Suppliers of sporting events — another platform for betting

There are other products aside from racing, which are also caught in the existing legislation that governs racing and betting in Victoria and are hence relevant to this review. These include other products that might form the platform for betting, namely sporting events. Throughout Australia, there is no legislative commitment for sporting bodies to give their consent for betting to occur on certain sports. Thus, all sports and sporting events are suppliers, either current or potential, in the Victorian betting market.

The Victorian betting industry

Gambling generally, and betting on races and sports in Victoria is also big business. Victorians and others who bet in Victoria spent $425 million betting on race outcomes in 1996-97. The substantial scale of this industry is reflected by betting turnover of $3 billion in 1997-98. Victoria accounts for 25 per cent of turnover on betting on racing in Australia, second only to New South Wales (Tasmanian Gaming Commission, 1997). Victorian racing accounts for between 30 to 40 per cent of wagering turnover in other states (VRC submission). Gambling, including betting on racing and sports also provides an important source of revenue for the government (table 2.3).

2.3 **Victorian government revenue from racing and betting**

	1996/97	*Change over previous year*
	$m	*%*
Tax revenue from TABCORP		
Taxation — racing	108.3	0.1
Taxation — football	0.5	2.9
Fractions	5.2	4.0
Net unclaimed dividends	6.8	15.7
Total totalisator	120.9	1.1
National Sportsbet (fixed odds)	0.4	48.7
Total TABCORP tax revenue	121.2	1.2
Bookmakers' turnover tax	7.1	-13.3
Total betting	**128.3**	**0.2**
Total gambling	**1 157.4**	**10.1**

Source: Office of Racing, Victoria, Tasmanian Gaming Commission, 1996/97.

Betting service providers

A restricted range of betting service providers are available to Victorian punters for betting on racing and sporting events. These include TABCORP, Victorian, interstate and overseas bookmakers, interstate totalisators, and illegal betting operators.

These providers differ in the products and services they offer, and the conditions under which their products and services are provided. Various races and sporting events lend themselves to different types of betting products. The types of products offered by the various betting service providers are outlined in table 2.4.

TABCORP

TABCORP is a listed company, which was formerly the government-owned TAB. The then TAB serviced off-course totalisator betting on an exclusive basis, a feature that has been retained under current ownership and licence arrangements. Its exclusive licence under the *Gaming and Betting Act 1994* entitles TABCORP to sell parimutuel and fixed odds bets on thoroughbred, harness and greyhound racing, and sporting events. Betting on racing is 'the main game' for TABCORP, reflected in the breakdown of wagering turnover across racing and sporting codes (table 2.5).

2.4 **Betting services and service providers**

	Parimutuel (tote wagering)		***Fixed odds***	
Betting Products	***On-course***	***Off-course***	***On-course***	***Off-course***
Victorian racing	TABCORP	TABCORP	TABCORP	TABCORP
	Option for race clubs	Interstate TABs	Bookmakers	Illegal betting
				Interstate/national/ international operators
Sports betting	TABCORP	TABCORP	TABCORP	TABCORP
		Interstate TABs	Sports bookmakers	Interstate/national operators
Interstate racing	TABCORP	TABCORP	Victorian and interstate bookmakers	Illegal betting Interstate/national operators
		Other states' TABs	TABCORP (potentially)	TABCORP (potentially)

Note: TABCORP can offer a full range of betting (parimutuel and fixed odds) on racing and sports at any location.

TABCORP owns 100 per cent of the licences and the majority of the assets and manages 100 per cent of the businesses. TABCORP exercises its exclusive licence to sell totalisator and fixed odds bets on racing and sports events through a network of agencies, hotels and licensed clubs. It has two telephone betting centres for betting customers. TABCORP's totalisator pay-outs have a floor of 84 per cent, which need to be returned to the pool as dividends to winning investors.

Joint venture arrangement with the racing industry

TABCORP manages its wagering business on behalf of an unincorporated joint venture between TABCORP Holdings Limited and VicRacing Pty Ltd (a company formed by the controlling bodies from thoroughbred, harness and greyhound racing in Victoria). The joint venture business has licences to conduct sports betting and Keno, and operates half of the electronic gaming machines (EGMs) in Victoria (outside of the casino). The other half is operated by Tattersalls. These machines are located in licensed clubs and hotels.

VicRacing receives a 25 per cent share of the joint venture's total profit from gaming and wagering and Racing Products Victoria receives a product fee of 18.8 per cent of net wagering revenue, a $2.5 million marketing fee, indexed to increases in net wagering revenue, and a $50 million annual racing program fee for supplying the racing product.

2.5 **Betting on Victorian racing and sporting events** 1996-97

	Unit	*Racing*				*Sports*
		Thoroughbred	*Harness*	*Greyhound*	*Total racing*	
TABCORP betting turnover	$m	1 877.7	400.8	229.9	2 508.4	27.0
Share of TABCORP betting turnover (%)	%	74.1	15.8	9.1	98.9	1.1
Bookmaker turnover ($m)	$m	344.5	17.7	5.4	367.6	1.3
Total turnover ($m)	$m	2 222.2	418.5	235.3	2 874.7	28.3
Government revenue derived from betting ($m)	$m	97.1	19.6	11.2	127.8	0.9

Source: Office of Racing, Victoria.

These funds are then distributed to the owners of these bodies, which are the controlling bodies of the three codes, the VRC, the HRB, and the GRCB.

The introduction of off-course totalisator betting in 1961 has been the major source of growth for the racing industry. Revenue from VicRacing and Racing Products Victoria is directed into payment of prize money, capital development and administration of the racing industry, defined as including thoroughbred, harness and greyhound racing. Thoroughbreds currently dominate betting on racing turnover, accounting for 75 per cent of the totalisator market share (table 2.5). The thoroughbred racing code expects to receive $138.1 million in profit share and fees from TABCORP for 1997-98 and the three codes in total should receive $187.2 million (VRC communication).

Only thoroughbred, harness and greyhound racing have a relationship with TABCORP. Other racing codes and sports would be interested in entering into a relationship with TABCORP as suppliers of a betting product, given the established importance of such a relationship to industry growth. The ARQHA has submitted that quarter horse racing does not have access to off-course wagering, (and) consequently no rebate, back from wagering to enable the industry to grow and sustain this growth.

Bookmakers

Bookmakers in Victoria provide an alternative for punters to the services operated by TABCORP. There are around 220 bookmakers in Victoria registered with the Bookmakers and Bookmakers' Clerks Registration Committee (BBCRC), with over 1 000 bookmakers' clerks. Bookmakers generated $366 million in wagering turnover in 1996-97, of which $7.1 million was distributed to the government via the bookmakers' turnover tax (Office of Racing).

Bookmakers in Victoria can only operate 'on-course' and the 'competition' they provide to TABCORP is largely restricted to the middle and higher ends of the consumer market due to minimum betting requirements placed on telephone betting with bookmakers. For metropolitan thoroughbred meetings and sports events, the minimum bet is the lesser of $200 or to win $2000. For harness, greyhound and provincial thoroughbred meetings, the minimum bet is the lesser of $100 or to win $1000 (BBCRC submission). Bookmakers only offer a fixed odds product on both racing and sporting events. The restrictions on bookmakers are governed by the legislation covered in this review, which is outlined in Chapter 3.

Interstate bookmakers also service the betting public in Victoria. Any bookmaker in Australia can accept a bet from any customer in any state or territory on any race meeting (of the three racing codes) in any state or territory. The limitations on minimum bets for racing are broadly equivalent across states, with some minor exceptions in the smaller states and territories. However, there are no limitations on minimum bets for interstate bookmakers with regard to sports betting, as there are for Victorian bookmakers.

Interstate betting service providers

Interstate TABs also provide betting services to Victorian punters. This service exists to the extent that punters look for arbitrage opportunities across the parimutuel and fixed odds betting pools of the various state TABs.

Other sports betting service providers

The legislation governing sports betting in Victoria currently allows for sports betting to be offered through the licensing arrangements for TABCORP, licences to a few bookmakers and Crown Casino.

While Crown Casino (Crown) is licensed to provide sports betting as part of its own licensing arrangements, its licensing rights are not currently being exercised. Presently Crown offers sports betting only through its agency agreement with TABCORP (the casino's on-site TAB offers the same sports betting opportunities as other TAB's). The restrictions that exist with regard to Crown's sports betting licence (see chapter 3), bought about by the licensing conditions themselves and other Acts which impinge on the sports betting area, have not yet enticed Crown to activate its licensing provision in this area.

No other betting service provider is licensed to operate in the Victorian market under existing regulatory arrangements. If legislation were relaxed, however, there could be potential providers of betting services such as large lottery operators with pre-established networks of other gaming services. Other betting service providers that Victorian punters can bet with include interstate sports bookmakers, via telephone or internet services, in the Northern Territory, the Australian Capital Territory, and New South Wales, and overseas sports bookmakers in Vanuatu.

Common across all sports betting operations is the arms length relationship between the suppliers of the sporting product or event and the betting service provider. No sporting bodies receive any direct benefit from sports betting revenue, with the minor exception of betting conducted under mixed sports gathering permits, where the sporting or community organisation conducting the event receives 29/70ths of the 1.5 per cent bookmakers' turnover tax ($2000 to mixed sport bodies, mostly from betting on racing, in 1997-98). The Australian Football League (AFL) currently receives a relatively minor payment from TABCORP for supplying official scores ($40 000 in 1998) and payment relating to the Brownlow ($10 000 in 1998), however, no sporting code receives a fee for supplying the sports betting product (stakeholder consultations with the AFL).

These arrangements may be contrasted with the close links between the racing industry and TABCORP. However, there is a major difference between racing and sports betting in that sporting events stand alone and are in many senses a strong industry in their own right. Racing, on the other hand, needs betting, which comprises a large part of the sport.

Distributors

TABCORP's retail outlets

TABCORP's retail agents are also an important part of the racing and betting industry. These include PubTAB and ClubTAB operators. These agents describe themselves as customers of TABCORP. The Australian Hotels Association (AHA) and Licensed Clubs Association of Victoria (LCA) submitted that TABCORP has limited supply of its product and only selected outlets are chosen to be able to supply the service to end users (punters). This means that there is competition between hotels and clubs to attract TABCORP to the particular venue. The AHA and LCA argue that demand outstrips supply.

To place tote bets other than at the courses or through telephone accounts with TABCORP, punters utilise these retail outlets. TABCORP negotiates terms with these outlets and exercises its discretion over which outlets it will utilise to distribute its product.

Betting consumers

The number of customers who bet using various service providers is heavily influenced by the availability of being able to place a bet. In Synaval's submission to the review it is noted that in Victoria, TABs have a wide network of retail distribution plus telephone betting, whereas bookmakers can only take bets at racecourses and via restricted telephone betting operations. Consequently, the number of TAB customers dwarfs the number of bookmaking customers.

Consumers who bet in Victoria fall into four groups:

- small to medium Victorian gamblers;
- large, professional Victorian gamblers;
- interstate and international (largely professional) gamblers, some of whom visit the casino; and
- the lay off of bets between betting service providers.

Each of these customer groups has very different characteristics and requirements. Research undertaken by Tattersalls shows that small to medium sized gamblers tend to consider their gambling activities as 'having a flutter' rather than gambling, betting between $2 and $100 (average $20) on a semi-regular basis. The choice of betting products focuses more on randomness, captured by the 'size of the prize' rather than skill and consideration of the favourable odds, evidenced by the popularity of mystery bets and scratch lotteries.

Large professional gamblers, both within Victoria, from interstate and international gamblers, follow the racing sport with much more interest and base their betting choice on detailed information and analysis. These gamblers typically bet in large amounts. There is great diversity of preferences within this group of punters in terms of their on-course, off-course choices, the codes upon which they bet, and the betting supplier with which they deal (Tattersalls research, obtained through consultations with stakeholders).

Amongst the customers of bookmakers, the Victorian Bookmakers Association (VBA) reports that 10–15 per cent of bookmaker turnover

comes from the small to medium Victorian gamblers, compared to 65–75 per cent for large professional Victorian gamblers, and 10–25 per cent for interstate and international gamblers. The VBA also notes that the large professional Victorian gambling group are also the most successful (that is, bookmakers rarely make a profit from this group) (Victorian Bookmakers Association submission).

The legislation contains regulations that restrict consumers, especially customers of bookmakers, from exercising their preferences in various ways, in terms of where they can place a bet, with whom, at what level and under what conditions. These restrictions are outlined in chapter 3.

Racing and betting regulators

Racing and betting markets in Victoria are characterised by licensing schemes that grant exclusive rights to private operators with respect to specific products and venues. The specifics of these regulations are laid out in the next chapter. They are applied and enforced by various agencies and groups empowered by the Acts governing the racing and betting industry. These agencies and groups include the:

- Victorian Casino and Gaming Authority (VCGA);
- Bookmakers and Bookmakers' Clerks Registration Committee (BBCRC);
- Minister for Sport, assisted by the Office of Racing;
- State Revenue Office;
- Racing Appeals Tribunal; and
- controlling bodies for the three racing codes — VRC, Harness Racing Board (HRB) and the GRCB.

Victorian Casino and Gaming Authority

The Victorian Casino and Gaming Authority (VCGA) is a statutory body established under the *Gaming and Betting Act 1994*. Through their chairman, the VCGA reports to the Minister for Gaming and is responsible for the regulation and supervision of TABCORP, Tattersalls, Crown Casino and the gaming industry.

With regard to this review, the areas of relevant jurisdiction of the VCGA include licensing and regulating wagering operations.

In the event of potential entry of new betting products, which would require new betting competition rules (such as elaborate forms of sports bets) the new rule would be required to be submitted to the VCGA who applies a fairness rule to ensure no-one is disadvantaged by them, as it does with all betting rules. However, it would not have the final responsibility for approving them. This lies with the Minister.

Bookmakers and Bookmakers' Clerks Registration Committee

The Bookmakers and Bookmakers' Clerks Registration Committee (BBCRC) was established under the *Racing Act 1958*. It regulates the activities of bookmakers and bookmaker's clerks at racecourses and sports grounds throughout Victoria. The BBCRC considers applications for registration and issues registration certificates for approved bookmaking activities, monitors the performance of bookmakers and bookmakers' clerks and conducts inquiries where necessary. The BBCRC also has the authority to revoke, vary or suspend any certificate or impose a prescribed penalty.

As a result of registration, the BBCRC, in its submission to the review, contends that bookmaking is regarded as a respected profession where the holding of a registration certificate can be regarded by the public as a safeguard for the honesty and financial integrity of the bookmaker.

Minister for Sport – Office of Racing

The Minister for Sport, assisted by the Office of Racing administers the *Racing Act 1958*, including the licensing of 105 privately constituted non-proprietary clubs to conduct race meetings at 83 licensed racecourses.

The Minister authorises a broad range of racing and sports events at which betting occurs. These include Anzac Day race meetings, point-to-point steeplechases, picnic race meetings, restricted harness racing meetings, greyhound racing permit meetings, greyhound plumpton coursing matches, mixed sports gatherings, Calcutta sweepstakes, professional athletics and cycling meetings, Victoria Club's annual Call of the Card, and Stawell Athletic Club's annual pre-race betting permit.

The Minister also issues authorisations relating to the betting on races and sporting events, including telephone betting by bookmakers, approvals enabling TABCORP (jointly approved with the Minister for Gaming) and bookmakers to bet on sports, starting and finishing times of race meetings, feature doubles for which bookmakers may mail odds, and the operation of

pre-recorded betting information services. The Minister also approves the dissemination of bookmakers' prices in certain circumstances.

State Revenue Office

The State Revenue Office collects the taxation receipts from bookmakers and conducts associated inspections and investigations to ensure that provisions in the *Racing Act 1958* and *Stamps Act* (under which bookmakers are taxed) are observed.

Racing Appeals Tribunal

The Racing Appeals Tribunal is a statutory body established under the *Racing Act 1958*. It hears appeals against certain penalty decisions imposed by controlling bodies of the three racing codes (see below) or their respective stewards.

The tribunal hears appeals in respect to conviction as well as the severity of penalties. If a person appeals against a conviction, the tribunal may issue a stay of execution of the penalty until the matter is heard. The independent tribunal consists of a chairman (selected from a panel of four, all of which are, or were, a county court judge) assisted by two industry advisers.

Racing control bodies

The racing control bodies have many distinct roles — acting as operators, regulators and business managers for their respective racing codes.

Victoria Racing Club

The VRC is a privately constituted non-proprietary club recognised by the government as the controlling body of the thoroughbred racing code. All jockeys and trainers are registered by the VRC, and the VRC hears most appeals. The VRC has a statutory responsibility to allot the number of meetings and the dates for all licences and permit race meetings. Racing clubs must be registered with the VRC in order to obtain a racing club licence. The VRC :

- administers the Rules of Racing (including stewardship of races, licensing of trainers and jockeys, registration and drug testing of horses);

- manages the industry business and finances, marketing, personnel training, capital development, research and development, and breeding incentive schemes; and
- organises the racing calendar and race programming.

The VRC issues commercial licences for bookmakers that allows them to come to the course, have a stand and pay relevant fees. This licence is different to the BBCRC registration process, which is more of a general probity and financial accreditation check.

Harness Racing Board

The HRB is a statutory body established under the *Racing Act 1958* whose functions are to control the sport of harness racing, conduct race meetings, and develop and promote the sport. The HRB may also issue bookmaker licences similar to those of the VRC.

Greyhound Racing Control Board

The Greyhound Racing Control Board (GRCB) is a statutory body established under the *Racing Act 1958* whose core functions are to control the sport of greyhound racing, and develop and promote the sport. The GRCB may also issue bookmaker licences similar to those of the VRC.

Challenges to existing structure of Victorian racing

Competition from gaming

The racing industry in Victoria, through its joint venture with TABCORP, now has to compete with gaming for its share of the total gambling consumer dollar. Racing and other sports betting currently comprise 15 per cent of total gambling expenditure in Victoria with expenditure on gaming comprising the remaining 85 per cent (see table 2.6). While still growing in absolute dollar terms, betting on racing has fallen both as a percentage of household spending and household gambling expenditure, while household expenditure on gambling has risen markedly both in absolute and proportional terms.

2.6 **Gambling activity in Victoria** 1996-97

Gambling form	*Total expenditure*[a]	*Per capita expenditure*	*Exp. as a % of household disposable income*	*Total turnover*
	$m	*$*	*%*	*$m*
Racing				
TABCORP	366.8	107.1	—	2 292.7
On-course totalisator	35.7	10.4	—	223.4
On course bookmakers	22.3	6.5	—	366.3
Total racing	**424.8**	**124.0**	**0.49**	**2 882.4**
Sports betting				
TABCORP	—	—	—	27.0
Bookmakers	—	—	—	1.3
Total sport	—	—	—	**28.3**
Gaming				
Tattersalls lottery	4.9	1.4	—	12.3
Tattslotto	257.6	75.2	—	643.9
Instant lottery	24.2	7.1	—	60.4
Pools	1.3	0.4	—	2.7
Bingo and minor gaming	153.1[b]	15.7[b]	—	188.7
Electronic gaming machines	1 455.8	425.0	—	15 894.0
Club Keno	7.2	2.1	—	29.7
Casino	579.0	169.0	—	6 534.0
Total gaming	**2 331.9**	**680.7**	**2.71**	**23 196.8**
Total gambling	**2 756.7**	**804.7**	**3.21**	**26 107.2**

[a] Expenditure is the net amount lost, or in other words, the amount wagered less the amount won by people who gamble. It is the gross profit due to the operations of each particular form of gambling. [b] Data for 1995-96.

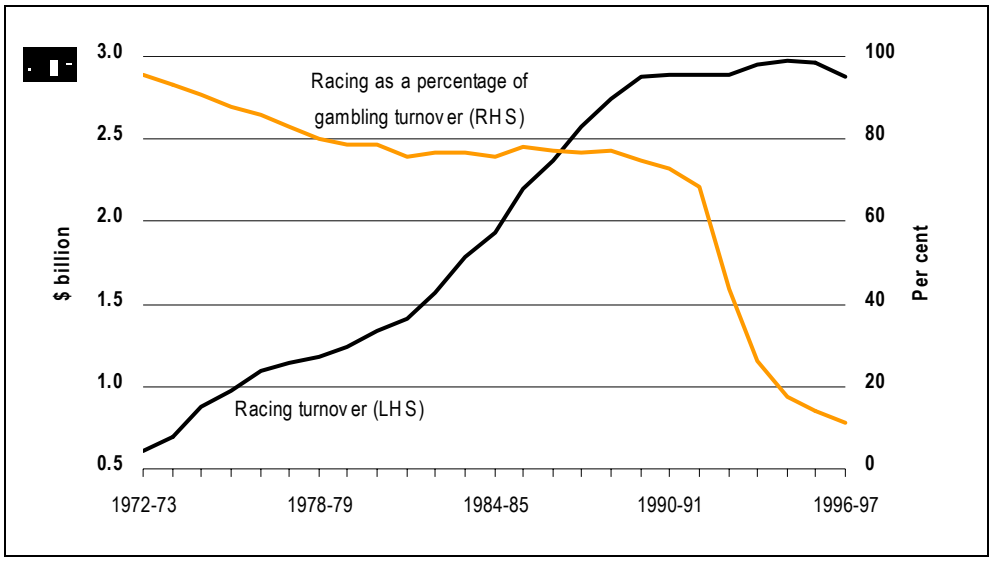
Source: Tasmanian Gaming Commission (1997) and the Office of Racing, Victoria.

Betting on racing accounted for 0.49 per cent of household disposable income in 1996-97, down from 0.64 per cent 10 years ago, whereas gaming accounted for 2.71 per cent of household disposable income, up from 0.63 per cent 10 years ago. Betting on racing in Victoria over the past five years has been levelling off, following two decades of steady and impressive growth. While the level of racing turnover remains significant, at $2.3 billion in 1996-97, the very rapid increase in the availability of gaming products such as Electronic Gaming Machines (EGMs) and casino games has seen racing turnover as a per cent of gambling turnover decline dramatically (chart 2.7).

