

**Submission
No 15**

INQUIRY INTO IMPACT OF GAMBLING

Organisation: Harness Racing Australia

Date received: 7/03/2014

NSW Legislative Council
Select Committee On Gambling

INQUIRY INTO GAMBLING

Submission from
Harness Racing Australia



7 March 2014

HARNESS RACING AUSTRALIA
SUBMISSION TO THE NSW LEGISLATIVE COUNCIL
SELECT COMMITTEE ON GAMBLING

Harness Racing Australia (HRA) welcomes the opportunity to contribute to the NSW Parliament Select Committee on Gambling (the Committee) Inquiry into Gambling (the Inquiry).

HRA is the peak national body for the sport and business of harness racing in Australia.

HRA represents more than 48,400 individuals who are involved in the process of producing and preparing standardbreds for racing in Australia. Of these, there are 24,000 owners of standardbred racehorses who provide significant capital investment into the industry, over 5,900 trainers and drivers and more than 5,500 breeders. The process of producing and preparing standardbred racehorses to compete in the industry is worth more than half a billion dollars in direct expenditure alone to the Australian economy. The majority of this is spent in regional Australia.¹

HRA wishes to raise 4 points for consideration by the Committee:

1. The need for a national approach to wagering regulation and taxation.
2. Wagering must continue to be exempt from the Interactive Gambling Act 2001.
3. The need for a national approach to dealing with unauthorised offshore wagering operators.
4. The need for a national approach to integrity standards particularly in relation to non-racing sporting bodies.

These issues primarily relate to the Committee's Terms of Reference in respect of:

- *The regulation of telephone and internet gambling services in other jurisdictions in Australia and overseas*
- *Exemptions and exceptions to State and Federal laws and policies relating to gambling*
- *Any other relevant matters*

1. The need for a national approach to wagering regulation and taxation.

Betting on horses has been a part of the Australian culture since white settlement in 1788. The drafting of the Australian constitution at Federation, determined that the States would be responsible for the imposition and collection of wagering and gambling taxes.

For the majority of the 19th and 20th centuries, the most common form of wagering on horses was through private bookmakers, many of whom operated illegally. In the 1960s, the introduction of State Government owned parimutuel totalisators (TABs) transformed the wagering landscape and provided a significant revenue raiser for States. Each State set its

¹ Size & Scope of the Harness Racing Industry in Australia, IER Pty Ltd, May 2013.

own wagering tax rates which varied across jurisdictions.

In addition, the racing controlling bodies and the State owned TABs entered into what was known as the 'Gentleman's Agreement'. This allowed each Australian parimutuel wagering operator the right to use the racing product of their interstate counterparts, without paying a fee. The Gentleman's Agreement operated effectively until the late 1990s when the internet began to gain acceptance and offshore, unregistered bookmakers began offering betting opportunities to Australian punters on Australian races, without making a contribution to the industries, or paying any tax to the State in which the race was held. This practice is known as 'free riding' or 'cross border betting'.

Technological advances have since revolutionised the wagering landscape, eroded state and national boundaries and opened the doors for an international marketplace for gambling.

The result of this wagering revolution has been largely detrimental to the Australian racing industry and to the Australian taxpayer, with wagering revenue diminished by non-tax paying corporate bookmakers and the gradual introduction of betting on non-racing products such as sport.

Crucially, the inability of the States and Territories to work together to address the new landscape, and the absence of a Federal response to these issues, encouraged the smaller Australian jurisdictions (in particular the Territories) to offer sweetheart deals to corporate bookmakers to be 'licensed' in their jurisdictions, although in effect, many still operated in the larger racing States (such as Victoria).

The State and Territory Racing Ministers have on numerous occasions acknowledged the complexities and difficulties in dealing with these issues, as summarised in the following extract from a Taskforce Report into Betting Exchanges, prepared at the request of the Australasian Racing Ministers in 2003:

The emergence of Internet-based betting exchange wagering platforms raises several highly challenging issues for the future viability of the Australian racing industry, consumer protection of punters and for government revenue flows from wagering.

