

Productivity Commission Draft Report on Gambling (October 2009)

What does this mean for the wagering sector?

Background

Earlier today (21 October), the Productivity Commission released its Draft Report on Gambling¹. The Report represents a significant milestone in Australian gambling regulation and precedes a Final Report to be released by 26 February 2010.

The Productivity Commission was requested by the Commonwealth Government to report on various matters relating to the gambling industry including:

- the effects of the existing regulatory structures – including licensing arrangements, entry and advertising restrictions, application of the mutuality principle and differing taxation arrangements –governing the gambling industries, including the implications of differing approaches for industry development and consumers;
- the implications of new technologies (such as the Internet), including the effect on traditional government controls on the gambling industries; and
- the effectiveness and success of harm minimisation measures.

This review represents the second review conducted by the Productivity Commission, the first being in 1999.

The Productivity Commission has invited comments on the Draft Report. Written submissions should be made by **Friday 18 December 2009**. The Commission has scheduled a number of public hearings from late November until mid-December at which submissions relating to its Draft Report can be made.

Current Regulatory Regime

The current regulatory regime is implemented at the State and Territory level and requires wagering operators licensed in the relevant jurisdiction to pay taxes. Similarly, all States,

¹ See <http://www.pc.gov.au/projects/inquiry/gambling-2009>

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with the exception of Western Australia², have in place legislation which requires a wagering operator to obtain authorisation before using race fields. The ACT and the Northern Territory are yet to introduce a race fields regime.

An Industry in Flux

The wagering sector is in a transitional period³. The *Betfair* case (see Addisons FocusPaper entitled “*Internet Regulation - End of Cross-Border Restrictions on Gambling Activities?*”) confirmed the existence of a national wagering market in Australia.

Under the old system, a Gentleman’s Agreement had existed between the totalisators which allowed each totalisator to bet on racing in the other’s jurisdiction without paying any fee for the use of information relating to each race. This information, commonly referred to as a “race field”, includes the names of horses or greyhounds, their positions, weights and other race-related data. However, as the number of corporate bookmakers and the amounts bet with them increased, racing bodies became increasingly concerned at the “free riding” taking place through the use of race fields by these betting operators without the payment of an appropriate fee to the industry and race fields legislation was introduced.

Race fields legislation requires wagering operators to obtain authorisation to use race fields, subject to various conditions, including the payment of a fee in return for this use. Some jurisdictions calculate the fee on the basis of turnover (the amount bet with the wagering operator by punters) while others calculate the fee on the basis of gross profits (turnover less winnings paid to punters).

The Commission’s Draft Findings

“Free-riding” must be prevented in order to:

- ensure the long term viability of the racing industry;
- prevent detrimental effects to the communities where racing plays a key role; and
- prevent adverse impacts on the consumers of wagering and racing products.

However, while the grant of monopolies and race fields legislation addresses the “free riding” problems, these solutions are anti-competitive, and have led to undue costs to wagering operators in a market that is now national.

The Commission’s Draft Recommendations

The Productivity Commission recommends that:

- a national funding model be implemented which will involve a single levy being paid by all wagering operators;

² The West Australian Government has introduced a number of pieces of legislation to implement a race fields regulatory regime. At the time of writing, this legislation was before Parliament.

³ For further information on changes in the wagering sector, see Addisons FocusPapers entitled: *What does the IceTV Decision Mean for the Racing Sector? Race Fields Legislation - Will the New South Wales Legislation withstand a Constitutional Challenge?*

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- the levy be calculated on the basis of gross revenue; and
- an independent national body be created that would set and review the levy in consultation with key stakeholders.

These arrangements would be underpinned by national legislation.

Additionally, the Productivity Commission recommends:

- the ACCC should be asked to examine any adverse implications for competition associated with the ownership of the SKY racing television channel by Tabcorp;
- retaining the exclusivity arrangements currently conferred on totalisators;
- permitting tote-odds betting;
- permitting credit betting, but only for large and established clients;
- considering whether it is appropriate to prohibit inducements being offered by wagering operators; and
- ending the retail exclusivity enjoyed by totalisators.

The Commission's Requests for Submissions

The Productivity Commission requests submissions on the feasibility of a model whereby the single levy referred to above would be paid directly by wagering operators to racing clubs rather than state racing authorities.

Submissions are also requested on whether credit betting should be extended to other betting providers and, if so, whether the proposed restrictions are appropriate.

Response

Racing NSW has issued a response to the Draft Report which it strongly attacks the conclusions reached by the Productivity Commission. This indicates the strong views held on the matters addressed in the Draft Report (many of which are also the subject of complex court challenges) and signals the continuation of a vigorous and lengthy debate on the draft recommendations.

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