Betting on racing shifts off-course

Within the racing industry, there is a shift in the mode of race betting with a shift away from on-course to off-course betting. Growth in total racing turnover in Victoria has fallen from a 7.5 per cent annual rate in the ten years to 1986-87, to 1.1 per cent per annum in the ten years to 1996-97.

2.7 **Racing turnover in Victoria**



Data source: Tasmanian Gaming Commission (1997).

The fall was driven by the collapse in bookmaker turnover, which has fallen 7 per cent per annum over the past decade, and on-course totalisator turnover which contracted (albeit at a lesser) 3 per cent per annum. The turnover of the TAB, however, increased at 4 per cent per annum over the past decade due to rapid growth in off-course betting. This trend is evident nationally where racing turnover fell from an 8 per cent annual growth rate in the ten years to 1986-87 to 2 per cent in the ten years to 1996-97. That principally reflects a 5 per cent per annum fall in on-course bookmaker turnover, despite strong rises in TAB turnover over the period. This gives rise to new challenges for the racing industry in terms of maintaining its attractiveness to the changing profile and preferences of betting customers.

The age of television

Other developments are also driving changes in the racing and betting industry, including the increasing importance of television. Televised versions of racing and sporting events have become critical to off-course betting services with punters 'betting on the picture'. Televised racing and other sport, combined with legal TAB off-course operations, have been responsible for the big shift in post-war betting to off-course betting. Television, and now pay TV coverage of racing and sporting events to provide a picture of the event on which bets are placed, has become increasingly a required ancillary input to the provision of betting services. TABs rely on the picture for punters who bet and watch at the agency or hotel or club and for punters who watch at home, as do on-course bookmakers who take telephone bets via the VRC monitored system from punters off-course.

These challenges are part of the 'base case' for regulatory arrangements, which sharpens the need to ensure that the right balance is achieved between the objectives of existing legislation in light of these developments.

3 Regulatory arrangements

This chapter outlines how the relevant legislation restricts:

- who may supply racing and sports products which form the basis for betting activity;
- how these products (in the case of the racing product) may be provided;
- the rights of jockeys and trainers to sell their services to other codes, and therefore, the right of other codes to compete for their services;
- who may supply betting services;
- the range of betting services that particular suppliers can offer and therefore which market segments each is allowed to compete in;
- the locations at which betting service suppliers may operate, and the manner in which they may accept bets; and
- the ability to communicate information to consumers relating to betting.

It also considers some of the indirect restrictions from the legislation with regard to agency agreements with the retail sector and the terms and conditions on the Joint Venture agreement between TABCORP and the Victorian racing industry. The way in which the legislation sets out the regulatory role and powers of the various control bodies are also examined, as are the joint roles performed by some of these.

Suppliers of racing products for betting

The existing supply structure of Victorian racing and sports products that can be bet on, is derived to varying degrees from regulatory arrangements, and in turn, from the four pieces of legislation under review.

Restrictions on racing suppliers

The *Racing Act 1958*, by regulating race meetings and governing licensing of racing clubs and racecourses, necessarily restricts the racing product on which betting is based.

Restrictions arise from the definitions of a racing club and the legitimate holding of race meetings. Section 24A of the Act defines a racing club for the purposes of a racing club licence as a club registered in accordance with the rules of the VRC, the HRB or the GRCB. This effectively transfers regulatory control to the controlling bodies of the three existing racing codes who write, administer and control the rules pertaining to the operation of a racing club as defined in the Act. Those rules *exclude* other racing codes, so the outcome is that only thoroughbred, harness and greyhound racing breeds can have registered racing clubs.

Section 6 of the Act stipulates that the holding of race meetings must be conducted either by:

- a licensed racing club in accordance with the Rules of Racing of the VRC, HRB and GRCB on a racecourse licensed for racing; or
- any other club, association or body of persons pursuant to an authority granted by the Minister under Section 19 relating to 'mixed sports gatherings'.

The VRC submits that the legislation does not in itself prohibit other racing codes from holding racing meetings. It says that only clubs registered by The VRC under the Rules of Racing are entitled *'as of right'* to conduct race meetings. Other racing codes require Ministerial approval. The VRC contends that this requirement is not an 'anti-competitive restriction on racing suppliers', but is the practical result of the absence of established and reliable supervisory arrangements in respect of racing conducted other than by the three established racing codes. However, this involves an implicit judgement that supervisory arrangements in other codes are inferior to those in the three traditional codes and that these could not be developed to an equivalent standard. There has been no evidence put before the review that this is the case.

Ministerial approval for permits for mixed sports gatherings have a long history that predates the TAB. These permits were intended to allow bookmakers to attend rural community gatherings and bet on concurrent licensed race meetings. It is not intended, nor suited, to providing a vehicle for the launching of new codes.

While Ministerial consent may permit quarter horse and Arabian codes to conduct a race meeting, no person licensed by the VRC may participate in the race meeting, including racetrack owners, jockeys and other personnel. Section 3 of the Act, in defining a mixed sports gathering, states that no horse or pony ridden by a jockey who is licensed with the VRC or driven by a driver who is licensed with the HRB is permitted to take part in any horse, pony or harness race. The VRC submit that these restrictions are consistent with the Australian Rules of Racing. The conditions under which Ministerial approval is granted place alternate codes at a commercial disadvantage and in effect restrict the holding of race meetings to the existing three racing codes. The legislation requires alternate code race meetings to be conducted not less than 25 kilometres from Melbourne.

The restriction on TABCORP from offering wagering services on racing by other codes, and on those codes gaining access to wagering revenue (as discussed below) is a further impediment to racing by other codes. So while currently there are no absolute barriers to access to racecourses by other racing codes, the above restrictions impose a substantial cost burden on them. These costs, plus the costs of providing the necessary integrity assurance functions and infrastructure needed for the conduct of such race meetings have so far meant that racing by other racing codes on a commercial scale is not viable. Barriers to alternate code racing tend to be the result of interacting legislation and circumstantial factors, as chapter 5 demonstrates.

Proprietary racing

Proprietary racing is a potential supplier for betting in Victoria. The VRC in its submission defines proprietary racing as the conduct of race meetings where the profits from the conduct of the race meeting are paid to investors in the organisation which conducts the race meeting, rather than being paid out in prize money to the owners of the horses competing in the race meeting. However, the *Racing Act 1958* excludes 'for profit' racing, stating that no person may receive any 'direct financial benefit' from the 'profits' of a race meeting.

The outcome of this requirement is that proprietary racing is not permissible under the Act.

Joint Venture arrangements and a single product supplier

The cost disadvantage on staging races for alternate codes is compounded, albeit indirectly, by the *Gaming and Betting Act 1994* and the Joint Venture

relationship it establishes between TABCORP and VicRacing. The Act required TABCORP to have an arrangement with the racing industry as a prerequisite to the issuing of a wagering licence, but did not stipulate the nature of that arrangement. However, the commercial agreement made between thoroughbred, harness and greyhound racing — represented by Racing Products Victoria and VicRacing— and TABCORP, shores up the supply of racing products for betting from these codes only, and the revenue returns to those suppliers, only.

Suppliers of sporting events as a platform for betting are not affected in the same way as other racing codes from the above 'single product supplier' arrangement. The Joint Venture agreement does not preclude the provision of betting services by TABCORP on any non-racing sport. TABCORP is not constrained by the Joint Venture in how it may exercise its sports betting licence.

Suppliers of other products which can be bet on

As mentioned in the previous chapter, other events, such as sporting events, can and do also form the basis of betting. Under the *Gaming and Betting Act 1994*, any sporting event approved by the Ministers for Sport and Gaming can be a supplier to a betting service provider. Sporting competitions already approved by the Ministers include a range of sports including Australian rules football, American football, athletics, baseball, basketball, boxing, cricket, cycling, golf events and many more. The restrictions that apply to sports betting are borne by providers of the betting service (see below), not the sporting bodies or events themselves. However, there is no legislative obligation for suppliers of sporting products to be paid a fee for that supply to betting providers.

The VRC contends that this absence of a legislative requirement is not relevant to competition issues. However this fails to recognise that racing is in competition with other sports for the entertainment budget of consumers. Competing sports then may be at a competitive disadvantage relative to the racing industry which receives income from the wagering activity under an agreement required by the *Gaming and Betting Act 1994*. The costs and benefits of this are discussed in chapter 5.

Betting service providers

The relevant legislation allows for betting in Victoria to be provided under licence by TABCORP, bookmakers and Crown Casino.

The *Gaming and Betting Act 1994* provides for TABCORP's status as the exclusive licence holder for off-course totalisator betting services, and regulates the operation of totalisator and fixed odds betting of the company. TABCORP is permitted to accept bets from any TAB outlet as well as telephone bets from amounts of $0.50. Some agents suggest bets at the bottom end of the range are uneconomic for the agent.

The commercial arrangements of the Joint Venture agreement restrict TABCORP from offering wagering services that may have a material adverse impact on wagering revenue on established racing products, other than where the Joint Venture partners agree in writing. According to the VRC, these limitations apply only to the TABCORP companies that are parties to the Joint Venture. It claims that TABCORP Holdings would be free to establish a new company to carry on any form of business the holding company may direct, although this would still be subject to the Government granting a wagering licence to the new company.

TABCORP, in its submission to the review, provide the examples of quarter horse, TeleTrak and fixed odds on established racing which are affected by this restriction, albeit a result of commercial decisions between the parties to the Joint Venture. These arrangements work to inhibit other racing codes from gaining access to off-course wagering revenue.

TABCORP and the provision of betting on non-racing sports

TABCORP provides betting services on sporting events from selected outlets and to telephone account customers but has no obligation to pay a fee to the suppliers of sporting events upon which those bets are placed.

The Australian Football League (AFL), a major supplier of a sporting event that can be bet on, makes the point that TABCORP has a licensing monopoly 'but no obligation' to enter into a relationship with other sports. The lack of obligation has resulted in the lack of a relationship. However, part of the reason for this lies in the differences between Victorian racing and other sports that can be bet on. The AFL and other major sports earn substantial revenues from advertising, gate fees and television rights which would seem to be sufficient for these sports to operate at some desired threshold of activity. History has given rise to a situation where the reliance on capturing the benefits from their product in the form of revenues from betting service providers is much greater in the case of racing.

In the case of the AFL, there is also no obligation for TABCORP to enter into a sublicensing arrangement that could allow the AFL to be an agency

for betting on the Australian Football League, which they could promote. The *Gaming and Betting Act 1994* states that TABCORP must not approve a wholly owned subsidiary of the licensee for appointment as an operator of a licence unless satisfied that the subsidiary is a suitable person to be concerned in, or associated with, the management and operation of a wagering business. A difficulty for the AFL in this regard is that it is not strictly in the business of wagering, and is perhaps not an obvious target for these arrangements.

Bookmakers

Bookmakers compete with their interstate and overseas counterparts and TABCORP as a provider of betting services. Bookmaking activities, however, are restricted by legislation in various ways. The *Racing Act 1958* requires that all bookmakers be registered and are thus subject to the rules that govern that registration. This includes limiting the conduct of betting to:

- certain locations (fielding at a race course while a race meeting is in progress, including for the acceptance of sports bets);
- certain hours of operation;
- certain betting events (registered race meetings only, which excludes the taking of bets on racing other than thoroughbred, harness or greyhound racing), with the exception of events with Ministerial approval;
- restricted means of communication (ie limiting telephone bets to a closed mobile telephone system operated and monitored by the VRC with minimum bets; and
- lodging a security bond for each class of bookmaker from $25 000 (eg bookmakers operating at mixed sports gatherings) to $400 000 (ie thoroughbred racing metropolitan rails bookmakers who recorded betting turnover in the previous financial year exceeding $15 million).

The VBA, in their submission to the review, also note that the *Lotteries Gaming and Betting Act 1966* prevents bookmakers from displaying real time betting odds to clients via the internet and other electronic opportunities, in contrast to competitors in other jurisdictions.

The outcome of these restrictions is that bookmakers must operate in ways that limit the competition they can provide to the totalisator and to interstate and international bookmakers operating telephone betting services in the provision of both racing and sports betting services.

The *Racing Act 1958* also requires that no licensed bookmaker shall carry on business on behalf of, or in conjunction with, any other person. This prohibits the incorporation or partnering of bookmakers and the pooling of bookmaking activities. The outcome is that bookmakers must lay off on each other or the tote in order to hedge their exposure to large risks.

The *Racing Act* establishes the Bookmakers and Bookmakers' Clerks Registration Committee, which requires of bookmakers' that:

- applicants be at least eighteen years of age, of good character, and have had twelve months' experience as a bookmakers' clerk;
- there be a minimum of $50 000 cash available for bookmaking purposes;
- a guarantee is provided to cover intended bookmaking operations; and
- applicants have a good knowledge and understanding of the acts and regulations governing bookmaking in Victoria.

Retailers — TABCORP agents, PubTABs and ClubTABs

The legislation under review does not prescribe a relationship between TABCORP and its retail agents. However, the AHA and LCA submit that the legislation allows for 'TABCORP to unilaterally regulate this relationship'. The impacts on retail agents of legislative restrictions are discussed in chapter 5.

Crown Casino

Melbourne's Crown Casino is also permitted to offer sports betting via the *Casino Control Act 1991*. Part 5A of the Act establishes the right for the casino to operate approved betting competitions in respect of any event or contingency relating to a horse, harness, greyhound or any other race, as well as fight, game, sport or exercise, or any other event or contingency. While allowing for the casino to run a sports betting competition, it is not to impinge on the exclusive licence of TABCORP in respect of betting on racing.

Punters must be present in the casino to place a bet on racing or sporting events and there is no provision in the legislation to allow the acceptance of bets by telephone. Crown believes that approximately 90 per cent of betting on sports is conducted by telephone. The *Lotteries Gaming and Betting Act 1966* also prohibits Crown from advertising their own sports betting service, which Crown sees as a further inhibiting factor to their

activation of a sports betting licence (stakeholder consultations with Crown Limited).

For commercial reasons, as a result of these restrictions, Crown has not yet elected to conduct its own sports betting operation and casino patrons are serviced by a TABCORP outlet situated on the premises.

Potential entry into the provision of betting services

The *Gaming and Betting Act 1994* prevents the entry of any other betting service providers establishing in Victoria. The *Lotteries Gaming and Betting Act 1966* contains extensive offence provisions with regard to the conduct of betting, and restricts the advertising and other communications relating to betting services and odds. Bookmakers are exempt from these prohibitions under sections 40(3AA) and 40(3A) and TABCORP is exempted by the *Gaming and Betting Act 1994*. The *Lotteries Gaming and Betting Act*:

- establishes restrictions on the publication of information concerning betting, including tipping 'as to the probable result of any such sporting contingency or contingencies';
- establishes penalties for communicating certain racing information (ie betting odds) while a race meeting is being held; and
- stipulates that communication of betting odds in certain circumstances can be exempted by the Minister.

The outcome of this restriction is that no competing betting service provider can alert the market to the existence of their products and services. Tipping agencies must also get authority from the Minister in order to conduct pre-recorded telephone services in Victoria.

TABCORP, in its submission to the review, suggests that betting information and tipping services are akin to advertising in that they stimulate the interest of wagering customers and also act effectively as an advertising medium for their promoters.

Betting consumers

The restrictions on consumers wishing to bet on racing and sporting events in Victoria are derived from the *Racing Act 1958* and *the Gaming and Betting Act 1994.* They include:

- restrictions on telephone betting to bookmakers which are set at significantly higher rates than for TABCORP, and must be taken only during hours of race meetings, and restrictions of telephone betting to Crown, were it to elect to conduct sports betting;
- being unable to place bets on sporting events not offered by TABCORP and bookmakers;
- being unable to bet on races not offered by TABCORP or bookmakers (eg. international racing events); and
- being unable to bet on proprietary racing (were it to exist).

Regulators

The relevant Acts governing racing and betting in Victoria establish roles for various regulators in administering the above restrictions. The VCGA has responsibility for administering TABCORP's wagering and gaming licence, the sports betting provisions of the Casino licence, under *the Casino Control Act 1991*, if the Casino elects to activate that licence, and the advertising and communication provisions of the *Lotteries Gaming and Betting Act 1966*. The Minister for Sport administers the *Racing Act 1958*. The racing controlling bodies operate under that Act, setting and administering their own rules in conjunction with the Act. The BBCRC also operates under the *Racing Act 1958* and administers the registration of bookmakers and the conditions of that registration.

The major issue for competition with regard to legislative restrictions and their regulators is the multiple roles for controlling bodies granted under the *Racing Act 1958.* The Act establishes the Harness Racing Board and the Greyhound Racing Control Board. Along with the Victoria Racing Club, the three controlling bodies are allowed to make rules for, or with respect to:

- the issue of club bookmaker's licences on payment of the fees fixed by the rules;
- fixing the terms and conditions of club bookmaker's licences issued by the respective clubs;
- excluding or removing from a race-course or part of a race-course bookmakers who are not licensed (section 91A);
- the registration of clubs;
- the licensing of bookmakers; and
- determining the race program.

Such powers are consistent with the role of the three race controlling bodies as regulators for those codes in respect of the supervision of racing and the performance of the integrity control functions. They are also made responsible for business management of their respective codes. This raises concerns regarding possible conflicts of interest between these responsibilities.

As the VRC point out in their submission to the Discussion Paper, the *Racing Act 1958,* does not specifically provide for multiple roles for the controlling bodies. Arrangements for business management of the thoroughbred code were put in place by the VRC of its own initiative. However, the Act does delegate regulatory powers to the VRC for instance, and does not specifically rule out the other functions creating the scope for multiple roles to emerge, as they have done.

The Victorian Arabian Jockey Club has noted that consideration should be given to the appropriateness of a breed specific organisation such as the VRC managing the racing product in a manner that prevents existing clubs from conducting alternative breed races and supplying these to TABCORP for public wagering.

Internal restructuring is occurring within the VRC to partition various responsibilities. Its success, and the significance of these arrangements for competition, is discussed in chapters five and six.

4 Regulatory objectives

A necessary step for this review is to clarify the objectives of the legislation in restricting competition. This clarification of objectives is important because evaluation of the costs and benefits of restrictions on competition needs to be done in terms of objectives sought. CIE (1997) identifies several possible objectives for government regulation of gambling activities (not all of which would necessarily be consistent with NCP objectives). These include:

- enhancing the integrity of the 'product';
- consumer protection (in terms of quality);
- prevention of monopolistic exploitation;
- security of taxation revenues;
- assistance to designated industries and causes;
- prevention of crime related to racing and betting;
- economic development; and
- control over social costs.

The four pieces of legislation under review here each have their own objectives — both stated and implied. The approach taken in this chapter is to examine each piece of legislation with a view to deriving objectives. Then these identified objectives are examined for consistency with the principal reason for government intervention in markets that is consistent with a NCP approach — correction of market failure.

Objectives — stated and implied

Racing Act 1958

The Victorian parliament passed the *Racing Act 1958* to consolidate the regulation of racing which was, at that time, distributed over 20 separate Acts enacted over a 30 year period. With amendments spanning 70 odd

years it is therefore difficult to identify the objectives law makers had in mind when making laws, which amongst other things imposed certain restrictions on competition.

However, the second reading speech for the *Gaming and Betting Act 1994*, which substantially amended the *Racing Act 1958*, offers insights into the objectives of the *Racing Act 1958*. In his speech, Treasurer Stockdale said that the amendments to the *Racing Act 1958* were to:

> 'remove obsolete or redundant provisions, to deregulate the conduct of racing, except in relation to matters of probity and public interest…'

In the second reading speech for the *Racing (Miscellaneous Amendments) Bill* in 1991, the then Minister for Sport and Recreation, Mr Trezise noted the government's commitment to ensuring 'integrity, efficiency, and effectiveness of administration of the racing industry'. It seems reasonably clear that maintaining probity and/or integrity in the racing industry has been an important objective. The Victoria Police in their submission to the review note that '… [a]t some stage a product lacking integrity is likely to become an unlawful product'. Controlling criminal activity also seems an objective in this case.

Racing Victoria in its submission to the Discussion Paper submit that the protection of integrity of racing is a reasonable statement of the objectives of the racing Act, as long as 'integrity' is interpreted in its widest sense incorporating probity, consistency, uniformity and fairness of racing conducted under a well-understood set of Rules of Racing.

The benefits from maintaining the integrity of the racing industry for consumers and the racing and betting industry generally are discussed further in the next chapter.

TeleTrak, in its response to the Issues Paper, suggest an alternative objective of the Act — protection of the biggest individual source of government revenue. Whether this objective is achieved, and whether or not revenue presently suffers as a result of preventing proprietary racing competing for wagering expenditure with the Joint Venture operation, depends on a number of factors. These include the taxation arrangements applied, along with other fees and charges and the 'unproved' popularity of proprietary racing in Victoria.

TABCORP also implies a government revenue objective but via a different mechanism. TABCORP submitted that if restrictions were relaxed and additional codes permitted, then there *could* be an adverse impact upon the quality of racing and reduced revenues for government.

There is no evidence, however, that other codes do not have every incentive to ensure that maximum level of probity exists for their racing codes.

Another possible objective of the legislation is that the profits of a race meeting are redirected back to the horse owners and stakeholders in the industry. The Greyhound Owners, Trainers and Breeders Association submitted that it was the fact that profits went to individual investors and not to owners and trainers, which was a motivation for the ban of proprietary greyhound racing in 1956. This view, however, fails to recognise that owners and trainers require a fair return in order to participate in the racing industry. The returns from proprietary racing would be shared between owners, trainers and investors.

The requirement that bookmakers and bookmakers clerks' be registered with the BBCRC, might also reflect a concern with probity among wagering service providers. The BBCRC and its registration system provides a framework for the control of bookmakers' activities whereby bookmakers could be deregistered for such things as criminal activity or association with criminals. The Act also sets up a right for the controlling bodies to licence bookmakers.

Lotteries, Gaming and Betting Act 1966

The objectives of the general restrictions on gaming and betting contained in the *Lotteries, Gaming and Betting Act 1966* are relatively clear. The Act effectively bans games and other betting activity unless specifically licensed to operate — that is, it sets up the authority to control these activities in Victoria. The Victorian Bookmakers Association (VBA) submitted:

> '… the primary objective of the Act was to legalise and control betting and endeavour to eliminate illegal SP bookmaking activities.