Australia's situation is unique among the world's first level racing countries. This stems jointly from its status as a Federation and the co-existence in all jurisdictions of bookmakers and totalizators (TABs). Eight individual racing jurisdictions, together with eight State and Territory Governments with a range of often disparate racing and wagering legislation, heightens the challenge of developing and implementing a coordinated national response to the emergence of betting exchanges.²

The Betting Exchange Taskforce is one of an array of taskforces, reviews and working parties set up in the past decade by the Conference of Australasian Racing Ministers to progress reforms and to effectively protect Government and racing industry revenue from scrupulous wagering operators. To date, all of these efforts have proven futile.

²Report of the Betting Exchange Taskforce to the Australasian Racing Ministers' Conference, 10 July 2003. Accessed at https://assets.justice.vic.gov.au/justice/resources/743bb8e6-35a4-4a05-b7ba-99508b88bfe9/betting_exchange.pdf

HRA requests the Committee consider these issues as a matter of urgency. The current system is inefficient, ineffective and most importantly, is resulting in the diminution of revenue to the Commonwealth (acknowledging that the Commonwealth currently receives GST on wagering), the States and the racing industry. There is also unnecessary and costly duplication.

In addition, unlike in other areas where there is often resistance to Commonwealth intervention, the States themselves have consistently called on the Federal Government to intervene and provide assistance. A review of the resolutions/outcomes from the annual Conference of Australasian Racing Ministers (ARMC) highlights the attempts by the State and Territory Racing Ministers to seek a national approach to product fees, wagering taxes, integrity and the regulation of offshore unlicensed wagering operators.

A meeting of Australasian Racing Ministers held in Melbourne today highlighted the need for a new national approach to ensure a strong future for the racing industry.

It was agreed that challenges posed by the changing commercial and regulatory environment associated with racing and betting require a rethink of current practices.

It was also agreed by all Ministers that Governments must remain committed to ensure that racing is conducted as fairly and as honestly as possible; that racing must receive adequate funding from wagering operators; that animal welfare remain as a key priority for the racing industry and that community harm arising from wagering is minimised.

The Ministers unanimously agreed on the importance of maintaining a consistent understanding of the complex series of mutual dependencies that support the racing industries on which our national wagering and betting markets are based.

Ministers have agreed to work with their respective Heads of Treasury to prepare a submission to the Treasurers' Ministerial Council in relation to the financial arrangements underpinning Australian racing and wagering. (From the Official Communique of the ARMC, 2008)

State and Territory Ministers gave in principle support to the development of a national approach to the payment of race fields fees, including the development of Federal legislation to facilitate such a national approach. (From the Official Communique of the ARMC, 2010)

The Ministers discussed the absolute need for a national approach to product fee legislation driven by the Commonwealth to ensure the racing industry continues to be a major contributor to Australia's economy and proposed a further approach to the Federal Government on this issue.

Conference agreed that there is merit in investigating the possibility of a national totalisator pool and Victoria, South Australia and Western Australia will jointly examine the issue. (From the Official Communique of the ARMC, 2011)

The Ministers agreed to write to the Federal Government seeking urgent support for legislation to protect Australian racing from unauthorised offshore wagering

operators. (From the Official Communique of the ARMC, 2012)

More recently, the Premier of Victoria, Dr Dennis Napthine, has been increasingly vocal about the need for a national agreement on racing wagering and regulatory matters. In an interview on Melbourne radio in February 2013, he stated:

"National agreement is needed to ensure all participants in wagering, including totalisators, corporate bookmakers and betting exchanges, pay a fair and reasonable contribution to continue the growth and development of racing across Australia.

"With the massive growth of Darwin-based corporate bookmakers and interstate-based betting exchanges, action is needed on a national agreement to return a fair dividend to Australian racing from these betting operations.

"The real threats to Victorian racing in particular are the corporate bookmakers and interstate-based betting exchanges that have the advantages of lower tax rates because they are based in Darwin or other jurisdictions.

"Many of these corporate bookmakers and interstate-based betting exchanges pay little or nothing to help fund the racing industry in which they operate.

"The biggest losers from the shift of betting to interstate operators are the Victorian racing industries and the state Treasury.

"If we do not get a national agreement we are likely to have a much diminished racing industry in the future," Dr Napthine said.³

Despite all of these calls for a national approach, there has been little progress. Even though race fields legislation has been gradually introduced by the States, this has been an adhoc process and lack of any national agreement on the fees charged for the authorised use of race fields, has resulted in multiple legal challenges including High Court challenges.