There is some circularity in this reasoning, as the Act makes SP bookmaking illegal by definition. However, it seems reasonable to speculate that law makers saw licensing as a way of enforcing the law and controlling criminal activity associated with SP bookmaking and other illegal gambling activity.

The AHA and LCA submitted that the illegal activity to be controlled was the avoidance of tax by the SP bookmakers. It sees the establishment of an off-course totalisator as establishing a reliable tax payer.

Restrictions on advertising contained in the Act are probably also aimed at controlling illegal activity in Victoria. Because there is complete prohibition (aside from certain exempt Victorian operators), the Act also prevents interstate and international betting service providers from advertising. While TABCORP submitted this as an objective to 'protect the Victorian public from uncontrolled or unscrupulous operators, at least in the case of Australian service providers, it is not likely that this aspect of consumer protection is an objective of the restriction, given that legislation in other states generally requires similar checks on probity as in Victoria. It may be a concern for foreign sourced services.

TABCORP also offers two other, more commercial, potential objectives for these bans. These are:

- protection of TABCORP which paid $597 million in combined wagering and gaming licence fees for the right to the wagering and gaming customer base in Victoria; and
- protection of Victorian taxation revenues from diversion of wagering turnover to other jurisdictions.

In the context of tight regulation of betting and related activities in other Australian jurisdictions, these two objectives might dominate the consumer protection objective described above. The Victorian Bookmakers' Association submit that, due to the restrictions on bookmakers, this potential objective is not achieved.

The AHA-LCA in their submission make the point that the protection of state revenues is inconsistent with competition policy objectives. They note that the competition dividends from the Commonwealth are designed to compensate for any loss of revenue for a state.

Gaming and Betting Act 1994

The second reading speech by Treasurer Stockdale (28 April 1994) gives some clues as to the government's objectives for the restrictions on competition contained in, and supported by, the *Gaming and Betting Act 1994*. Treasurer Stockdale said:

> The [racing] industry will have a participating interest in the Victorian wagering and gambling operation of a privatised TAB through a proposed joint venture, providing a more secure level of income into the future than would be available under a continuation of the current arrangements.

and

> This will significantly enhance the competitive position of the Victorian racing industry relative to other states and overseas.

It is clear that the government had in mind an economic development objective through the promotion of the racing industry when introducing this Act.

The VRC in its submission to the Discussion Paper contends that the Joint Venture arrangements that are recognised by the *Gaming and Betting Act 1994*, reflect what the VRC sees as the ownership interests of the three codes in the previous statutory TAB. Under previous arrangements, the three codes were entitled to the profits of the statutory TAB and so were subject to equity risk. This view of Racing Victoria would not seem to be inconsistent with an economic development objective.

The Joint Venture arrangements underpin intercode and intracode agreements. In their present form, these agreements secure funding for country racing disproportionate to its share of wagering turnover, and therefore indicate an implicit regional development objective. While this arrangement is not specifically required by the Act, the requirement for TABCORP to have an agreement with the racing industry has facilitated this arrangement. Ensuring the probity of Victorian wagering service providers is also an objective:

> It establishes a rigourous legislative framework to…ensure that the highest standards of probity are maintained in the Victorian gambling industry… (Treasurer Stockdale, 28 April 1994).

The Treasurer also contended that the Act would 'facilitate the successful public float of the TAB' by allowing the issue of a licence that was central to the float. TABCORP identifies its exclusive licence bestowed under the Act as guaranteeing significant economies of scale. As such, it may protect against unsuccessful entry and avoid unnecessary expenditures associated with any such attempt at entry. Economies of scale also lead to cost efficiencies in operations. In this regard, promoting economic efficiency may be an objective. This would have also translated into a higher price to the government from the sale of TABCORP.

The grant of an exclusive licence for TABCORP could leave consumers open to exploitation in the absence of effective competition and lead to the creation of 'monopoly rents' — returns to the license holder in excess of those obtainable in a competitive situation. However, the application of maximum rates of commission (as specified in Part 7 of the Act) limits the ability of TABCORP to extract these rents from consumers. With this effective price cap in place, it does not seem likely that the government had

in mind an objective of the creation and capture of these monopoly rents through the sale of TABCORP. However, its exclusive licence does allow TABCORP to price discriminate in a number of ways as discussed further in chapter five.

TABCORP also submitted that the exclusive licence which guarantees the existence of a large totalisator in Victoria also reduces the attractiveness of illegal betting.

Casino Control Act 1991

In contrast to the more restrictive nature of other racing and betting legislation under review, Part 5A of the *Casino Control Act 1991* grants Crown Casino a right to a sports betting licence. However, the conditions under which this right is granted specifically rule out the casino taking bets on horse, harness or greyhound races at meetings in Australia or New Zealand, upon which TABCORP is proposing to conduct wagering. The objectives of this restriction are presumably in line with those for the grant of an exclusive licence for TABCORP described above. Restrictions on the acceptance of telephone bets are also imposed.

Identifying market failures

We have identified possible objectives of anticompetitive restrictions as to include:

- ensuring the integrity of racing and betting activity;
- economic development of the Victorian racing industry;
- protection of government revenue;
- limiting criminal activity; and
- ensuring economic efficiency through the protection of economies of scale in totalisator betting.

It is an accepted principle that correction of market failure is a primary rationale for government intervention in markets. While not explicitly couched in terms of market failure it is possible to see most of these objectives as addressing some perceived failure of markets, if left to themselves, to deliver outcomes that maximise community welfare.

Integrity and probity in racing and betting activities are important in terms of consumer confidence. If punters feel that a particular race or event is fixed they will be less inclined to bet. Uncertainty over the integrity of the

racing industry may therefore spill over to the betting industry, leading to less betting activity than what might be considered optimal. Government taxation revenue would also be reduced. The establishment of a regulatory framework is a means of addressing this consumer confidence problem by allowing open scrutiny of the workings of the racing and betting industry. Restrictions on non traditional codes such as Arabian horse racing may be seen as a way of protecting the traditional codes from possible spill overs arising from improper activity in these other codes.

Economies of scale occur where there are large fixed costs relative to variable costs. In the context of the betting market, the operation of a network of betting agencies is one potential area where economies of scale could exist. In the presence of economies of scale in network operating costs, restrictions to entry may be desirable to avoid the cost of network duplication and the fixed costs associated with it. However, these may be overcome in some circumstances through third party access arrangements.

A further aspect of economies of scale occurs in terms of totalisator betting where larger pool sizes are more attractive to players. Empirical research in the United States showed that the scale of lotto games (the pool size) had a positive impact on sales per capita (Cook and Clotflelter 1990). This means there will be a tendency for a single totalisator to dominate. Restrictions on entry are potentially able to lead to efficiency gains by avoiding the cost of unsuccessful entry. The AHA-LCA contend that economies of scale in terms of the pool size are not present in the case of fixed odds betting.

The nature of racing 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. As such, it is possible that betting service providers could 'free-ride' on the racing industry, taking bets on races without contributing to the costs of running them. Such a situation could lead to there being too few race meetings and a smaller racing industry.

The requirement for TABCORP to have an agreement with the racing industry could therefore be seen to be addressing this free-rider problem. It is, however, difficult to interpret the arrangement whereby the racing industry receives a share of TABCORP's *gaming* revenues as being consistent with this interpretation. It is more in line with an attempt to allow the racing industry to benefit from taste changes in the community and from deregulation of other gambling.

Licence fees on bookmakers, imposed by the VRC, HRB and GRCB could also be seen as addressing free rider issues. The Victorian Bookmakers Association strongly agrees with this interpretation and adds that the

contribution of bookmakers in terms of turnover tax, 'on-course ambience' and the supply of betting odds mean that bookmakers do not free ride on the racing industry.

While market failure is a principal reason for intervention, other factors may motivate direct government intervention in a market. Chief among these other factors is the desire to curb socially undesirable activities such as criminal activity associated with illegal gambling. The objectives for restrictions on betting imposed under the *Lotteries, Gaming and Betting Act 1966* would seem to fall into this category of non-economic (non-market failure) objectives.

The benefits of addressing market failure arise primarily through improved resource allocation — that is, resources are dispatched by the workings of the market to the sectors that offer the greatest return to the community. However, there are also other benefits in the form of regional development or income distribution that may arise as a result of government interventions. Where appropriate, these are discussed further in the next chapter, which examines the costs and benefits of the current restrictions on competition.

5 Benefits and costs of regulation

Restrictions on the supply of racing products

A substantial part of the meetings, discussions and submissions to the review have been about the obstacles posed by existing arrangements to the supply of additional racing products. While to some these arrangements were seen to provide benefits to the existing industry, for others they raised costs by unnecessarily restricting consumer choice. National Competition Policy requires that for restrictions to continue to apply, the benefits should exceed the costs.

Benefits of excluding other racing codes

On the benefits side, two main aspects arise. Firstly, limits to the number of codes makes it easier to manage risks, and secondly, it avoids the potential problems of cross subsidisation and resolving conditions of access.

Restrictions moderate the costs of managing some key risks

Racing poses a number of probity and 'quality of product' risks, both as a sport and as a basis for betting. Submissions that supported the existing system contended that these risks can be more effectively managed by restricting racing as a betting platform, so that racing is conducted in accordance with recognised rules and under the regulation of a recognised, existing, experienced body with the expertise to undertake racing supervision and integrity assurance functions. According to this view benefits flow from the continuing ability to provide quality assurance surrounding events to the benefit of certain racing and betting participants, including:

- owners, trainers and jockeys, whose rewards depend in part on fair outcomes from the staging of events that are conducted to high safety standards;

- punters, who create a demand for betting services and whose confidence in the racing or sporting product as a betting platform, and into the probity of those who produce it, is critical; and
- betting service providers (TABCORP, TABCORP outlets, bookmakers) who sell the betting services and depend on the confidence of punters in the fairness of the underlying event.

Current legislation substantially favours existing racing codes to access *all* of these benefits of the current regulatory structure. By doing so, it may broaden participation in *existing* codes and help to shore up the demand for betting on traditional racing, at the expense of those who wish to see other products offered as the basis for betting and, in particular, as a product for off-course totalisator wagering.

The Greyhound Owners, Trainers and Breeders Association submitted that the lifting of restrictions on the supply of racing products would deplete the pool of money available to finance existing racing.

There is widespread acceptance that participants and punters alike are unlikely to support events that are ineffectively regulated if this weakness is widely known. An elaborate and experienced regulatory framework already exists for the three codes (a network of stewards, racing officials, drug-testing facilities, handicappers and associated racecourse infra-structure).

However, to justify continued restrictions on other codes, it would need to be established that regulatory standards for these presently excluded codes would dilute the reputation of, and confidence in, the probity and integrity of existing codes. If such adverse effects are likely, then entry prevention could be a way of preserving reputations and avoiding any such costs. Commenting on the Issues Paper prepared for this review in relation to the standards of other codes, the VRC said:

> It is the absence of clear rules and a supervisory body for racing not conducted in accordance with Section 6 (ie. under the rules of the three codes) that creates the need for Ministerial approval. If it were proposed to remove the requirement for Ministerial consent, it will be necessary for the government to either:
>
> (a) designate a controlling body which the government is satisfied has the experience, resources and capacity to provide the necessary integrity assurance in respect of such racing; or
>
> (b) establish a statutory authority to do so.

A new authority would involve establishment and operating costs. Racing Victoria submitted that the establishment of other codes depends on the ability of those codes to meet the costs associated with the supervisory and integrity assurance functions without cross subsidisation from other codes. Other codes generally submitted that they had the services and capacity to provide and pay for supervisory services.

Settling questions of access to services and facilities

The use of existing bodies to regulate new codes poses questions about access — questions that need not be addressed if new racing codes are excluded.

If quarter horse or Arabian racing were permitted to race under the supervision of say, the VRC, or if a new umbrella supervisory body were created but the services of existing personnel and much of the existing infrastructure (courses, training facilities etc) were used to effect quality assurance, there would be a question of who would pay and how much. On this issue, the VRC in responding to the Issues Paper for this review submitted:

> It is the view of Racing Victoria that the funds and resources of the Victorian thoroughbred racing industry must not be used to subsidise the conduct of other forms of racing or of racing by organisations other than the licensed racing clubs.

The 'resources' of the industry now include the self-regulatory infrastructure that the clubs have developed over time. If new codes were to access this regulatory and physical infrastructure, there is a concern by existing operators that they might seek to do so without paying appropriate fees. Conversely, potential entrants might equally be concerned about the prospect of paying too much. An 'access' fee and an ongoing 'regulation fee' might have to be imposed on any newly admitted code seeking regulation by the VRC or other bodies. Who should set such fees and at what level, is complicated by the large element of 'self regulation' under the present system. Possible options for this are explored in the following chapter.

The Victorian Arabian Jockey Club (VAJC) submitted that some owners of existing racing infrastructure would like to welcome Arabian racing, in part to absorb their own access capacity. However, according to the VAJC, VRC directives will not permit them to do so. The VAJC also submitted that much of the existing infrastructure has been developed by the government-owned Racecourse Development Fund, rather than the racing industry itself. This may be so. However, the Racecourse Development

Fund (which ceased in 1994) operated as a government trust fund, sourced from betting turnover on the existing racing codes.

Avoiding putting the existing racing industry at risk

Perhaps the major benefit claimed for arrangements that raise substantial entry barriers to other forms of racing is the contribution such barriers make to sustaining the existing industry. Annual betting turnover was $3 billion in 1997-98. And some 33 000 people were employed at the time of the last comprehensive review of the industry, when it was estimated that racing contributed $590 million to Victorian GDP. The benefits in terms of income, general economic activity and revenue to the government are a significant part of the Victorian economy.

However, if other codes were to compete with and displace the existing codes, those new codes would also employ people and generate turnover. It might as validly be argued that the costs of restrictions are the foregone employment and turnover opportunities associated with other forms of racing. While such a switch in activity might mean adjustment and change for some people, for others, opportunities and growth would be involved. As the AHA and LCA submit:

> …artificially isolating the authorised codes from competition is against competition policy. If the public really wants the three codes then there is no threat (to existing codes). If the public likes the alternatives, then the market should decide. Any adverse impacts on government revenue from a shift in consumer preferences are not appropriate considerations for a competition policy review. At any rate, it is a spurious argument that a rise in the popularity of alternative codes would reduce government revenue. Any justifications that can be found for the argument are readily countered with the more likely increase in revenue that variety and competition brings.

The commercial viability of other codes is currently not tested. They could grow and displace other codes, which would be a change but would not diminish economic activity. Or they might complement other codes. Only if inferior regulation of new codes occurred and inflicted damage on the reputation of the whole industry, need there be a threat to overall activity levels. The ARQHA and the VAJC have presented some evidence of the strength of their respective codes in international markets. They appear confident that similar benefits could be expected were they permitted to effectively launch their codes in Victoria. But the outcome would be a question of competition following the removal of restrictions that currently 'protect' the existing industry.

Moreover, the 'protection' effect needs to be seen from the National Competition Policy perspective whereby such competition should be allowed to run its course unless the benefits of the restriction exceed the costs.

Costs of excluding other racing codes

The costs of barriers to entry for new racing codes concern benefits foregone for consumers and other segments of the racing industry.

Both the ARQHA and the VAJC have suggested benefits from a modification to legislative arrangements that would permit their codes to race on a commercial basis. Complementarity rather than competition with existing racing and the gambling that accompanies it, is stressed. The ARQHA, for instance, submitted that quarter horse and thoroughbred racing coexist with no down-side effects for either industry in North America, Mexico and Brazil. The review team sought and obtained information on the joint regulation of thoroughbred and quarter horse racing from the American Quarter Horse Association which revealed that both breeds frequently share programs.

The ARQHA has an established National Licensing and Registration System for recording horses, owners, trainers, jockeys, stable personnel, colours etc. It maintains a stud book. It wishes to offer a form of racing popular in the United States that would require the construction of new dedicated tracks — one in each state. It is not clear whether disused existing race track sites are proposed. By scheduling daily twilight meetings using a different breed of horse carrying jockeys at weights between 57 and 62 kg and with races over distances up to 800 metres, the Association would offer a different form of racing. The ARQHA expects quarter horse racing to be well suited to television and attractive to the wagering public, which is denied this choice at present.

The ARQHA submitted that it would only be able to offer such racing on competitive terms if it too could enjoy the kind of benefits that the established codes get through some arrangement like the Joint Venture Agreement, which would give it some access to wagering revenue. The ARQHA suggested that legislative change would need to be made to ensure the rebate on wagering from TABCORP is returned to their code. This suggestion raises a number of issues in the context of the Joint Venture arrangement between TABCORP and VicRacing. These matters are addressed in chapter six.

The ARQHA also considers that the present export trade to the United States would benefit significantly with the opportunity to race regularly. Purported benefits include:

- enabling the quarter horse industry to sell pictures and film of quarter horse racing to the US; and
- improving bloodlines through having more racing, and racing the fastest with the fastest, given that the key to successful racing is speed.

The VAJC has different proposals for its breed that would involve opening up existing thoroughbred meetings to include Arabian events. However the ability to participate on this basis would require the VRC to open up the stud book to non-thoroughbreds.

By excluding Arabian racing at existing licensed club meetings, the VAJC contends that the following benefits are being foregone.

- The existing racing infrastructure suffers from excess capacity which Arabian horse racing could help to fill especially in the summer season.
- A larger female interest and following at race meetings would be provided because of the much higher participation rate of women in breeding Arabian horses and potentially racing the breed.
- The heavier weights carried by these horses would mean longer careers for jockeys.
- The increased pool of horses in work would enhance the opportunities for the full range of racing support personnel.
- The purported higher ratio of 'winners from favourites' for the breed would enhance wagering turnover.
- There would be opportunity to sell the racing product overseas to wagering markets where the Arabian breed enjoys a high level of support.

In responding to the Discussion Paper, Racing Victoria submitted that the possible costs of restrictions identified were speculative and were not to be compared with the acknowledged and quantifiable benefits of the existing racing industry.

The review team is not persuaded by this argument for two main reasons. First, the fact that restrictions on competition have led to the entrenchment of a particular industry is an extremely narrow definition of benefit. Such a narrow definition could be used to justify the most egregious restrictions.

Second, Racing Victoria contended that the costs of the restrictions identified in submissions and by the review team are 'wholly speculative'. The costs Racing Victoria have identified have not been quantified. But the onus is on proponents of restrictions to demonstrate that the benefits exceed the costs, and in this context, Racing Victoria has not identified relevant benefits of a less speculative nature.

Racing Victoria has pointed to the size of the industry supported by existing codes without recent figures to support that — although there is little to suggest that the industry has shrunk significantly since the early 1990s, when it was subjected to measurement. More significantly, the submission did not produce from countries where the codes in question coexist, examples of adverse spill over effects from one type of racing to another.

Assessment

In assessing the costs and benefits of existing access arrangements, Racing Victoria submitted that consideration must be given to the effect on the regulatory arrangements for existing codes if changes were made to allow the entry of other racing codes. They submitted that changes to legislative restrictions ought not to impose new restrictions or obligations on, or otherwise disrupt the operations of, the existing controlling bodies which may put at risk their ability to continue to meet the integrity assurance objective of the legislation. Racing Victoria considered that the use of its regulatory system for purchase by other codes would lead to conflicts of interest, given the VRC is a code specific organisation.

The ARQHA also expressed concern at the notion of being regulated by the VRC, submitting that they have 'no interest in that option'.

However, the form of regulation that might govern other codes need not necessarily be purchased from existing controlling bodies. Provided that integrity assurance was given due prominence and the current level of integrity assurance was used as a benchmark, there is no inherent reason to believe that the current level of integrity assurance would be compromised. Alternative means for accommodating other codes are discussed in chapter six.

The argument that other racing codes should be excluded to avoid their cross subsidisation by other codes seems to be based largely on the substantial elements of cross subsidy already present in *current* arrangements. The profit sharing agreement of the Joint Venture links a body with profitable gaming interests to the racing industry. It ensures that

some gaming revenue sourced from the expenditure of TABCORP's electronic gaming machine patrons contributes to paying for the costs of supervising and ensuring the integrity of licensed racing. And it does not ensure that the 'price' which clubs receive for the racing product they provide is fully reflective of the different relative costs of providing that product by the three different codes. While as submitted by Racing Victoria this is the outcome of commercial negotiations between the affected parties, it evades the proposition that cross subsidisations, whatever their source, require justification, as they work against efficient resource allocation.

However, the fact that these provisions and cross subsidies apply with respect to existing codes, does not necessarily mean that they must apply to new arrangements.

The VAJC submitted that thoroughbred racing has been largely funded by the revenue from the Racecourses Development Fund. The VAJC consider there is no basis for concluding that revenue from this body was intended to be used for the exclusive development of the thoroughbred racing, and to a lesser extent, the harness racing and greyhound racing industries. However, the Racing Development Fund, while it existed, was intended to be used for the three codes and comprised only a small amount of the total funds used for industry operations, the vast bulk of which was funded from the distribution of funds from TABCORP.

The force of the 'complementarity' argument — that additional codes would help and not threaten existing ones if there were no restrictions to racing — is difficult to evaluate. However, it is more likely that potential entrants would generate either increased employment and incomes, or a better utilisation of existing resources, than reduce or harm the existing level of employment and income generated under the existing structure.

The fact that no one really knows what would happen is one of the primary reasons for letting competition sort the matter out. So long as the new codes are run well and can offer integrity, the answers can be found in the very objective of competition policy. The underlying assumption of competition policy is that consumers and producers are well able to resolve through free and voluntary exchanges just what the shape and size of an industry — including the racing industry— should be. It would be one thing if shoddy management and poor supervision by one code were to put all codes at risk; it would be quite another if the risks posed for one code by another grew out of the fact that one of them proved to be the more efficient and more popular.

Restricting racing products to non-proprietary racing

Benefits of excluding proprietary racing

The VRC identified in its submission to the Issues Paper to this review that there are a number of benefits that it considered accrued from excluding proprietary racing. These include:

- the removal of incentives to manipulate race results by those conducting events;
- the avoidance of the supervisory costs that are incurred for instance in certain American states whose gambling authorities closely supervise proprietary racing to prevent such manipulation; and
- a maximum return to the 'true equity holders' in racing — the owners who race horses (and greyhounds) — as the club system returns net revenues to these parties and not to shareholders.

The Victorian Bloodhorse Breeders' Association submitted that horse population numbers are currently insufficient to support TeleTrak racing were it to commence prior to 2000. According to the Association, in order to compensate for this, there would need to be fewer race meetings (which would threaten country race meetings and clubs) until such a time that the horse population could be increased. And anything that affects horse numbers affects TAB turnover, which affects revenue distribution to clubs.

TeleTrak on the other hand said there is no shortage of horses. In a competition sense, these matters are neither here nor there. The supply of horses and their allocation among codes is something for competition to resolve. For the new forms of racing to be able to bid horses away from existing forms the new form would need to be very popular. And if they are popular then these are good arguments for letting them do so, not for stopping them.

Costs of prohibiting proprietary racing

While the *Racing Act 1958* excludes all forms of proprietary racing the main proposal affected at present is that of TeleTrak. The TeleTrak proposal is to present straight line racing from a dedicated track through internet services tendered out to allow a range of betting service providers (including Australian TABs and overseas wagering services) to offer these events to punters. In return, TeleTrak would receive commissions based on the betting turnover on its races. Unlike quarter horse or Arabian racing the

proposal does not rely on a different breed being raced. Rather, thoroughbred racing would be presented in a different way and by a for-profit organisation.

The exclusion of proprietary racing by preventing the development of TeleTrak in Victoria has, according to TeleTrak, the direct cost of denying Victorian off-course punters the opportunity to bet on a form of racing that TeleTrak submitted is better adapted to television presentation than circuit racing. By failing to allow the expansion of consumer choice in this way, it is argued overall wagering outlay in Victoria is likely to continue to lose ground to other forms of gambling and to wagering services provided outside Victoria.

TeleTrak racing is intended for regional areas, given such racing does not require a spectator audience. The regional impact of TeleTrak Racing is therefore *purported* to be significant. The Central Goldfields Shire Council submitted that the TeleTrak group calculated a TeleTrak facility in the shire (or any other shire) would mean $20 million in capital investment, up to 1000 jobs and approximately $350 000 weekly turnover from the site. Administrative arrangements between the shire and TeleTrak are said to result in a further 100 executive and/or administrative jobs and the council would receive a substantial annual service fee. TeleTrak racing would also have exposed the shire to international audiences. Independent costings of the impact of proprietary racing have not been bought to the attention of the review team.

Other suggested benefits of TeleTrak racing identified by the National Institute of Economic and Industry Research study on TeleTrak in 1997 include:

- increased consumer choice, as to type of betting product and better access to betting from home;
- increased utilisation of existing breeding stock, as the higher 'pure chance' factor in this racing type reduces the need to select more expensive, well bred stock; and
- the opportunity to utilise a strongly growing medium for betting services, namely the internet (TeleTrak, in its submission to the review, forecasts that five years from commencement, 93 per cent of wagering sales would be generated from outside Australia).

Assessment

There appears to be no inherent reason why a privately owned and for-profit company would not have a strong incentive to offer a high integrity racing product. TeleTrak contended that

> …it's the value of proprietary licences to the commercial sector that ensures probity. It is the responsibility of directors and executives to safeguard its shareholders and their investment. It is the requirement of corporate law that individuals take personal and fiduciary responsibility.

There may be an issue of convincing prospective shareholders and punters in particular of these standards, particularly before operations have been established and a reputation has been built. While there seem to be few NCP relevant arguments in principle for excluding TeleTrak, there are very strong arguments for ensuring high standards of integrity, and that the costs of meeting and demonstrating these standards are intended to be met by the provider. TeleTrak submitted that 'whatever the cost, it is a cost of doing and remaining in business'. The options for regulating proprietary racing are explored in the following chapter.

It must be acknowledged that a self regulatory model for proprietary racing is not appropriate. Incentives may exist for proprietary owners to manipulate races in the interests of profits and all models examined by the review team involved independent external regulation. Such regulation would be costly if it could not be supplied by the existing structure. The clubs would have little incentive to supply it.

The issue of owners' choice may be an important one. The question arises whether thoroughbred owners, given a choice to supply starters to club racing or proprietary racing would be able to force high standards of horses (or low or inappropriate standards) on proprietary racing and also extract adequate returns by way of fees and prize money. There can be no certainty that the quality of horses will not be affected by the introduction of proprietary racing. However, there is also no reason to suppose that the market would not be the best judge as to whether that might occur, or be tolerated.

The issue of whether proprietary racing could make an adequate return for the business and provide attractive returns to horse owners depends largely on the size of wagering on proprietary events and the share of these wagering revenues that would flow back to this sector. Proprietary racing operators competing with the club based thoroughbred program would either require breeders to supply additional quality bloodstock for the purpose or would have to compete horses away from the traditional

program. Either way the bloodstock industry would seem to benefit in the medium to longer term. It is acknowledged that there may be some short term start up difficulties as *trained* horses are sourced from the existing horse population.

The principle that applies to other racing codes regarding the net benefits of market entry also apply to proprietary racing. The decision as to whether TABCORP should allow wagering on proprietary racing remains a commercial decision between the partners to the Joint Venture. But as discussed in chapter six, the implications of the Joint Venture agreement can be significant for competition.

Restricting activities of jockeys and other personnel

Benefits

The main benefit attributed to excluding other codes of racing other than that provided by the licensed clubs from making use of licensed jockeys and trainers is the quarantining of club racing from association with other codes and types of racing not under the supervision of the controlling bodies. The VRC submitted:

> Quite clearly the participation by trainers or jockeys licensed by Racing Victoria in racing that was not conducted or supervised in accordance with the integrity assurance requirements may, in the event of any allegation of dishonest conduct, have the potential to call into question the integrity of Victorian thoroughbred racing conducted under the Rules of Racing in which such trainers and jockeys also participate.

These issues may be influenced by the dual role of the VRC as a regulator and a supplier to the extent that jockeys need to be licensed by the VRC to race for existing racing codes. While the VRC does not employ jockeys as such, its licensing responsibilities are integral to jockeys' employment. Under current arrangements, the scope for the VRC and other racing codes to 'bargain' for access to jockeys etc is likely to be limited if it is accepted that the VRC's role of supervising and licensing jockeys is part of its non-negotiable regulatory function. In the absence of an independent regulator there is little basis for outside help in reaching agreement on conditions of access and fee rates for VRC regulated jockeys, if in fact access fees are the central issue. Racing Victoria submitted that the participation of jockeys and others in alternative racing codes depends entirely on the demonstrated integrity and probity of other codes. Unless this can be

established no access fee would be acceptable to the existing controlling bodies. Moreover, occupational restrictions are embedded in the 'tried and true' Australian Rules of Racing, amendments to which require multilateral action across states.

Costs of restricting licensed jockeys and trainers activities

As things stand there are relatively few opportunities that licensed jockeys and trainers forego and so it could be argued that the costs to them are relatively minor. However, there is circularity to this. Entry by other codes and forms of racing outside the auspices of the clubs is made difficult without access to experienced professional jockeys and trainers. Effective entry is unlikely without access to some share of off-course wagering revenues. This is made unlikely by the Joint Venture agreement.

The costs imposed on these occupations depend on any unrealised potential of other racing, which depends partly on this restriction and partly on the other parts of legislation that restrict entry.

Assessment

It is impossible to test whether the unrealised potential of other racing, and any foregone opportunities for owners, trainers and jockeys alike would offset any possible adverse effects of entry on the integrity, consumer confidence and consequent activity levels of the existing codes.

Whether the time will come when respective codes reach a level of cooperation and confidence in each other such that jockeys and owners can switch back and forward, only time will tell. It would be safe to say that such a time is some way off yet. It makes little sense to force such cooperation. While it is one thing to question an arrangement whereby the existing code has the call as to whether other codes are well supervised, it is quite another to insist that it cooperate at all levels.

Limiting control to the controlling bodies

Benefits

A centrepiece of the *Racing Act 1958* is the control that it presently provides to the controlling bodies over their respective codes. While this limits the

freedom of individual clubs to operate in an independent fashion it also provides benefits.

- *Avoiding fragmentation between and within racing codes*. TABCORP submitted that the racing industry would be disadvantaged should any fragmentation or partitioning of existing racing occur beyond the existing code structure.
- *Ensuring probity*. The *Racing Act 1958*, in legislating that racing in Victoria must be conducted under the VRC, HRB and GRCB Rules of Racing, entrenches a set of 'tried and true' regulations that have long governed the racing industry. This implies a high degree of probity with regard to such established rules.
- *Minimising conflicts of interest*. Racing Victoria submitted that the current arrangement of code-specific controlling bodies minimises conflicts of interest because each controlling body has responsibility for only one racing code. Conversely, TABCORP submitted that the importance of avoiding industry fragmentation is such that were other racing codes to be licensed, they should be subject to the supervisory and quality assurance responsibilities of the existing controlling bodies.

Costs of limiting control to the controlling bodies

The exclusion of other codes is potentially one of the costs of limiting the control functions to existing controlling bodies. The VAJC raised the appropriateness of a breed specific organisation, such as the VRC, managing the racing product in such a manner that prevents existing clubs from conducting alternative breed races.

Costs for country racing may also be entailed. While country racing might benefit from the quality assurance provided by the controlling bodies, and receive income indirectly from the Joint Venture relationship, the inability to expand their racing program is considered by some to penalise regional areas. Racing Victoria submitted that these concerns are misguided:

> There is no benefit associated with conducting uneconomic race meetings, which is the inevitable result of the uncoordinated expansion of the racing program.

The Thoroughbred Racehorse Owners Association (TROA) have challenged whether existing arrangements adequately deal with conflicts of interest where appeals against stewards' decisions are heard in the first instance by the clubs that appoint them. TROA has also questioned the efficiency implications of a control structure which gives principal club

status to the VRC rather than to a separately constituted industry board drawing on all segments of the industry.

Assessment

The benefits and costs of centralised regulatory control include those associated with 'industry' matters relating to product supply, and 'revenue, supervisory and quality assurance matters', which are the main object of the legislation.

With regard to supply, the review team considers a conflict of interest to be more severe under existing arrangements — where regulatory control acts to prevent entry by other codes — rather than under circumstances where other racing codes were permitted entry.

With regard to revenue, supervisory and quality assurance matters — with the notable exception of TeleTrak — the review team did not hear from others critical of the fashion in which the controlling bodies exercise the supervisory and quality assurance functions for the *existing* racing industry.

However, these issues are linked. The management responsibilities of the racing controlling bodies creates for them a possible conflict of interest, as they 'manage' only for existing codes, which are then the only ones exposed to the above quality assurance measures. The consequent net costs imposed for other racing codes then become part of the costs of these regulatory arrangements for the racing industry defined more widely. Because the industry is both self regulating and based on within-state co-operation, it is largely an internal matter as to the efficiency and equity of the industry arrangements that have developed under the mandate given to the VRC, through the legislation, and the other two controlling bodies. However, the review team notes that criticism of efficiency within the industry has been limited, in submissions to this review, to the thoroughbred code. The regulatory framework differs there from the other two codes where separately constituted control boards have responsibility for industry and regulatory matters.

While current arrangements leave open the possibility for conflict of interest within the confines of a co-operative model for the racing industry, this is an issue best left to be addressed by a separate review with a single purpose.

Restrictions on bookmakers operations

Benefits of restrictions on bookmakers

As chapter 4 suggests, the overriding objective of setting up a registered bookmaker and clerks system was to confine this activity to a group whose transactions are open to scrutiny (and taxation) and whereby breaches of conduct that prejudice the interests of the betting public or the racing industry can be dealt with by the BBCRC. Integrity and probity, and confidence in that integrity and probity, are important for both the racing product and the betting that occurs on that product.

The registration of bookmaking personnel allows the BBCRC to exercise a screening function and enables it to exclude persons it judges to be unfit. To the extent that this is effective and to the extent that illegal SP operators are suppressed, there is a benefit in reducing the risks of criminal activity.

The obligation for bookmakers to lodge a substantial security bond with the VBA is intended to reduce the risk that default will leave punters out of pocket. Like other professions when money is held in trust — such as solicitors and real estate practices — some form of guarantee fund helps to boost consumer confidence and reduce the risks of financial damage in the event of default. However, defaults have not been eliminated as recent experience has shown.

TABCORP submitted that the restrictions on bookmakers also have benefits for state revenue, and for the racing industry. Victorian bookmakers' principal competition is TABCORP, which is taxed at an effective rate of 4.5 per cent of turnover compared with bookmakers' tax at 2 per cent of turnover. However, comparisons of taxation are complicated by the fact that TABCORP is taxed on revenue and bookmakers are taxed on turnover. TABCORP submit that none of the bookmakers betting revenue is paid to the racing industry to pay for the racing product. This is not strictly true, with one third of bookmaker turnover from country racing redirected to the industry. It is true, however, that racing is funded principally by the TABCORP Joint Venture through program fees and product fees paid to racing. These approximate 5 per cent of turnover. While bookmakers accept off-course bets by telephone, TABCORP submitted that bookmakers make no contribution to radio broadcasts, SKY CHANNEL, Pay TV or daily press form guides.

The TABCORP submission also addressed the idea of reducing minimum bets for bookmakers. It said that its minimum bet is 50 cents, which is uneconomic and is effectively subsidised by higher value bets. According

to TABCORP if telephone wagering revenue and, in particular, bets that comprise between $10 and $200 are transferred from the totalisator to bookmakers:

a) TABCORP may be forced to increase the minimum telephone bet considerably more than it has already done ($2 minimum during peak demand hours);

b) there will be a reduction in tax revenue; and

c) the contribution to racing that would be derived from the revenue will be lost.

There do not seem to be very powerful reasons for restricting bookmakers access to this segment of the market — a segment that is regarded as profitable because these punters do not carry out the same intensity of research about their bets.

Costs of restricting bookmakers

The VBA argues that both bookmakers and the public are unnecessarily disadvantaged in a number of ways by existing restrictions. It states that the legislation and regulations combine to put Victorian bookmakers at a competitive disadvantage to other betting service providers including TABCORP and interstate bookmakers.

With regard to interstate bookmakers, the VBA submitted that no minimum telephone betting requirements apply to sports betting in New South Wales, South Australia, Tasmania, the Northern Territory or the Australian Capital Territory, whereas there is a $200 limit in Victoria. According to the VBA, this competitive disadvantage is added to by turnover taxation at rates for all Victorian bookmakers that are unfavourable compared with other jurisdictions.

The *Lotteries Gaming and Betting Act 1966* prevents bookmakers displaying real time betting odds to clients via the internet and other electronic opportunities, a restriction not imposed on bookmakers in the Northern Territory, is also of concern to the VBA. The VBA submitted that real time odds are also allowed to be transmitted using media radio press in the Northern Territory. It is certainly the case that various states have different permissions for communicating racing and sport real time odds. The VBA does not argue for indiscriminate communication of their betting odds, which is the bookmakers' product that they effectively own. It does, however, wish to communicate its product to their customers. Bookmakers are currently unable to do so using the internet. These restrictions result,

according to the VBA, in wagering turnover in Victoria being lost to other jurisdictions.

Bookmakers can only take bets while located on licensed racecourses during, and three hours either side of, a race meeting. The public, according to the VBA, has limited opportunity to place bets with the person of their choice and for the amount of their choice under the system of fixed odds credit betting.

It should also be noted that while separate licences exist for sports bookmakers (and this approach is supported by the VBA), the on-course restrictions mean that they are typically unable to field at the sporting events themselves but are confined to accepting telephone bets while fielding on a racecourse.

Similarly, the minimum telephone bet of $200 on metropolitan events (compared to the opportunity to bet as little as fifty cents with TABCORP) prevents bookmakers from testing a segment of the market for their services. Those who wish to bet on races in smaller denominations but at fixed odds have no choice but to incur the cost of travelling to the course or using some other less preferred betting medium. While TABCORP has minimum betting requirements with regard to sportsbetting and telephone betting, they are marginal and commercially driven, not legislative restrictions.

Bookmakers argue that by excluding access to that segment of the market that would prefer to bet fixed odds by telephone for a small stake, they are being forced to behave increasingly as gamblers rather than as bookmakers. That is, without smaller punters who would make it more likely that bets are placed on most starters in the field, bookmakers are frequently confronted with a market dominated by professional punters backing just a few starters. This threatens their long term viability.

TABCORP do not attribute the long term decline of bookmakers to the restrictions that they face but rather to the innate advantages of parimutuel wagering conducted under an exclusive licence.

The VBA considers race bookmakers are being taxed twice. The need to cover themselves against professional punters increases the need to lay off on the tote. Bookmakers are taxed on their turnover and the tote net revenue is also taxed. But the review team understand that bookmakers frequently lay off with other bookmakers, reducing the force of this argument.

Assessment

Because bookmakers and TABCORP are taxed on a different basis, it is difficult to establish comparability between the arrangements under which both operate. Bookmakers in some respects operate at a disadvantage to TABCORP in Victoria and interstate and international bookmakers. The justifications for subjecting bookmakers to rigorous registration requirements and bond guarantee systems is very much in line with the objectives of the legislation to prevent illegal bookmaking activity and thus remain appropriate.

Some other aspects of the restrictions on bookmakers seem to derive their justification from the need to protect the exclusive wagering position of TABCORP. These arrangements make it difficult to assess the costs and benefits of the restrictions on bookmakers because they in part involve interpretations of the dimensions of TABCORP's exclusive licence. Any challenge to those rights granted by the licence might have implications for the balance of costs and benefits of the restrictions on bookmakers. Obviously the extent to which bookmakers' activities impinge upon TABCORP's exclusive arrangements are critical in defining that challenge. The VBA has presented a fair case that the two groups service different client groups in many instances, with bookmakers servicing fixed odds credit bettors and TABCORP catering for parimutuel cash bettors.

It would seem that only on the very broadest interpretation of exclusivity could an objection be raised to allowing bookmakers to incorporate. It does not necessarily imply that TABCORP's exclusive licence has been breached. On the one hand, there is the concern that incorporation should be avoided to protect the stand alone operator in an industry characterised by a diverse group of small independent bookmakers with little or no market power. On the other hand, bookmakers should be able to take advantage of increases in pool size and capitalisation levels. Given that the onus is on justifying the restriction rather than its removal, there appears to be insufficient reason why the market should not be able to determine its own structure. It is possible that any concentration in the number of bookmakers may be mitigated by consumer preferences to 'deal with the boss' and build a rapport with an independent bookmaker.

Whether or not restrictions on bookmakers represent a significant loss of amenity for the betting public depends on the demand for bookmakers' services in certain areas of betting (AFL games, cricket matches and other major sporting events) and in a manner of betting. Removing the restrictions on bookmakers would enable them and the public to test that demand. The experience of the interstate bookmakers who take telephone

and internet bets suggest that demand for such services may well be significant.

It would seem to be the case that restrictions on bookmakers' hours of operation are becoming less necessary. The review team has found little evidence that the public interest is best served by their maintenance, particularly given that some restrictions are anti-competitive for Victorian bookmakers compared to their interstate counterparts.

In the case of the requirement that bookmakers operate on-course, the benefits of removing this restriction are less clear. While consumer choice would be enhanced via the operation of bookmakers off-course, there is a significant problem in how bookmakers would be effectively monitored. In the absence of any firm suggestion of how this might be achieved and at what cost, there would seem to be a case for some locational restrictions to be maintained. In the case of sports bookmakers, the VBA has suggested in might be appropriate for bookmakers to operate from racecourse Tabarets with computer links to sporting venues. This suggestion would seem to be consistent with increasing consumer choice while maintaining monitoring costs at near their current levels. The costs of effectively monitoring unfettered off-course operations of bookmakers may, however, be substantial.

Still, an assessment of the net benefits of the removal of bookmakers restrictions must allow for consideration of TABCORP's retail agents. The Victorian Off-Course Agents Association have submitted that the introduction of off-course bookmaker betting would seriously threaten existing outlets. This assumes, however, that competition would draw business away from existing outlets rather than create additional demand. There is no evidence to substantiate that this may be the case. It relies on an assumption that there is a high level of substitutability between fixed odds and parimutuel products.

Exclusive off-course wagering licensing arrangements

Benefits of TABCORP's exclusive licence

The benefits of legislation under review relate to the *exclusive* licence status enjoyed by TABCORP's wagering business under the *Gaming and Betting Act 1994* and the way in which this combines with the Joint Venture

requirement to feed back significant wagering revenue to the three existing codes of racing.

The benefits of providing an exclusive licence for 18 years to conduct off-course totalisator betting, for which TABCORP paid an estimated $597 million, fall into five broad categories:

- benefits to punters;
- benefits to state revenue;
- benefits to the provider industry and shareholders;
- social benefits; and
- benefits to racing.

The last of these is not delivered by the exclusive licence alone, but through the requirement to enter into a Joint Venture agreement with VicRacing, which resulted in benefits accruing to racing.

Some of these benefits are related to the profitability of TABCORP, derived in part from the exclusivity of TABCORP's licence. Removing the exclusivity of the parimutuel licence could reduce profitability and therefore the returns to the abovementioned stakeholders. TABCORP in its prospectus to intending potential investors drew attention to the exclusivity of the wagering licence and the term of that exclusivity (pp. 10, 29 and 104). It can be safely assumed that investors took that into account in the price they were prepared to pay for shares. In the TABCORP prospectus it was stated that:

> Potential changes which would affect TABCORP's profitability and the value of its wagering and gaming licences include changes to State wagering and gaming tax rates, *the granting of additional gambling licences*, variations to permitted deduction rates and returns to players, and changes to the restrictions on the number, type and location of gaming machines and gaming venues (p. 15).

Central to the decision to grant exclusive licences to off-course totalisator operators in both Victoria and New South Wales has been the advantages of having a large single operator who can take advantage of the economies of scale and decreasing unit costs that characterise a network system with high fixed costs. Exclusivity results in a larger pool of bets, higher turnover, lower unit costs, and higher and more stable dividends for punters. The last of these outcomes of course requires that the licence holder is prevented from exploiting its exclusive right at the punter's expense.