And all the while, industry funding continues to be compromised and eroded through these issues plus the activities of corporate bookmakers which include the offering of inducements, credit betting and the use of tote odds markets derived from the parimutuel tote (quite separate from their own operations) – all of which could be addressed through a national approach to wagering regulation.

In 2010, the Productivity Commission Report into Gambling noted the widespread calls for a national solution to the funding and taxation issue, (refer to Chapter 16 and in particular Box 16.7 "Calls for a National Funding Framework"). In finding 16.3 of its report, the Productivity Commission found:

There are grounds for state and territory governments to cooperate when setting taxes on wagering revenue, in order to avoid destructive tax competition. However, the increased capacity for competition from lowly-taxed offshore online suppliers will, in any case, increasingly limit the capacity to tax wagering activity.⁴

³ 15 February 2013, www.rsn.net.au/news/racing/govern

⁴ Productivity Commission 2010, Gambling Report No. 50, Canberra.

In response to this draft finding, HRA recorded its agreement that there are strong grounds for State and Territory governments to cooperate when setting wagering taxes in order to avoid destructive tax competition. HRA went on to say, that:

History shows, however, that this is highly unlikely to be achieved in the absence of Commonwealth Government intervention. The smaller states and territories will continue to undercut each other chasing short term benefits at the expense of the long term health and prosperity of the national racing industry.⁵

HRA respectfully submits that now is the time to take action to enhance the long term health and prosperity of the national racing industry.

2. Wagering must continue to be exempt from the Interactive Gambling Act 2001

When it was enacted in 2001, wagering was specifically exempted from the Interactive Gambling Act (IGA). HRA supports this continuing exemption, but only on the basis it cannot be exploited by internationally “footloose”⁶ wagering providers. This term was used by the Productivity Commission in its 2010 report to describe the practice of bookmakers relocating their businesses away from established jurisdictions to avoid paying tax or contributing to the controlling body on whose product they are wagering.

It is essential that all betting providers which seek to profit on Australian racing or sporting events, regardless of where they are located, comply with strict integrity and financial standards. In this regard, the IGA should be strengthened to allow the blocking of ISPs from internationally “footloose” wagering providers.

HRA also recommends the IGA be amended to prohibit financial institutions from processing transactions from non-approved online gambling sites. Whilst the IGA currently provides a mechanism for regulations to be made relating to financial agreements involving illegal gambling services, to date there have not been any regulations made.

The United States Federal Government has led the way in this area, with the *Unlawful Internet Gambling Enforcement Act 2006*. The incorporation of similar provisions in the IGA would enhance Australia’s ability to ensure that punters deal with betting providers who have been approved by the appropriate regulatory body. This would ensure punters are dealing with betting providers who meet minimum integrity, harm minimisation and problem gambling standards.

3. The need for a national approach to dealing with unauthorised offshore wagering operators.

HRA strongly supports intervention to ensure adequate and effective measures are taken to deal with unlicensed, offshore wagering operators. The Commonwealth’s ability to make laws in respect of telecommunications provides it with the opportunity to arrest the revenue leakage away from Australia as well as providing protective measures to ensure Australians are not the victims of unscrupulous practices by offshore operators.

⁵ Australian Government Productivity Commission Draft Report on Gambling October 2009, Response of Harness Racing Australia, 15 December 2009.

⁶ Productivity Commission 2010, *Gambling*, Report no.50, Canberra, p15.1

This issue has been the subject of review by the Joint Select Committee on Gambling Reform in 2011 and the Department of Broadband, Communications and the Digital Economy in its review of the *Interactive Gambling Act 2001* (the IGA) in 2012. In the Department's Interim Report dated 29 May 2012 and Final Report dated 12 March 2013, the following recommendations were made outlining measures the Australian Government can take to prohibit overseas based wagering operators accessing Australian customers.

Recommendation 9: Subject to further consultation with industry, the IGA should be amended to provide a 'safe-harbour' allowing financial institutions that choose to voluntarily block financial transactions between Australian consumers and unlicensed online gambling service providers (or any intermediaries involved in such transactions) as part of their services to customers. The list of prohibited gambling service providers identified and published by the ACMA should be drawn to the attention of financial institutions by the department.

Recommendation 10: The department and Treasury should continue to monitor developments overseas in the use of financial payment blocking to prohibited gambling sites and draw relevant developments to the attention of Australian financial industry bodies.