TABCORP and others argue that competitive pressure from other states (especially with TAB privatisation) and other forms of gambling insures this. TABCORP also refer to the product pricing restrictions in the *Gaming and Betting Act 1994* (maximum 20 per cent deduction on any parimutuel product and average 16 per cent over a year) which they consider places TABCORP at a disadvantage to NSW TAB (where the maximum is 25 per cent).

TABCORP attests to a 'natural' tendency for a single operator to dominate even without an exclusive licence (reflecting perhaps decreasing costs and better outcomes for punters from increasing pool size). It is probable but unprovable that this 'natural' tendency extends Australia-wide. Were this the case, there could be a benefit in establishing a long term requirement to protect exclusivity in at least the two major racing states to ensure more than one provider nationwide, if that is considered desirable. That is, to strike a balance between ongoing competition and realising economies of scale.

Benefits to punters

According to TABCORP, punters benefit from the exclusive licence arrangement in a number of ways. Apart from the benefit of the large pool size effect and the resulting stability of dividends, other benefits include an extensive distribution network that is supportable under the exclusivity arrangement giving the punter a large range of options. These include agencies, PubTABs, ClubTABs, telephone, IVR, direct computer input, on-course tote houses, internet, high quality of service through totally integrated betting systems, and financial stability and certainty of payment of winnings.

The AHA, however, dispute this, submitting that TABCORP serves its own interests, rationalising outlets into venues and areas that best suit TABCORP, not punters.

Benefits to state revenue

To the extent that exclusivity supports higher turnover and higher gross profits (the basis for totalisator taxation) Victorian revenues are boosted by the licence, providing benefits to the Victorian economy. (Victoria also received the benefits of the 'licence fee' payment as part of the privatisation sale.) This line of reasoning depends on the idea that wagering tax revenue would be lost to other jurisdictions under a more fragmented system that might see lower wagering turnover in Victoria. The return to the Victorian

government from TABCORP's wagering operations for 1996-97 was $121.2 million. The federal government also received $12.8 million in taxation revenue.

The AHA and LCA dispute these benefits, submitting that state revenue is leaking from Victoria into other jurisdictions due to what they see as a failure of TABCORP to develop its wagering products and attract new customers. They also argue that protection of state revenue is not a valid NCP objective.

Benefits to providers and shareholders

There are some 650 outlets in Victoria. TABCORP estimates that permanent and casual employees received approximately $31 million and outlet operators $42 million in 1996-97. Despite this, the AHA and LCA claim that not one of the 650 outlets in Victoria, which include agencies, PubTABs and ClubTABs would be satisfied with the service provided by TABCORP, with the returns, or with the terms and conditions of their arrangements with TABCORP.

The AHA and LCA submit that 'undoubtedly, TABCORP shareholders have benefited by the company's concentration on share price at the expense of development of its products'.

Social benefits

Off-course totalisator betting, introduced into Victoria in 1961, is said by TABCORP to be largely responsible for a dramatic decline in illegal SP bookmaking. According to TABCORP, the totalisator system as operated in Victoria offers a more attractive product than SP bookmakers would be able to. The contribution of exclusivity to this outcome would rest on how that exclusivity and pool size enhanced the tote product.

The idea of social benefits might also be extended to include the high level of probity facilitated by the exclusive licence and the easier task for the VCGA of scrutinising a single licence holder, albeit one with 650 outlets.

Benefits to racing

Exclusivity works to the benefit of the established codes in Victoria to the extent that it enhances wagering profits and there is a profit sharing agreement under the Joint Venture Agreement. Existing racing codes also benefit from the program fee and the racing product fee paid by TABCORP. According to TABCORP Victorian thoroughbred racing

received $132 million in 1997-98 and all up, the three codes received $180 million. This flow of funds has helped to underwrite 'upstream' activity in Victoria and attract resources into Victorian racing at a possible cost to other states. Of course it is important to recognise that the correct measure of benefit here is an incremental measure — how much better is the racing industry relative to what it would have been in the absence of the legislative restriction.

Because the Joint Venture agreement entitles VicRacing to 25 percent of the profits from the Joint Venture and these profits derive in part from TABCORP's gaming activities, there is some insulation of Victorian racing from any long term decline in wagering in favour of gaming, provided TABCORP's gaming activities remain competitive.

Costs of exclusive licensing arrangements

In ensuring that the gambling public and government can take full advantage of the provision of a single large totalisator operator, the exclusive licence legislation is inevitably related to many of the restrictions identified elsewhere in this chapter. To give full force to the exclusivity provision would mean that nothing should be done that would simultaneously enhance the competitive ability of any betting service provider with potential to attract revenue away from TABCORP.

The exclusive licence and other aspects of the Joint Venture Agreement have very strong implications for various other restrictions on competition, such as advertising and the scope of bookmakers' services with the attached costs of doing so.

Other important costs relate to TABCORP's 'price setting' abilities that result from its protected position in the Victorian market for wagering services. This price setting ability applies to the retail segments of the betting service provider market, as opposed to punters who receive pre-determined payout ratios. However, discussions with professional punters suggests that TABCORP takes steps to ensure punters money is directed towards bets with most favourable payout rates for TABCORP, namely place bets, to take advantage of its entitlement to 'fractions'. The AHA and LCA submitted that TABCORP sets the price it will pay PubTAB licence holders for their services in selling TABCORP's product through their outlets. Such outlets have no such countervailing market power.

The Victorian Off-Course Agents Association also believes the terms of the contract between Victorian TAB agents and TABCORP reflect the strength of TABCORP's monopoly position.

Assessment

The exclusive licence for wagering has benefits. TABCORP's licensing arrangements provide a mechanism to recoup the costs of providing the racing product, which may not occur if there were potential for several operators to run totalisators who would be able to 'free ride' on the racing industry. Each one would have an incentive to understate its willingness to pay for the product — holding back while another pays. This could result in lower quality racing on offer from Victoria. Moreover, size matters, and the parimutuel nature of totalisator betting makes large pool sizes attractive to players. A large enterprise benefits from public perceptions of a positive relationship between size, reputation and liquidity.

Of these, the most important would seem to be the need to guarantee an adequate pool size. This is largely due to the reality that betting resources can be mobile and will move to a more attractive pool size if one is not available locally. The existence of licensing arrangements in New South Wales which ensure a large pool size is of particular concern. The main issue upon which to assess the conditions of TABCORP's exclusive licence therefore lie in the extent to which they are necessary to shore up an adequate pool size in Victoria.

Fixed odds services are not affected by this argument to the same extent, being less sensitive to the size of the pool. Exclusivity for fixed odds products is not strictly part of TABCORP's exclusive licence, although in as much as the *Gaming and Betting Act 1994* exempts TABCORP from the illegal betting provisions of the *Lotteries Gaming and Betting Act 1966*, it does restrict the provision of fixed odds betting products to TABCORP, bookmakers and Crown Casino (primarily sports bets). Opening up the fixed odds market then concerns amendments to the *Lotteries Gaming and Betting Act 1966*, rather than TABCORP's exclusive licence.

While the need to shore up pool size provides a strong case for exclusivity of licence, exclusivity can lead to problems related to market power. In this context, the AHA and LCA submitted that TABCORP's monopoly status allows it to:

> …extract(s) monopoly rents from its retailer customers, which result in the inefficient allocation of resources of the product.

Alternative arrangements for mitigating exercise of market power and for addressing retail agents concerns are addressed in chapter 6. Further analysis would be required to establish the merit of accusations that an abuse of market power exists.

A further manifestation of market power and the costs associated with monopoly is a failure to meet the market. TABCORP's performance in this regard is highlighted below in the discussion of sports betting services.

Restrictions on provision of sports betting services

The *Gaming and Betting Act 1994* allows TABCORP to conduct fixed odds and totalisator sports betting from its agencies under its licence. It can also offer parimutuel or fixed odds services on sports approved by the Ministers for Sport and Gaming. Bookmakers can offer the service by telephone from on-course locations during race meetings. They require a BBCRC-endorsed certification and a licence issued by one of the controlling bodies to do so. The *Casino Control Act 1991* gives Crown Casino the rights to offer the service on its premises. Others are not licensed to do so. Crown's licence does not permit telephone betting.

Benefits of limiting sports betting providers

As with racing, the benefits of limiting the provision of sports betting services is the control of risks to consumers and revenue to the state captured through that control. With regard to TABCORP, the above benefits of the exclusive licence also apply to its sports betting provisions.

The size of these benefits depend on:

- leakage to interstate and overseas providers; and
- capacity of existing providers to 'meet the market' and offer the kind of sports betting services demanded by the Victorian public.

Unlike racing, upstream Victorian sporting activities receive little benefit from the betting that occurs on the sports that they provide, with the exceptions of a nominal fee paid by TABCORP to the AFL.

This stands in contrast to the benefits from sports betting (not necessarily fixed odds) in other jurisdictions. In New South Wales 10 per cent is deducted from the TAB football totalisator and paid to the Sport and Recreation Fund. Similar funds exist in South Australia and revenue is also redirected to sporting bodies in Tasmania.

In 1997-98 the Victorian government, through gross profit taxes on fixed odds sports betting at TABCORP and turnover taxes on sports bookmakers, receives around $700 000 in revenue from the operators

controlled by the legislation. TABCORP totalisator sports betting generated a further $500 000.

Costs of restrictions on sports betting operators

Submissions to the review have suggested that sports betting is an expanding market and that for a number of reasons, including the restrictions imposed by the legislation, Victoria is not capturing its expected share of the market or the tax dollars associated with it. The cause for this concern is supported by the following facts.

- Victoria has a disproportionately low share of the turnover generated by the national sports fixed-odds betting market (14 per cent) with a turnover of $20.8 million in 1996-97.
- While national turnover grew by 49.2 per cent in 1996-97, Victorian turnover only grew by 8.3 per cent. Victoria's market share of turnover fell by 5.3 per cent.
- TABCORP's share of the market's turnover is falling. Although TABCORP's turnover increased from $17.5 million to $19.5 million in 1996-97 (up 11.6 per cent) its market share fell from 17.5 per cent to 13.1 per cent.
- In measuring market share based on gross revenue, Victoria's position appears to be slightly more favourable. Victorian operators netted $2.1 million (19.2 per cent) of the total estimated national expenditure in 1996-97 of $10.9 million. TABCORP attracted the vast majority of the state's expenditure with a total of $2.0 million or 18.2 per cent of the national market.
- Despite these figures, Victoria's market share of national revenue fell from 33.8 per cent to 19.2 per cent in 1996-97. TABCORP's share decreased from 31.2 per cent to 18.2 per cent.
- The market is currently dominated by Northern Territory bookmakers who accounted for 57.3 per cent of $85.0 million of national turnover in 1996-97. From an expenditure perspective, the Northern Territory accounted for 61.0 per cent or $6.6 million. The Australian Capital Territory's bookmakers turned over 18.1 per cent of $26.9 million of the national figure.

Some participants in the review consider existing operators, endowed with protection from other Victorian potential entrants, have failed to fully utilise their licences or to 'grow the market'. Synaval, in its submission has instanced Crown Casino's failure to exercise its own licence. Synaval

suggests that the purpose of the legislation that gave Crown this right was 'most likely to increase the value of the casino licence, to provide added service to casino patrons and also to create some competition in sports betting in Victoria' (which at the time of the casino legislation was restricted to bookmakers). Crown's choice to house a TABCORP sports betting outlet in the venue instead means, according to Synaval that two of the intended objectives of the legislation have not been met and an anticompetitive situation has been created.

The review team heard from Crown Casino that it is uniquely placed to tap a demand for betting that presently goes unserved. Non-Australian residents high roller visitors from overseas may wish to bet on international sporting events from their rooms by telephone while staying at the Casino but, at present, will typically use non-Victorian services to do so. Crown's inability to service them in this respect or to take their sports bets by telephone when they are outside Australia means Crown is unable to capture the benefits of its high reputation with this market segment and incidentally earn tax revenue for the government.

TABCORP has been criticised in some submissions and discussions for what is considered to be its:

- failure to offer sports betting in a much larger number of its agencies;
- conservative approach to managing risks connected with sports betting leading to unattractive odds for punters; and
- slowness to take up new technology and software to allow, for instance, for betting on discrete elements within televised events (a criticism that TABCORP emphatically rejects).

These participants say that TABCORP's exclusive totalisator licence, with the network of agencies and the online systems entailed by that, allow it to dominate the Victorian sports betting market while neglecting it in favour of its wagering and gaming interests. In its defence, TABCORP attributes the reason for the leakage of sports betting out of Victoria to the ability for interstate bookmakers to utilise credit betting, which TABCORP do not have access to, and significantly lower tax rates in other jurisdictions than those that apply to TABCORP and Victorian bookmakers.

It is possible that the relatively reduced turnover in sports betting in Victoria is part of the reason for a lack of a formal supplier relationship between betting service providers and sporting events. Vicsport have submitted that when the reasons for low sports turnover are overcome, a mechanism needs to be put into place to establish a 'fair, equitable and

commercially viable' system of revenue sharing that would include the allocation of funds to sport.

Assessment

Despite TABCORP's claims to the contrary, the balance of evidence suggests that the sports betting market is under-utilised and that existing arrangements prevent the market from being better serviced. To an extent, TABCORP is prevented from exploiting any market power it might have with respect to its totalisator activities by minimum pay-out conditions, although were greater competition in the market, minimum pay-out ratios may differ. But there is no comparable force at work to ensure that TABCORP 'meets the market' with respect to the scope of its sports betting services.

Less restrictive provisions on the operations of sports bookmakers would help to provide such pressure. Licensing another sports betting operator to fill any gaps in the market would require legislative amendments and might raise questions over what shareholders actually purchased on buying into TABCORP. Tattersalls submitted that shareholders did not factor sports wagering into their investment decision when they purchased TABCORP shares, as this was a tiny fraction of the company's business at the time. TABCORP, however, submit that the privatisation process featured sports betting as a significant factor in valuing the company in the float.

Tattersalls raise the point that the Victorian government has since the listing of TABCORP placed a cap on gaming machines at 27 500, against a prospectus assumption of 45 000 machines. This raises a wider issue that the Victorian government must confront, which is the balance between any restriction on consumer choice resulting from present arrangements and the possible costs through loss of credibility and any impact on future investment or any costs involved in altering TABCORP's exclusive arrangements.

Another issue is that sporting events do stand on their own and the link with betting is not as critical to the welfare of the sports industry as it is to racing. The outcome is that betting service providers receive a 'free ride' on sport with no significant arrangements between sport suppliers and betting service providers. It is not clear, however, that this free ride constitutes a cost to existing arrangements regarding the provision of sports betting. In support of the sport industry, Vicsport submitted that

> …the intellectual property which is the event on which betting takes place has been developed and/or is owned by the sporting body or event promoter. It is inappropriate therefore that the sports betting providers utilise the marketing of the event, the naming rights of the event, and the stars of the event to promote their betting product for commercial gain, without entering any relationship with the hosts of the event, who contribute financially to and are responsible for it taking place.

The obligation for sports betting providers to lock into an arrangement with sporting events is less obvious than is the case for racing. More importantly for this review, the case for government intervention in seeking to pursue such a relationship to overcome the free rider issue cannot be convincingly established. For this reason, any such arrangement should be a matter for commercial negotiations between the interested parties.

Vicsport have submitted that attempts to establish meaningful commercial arrangements between TABCORP and sporting organisations have been rejected in the past. It is possible that the market itself will not lead to such an outcome. However, this would be a cost of the separation between sports and betting markets, rather than a cost of existing institutional arrangements. In contrast to the sports industry, the racing industry has had close historical ties with the state totalisator, giving them more bargaining power with TABCORP than sports. Racing Victoria submitted that their relationship with TABCORP has its origins in what they describe as the equity interest held by the thoroughbred, harness and greyhound racing codes in those business operations long before the privatisation of the TAB in 1994.

It seems likely that an extension of the conditions of Crown's licence to allow it to accept telephone or internet bets from non-Australian residents staying at the Casino or from outside Australia would be unlikely to have adverse effects on other Victorian betting service providers because of Crown's relationship with its clients.

The objectives of a sports telephone betting restriction on Crown are unclear and are not easily aligned with any of the objectives identified under National Competition Policy.

Restrictions on advertising and communication

Most market activities operate more effectively with the free flow of information. Yet the *Lotteries Gaming and Betting Act 1966* restricts bookmakers from displaying and communicating real time odds over the

internet or using other electronic media and prevents other betting service operators from advertising in Victoria — reflecting a different view.

Benefits of restricting advertising and communication

The benefits of preventing bookmakers from communicating real time odds off-course via the internet and other electronic delivery channels are said to flow from the added difficulty created for illegal SP operators. By preventing other wagering operators such as the NSW TAB from advertising its services in Victoria, it might also have been the intention of legislation to protect certain sections of TABCORP's market for off-course wagering, and more recently, fixed odds sports betting, from interstate and overseas betting services. As a consequence, state revenue flows would be protected.

TABCORP submitted that by adopting a restrictive approach to advertising (and to overt competition by this means) the government is better placed to retain a large measure of control over the conduct and general probity of betting operators who deal with the Victorian public. However, as the AHA and LCA submitted, telephone and internet betting is conducted with operators located outside Victoria without the scrutiny of the Victorian government, and the state has no control over the flow of funds or the probity of the providers.

TABCORP also submitted that restricting advertising (thereby protecting TABCORP's exclusivity) protects the interests of the Victorian racing industry and the taxation revenue stream provided by the wagering operator (TABCORP).

Costs of restricting communication

A major cost associated with restricting communication of betting products is the inability for betting service providers outside of Victoria to effectively market their product, and for consumers to obtain information about competing products in order to make their betting choices based on full information.

The AHA and LCA submitted that restrictions on advertising effectively give TABCORP a monopoly on the provision of the service to hotels and clubs. Unlike other states, hotels cannot advertise the services of alternative fixed odds or parimutuel wagering providers. They claim that this enables TABCORP to extract monopoly rents from the hotels and clubs who have to 'cop the deal (the terms that are offered) or don't receive the product'.

The AHA and LCA also point to costs for punters who are disadvantaged by the inability to adequately access fixed odds betting. The provision prohibiting advertising, they submit, means that punters wishing to access other fixed odds services by phone or over the internet 'must obtain the information surreptitiously'. Such punters can also lawfully call on-course bookmakers or interstate bookmakers for this information.

Punters Choice submitted that the part of the legislation intended to prevent the advertising of tipping services has been interpreted as also applying to their information service, which analyses the performance of tipping services after the event, rather than providing forecasts of outcomes. There is then a cost to the Victorian public who are denied a consumer choice advisory service that is available in other states. To the extent that restrictions on communication of this nature apply to nationally distributed publications available to Victorian punters, the Australia-wide public is also affected. This is a view supported by the consumer's advocate on the Racing Industry Participant's Advisory Committee.

As mentioned previously, bookmakers have also been critical of their inability to communicate real time odds over the internet to their customers, placing them at a competitive disadvantage with their counterparts in the Northern Territory.

Assessment

The benefits of the restrictions on advertising and communication are not readily being captured. The review team is not persuaded that advertising and communication restrictions are either an effective way of achieving the objectives of the restrictions, or that the restrictions on competition are justified.

The restrictions on non-exempt betting service providers to advertise their products in Victoria is being undermined by the pace of technological advance. Synaval submitted that while in contravention of the Act, interstate and/or overseas operators are 'marketing direct' via mail and the Internet and are not being pursued. At the bigger end of the market, punters are well aware of rival services on offer and are sensitive to differences in dividends and odds on offer, with 'dividend competition' putting pressure on rival operators. The restrictions are therefore to some degree ineffectual.

Moreover, the consequences of advertising and communication restrictions have gone beyond the meeting of the quality assurance objective of the restriction. It appears that the restrictions on advertising by betting service

providers other than TABCORP, Victorian bookmakers and Crown (were it to elect to activate its sports betting licence) serve merely to protect the interests of those parties, in particular to protect the 'exclusivity' embodied in TABCORP's licence. This is not an objective of a restriction required by NCP. It is anticompetitive. While the arrangements do have benefits, the review team has not been convinced that the benefits of the restriction outweigh the costs.

The *Gaming and Betting Act 1994* does not state that TABCORP's exclusivity includes being protected from the advertising of interstate betting service providers in Victoria. The AHA submitted that 'advertising the parimutuel (or presumably fixed odds) product of interstate competitors does not contravene the exclusivity of the Victorian licence'. While this may be true, it is quite a different matter to extend the advertising of alternative services to the provision of alternative betting services within Victorian betting outlets.

The apparent extension of advertising restrictions to an information service that assesses alternate tipping services does not appear warranted by existing legislation, nor justifiable in terms of the objectives of NCP. The Victoria Police, responsible for prosecutions of persons for offences under the *Lotteries Gaming and Betting Act 1966* have submitted that the wording of the section does not provide for clear and transparent law. In the interests of law enforcement and the providers of information services, such as *Punters' Choice*, legislative amendments must be clear.

Measures must remain in place to inhibit the conduct of illegal betting. However, the current advertising restrictions do not appear to be a satisfactory means of doing so. Alternative arrangements need to be made to meet the important probity objectives of the current legislation, and any change will need to be made on a basis that caters for the dynamism of technological change. These issues are explored further in the following chapter.

6 *Alternative arrangements*

A task alternative, and less restrictive, arrangements that might meet the required for any NCP review is to examine whether there are objectives identified for the existing restrictions.

The Discussion Paper for this review proposed three special features of racing and betting that might require restrictions on competition. These are summarised as follows.

- The integrity of the racing product needs to be guaranteed.
- There are economies of scale in the supply of betting products.
- There is inherent scope for people to make and take bets on a contest without contributing to the cost of producing that contest — the 'free rider' feature.

There are other objectives that might also be considered in the context of racing and betting legislation. For example, the need to contain social costs or the objective of protecting state government revenue. In part these matters can be covered by the classification suggested above — there is overlap between guaranteeing integrity of the game and containing social costs, and considerations of scale and the scope for 'free riding' are closely tied to revenue considerations. But it is also the case that some aspects of social costs and government revenue collection lie outside NCP and are more appropriately dealt with in other contexts.

Because of such special features, restrictions might be required on racing and betting activities. Such restrictions need to be judged in terms of their impact on overall income, employment and investment in Victoria, and not simply in terms of maximising the contribution of established racing and betting activities.

The objectives overlap each other to some degree. Probity both protects and encourages consumers. It enhances the product both as a spectacle to watch and as a contest to bet on. More betting in turn both encourages and takes advantage of economies of scale. In other ways there are tradeoffs between objectives. Greater consumer choice over betting and racing products may involve a tradeoff with respect to the costs of ensuring

integrity. For example, monitoring and other regulatory costs could increase as the number of codes and betting service providers increase. A central question is, 'What is it about racing and betting that makes these objectives important enough to warrant the strong restrictions that apply?'

A reputation for integrity is a commercial asset in all forms of commercial and social activity. And in most cases there are strong commercial pressures to establish and maintain a good reputation. Similarly economies of scale apply for most commercial activities with the question of optimal size for an industry or firm being continuously tested by market competition. Free riding might be said to occur when the providers of a game receive no or little payment from the people or firms providing betting services on that game. But finally there are bargaining standoffs with scope for equivalent free riding in many activities. These are normally resolved by realistic appreciation of each party's relative bargaining strengths and such bargaining strengths may change with technology and demand for different producers. These various pressures are normally resolved and enforced through an established legal system applying to all forms of economic and social activity. In the course of the review a number of features of racing and betting were raised to warrant the importance of these objectives and the need for special measures, in the case of racing and betting, to achieve them.

Table 6.1 sets out these main objectives, the key ways they are approached under existing arrangements and alternative ways of achieving them. The following discussion works through this table by taking each objective with a view to discussing whether there is something special about the nature of racing and betting, such that some restrictions are necessary in the public interest. To the extent that this is the case the discussion proceeds to alternative ways of satisfying these objectives. The general format is to take each of these objectives and first: refer to the matters raised in the Discussion Paper; second, report on the responses in submissions; third, to examine alternative arrangements and fourth, to weigh up and conclude on the basis of the material at hand.

In some cases there are restrictions that do not obviously fit any of these objectives and can only be explained in terms of protecting the established industry, an objective which, as some participants pointed out, does not really enter into NCP considerations. In other cases restrictions apply and such bargaining strengths may change with technology and demand for different producer.

One of the more complex issues in this review, which intrudes on the practical scope for introducing changes in arrangements affecting the

6.1 Alternative arrangements for meeting objectives

Objectives	*Existing arrangements*	*Alternative arrangements*
Ensure integrity of the racing product	▪ Self regulation of established codes ▪ Limits on new codes	▪ Remove restrictions on new codes (allow racing 'as of right') ▪ Remove restrictions on 'for profit' racing ▪ Self regulation with audit for new codes ▪ VRC fee for service regulation ▪ Racing Commission to oversight – new codes – all codes ▪ Establish a Thoroughbred Industry Racing Board
Ensure integrity of the betting product and achieve economies of scale	▪ Exclusive totalisator license ▪ Limits on bookmakers ▪ Limits on advertising	▪ Allow bookmakers to incorporate ▪ Reduce restrictions on bet size, hours and place of bookmaking operations ▪ Place bookmakers under a single regulator ▪ Remove restrictions on advertising ▪ Allow retail outlets access to other betting service providers
Give gambling product providers a basis to negotiate with betting service providers — control 'free riders'	▪ Requirement that TABCORP enter into an arrangement with the racing industry but the nature of the arrangement not stipulated ▪ No arrangement required for other codes or sporting events	▪ Allow TABCORP to negotiate a product fee with new codes ▪ Let codes and betting services reach their own arrangements — with pay TV, internet and so forth ▪ Encourage TABCORP to enter into arrangements with other sports

restrictions on other codes, is the apparent lack of those codes' access to totalisator betting revenue. This lack of access is partly a result of legislative restrictions on activities that can be legally bet on and partly an outcome of the conditions of sale of the TAB and the issue of license that the racing industry be involved as a joint venture partner in the new entity. By one view, these arrangements are commercial outcomes reflecting agreed conditions of sale of a government asset. Changing these conditions, it is said, would raise issues of sovereign risk in Victoria. Thus it might be argued that one objective of some restrictions is to honour commitments made by government at some earlier time.

By another view, the Joint Venture is an obstacle preventing the emergence, market testing and development of other racing codes and other arrangements for the conduct of betting. Similarly, some of the restrictions that apply to betting are justified by those who support them on the grounds that they were part of the conditions of sale and purchase of TABCORP. These various views are weighed up towards the end of this

chapter, after working through the various objectives that might explain existing arrangements, and alternative ways of meeting them.

Meeting the integrity objective

The review process has raised a number of possible reasons why the assurance of integrity is a special feature of racing, which might warrant restrictions of an anti-competitive nature. These include:

- contests where betting takes place are vulnerable to manipulation of form, performance and result; and
- bettors are protected by, and attracted to, contests that are above board and results are on merit.

Thus, the restrictions that apply to such matters as the activities of other codes, the conduct of racing for profit and the mobility of horses, riders and trainers across codes is seen by some participants in the review as being essential for assuring integrity and probity. However, views differed widely. On the one hand Racing Victoria submitted:

> The integrity assurance objective of the *Racing Act* is achieved by requiring racing in Victoria to be conducted under the supervision and control of code-specific controlling bodies having the resources, expertise and experience to ensure that racing is conducted in a manner that secures the confidence of participants and of the public and within the framework of the conduct of racing throughout Australia and internationally.

On the other hand the Australian Hotels and Hospitality Association Inc. and the Licensed Clubs Association of Victoria (AHA and LCA) submitted that:

> The market should be allowed to determine the desired quality of the product and whether or not there is a true market for this high quality level of product.

The Discussion Paper posed the question as to whether weaker integrity in one code could damage the reputation of others. Racing Victoria submitted that the introduction of new racing codes might jeopardise the integrity of the existing racing industry, or undermine the capacity of the existing industry to maintain its quality assurance objectives. However, this line of reasoning was strongly rejected by other codes currently seeking to establish in Victoria. The ARQHA contended that it was capable of, and had every incentive for, providing high quality supervision. The ARQHA said:

> It is surely in the best interest of that new code or product supplier that their product is absolutely 100 per cent legitimate in every sense of the word and operates at the highest level of integrity.

The VAJC also took issue with any suggestion that there was any lesser degree of integrity associated with other racing codes.

The VAJC submitted:

> Arabian racing is conducted under the Australian Rules of Racing (thoroughbred rules), local rules are added as pertaining to the age an Arabian horse is permitted to commence racing and the minimum and maximum weights carried by Arabian horses.

Teletrak, in its submission, contended that the incentives and disciplines applying on proprietary companies were stronger than that applying in traditional club structures. Teletrak submitted:

> … to suggest in the discussion paper that introduction of new codes could dilute probity and integrity of the existing codes is an absolute nonsense.

As noted in chapter 5 Teletrak considers the rules applying to the corporate sector with legally assigned responsibilities of directors and executives to safeguard shareholders are stronger guarantees of integrity than those applying to much existing racing administration.

Indeed, some participants contended that a nonprofit structure, perhaps tied into high returns from gaming, was a recipe for inefficiency and waste. According to the AHA and LCA:

> The high returns to Racing Clubs and the non-profit requirements have resulted in a quality of facilities at racecourses which are totally under utilised except during Spring Carnival. What's more, even on the traditional carnival days, only one of the four metropolitan courses is being used. This is not an efficient use of resources.

The review team can see no *in principle* reason why so-called proprietary racing should be prohibited on the grounds that integrity cannot be guaranteed. Moreover, the review team can see no *in principle* reason why alternative codes — including the ones making submissions to this review — should not provide high integrity product. However, these points of principle beg some important practical questions. The review team has neither the information nor competence to judge on likely viability and capacity to guarantee integrity. The issue of whether these other activities are commercially viable and how standards of integrity should be tested, monitored and enforced are questions beyond the scope of the review. What is at issue is whether there exists scope for such tests that might

apply for them to be judged independently and by the same standards, which apply to existing codes.

Alternative arrangements

Racing Commission

One way of tackling these issues would be to establish an independent agency along the lines of a racing commission to carry out these functions. Such an agency might range from a division of the VCGA as suggested by Teletrak — to a fully fledged, independent agency. The question is whether a racing commission, with all the additional costs and change entailed, would be justified. The establishment costs of the recently established Thoroughbred Racing Board (TRB) in NSW (a statutory authority with registration and licensing responsibilities for the NSW thoroughbred racing code only) were approximately $250 000. This small establishment cost would not be a reliable indicator of the cost of establishing a fully independent regulatory body with responsibilities beyond that of the established controlling body for thoroughbred racing in Victoria. Annual running costs for the TRB come to $6 million after tax. The potential cost of a racing commission in Victoria would depend on the scope of the commission's jurisdiction — whether it regulated thoroughbred racing, other racing codes, proprietary racing or a combination of the above — and responsibilities.

Whether or not the costs of a racing commission in Victoria were justifiable would depend on the likelihood of the emergence of other codes and forms of racing as commercial activities. Poor prospects for such viability might be due to existing restrictions, such as prevented access to a share of totalisator revenue being held to be an inviolate condition. Or they might relate to the product simply being not very popular as a wagering and spectator product. It would make little practical sense to establish a new specialist agency to regulate activities, which for reasons of lack of commercial viability or because of restrictions were unlikely to get off the ground or fail. The current practice of issuing permits to these codes as for mixed sports gatherings can be seen as a low cost way of allowing alternative codes to demonstrate a capacity to run events and attract interest. However, while such permits allow for the presence of bookmakers they do not provide a vehicle for testing wagering interest or for attracting a share of revenue that might flow from such wagering.

Access to racing personnel and infrastructure

There is a further question of whether there are other restrictions that might prevent the full testing and establishment of other codes. These include restrictions on access to services and racing infrastructure including:

- jockeys, trainers and horses;
- steward services; and
- tracks and infrastructure.

On the first mentioned of these, jockeys, trainers and horses are prevented by the Australian Rules of Racing from participating in other codes while at the same time participating in thoroughbred racing. The restriction is explained in terms of the need to meet national and international standards of thoroughbred racing in terms of probity, professionalism and performance. Such explanations raise complex questions about access and restraints on trade. To the extent that the review team has formed a judgement on these matters, it is that the explanations seem sensible and that the existing arrangement is one that involves a voluntary choice by participants of one code over another and is not in the nature of a legislative and anticompetitive restriction.

As to the question of steward's services, again it hardly seems to be a legislative restriction on trade for established codes to insist that stewards and other staff not work for new codes — while in their employment. In any event the nontraditional codes participating in the review were not interested in accessing services from established codes.

Teletrak suggested that the Victorian Casino and Gaming Authority would be expanded to operate stipendiary panels for all racing codes. The Greyhound Racing Control Board suggested that any 'Racing Commission or more appropriately, "Racing Industry Board", if contemplated should replace not add to the existing control structure'.

The VAJC suggested that each breed's accredited racing authority be responsible for their own administration and/or conduct with each accountable to and under the direction of the racing commission.

The suggestion in the Discussion Paper that other codes could 'purchase' supervisory services from the VRC was rejected in the VRC submission on the grounds that there would be a conflict of interest and that cross subsidies could be involved.

The ARQHA went on to say that it:

> … has experienced and capable personnel, and would purchase further expertise from overseas and locally once given the right to race with off-course wagering.

The ARQHA also rejected, without qualification, the option of drawing upon VRC supervision services. It said

> Self regulation with Audit, a Racing Commissioner to oversight quarter horse racing, and all codes, existing and new, would be the only way quarter horse racing would be given a fair opportunity.

Thus the question continues to be whether there is an independent commercial capacity, which would warrant the establishment of a separate agency to provide such supervision.

To the extent that racing tracks are on publicly owned land, access to racing tracks might be a different matter. Whether a racing commission would be an appropriate agency to deal with questions of third party access is another matter.

Access to wagering revenue

Another potential barrier to the commercial viability of other codes is their access to betting activity and revenue. While bookmakers are able to field at approved meetings of other codes totalisator betting is not an option. Totalisator betting on these codes is also restricted by legislation in that Section 24A of the *Racing Act 1958* states that a Racing Club can only be issued to a club registered in accordance with the rules of the VRC and these other two codes. This provision, and the requirement, as a condition of sale of the TAB, that the established racing industry be involved as a Joint Venture partner that gives the VRC a say in the decisions by TABCORP as to whether totalisator betting can be provided to other codes, are two powerful obstacles to access to the tote for new codes. It would be one thing if TABCORP did not provide totalisator services to other codes because this would not be a profitable thing to do, it is another if such service is not provided because it would compete with the racing activities of the joint venture partners.

The ARQHA submitted that:

> … although quarter horse racing can take place in Victoria under Mixed Sports Gathering Permits, it does not allow it access to off-course wagering, and even if it did, legislative changes would need to be made for the rebate on wagering from TABCORP to be paid back to our association.

Whereas, in the opinion of Racing Victoria:

> The conduct of wagering in the TABCORP Joint Venture in respect of other codes of racing is a commerical matter to be determined by the Joint Venture partners.

On this matter, TABCORP submitted that:

> In this regard it may be appropriate to allow alternative racing products, such as quarter horse racing, the opportunity to test the market demand for the product. However, it must be recognised that there are barriers to accessing wagering revenue by non-joint venture partners.

These barriers relate to the legislative restrictions on other codes and the Joint Venture arrangement. Thus the question arises as to whether there might be alternative and less restrictive arrangements that would open up the access of other codes to wagering and a negotiated share of wagering revenue related to each code.

The Racing Victoria submission contended that the Joint Venture condition mainly served to clarify and confirm that totalisator betting in Victoria had been developed by the racing industry.

One option for other codes then might be for them to be allowed to develop their own totalisator betting service. While such a service might lack pool size and physical facilities, there are typical problems for new entrants in any industry.

The concern has been raised that the conditions of sale of TABCORP were sanctioned by the government and to change them would break conditions offered shareholders. As noted in chapter 5 one of the costs of changing such arrangements could be investor concerns about Victoria because of an apparent increase in sovereign risk, whereby conditions of sale cannot be relied upon. On the other hand it could be argued that TABCORP and the investors in it would actually be better off if TABCORP were able to decide its arrangements with other racing codes on commercial merits. This appears to be what happens for approved sports betting. But for this to happen, other codes would need to be approved by legislation and the Joint Venture partners would need to agree. Until this happens it could be argued that the restrictions against wagering on other codes has the potential for diminishing TABCORP income.

Such a concern was raised by the ARQHA in the following terms:

> We believe that the Joint Venture is contrary to TABCORP's role as a Public Company. TABCORP has a duty and obligation to all their shareholders and by the Joint Venture restricting TABCORP's ability to take on new product and develop new business, surely must be not in the best interests of their shareholders.

The review team considers that it is important that the range of opinions on these matters be exposed. However, the extent to which these matters are part of the review is a matter of contention. Racing Victoria observed:

> The commercial arrangements between the racing industry and TABCORP in respect of the Joint Venture are not legislative restrictions on competition, but are private contracts negotiated and entered into by the parties in 1994.

However, in as much as the Joint Venture arrangement was an outcome of a government decision and in as much as it manifestly affects racing and betting in Victoria, it is also a matter of concern for the government. It should also be a matter of concern for the government in the context of competition review in that the arrangement is pivotal to competition among codes.

Other possible arrangements

Even if the question of access to, and regulation of, other codes were not at issue some participants considered that changes in existing arrangements would be appropriate. The Discussion Paper raised the question as to whether there were any conflicts of interest in the controlling and other bodies' Principal Club role whereby it was both a regulator of and provider of racing product. Racing Victoria in its submission considered such concerns were unsupported and gratuitous.

The Thoroughbred Racehorse Owner's Association (TROA) considered that the racing industry faced major challenges in adapting to the commercial nature of racing into the 21st century. According to TROA:

> Racing needs to operate under a corporate style Board of Directors, which would comprise talented, highly credentialled, commercial planners.

The alternative arrangement proposed by TROA comprised:

> A Victorian Thoroughbred Racing Industry Board to be established by *the racing industry not government*, with one representative to be endorsed for each of the major clubs; Victorian Country Racing Council; owners, breeders and trainers.

This board would become the Principal Racing Club and existing committee structures would be reassigned obligations at club level.

The question of what is the best way to organise and manage the various established codes was not raised as a point of issue among these codes. In these circumstances the review team has no basis for forming an opinion about structures along the lines of that proposed by TROA.

Restrictions on betting

Restrictions on betting that some participants have sought to justify in the interest of achieving integrity and probity are set out as follows.

- Betting is unlawful unless it is conducted by an entity that has been granted exemption from the illegal betting provisions of the *Lotteries Betting and Gaming Act 1966,* and the entity has a licence. Licensed entities are:
  - TABCORP,
  - bookmakers, and
  - Crown Casino.
- Restrictions apply to the dissemination of betting odds during a meeting.
- Betting information and tipping services cannot operate without a permit.
- Betting operators not licensed in Victoria cannot advertise their services.

Licensing of bookmakers

Bookmakers are subject to tests of character fitness and financial capacity as overseen by the BBCRC. Following this testing and subsequent registration the established codes determine how many, and which, bookmakers will be licensed to field. This decision reflects commercial considerations related to costs of supervision, demand by racegoers for bookmaker services, license revenue, and impact on the overall racing product.

The VBA considers that it:

> …the Victoria Racing Club along with the three controlling bodies should continue to be allowed to make rules for, or with respect to:
>
> - the issue of club bookmaker's licenses on payment of the fees defined by the rules;
> - fixing the terms and conditions of club bookmaker's licenses issued by the respective clubs; and
> - excluding or removing from a racecourse or part of a racecourse bookmakers who are not licensed.

The VBA also submitted that it is '…satisfied with the current controls and regulations in place regarding probity, character and financial capacity of bookmakers.

The VBA does not support the establishment of a racing commission.

Restriction on dissemination of betting odds

These restrictions originally applied mainly to control illegal SP betting. They also raise the return to bookmakers from being required to field on-course by providing an incentive for betters to attend race meetings to obtain this information. In recent years some exceptions to this provision have been approved. Thus, odds can be communicated by bookmakers over the telephone. Starting prices can now also be broadcast after declaration of correct weight, as a promotional initiative for betting with bookmakers.

The VBA submitted that 'subject to the establishment of appropriate access controls, the VBA can see no reason why they should be restricted from advertising odds via electronic means to their clients only'.

TABCORP did not see restrictions on advertising and communication of wagering services by wagering operations as being justified in terms of integrity, but rather as being necessary to:

- protect the interests of the state's racing industry; and
- protect the taxation revenue stream provided by the wagering operation

As noted earlier these objectives lie outside National Competition Policy considerations. The TABCORP submission also refers to competitive pressures from interstate which are emerging despite the restrictions on advertising. TABCORP contends that the obligations imposed by the Joint Venture arrangement are more onerous than payments made to racing by providers in other states and as such TABCORP has difficulty meeting competition head-on. In light of the pressures TABCORP submitted:

> Existing restrictions on advertising do give Victoria some protection over interstate operators who see Victoria as a potentially lucrative market .

Thus while TABCORP strongly recommended that the restrictions on advertising be maintained it based this recommendation on:

> …the consequent loss of revenue that would occur to the Victorian Government and the Victorian Racing Industry.

In the review team's opinion these reasons have little to do with NCP objectives and nothing to do with maintaining the integrity of the product.

In view of the alternatives that are already widely known to the public, there seem to be no good reasons related to probity for restricting the competitive ability of bookmakers by preventing them from advertising odds via electronic means.

Tipping Services

Punter's Choice submitted that no other state has legislation impeding its right to advertise. According to *Punter's Choice*:

> We do not nor have we ever forecast the probable result of any sporting contingency, nor is that our intention. We simply record and make accurate analysis of the performance of tipsters for the guidance of punters, who may be pursuaded to buy betting products making claims which cannot be matched in practice.

Because Punters Choice is not allowed to advertise in nationally distributed form guides available to readers resident in Victoria, the ban is effectively a national one.

Little persuasive evidence has been put before the review that consumers would be incapable of protecting their own interests, should the legislative instructions on advertising of tipster services be removed. To the extent that there is a risk for consumers it is better to cover that risk by way of generally available legislation and administrative machinery available to protect consumers across a wider range of activities. This has particular force in view of the fact that there are others willing to provide an assessment to the betting public on the relative merits of these services but one presently prevented from doing so in Victoria, and as a consequence, in other states.

Achieving economies of scale

Economies of scale or size may exist in more than one area of the betting market. Economies of size are important in technical aspects of betting products.

- Large pools are more likely to attract bettors in parimutuel betting.
- Large pools offer stability and robustness.
- Large pools attract international participants, and participants from other states.

- Efficiency considerations are also involved as operating costs can be spread out over a large pool (network operating costs).

To the extent that economies of scale are important they could be achieved in a number of different ways.

- Alternative providers of betting services could be allowed to compete and to the extent that economies of size are present, they would see the market dominated by one large provider.
- Bookmakers could be allowed to incorporate, and other restrictions such as minimum bet size, operating times etc., could be removed — facilitating expansion to an efficient size.

Existing arrangements offer economies of size mainly through the exclusive role of TABCORP as the provider of totalisator betting in Victoria. The present arrangements seek to extract maximum advantage of totalisator economies of scale by restricting competition in the off-course betting market, thereby enhancing demand for TABCORP tote products. In doing so, they may have the effect of restricting bookmaking operations to a less than efficient scale of operations.

The discussion paper posed the question whether enhanced access to the off-course market by bookmakers could be done without threatening the minimum efficient scale of TABCORP's totalisator operations.

TABCORP considered that economies of scale are important and provided an example in its submission:

> TABCORP's economy of scale enables TABCORP to operate a superior cash sports betting facility at the casino while providing casino customers with access to TABCORPs account betting and to TABCORP's retail network for cashing winning tickets. The participation in a larger 'book' allows casino patrons to bet to larger 'limits' than would otherwise be possible and access a wider range of events.

The AHA and LCA challenged whether there was a minimum efficient scale for TABCORP to be threatened. It submitted:

> TABCORP's exclusive licence was to deliver economies of scale, which in turn would facilitate efficiencies and state-of-the-art operations resulting in the Victorian bettor experiencing the very best services. Instead all that has been realised is a classic example of the evils of monopolies — inefficiencies, inattentiveness, monopoly rents, lack of initiative, lack of product, neglect of research and development — but of course a high share price.