Recommendation 11: Online gambling service providers that are confirmed by the ACMA as providing prohibited services in contravention of the IGA should continue to be included on the ACMA's list of prohibited URLs and/or websites that are subject to blocking by vendors of PC filters on the Internet Industry Association's (IIA) family-friendly filter scheme. The IIA should also expand its family-friendly filter scheme to include all popular filters used by Australians.⁷

HRA supports these recommendations, as outlined in both its original submission dated 21 October 2011 to the Department and its response to the draft report dated June 2012. HRA also notes the strong stance taken on these issues by the State and Territory Ministers at the 2012 Conference of Australasian Racing Ministers. In the official Communiqué from the Conference, it was resolved:

The Ministers agreed to write to the Federal Government seeking urgent support for legislation to protect Australian racing from unauthorised offshore wagering operators. The Ministers will be recommending the following action:

- *make it illegal for a telecommunication service provider to facilitate the transactions of a bet with a wagering service provider unless that wagering service provider is authorised by the relevant racing controlling body, and*
- *prevent financial institutions from processing betting transactions with a wagering service provider unless they are so authorised.⁸*

HRA urges the Committee to progress these initiatives in the best interests of the Federal and State Governments and the billion dollar racing industry.

⁷ Department of Broadband, Communications and the Digital Economy, Review of the Interactive Gambling Act 2001, Final Report, 12 March 2013.

⁸ Australasian Racing Ministers' Conference, 11 May 2012, Government Media Statement. Accessed at http://www.premier.tas.gov.au/media_room/media_releases/australasian_racing_ministers_conference

4. The need for a national approach to integrity standards particularly in relation to non-racing sporting bodies.

The absence of a national approach to wagering regulation and taxation, as outlined above, has resulted in an inconsistent approach to integrity standards. It has also highlighted the disparity between the integrity measures taken by the racing industry, and those by non-racing sporting codes. If there was a national regulatory body, developing and enforcing integrity standards across all racing and sporting bodies would be easier and more effective. A national regulatory body would also allow the Government to promote measures to best address any concerns arising from the social and economic impacts of gambling.

Of continuing concern to HRA is the lack of integrity oversight by non-racing sporting codes, whose sporting activities are now the subject of vast betting activity. Between 2000-01 and 2010-11 in Australia, sports betting has increased by 278 per cent, compared with 69 per cent on racing.⁹ Unlike the racing industry, however, these sports have not invested in integrity and do not have the expertise to manage the complexities associated with betting. The Australian Crime Commission's *Organised Crime and Drugs in Sport Report* released in February 2013, highlighted this vulnerability. One of the four issues the ACC identified which posed a current threat to the integrity of professional sport in Australia was "the differing levels of integrity oversight in professional sport in Australia."¹⁰

The other critical difference between the racing industry and other sporting codes is the unique link which exists between the racing industry and wagering. For example, over 90% of the revenue generated by the harness racing industry comes from wagering. This clearly distinguishes it from other sports which do not depend on wagering. Racing exists to provide product for punters to wager on, while an AFL game or cricket match can go ahead without betting, and its participants are no worse off.

The racing industry's unique relationship with wagering means that the integrity departments of racing controlling bodies are mature (having been operating since the industry commenced), sophisticated (there is a long history of rules and precedents regulating the industry) and well resourced (dedicated integrity departments exist headed by Chief Stewards with extremely strong powers). Income from wagering is the primary source of funding for the racing industry and so ensuring the highest integrity standards are maintained is crucial. This is not the case with non-sporting bodies. HRA continues to believe that betting on sports should only be permitted if strict integrity measures are enforced by an appropriately empowered and competent national regulatory body. If the controlling body cannot demonstrate this ability, betting on its product should not be permitted.

HRA requests the Committee explore opportunities for a national approach to integrity standards and practices and review the role of the National Integrity of Sport Unit (NISU). The NISU was hastily established in late 2012 with its initial purpose to oversee the implementation of the Match Fixing Policy endorsed by States and Territories in July 2011. To date, this legislation has still not been introduced uniformly across Australia. It is unclear what the role of the NISU will be under the new Coalition Government.

⁹ Australian Racing Board, Australian Racing Fact Book, 2011.

¹⁰ Australian Crime Commission *Organised Crime and Drugs in Sport Report*, February 2013 accessed at <http://www.crimecommission.gov.au/sites/default/files/files/organised-crime-and-drugs-in-sports-feb2013.pdf>