The AHA and LCA did not agree that benefits from economies of scale and the avoidance of unsuccessful entrants to the market were acceptable

competition objectives anyway. Moreover, the AHA and LCA contended that pool size was only an issue in a parimutuel system and economies of scale are not relevant for fixed odds betting. The review team, however, notes that a small client base does also create difficulties for people offering fixed odds betting.

Weighing up other alternative arrangements that might meet economies of size objectives is complicated by several unknowns. Realisations of the benefits of economies of scale are influenced by the considerable competition that exists for totalisator betting across states. Thus in a sense it is not practical to expect to 'lock up' Victorian totalisator betting and this is likely to become a more significant consideration as telephone and interactive betting increases. Then the only practical way of getting economies of size is to earn them by being efficient.

Dealing with the 'free rider' objective

The importance of the link between betting and sporting contests varies greatly across sports. As a result, so does the potential importance of the 'free rider' problem. This difference flows from the different attributes of almost any sporting contest. These attributes attract people for three quite different reasons. These reasons may be summarised as to:

- participate;
- spectate; and
- speculate.

Thus there are some contests — social golf, for example — that are driven entirely by participation; there are no spectators and there is little betting. For many years Australian rules football was driven overwhelmingly by spectators. And at the other extreme TeleTrak type racing would be driven almost completely by betting.

Thus the requirement that the racing industry be involved with TABCORP as a Joint Venture partner might be taken to reflect claims for ownership of the totalisator established over the years of its development. Racing Victoria submitted that such claims had a legal basis but, in any case, there is little doubting the strength of the bargaining position of the racing industry was strong.

Similarly, the fact that other sports existed independently of betting might explain their consequent lack of bargaining strength in relation to

reimbursement and why they receive little in the way of direct benefits from betting on that contest, either from TABCORP or bookmakers.

While overcoming free rider issues was posed as a possible objective in the issues paper, some participants disputed that this was a legitimate national competition policy objective.

The AHA and LCA submitted that:

> If the government wishes to distribute revenue to any particular sport or code, then this is most properly achieved by virtue of a redistribution of taxes collected. It is inappropriate to require commercial entities to strike deals with other commercial entities.

The AHA and LCA went on to say that in some cases, betting enhanced spectator interest in the sport and thus the case could be made that payments should be made to the betting service and not the other way around.

Vicsport submitted that 'the access for each sport, to a share of the revenue generated through betting on that sport is our primary recommendation.' Vicsport rejected any suggestion that '…because sports events stand on their own and the link with betting is not as critical to their welfare as it is to racing, there is not as pressing a need to link into relationships, rather it is a matter of commercial negotiations'.

In the review team's opinion commercial arrangements between betting providers, the provider of the game and providers of information about the game, such as SKY CHANNEL, like any commercial arrangement are matters to be resolved on the basis of each party's assessment of the benefits and costs and relative bargaining strengths.

A sports betting fund which recycles taxation revenue from sports betting back to various sports, along the line of similar funds in New South Wales, South Australia and Western Australia, is an option. Its merits need to be assessed with the other competing claims for use of tax revenue.

There is also an issue of whether bookmakers enjoy some degree of free riding with respect to racing. Racing bookmakers pay licence fees to operate on-course, and a third of turnover tax collected at country race meetings is redirected back to the racing industry. A significant portion of on-course revenue can be said to be attributable to bookmakers (some estimates have placed their contribution between $40 and $50 million) because of the attraction they provide. Given these returns to the industry, while it is difficult to assess precisely whether bookmakers are 'paying their way', it appears they are probably doing so.

These different outcomes for racing and other sports reflect several considerations. First there are the legislative provisions setting the bounds for negotiation. Second there is the relative bargaining strengths or mutual dependence between product suppliers on the one hand and betting service providers on the other. This is shaped in turn by such things as changing technology — pay TV and the internet — competition from other product and betting service providers.

The Discussion Paper suggested two approaches for consideration.

- The existing legislation could be amended to require that any joint venture arrangement not discriminate against other codes and sports.
- Potential entrants could be left to test the existing provisions under trade practices legislation.

The study team considers the second approach to be the more practical.

Other restrictions and other objectives

As foreshadowed earlier in this chapter several important restrictions mainly affecting betting activity do not easily fit under the objectives of integrity, scale and free riding. These restrictions include:

- limits on bookmakers with respect to;
  - hours and place of operation,
  - structure of operation including right of incorporation,
  - betting events,
  - means of communication; and
- restrictions applying to retail TABCORP outlets.

Currently, a condition of approval under the *Racing Act 1958* specifies that bookmakers cannot accept a telephone bet for less than $200 if it is a metropolitan race and $100 if it is a provincial race. The main objective of this requirement appears to be to protect TABCORP's market share.

TABCORP submitted that TABCORP takes bets as low as 50 cents and that the costs of taking such bets are greater than any financial contribution. According to TABCORP if telephone wagering revenue, and in particular bets that comprise between $10 and $200 are transferred from the totalisator to bookmakers, TABCORP might be forced to increase the minimum bet.

TABCORP also argued that bookmakers are taxed at a lower effective rate on turnover. These comparisons are complicated by the fact that bookmakers pay a tax on turnover (that is, whether they win or lose) while TABCORP pays tax on revenue. But to the extent that this is an issue, restricting size of bets is a very indirect way round it. It has also been pointed out to the review that bets over this range, that is, up to $200, tend to be more profitable to the taker of bets because they are more likely to involve part-time or irregular punters who are less well informed than people making bigger bets.

In the review team's opinion there is no basis for the restriction on size of bet applying to bookmakers. If as a result other betting providers raise their minimum size bet to reflect actual transaction costs, then that would be no bad thing.

The VBA submitted that sports bookmakers should be allowed to accept bets off-course provided appropriate monitoring systems and penalty provisions are in place. The review team considers that this is a sensible suggestion. Similarly, the easing of restrictions on advertising proposed earlier should be extended to bookmakers.

The Discussion Paper raised the possibility that restrictions on bookmakers becoming incorporated entities should be removed. Following circulation of the discussion paper the VBA submitted that while sports bookmakers should have the option of becoming incorporated the restriction on racing bookmakers should still apply.

The reasons given for this position related to the need to offer consumers choice and the risks that might occur if a large incorporated bookmaker were to take a strong position in the market.

In the review team's opinion these arguments do not stand up. If by incorporating a bookmaker is able to reduce costs and obtain access to both capital, economies of size and thereby attract punters then such incorporation should be allowed. It seems that the rejection of the incorporation option by the VBA reflects a wish to protect established bookmakers from competition from large firms.

Retail outlets

The AHA and LCA submitted that the Discussion Paper neglected to examine the position of the off-course retail sector of the wagering industry comprising:

- PubTABs;

- ClubTABs; and
- off-course agencies.

The AHA and LCA contended that TABCORP:

- failed to meet the demand of the retailers for the wagering product with the consequential denial of access to punters;
- failed to develop the wagering product in Victoria; and
- extracts monopoly rents from its retailer customers.

According to the AHA and LCA, TABCORP are currently going through a process of cutting back on agency outlets and expanding on the number of outlets in clubs and hotels. This is because there is a synergy across club and pub services whereby betting, dining, games, entertainment and drinking are mutually supportive.

For these reasons, hotels are keen to have TABCORP outlets, and TABCORP is in a very strong negotiating position. Thus it is argued that TABCORP is allocating outlets and setting prices from a very strong bargaining position.

This position is buttressed by:

- TABCORP — exclusive right flowing from the original licence, giving it exclusive rights to off-course totalisator wagering;
- the prohibition of advertising of fixed odds options for races and other products; and
- prohibition of advertising of totalisator products of interstate competition.

The AHA and LCA submitted that even with:

> …unique arrangements established by the public float of TABCORP and the imperatives which require the maintenance of TABCORP's exclusive licence as described in the prospectus … there is scope for competition in the wagering industry for off-course fixed-odds wagering and betting on sports and cultural events with providers other than TABCORP.

7 Recommendations

The issues that have been confronted during the course of this review are wide in scope. In instances where the review team has identified net costs in existing arrangements, or where it has not been possible to demonstrate net benefit from existing restrictions, alternative arrangements have been proposed. The following recommendations represent a distillation of the key findings of the review.

On restricting the activities of other codes to participation via ministerial permit

There has been no convincing demonstration that other codes, properly regulated, pose a threat to traditional racing, either through an unacceptable risk to the reputation of racing as a whole, or through dilution of wagering earnings available to existing codes.

Both in gaming, and in the wider entertainment industry, product differentiation and innovation has assisted this part of the service sector to capture an increasing share of household expenditure. The review team is not convinced that racing and betting are intrinsically different from these other forms of entertainment types. Expenditure patterns will vary in response to taste changes and what each component of the racing and betting industry has to offer. The recent growth in telephone betting as a result of the introduction of Sky's pay-TV channel is a case in point.

Even if dilution of earnings to traditional codes were to occur (as suggested in some submissions), this is not of itself a reason to continue to restrict the activities of other codes to their present occasional meetings. The ability of the racing industry, defined in its widest sense, to respond to changing consumer tastes should not be restricted and resources should be permitted to flow to those parts of the industry that attract the wagering and viewing public.

Accordingly, it is recommended that:

- *other codes be given an opportunity to demonstrate to a committee convened by the Minister that they have an adequately constituted controlling body,*

rules of racing and integrity assurance architecture to offer their sports as a potential totalisator betting product;

- *the elements of integrity assurance put forward by these codes be scrutinised using the standards of the traditional codes as benchmarks for acceptance;*
- *all costs of implementing quality assurance be borne by the respective prospective codes; and*
- *provisional licences be issued to clubs under the controlling bodies of these codes to allow racing to occur on presently licensed racecourses, but with totalisator wagering opportunities withheld while integrity assurance provisions are scrutinised.*

On access of other codes to existing racecourses, track infrastructure and race meetings

The *Racing Act 1958* prevents clubs other than those registered under the rules of the three present controlling bodies from holding racing club licences (Section 24A) and requires that the Minister must cancel a *racecourse* licence if satisfied that the racecourse is no longer required for use by these clubs. Race meetings, unless approved by the Minister through a mixed sports gathering permit, may only be held on a licensed course by a licensed club.

To open up the possibility of other codes utilising facilities where capacity permits, the legislation should be changed to allow for the licensing of clubs from other codes to extend the provisions of the Act to those that have satisfied the Minister of the adequacy of their control and quality assurance structure. The requirement on the Minister to revoke racecourse licences should then only apply if none of the approved codes require their use.

On access of other codes to totalisator betting

The legislative obstacles to betting on other codes, provided those codes demonstrate adequate integrity assurance, should be removed. TABCORP should be free to provide parimutuel and fixed odds betting services on events staged by these codes using the same commercial criteria it would apply to any other sport. Access by these codes to a share of totalisator revenue should be a matter of commercial negotiation between TABCORP and the controlling body of the code.

Such codes should also be free to offer their product as a betting vehicle to interstate totalisator operators.

This may involve testing the consistency with trade practices legislation of those elements of the Joint Venture Agreement that might inhibit TABCORP in its dealings with other suppliers of racing products.

Alternatively, the Victorian government should give consideration to altering the legislation to maintain the requirement of the holder of the TABCORP licence to have an agreement with VicRacing, but with the provision that any such agreement should not restrict TABCORP's use of Victorian racing product to that offered by VicRacing exclusively.

On the prohibition of proprietary racing

The review team can see no reason why proprietary racing, so long as it is properly regulated, should not be offered to the community. Appropriate regulation and its cost, however, are critical. Overseas models and those advocating proprietary racing's acceptance locally do not point to self-regulation as an acceptable solution. The review team is convinced that while a club based system has incentives compatible in principle with sound self regulation, these incentives are not present in the same measure for proprietary racing. In the United States, independent racing commissions have the responsibility, and the expertise, to regulate proprietary racing. Teletrak's proposal that the VCGA might be appointed regulator begs the question of how that body's expertise in racing integrity matters would be augmented, either for Teletrak or any other proponent of proprietary racing.

One of the main alternatives would require the establishment of a separate independent racing commission. While this could service other codes and existing ones, as well as proprietary racing, it would be costly and may be unnecessary for all *but* proprietary racing.

The other approach might be to establish a Victorian Thoroughbred Industry Racing Board, appointed by the industry, as recommended by the Thoroughbred Race Horse Owners Association, but with extension of its functions beyond that of a principal club to give it regulatory powers over proprietary racing.

This option is rejected. There may be good reasons for questioning the adequacy of the current arrangements for dealing with the interests of individual clubs and the collective interests of the industry. However, any body drawing substantially from the existing club structure would be unlikely to avoid significant conflicts of interest in governing both club and proprietary racing. Regulation by the VRC is rejected on similar grounds.

Until such a time as proprietary racing interests can provide detailed, costed recommendations for their independent regulation, it is recommended that the ban on proprietary racing remain.

On access of other codes to services of personnel licensed by the traditional codes

The review team recognises that, in view of the binding requirements of the Australian Rules of Racing, unilateral action by Victoria to allow jockeys and trainers to offer their services to both established and other codes is not feasible. While the restriction may affect the competitive ability of other codes, the fact that these personnel have a choice must also be recognised, and the right of licensed clubs to establish the terms of services of the personnel they license must be respected.

This choice for licensed personnel is, however, limited unduly by the restriction that a jockey, for instance, who has ridden *at any time* for other codes, may not return to ride under the Rules of Racing 'unless the Committee shall otherwise determine' (Rule AR.6.b).

It is recommended that, in the interests of competitive access and occupational mobility, the Victorian Minister takes up the benefits of allowing personnel to demonstrate their fitness to participate in any particular code with counterparts in other states, with a view to encouraging amendment to the Rules of Racing.

On restrictions on sports and race betting operators

Existing restrictions on access to Victorian betting markets by all but those presently licensed (TABCORP, race and sports bookmakers) or entitled to a licence (Crown Casino) take several forms:

- it is illegal for operators outside Victoria to advertise in the telephone and internet markets in Victoria;
- physical betting outlets cannot be operated without a licence; and
- it is illegal for Crown (licensed in Victoria) to advertise the services of its sports and race betting licence, or to conduct telephone betting.

The present advertising, licensing and other restrictions on the activities of betting service providers in Victoria appear to the review team to reflect attempts to partition the market and allocate different parts of the broader betting market to different types of operators. It also reflects a response to a state by state approach to regulation of this industry, which has been based

on exclusion. While protecting the interests of present certain licensed entities to varying degrees, this is not necessarily in the best interests of the consuming public.

The review team received argument from a number of quarters that sports betting in particular is being underserviced by TABCORP while alternative providers are unduly restricted. Sports bookmakers face locational and time restrictions that do not hamper their interstate or international rivals. Crown Casino has chosen not to activate its sports betting licence while prevented from accepting telephone bets, inhibiting its access to non-Australian high rollers as sports bettors.

Leakage to interstate and overseas providers, with consequent loss of state revenue, is said to be a side effect of this under-servicing. But if this leakage is as severe as some claim, the effectiveness of present advertising bans must be a questionable means of excluding outsiders and protecting Victorian tax revenue.

Advertising restrictions

The restriction on advertising by betting operators not licensed in Victoria is largely illusory, and to the extent that it does impact, it does so mainly on small, poorly resourced punters. Larger punters in particular are known to take advantage of their services, and those services can be sought out on the internet. While amateur punters are regarded as 'easy revenue' and the restriction might protect TABCORP turnover and the states' revenue base, this is not an objective consistent with National Competition Policy.

Consideration needs to be given to removing, amending or maintaining advertising restrictions for:

- fixed odds sports betting;
- parimutuel race betting; and
- fixed odds race betting.

Advertising restrictions on fixed odds sports betting offered via pay-TV, telephone and internet betting from providers in other jurisdictions are difficult to justify on NCP grounds. Exclusivity for fixed odds sports betting was not part of TABCORP's licence, and hence the promotion of alternative providers (both existing and potential) would not breach that licence. There is no convincing evidence that the buyers of TABCORP shares have been given reason to assume that TABCORP's licence incorporated any presumption of it enjoying a fixed market share of the

sportsbet market based on indefinite preservation of existing restrictions on other sports bet operators.

Promoting the services of non-Victorian providers could adversely affect state government revenue. But revenue protection is not a clear NCP objective. In as much as it is an objective for the Victorian government, revenue will not necessarily be put at risk through liberalised advertising. It is usually the case that advertising promotes the whole market. Overall market growth, stimulated by greater advertising, could mean the Victorian government would more than regain what it might lose to some jurisdictions from others and from greater activity among Victorian punters.

However it should be noted that Victorian bookmakers may be disadvantaged by allowing interstate operators to advertise in Victoria if reciprocal access is not available to Victorian operators. This highlights the case for a national approach to advertising/access issues.

If differential tax rates between states are thought to be contributing to present leakages, this is a matter for the Victorian government's consideration in the wider context of its taxation policy vis a vis other jurisdictions.

Advertising and promotion by alternative providers of parimutuel race betting services are a different case because of the need to guarantee an adequate pool size. By allowing potential parimutuel racing competitors (including NSWTAB) to advertise in Victoria, there is a prospect that leakage could occur in the pay-TV/telephone betting market. If this were to happen *without* reciprocal rights for TABCORP to advertise in NSW or other states, the advantages of a large Victorian pool size, which flow through to Victorian consumers, could be undermined. This would not be the case for fixed odds race betting.

It is recommended that:

- *advertising restrictions be removed on fixed odds sports betting provided by licence holders in Victoria, or entities licensed by other states;*
- *advertising restrictions on parimutuel race betting providers in other jurisdictions be maintained unless reciprocal access can be agreed; and*
- *advertising restrictions on fixed odds race betting providers whose principal business is not parimutuel wagering (see discussion below) be removed. For non Victorian fixed odds race betting providers whose principal business is parimutuel wagering, advertising restrictions should be maintained unless reciprocal access can be agreed.*

Licensing restrictions

With regard to licensing restrictions, the relevant questions relate to whether the Victorian government should restrict the provision of fixed odds sports betting licenses, fixed odds race betting licences and parimutuel wagering licences in Victoria to present categories of licence holder. There is also an issue of the appropriateness of using those licences to restrict betting modes available under those licences, including telephone and internet betting.

While existing advertising restrictions inhibit telephone and internet betting, they do not prevent it. The issue of under-servicing of sports betting demands relates to the provision of physical betting outlets. The Sports Betting Review considered the possibility of offering Tattersalls, with its established network of retail outlets for gambling products, a sports betting licence. This review also received a proposal from the AHA and LCA to offer alternative sports betting services in hotels and clubs. There may also be other proposals that the review team is unaware of. It is the view of the review team that alternative providers who are able to pass the required probity and integrity tests should be given the opportunity through the granting of a fixed odds sports betting licence to test the market in providing these services.

The AHA and LCA proposal takes this concept a step further, having submitted that hotels and clubs should be granted a wagering licence that would allow them to contract with any wagering service provider registered anywhere in Australia for the provision of fixed odds betting facilities into the licensee's premises. In effect, 'retail' outlets in the form of hotels and licensed clubs in Victoria could be an outlet for NSWTAB under such a proposal.

However, it is difficult to argue that such an arrangement could be established that would *not* adversely affect Victorian providers unless reciprocal access was granted for fixed odds products in other states. Moreover, establishing an outlet for an alternative service provider whose principal business was *parimutuel* wagering — even if this service were not offered at the outlets — may well be akin to advertising of the alternative parimutuel service. As suggested above, the pool size of TABCORP's parimutuel system would be adversely affected unless a national approach was taken to allowing agents to provide the exclusive services of any interstate TAB. While pool size is not as critical an issue for fixed odds betting, it is suggested that a national approach to lifting the restriction preventing retail agents from representing interstate totalisators is the most appropriate one.

As noted earlier in this review, sports betting at present is a relatively minor part of gambling activity. Any change that made this much more widely available through 'retail' outlets would need to be compatible with community views on accessibility of gambling products. The review team notes however that both Tattersalls agents and the hotel and licensed clubs are venues already associated with gambling products.

Offering alternative *race* betting licences in Victoria would not be appropriate for parimutuel race betting because TABCORP has been granted an exclusive licence to operate parimutuel race betting in Victoria — an arrangement found to produce net benefits through securing adequate pool size.

There is no in-principle reason why alternative fixed odds race betting licences should not be issued for operators whose principal business was not parimutuel wagering, except that given the present relatively minor size of this market, this may not be commercially viable. However, that fact should be one for the market to determine, not the licensor.

Similarly, the review team can find no net benefit in preventing bookmakers from advertising odds, should they wish to do so. It is recommended that restrictions on advertising of betting services and of odds be removed. Punters should be allowed to make choices about how they spend their money without artificial restrictions on information about betting markets. Any benefits from restricting the communication of real time odds by bookmakers that might relate to containing illegal SP activity are likely to be minimal.

The following actions are recommended.

- *Alternative Victorian fixed odds sports betting providers should be granted exemption from the illegal betting provisions of the Lotteries Gaming and Betting Act 1966 and issued a non-exclusive licence by the Minister, where the Minister is satisfied that the potential provider(s)*
  - *meet appropriate probity requirements and are — or could be — adequately regulated, and*
  - *can demonstrate they have sufficient financial resources both for the establishment of sports betting operations and running costs*
- *The licence, once offered, should not distinguish between modes of service, which should be a commercial decision of the licence holder. The existing licence available to Crown should be amended to reflect this view and thereby permit Crown to accept telephone bets.*

- *It is not appropriate to expect the Victorian government to be responsible for the licensing and regulation of interstate betting service providers. For the above liberalisation of licensing provisions to be extended to non-Victorian fixed odds sports betting service providers, a national system for licensing service providers and reviewing taxation rates would need to be established. Extending the above recommendation to non-Victorian fixed odds race betting service providers would also be subject to these provisions.*
- *Further consideration should be given to allowing hotels and clubs to enter into contracts with licensed Victorian fixed odds betting service providers. Such an arrangement would be subject to the recommendations made in this report with regard to locational conditions for bookmakers.*
- *Licensed sports bookmakers should be permitted to field at sporting events, provided they communicate bets taken through approved links to their representatives in racecourse auditoriums or other approved and monitored locations.*
- *Licensed sports bookmakers should be allowed to operate on a 24 hour basis without restriction on bet size, from premises approved by the Minister, to compete with non-Victorian operators.*
- *Bookmakers should be free to choose whether or not, and how, to disseminate their betting odds.*

On restricting control to the present controlling bodies

In the course of this review, some participants questioned the appropriateness of existing arrangements within the thoroughbred code whereby the VRC acts as the peak control body in the state, and simultaneously enjoys majority representation on the industry development body while looking after the interests of its racing operations at the Flemington racecourse.

Existing legislation recognises and indeed enshrines the 'club' model in Victoria. This model is a co-operative rather than a competitive one, such as might exist if proprietary owners competed to attract horses to their meetings. The review team notes that under the principal club structure, individual clubs do not have the option of opting out.

Concerns about the uneven distribution or exercise of power within this essentially co-operative framework are matters for the industry itself to resolve. This review did not receive the kind of evidence that would allow it to form a judgement on whether these arrangements are leading to a less

efficient or equitable industry than might otherwise be possible. The review team notes that the Thoroughbred Racehorse Owners Association (TROA) proposed that the VRC should be replaced as principal club by a thoroughbred racing board, under a corporate style board of directors drawn on a different basis than the present one, with representation from clubs, owners, breeders and trainers.

The TROA also proposed an independent Prudential Supervisory Group be appointed by such a board, to appoint stipendiary stewards and a board appointed independent Appeals Tribunal. TROA expressed dissatisfaction with the present model where race clubs in the first instance hear appeals against the decisions of their appointed stipendiary stewards. It would seem to the review team that this current arrangement does indeed leave open the possibility of conflict of interest. But the existing statutory authority, the Racing Appeals Tribunal, while not industry appointed, certainly enjoys independent status as the ultimate appeal body.

In assessing the case for a thoroughbred racing board or an independent racing commission to replace the VRC as the controlling body, or more broadly, to take over regulatory control of all of the racing codes in Victoria, a distinction must be made between the role of such a body as a regulator (in the sense that the VCGA oversees probity and integrity issues surrounding the operation of other gambling activity in Victoria) and as an industry development body.

An independent racing body or commission that removed regulatory control from the VRC but left industry development matters in its hands might do little to correct present complaints of unfairness in the present power sharing arrangements which have been put to the review team. Equally there must be some doubt as to whether an independent racing body or commission whose responsibilities extended to other established codes is required. Revenue sharing rather than regulatory matters seem central to inter code disputes.

There may be scope for addressing industry development (including revenue sharing and programming matters) within the existing framework by reviewing the voting rights of constituent clubs within the thoroughbred code and voting rights among codes. While industry disquiet provides good grounds for reviewing present power sharing and business arrangements, these are somewhat tangential to NCP issues.

The existing administrative structure of thoroughbred racing is one based on co-operation rather than competition within the state. Criticism has been directed at the distribution of power between the principal clubs and others and the resulting

business arrangements within the industry. Criticism has emphasised these elements rather than the NCP-related issues of strict regulator-operator conflicts of interest. The review team believes these latter conflicts to be relatively minor. The relative efficiency or inefficiency of present administrative arrangements is a question best addressed by a separate review with a single purpose.

On minimum bet size for bets placed by telephone with bookmakers

The review team is persuaded that by excluding bookmakers from accepting telephone race bets below specified amounts, existing regulations place them at a competitive disadvantage with TABCORP and interstate operators, with no net benefit demonstrated. The regulation is forcing some bookmakers to behave as gamblers rather than as bookmakers.

It is recommended that minimum bet restrictions be removed and that bookmakers be permitted to determine the bet size they accept on commercial grounds.

On incorporation of bookmakers

If Victorian bookmakers are to compete more effectively with other betting operators, they should be free to structure their business along the most efficient lines, including the use of partnerships and incorporation. The appropriate method of determining the contribution to the guarantee fund by a bookmaker's corporation or partnership would have to be settled before this restriction was removed.

On restrictions on race bookmakers' activities

To improve their competitive position vis a vis interstate and overseas bookmakers, Victorian race bookmakers should be permitted to accept appropriately monitored telephone or internet bets on a 24 hour basis at premises approved by the Minister.

On restrictions of advertising by tipping services

Restrictions on tipping services in the interests of consumer protection, particularly where they have the effect of also preventing publication of highly critical reviews of these services are inconsistent with allowing

consumers to make up their own minds about the value of such services in light of these reviews.

It is recommended that restrictions on the advertising of tipping services and any restrictions on publications of critiques of these services be removed.

A Listing of submissions to Issues and Discussion papers

A.1 Submissions to issues paper

Australian Racing Quarter Horse Association	Bookmaker and Bookmakers' Clerks Registration Committee
Central Goldfields Shire Council	RIPAC
EDS Pty Ltd	Mr John McNaughtan
Punters Choice	Synaval
TABCORP Holdings Pty Limited	Teletrak Australia Pty Limited
Victorian Arabian Jockey Club	Victorian Bookmakers Association Limited
Victoria Racing Club	

A.2 Submissions to discussion paper

Australian Hotels and Hospitality Association (in conjunction with Licensed Clubs of Victoria)	Australian Racing Quarter Horse Association
Crown Limited	Greyhound Owners', Trainers and Breeders Association
Greyhound Racing Control Board	Punters' Choice
Racing Victoria	Synaval
TABCORP	Tattersalls
TeleTrak	Thoroughbred Racing Owners Association
Vicsport	Victorian Arabian Jockeys Association
Victorian Bloodhorse and Breeders Association	Victorian Bookmakers' Association
Victorian Casino and Gaming Authority	Victorian Off Course Agents Association
Victoria Police	

B *Effect of legislative restrictions*

This appendix contains the following tables:

Table B.1 Effect of legislative restrictions on suppliers of the racing product

Legislation and restriction	*Effect on existing suppliers*			*Potential suppliers*		
	Thoroughbred racing (VRC)	*Harness racing (HRB)*	*Greyhound racing (GRCB)*	*Quarter Horse (QH) and Arabian racing*	*Proprietary racing*	*Sports*
The Racing Act 1958						
Occupational restrictions on bookmakers	Existing racing codes benefited by ensuring integrity of existing racing, and greater market share for TABCORP, and consequent returns to codes			Unaffected	Unaffected	Inhibits growth of betting on sports
Occupational restrictions on jockeys/stewards	Benefited by the servicing of the existing racing industry to the exclusion of other racing codes.			Limits ability of QH and Arabian codes to race	Would limit access to racing personnel if permitted	Unaffected
Exclusion of proprietary racing	Purported to maintain integrity of current industry structure by preventing any financial interest from having a stake in the outcome of a racing event. Reinforces existing owners of horses and dogs as equity participants in racing.			Potentially inhibits a possible source of utilising other racing breeds	Inability to conduct business	Unaffected
Restrictions on other racing codes	Benefited by diverting activity towards the three existing racing codes			Unable to effectively launch racing code	Unaffected	Unaffected
Multiple roles for controlling bodies	Benefited by increasing responsibilities and control for controlling bodies, able to influence participation in racing, but likely conflicts of interest			Increased likelihood of maintaining established industry to exclusion of other codes	Increased likelihood of maintaining established industry to exclusion of other codes	Unaffected
Gaming and Betting Act 1994						
Creation of monopoly totalisator	Provides for the monopoly rents that are accessed by existing racing codes			Unaffected	Unaffected	Could provide access to monopoly rents but unable to negotiate access to them
Single racing products supplier and the role of the Joint Venture	Provided with a monopoly in supply for each respective code. Has led to access to monopoly rents in betting and gaming revenue. Benefits through dominance of own code			Unable to supply racing for wagering or gain access to wagering revenue	May affect difficulties in establishing a new business	Unaffected
Lotteries Gaming and Betting Act 1966						
Illegal betting	Improves integrity of wagering in the existing racing industry			Improves integrity of racing	Improves integrity of racing	Improves integrity of sports betting
Advertising restrictions	Protects revenue base of existing industry with access to profits from the Joint Venture			Unable to promote racing code if racing offered in other jurisdictions	Unhelpful to establishing a new business	Unable to promote sports betting from other jurisdictions
Casino Control Act 1991						
Crown Casino's right to apply for a restricted sports betting licence	Unaffected	Unaffected	Unaffected	Unaffected	Unaffected	Restrictions discourage activation. Sports betting not promoted

Table B.2 **Effect of legislative restrictions on other betting product suppliers**

Legislation and restriction	*Sporting industry*	*'Intermediate' tipping services provider*
The Racing Act 1958		
Occupational restrictions on bookmakers	Bookmaker betting turnover is reduced as bookmakers cannot be present at the sporting ground during the hours of the sporting game, or take telephone bets from the major consumer groups who attend sports games who may wish to bet in small amounts	Unaffected
Occupational restrictions on jockeys/stewards	Unaffected	Unaffected
Exclusion of proprietary racing	Unaffected	Unaffected
Restrictions on other racing codes	Unaffected	Unaffected
Multiple roles for controlling bodies	Unaffected	Unaffected
Gaming and Betting Act 1994		
Creation of monopoly totalisator	No requirement for TABCORP to pay for the sporting product, nor for sports to receive access to sports wagering revenue. AFL is unable to offer their own sports betting service	Unaffected
Single racing products supplier and the role of the Joint Venture	Unaffected	Unaffected
Lotteries Gaming and Betting Act 1966		
Illegal betting	Benefits from increasing the integrity of betting	Benefited by increased integrity of the betting industry, which forms the basis of their product
Advertising restrictions	Unable to promote successful sports betting services from other states to Victorian customers	Restriction on trade, as offering of a tipping information service has been regarded as a forecasting product and banned as illegal advertising material
Casino Control Act 1991		
Crown Casino's right to apply for a restricted sports betting licence	Potential to enter into product supply relationship and/or to promote sports betting if Crown elected to activate licence	Unaffected

Table B.3 **Effect of legislative restrictions on betting service providers**

Legislation and restriction	*Effect on betting service providers*			
	TABCORP	***Bookmakers***	***Interstate and international service providers***	***Potential entrants***
he Racing Act 1958				
Occupational restrictions on bookmakers	More market share of phone bets. More market share as can accept bets at any TAB, increased profits — more funds to racing industry	Can only accept bets at race meetings. Unable to fully access sports betting. Must provide bond and be licensed. Cannot incorporate	Bookmakers use internet to display real time betting odds to clients (NT)	Unaffected
Occupational restrictions on jockeys/stewards	Unaffected	Reduces other code races, so limits ability to bet on those races	Unaffected	Unaffected
Exclusion of proprietary racing	Unable to be offered as a platform for betting	Unaffected	Unaffected	Unaffected
Restrictions on other racing codes	Unable to offer betting on races of other codes	Able to offer betting on such racing infrequently	Betting on other codes leaked out of Victoria	Unaffected
Multiple roles for controlling bodies	Has relationship with bodies with conflicts of interest (potential loss in efficiency). May lead to dysfunctional decision making	Subject to the regulation which is in the interests of existing racing codes, but maybe not the industry	Unaffected	Unaffected
aming and Betting Act 1994				
Creation of monopoly totalisator	Grants exemption to *Lotteries, Gaming and Betting Act* to allow betting. Captures economies of scale and monopoly profits	Some difficulties with competing. Unable to offer totalisator betting	Creation of competitor which brings odds across borders into line	Denied access to potential market opportunities in parimutuel betting
Single racing products supplier and the role of the Joint Venture	Obtains access to product supplies but denied access to others. Outcome requires distribution of profits to racing industry.	Reduced ability to offer betting on other racing codes	Unaffected	Unaffected
otteries Gaming and Betting ct 1966				
Illegal betting	Increase integrity of betting and thereby increasing wager revenue	Prohibits illegal bookmaking. Improves integrity of profession	Increases the integrity of betting with positive flow on effects	No exemption from illegal betting
Advertising restrictions	Protects profits by prohibiting competitors from advertising	Unable to communicate real time betting odds electronically	Disadvantaged by being unable to legally advertise	Unaffected. (Crown cannot advertise if licence activated
asino Control Act 1991				
Crown Casino's right to apply for a restricted sports betting licence	Potential competitor in fixed odds sports betting market	Potential competitor in sports betting market	Potential competitor in sports betting market	Unaffected

Table B.4 **Effect of legislative restrictions on consumers and retail distributors**

Legislation and restriction	***Effect on consumer groups***			***Effect on TABCORP's retail outlets***
	Small Victorian	***Large Victorian***	***Interstate and international***	
The Racing Act 1958				
Occupational restrictions on bookmakers	Unable to place parimutuel bets with bookmakers, need to bet with bookmakers at certain times, locations, and subject to minimum telephone betting requirements	Unable to place parimutuel bets with bookmakers, need to bet with bookmakers at certain times, locations, and subject to minimum telephone betting requirements	Unable to place parimutuel bets with bookmakers, need to bet with bookmakers at certain times, locations, and subject to minimum telephone betting requirements	Protected from some competition with bookmakers
Occupational restrictions on jockeys/stewards	Limits ability to bet on Quarter Horse and Arabian racing	Limits ability to bet on Quarter Horse and Arabian racing	Reduced capacity to bet in Victoria. Racing turnover maintained overseas	Unaffected
Exclusion of proprietary racing	Excluded from watching or betting on proprietary racing, of potential concern to those who may wish to bet from home	Excluded from watching or betting on proprietary racing, of potential concern to those who may wish to bet from home	Consumers do not bet in Victoria and racing turnover is maintained overseas	Unable to offer proprietary racing to customers.
Restrictions on other racing codes	Limited ability to bet on or attend alternative race meetings	Limited ability to bet on or attend alternative race meetings	Reduced capacity to bet in Victoria. Racing turnover maintained overseas	Unable to offer alternate code racing to customers
Multiple roles for controlling bodies	Subject to potential efficiency losses due to conflicts of interest and outcomes which are potentially not in the interests of racing as a whole	Subject to potential efficiency losses due to conflicts of interest and outcomes which are potentially not in the interests of racing as a whole	Unaffected	Unaffected
Gaming and Betting Act 1994				
Creation of monopoly totalisator	Access to large pool sizes, extensive distribution network, integrated betting systems, with financial stability	Access to large pool sizes, extensive distribution network, integrated betting systems, with financial stability	Access to large pool sizes, extensive distribution network, integrated betting systems, with financial stability	Subject to terms and conditions of monopoly totalisator
	Denied access to some sports betting on international events which is not offered by TABCORP	Denied access to some sports betting on international events which is not offered by TABCORP	Denied access to some sports betting on international events which is not offered by TABCORP	
Single racing products supplier and the role of the Joint Venture	Unable to bet on other racing codes	Unable to bet on other racing codes	Unable to place a bet on races commonly wagered at home	Barrier to offering alternate code races to customers

Table B.4 **Effect of legislative restrictions on consumers and retail distributors** continued

Legislation and restriction	*Effect on consumer groups*			*Effect on TABCORP's retail outlets*
	Small Victorian	***Large Victorian***	***Interstate and international***	
Lotteries Gaming and Betting Act 1966				
Illegal betting	Improved integrity of wagering and protection from uncontrolled or unscrupulous operators	Improved integrity of wagering and protection from uncontrolled or unscrupulous operators	Improved integrity of wagering and protection from uncontrolled or unscrupulous operators	Benefits for improved integrity of racing
Advertising restrictions	Protected from advertising by unlicensed operators. But less able to make informed choices about alternate service providers. Unable to gain access to basic information about their choice of betting product through prohibition of tipping information material	Protected from advertising by unlicensed operators. But less able to make informed choices about alternate service providers. Unable to gain access to basic information about their choice of betting product through prohibition of tipping information material	Protected from advertising by unlicensed operators. But less able to make informed choices about alternate service providers. Unable to gain access to basic information about their choice of betting product through prohibition of tipping information material	Unable to advertise services of providers in other states
Casino Control Act 1991				
Crown Casino's right to apply for a restricted sports betting licence	Would increase choice of fixed odds sports betting provider if licence activated. Would be unable to utilise telephone betting services	Would increase choice of fixed odds sports betting provider if licence activated. Would be unable to utilise telephone betting services	Could bet on sports followed at home when in Victoria, if offered. Unable to utilise telephone bets so cease betting when returning home	May reduce market share, if activated

Table B.5 **Effect of legislative restrictions on regulators**

Legislation and restriction	***Effect for regulators***				
	VCGA	***Minister for Sport***	***Office of State Revenue***	***BBCRC***	***Controlling bodies***
The Racing Act 1958					
Occupational restrictions on bookmakers	Unaffected	Issues authorisation relating to betting on races and sporting events in line with occupational restrictions	Collects taxes from activities	Regulates, registers, monitors bookmaking activities. Can revoke, and penalise if in breach	Impose Rules of Racing, including occupational restrictions for bookmakers
Occupational restrictions on jockeys/stewards	Unaffected	Unaffected	Unaffected	Unaffected	Impose Rules of Racing including restrictions on personnel
Exclusion of proprietary racing	Unaffected, but would have to apply fairness rule if permitted	Unaffected	Unaffected	Unaffected	Impose Rules of Racing that do not allow proprietary racing
Restrictions on other racing codes	Unaffected	Issue permits to allow racing. May license clubs and races if allowed to be licensed	Unaffected	Unaffected	Impose Rules of Racing that exclude other racing codes
Multiple roles for controlling bodies	Unaffected	Unaffected	Unaffected	Unaffected	Are responsible for regulating and operating respective racing codes
Gaming and Betting Act 1994					
Creation of monopoly totalisator	Licenses and regulates TABCORP	Unaffected	Receives taxes from monopoly totalisator	Unaffected	Required to enter into relationship with TABCORP
Single racing products supplier and the role of the Joint Venture	Unaffected	Unaffected	Unaffected	Unaffected	Joint Venture that delivers dividends from to racing from TABCORP revenue
Lotteries Gaming and Betting Act 1966					
Illegal betting	Unaffected	Unaffected	Unaffected	Watchdog for illegal bookmaker betting	Unaffected
Advertising restrictions	Unaffected	Unaffected	Unaffected	Unaffected	Benefit from lack of advertising for betting on events not offered by TABCORP
Casino Control Act 1991					
Crown Casino's right to apply for a restricted sports betting licence	Would regulate if license activated	Unaffected	Would receive taxes from license holder if activated	Unaffected	Unaffected

C Terms of reference

The review of legislation relating to the racing and betting industry has been commissioned by the Minister for Sport and the Minister for Gaming in accordance with the Victorian Government's Timetable for Review of Legislative Restrictions on Competition.

Legislation to be reviewed

The review will examine the case for reform of legislative restrictions on competition contained in the following racing and betting legislation.

- *Racing Act 1958*
- Rules of the Harness Racing Board and the Rules of the Greyhound Racing Control Board
- *Gaming and Betting Act 1994* as it relates wagering
- *Lotteries Gaming and Betting Act 1966* – Part 3, Part 4 (except Division 7) and Part 5 (except sections 69, 72 and 73)
- *Casino Control Act 1991* – Part 5A and other provisions as they relate to the conduct of approved betting competitions.

This review is to be conducted in accordance with the Victorian Government's Procedural and Methodological Guidelines for the review of Legislative Restrictions on Competition. Specifically, the review report should apply section 2.11 of the Guidelines 'A step by step approach to competition reviews' in its analysis and crafting of the review.

To inform the review, reference should also be made to *A Framework for National Competition Policy Reviews of Gaming Legislation* (A study prepared by Centre for International Economics in June 1997 for the Department of Treasury and Finance).

In particular, the review will provide evidence and findings in its report in relation to the following:

- Clarify the objectives of the legislation. The legislation provides the framework for the operation of racing and betting in Victoria. The

review will identify and clarify the range of objectives that the legislation seeks to achieve. In its consideration, the review report should discuss the relevant market(s), or sub-markets in which the legislation operates.

- Identify the nature of the restrictions on competition. The review will assess the costs of identified restrictions against the benefits judged to be achieved from those restrictions. Specifically, the review report should assess how the identified restrictions on competition contained in the racing and betting legislation are linked to the objectives outlined in the first part of the review report.
- Analyse the likely effect of the restrictions on competition and on the economy in general.
- Assess the balance of costs and benefits of the restrictions.
- Consider alternative means of achieving the same result including non-legislative means. The review will seek to identify practicable alternative regulatory approaches that are less restrictive on competition.

Reform options

The review needs to take into account the general principle of the National Competition Policy that there is a presumption against statutory intervention, and the onus should be on the proponent of intervention.

The review should specifically address the appropriateness of modifying or removing the identified restrictions on competition contained in the legislation while meeting the requirements articulated in the identified objectives.

Without limiting or pre-empting the review, it is anticipated that reform options for the following major legislative restrictions will be examined.

Racing Act 1958

- Exclusion of proprietary racing organisations.
- Limitations on racing codes operating outside the rules of the Victoria Racing Club, Harness Racing Board and Greyhound Racing Control Board.
- Occupational and operational restrictions on bookmakers, trainers and other participants.

- The multiple roles of the Victoria Racing Club, Harness Racing Board and Greyhound Racing Control Board as regulators, operators and business managers of their respective codes of racing.

Gaming and Betting Act 1994

- Monopoly wagering licence.

Lotteries Gaming and Betting Act 1966

- General prohibitions on betting and betting related activities including their impact on interstate operators.

Casino Control Act 1991

- Restrictions on the conduct of betting by the licence holder.

Collectively, the above Acts also regulate the conduct of fixed odds sports betting. This activity was examined by an independent panel appointed by the Minister for Sport during 1997. The panel's report entitled *Sports Betting Review Panel's Report to the Minister for Sport October 1997* recommends a package of legislative reforms aiming to maximise the competitiveness of Victorian sports betting. These recommendations should be examined in the process of the review.

Review arrangements

The review is to be undertaken by an independent consultant to be selected by tender.

This review is to be conducted in accordance with 'Model 2 – Semi-public review' as contained in the Guidelines. This model requires public notification of the review and calls for submissions. Targeted consultation with interest groups should also be undertaken.

References

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