

## **SUBMISSION 2**

### **REVIEW OF THE COMPETITION PROVISIONS OF THE TRADE PRACTICES ACT**

## **AUSTRALIAN RACING INDUSTRY**

I do not expect that the Trade Practices Act Review Committee will take a particular interest in the Australian racing industry. My expectation, however, is that this Committee will see in the sorry state of the Australian racing industry, riveting illustrations of inappropriate trade practices.

My hope is that these illustrations of problems besetting a major national industry will encourage and support legislative reforms that will in turn facilitate reform in the racing industry.

### **Racing out of control**

Reflecting a combination of factors -- principally political codependency -- the Australian racing industry is in a parlous state. Once a foundation of Australian popular entertainment, racing is in decline.

The administrators of racing in the individual States are granted a fixed percentage of TAB betting turnover which they redistribute on administrative criteria between participants in the racing industry. In an industry where the access of participants to public funding should be conditional on the quality of the racing entertainment they provide, it is, perversely, the opposite -- participants are publicly funded irrespective of the quality of the entertainment they contribute. It is a most unpalatable recipe, 'inputs' and 'expenses' are rewarded with unconditional subsidies while the quality of 'outputs' and 'revenues' are largely ignored.

The public presentation of racing entertainment on the broadcast media is now of an appallingly low standard. This is not surprising perhaps when the mismanagement of racing nationally reflects in the conduct of far too much racing which is forced fitted, crammed, into the limited available time on the broadcast media. Quantity has crowded out quality in racing entertainment. None of the customers of racing would fairly assess the situation with the broadcast media as anything other than disgraceful.

One can only wonder first, what went wrong and second, why is the racing industry incapable of correcting such obvious faults? The prevailing combination of inappropriate trade practices denies to the customers of racing the quality entertainment to which they are entitled -- and for which they (and community generally) pay dearly.

As currently administered, the racing industry is unable to deliver quality racing entertainment efficiently and cost effectively. The industry is simply out of control -- the races need to be fixed.

### **The issues to be addressed**

Over the past decade but especially in the past two years, as the Consumer Representative in the regulatory framework for racing in NSW, I have repeatedly asked for the obviously inappropriate aspects of racing industry policy to be corrected. Not only have these requests been simply disregarded by the key decision-makers in the racing industry, the situation has deteriorated further. The attachment to this submission comprises extracts from seven recent policy papers that have been widely circulated to industry administrators and commentators as well as being published, usually on crikey.com.au.

Against this background the following lines up some issues of principle about trade practices and competition policy being considered by the Committee, with summary assessments of situations in the racing industry deemed to be unsatisfactory.

#### **1. Monopolisation (broadcasting)**

Ordinary Australians who like to bet on the races find it hard to believe that TAB Limited was permitted to 'vertically integrate' and take over SKY Channel, the national racing telecaster, and in NSW, the racing radio station 2KY. To the extent such monopolising takeovers met policy criteria, the customers might wonder why conditions were not imposed to protect the quality of the racing entertainment broadcast.

Insult is added to injury. The triumph of quantity over quality in broadcast racing entertainment is compounded by the broadcast of other paid advertising. One might have thought the presentation of racing commentary was itself 'advertising' supporting the business of wagering conducted on far-too-many races in Australia by TAB Limited (and its TAB counterparts in other states).

It would be salutary for members of the TPA Committee to hear a few minutes of the racing 'entertainment' broadcast on 2KY one Saturday afternoon about 3 pm.

The paying customers are force-fed a broadcast program that is a parody of proper racing entertainment. Much as one might have hoped for new entrants to the business of broadcasting racing entertainment, it has not happened. If the market conditions allow only one broadcaster in each medium, then customers would prefer 'divestiture' i.e.: racing media be no longer owned by a wagering operator, such as TAB Limited. At a minimum the customers of racing would like to see conditions placed on any monopolist owner of racing broadcast media to ensure quality entertainment, as determined by a consultative body representing customers.

## **2. Monopolisation (State v. State -- no way)**

The imposition of taxes on gambling entertainment seeks to achieve balance between different gambling options and, in principle, has nothing whatever to do with the public funding of the provision of facilities for, and conduct of, gambling entertainment. Put differently, if the public funding of racing ceased, the appropriate taxation of racing gambling would probably not change. Taxes collected on racing gambling belong first to consolidated revenue -- and only subsequently to those in the racing industry that might qualify for available subsidies on the basis of the quality of the racing entertainment (and tax collections) they deliver.

State governments have seen fit to enter into contracts to subsidise their local racing industry -- a percentage of betting turnover is given unconditionally to local administrative bodies for distribution on administrative criteria to participants in the local racing industry. This is mindless public expenditure. The predictable consequence has been bloated local racing industries in every state delivering little, if any, quality-racing entertainment. When far-too-many, races in each State become a wagering and broadcasting opportunity in every state, the aggregated consequence, nationally, is simply appalling.

Considerations of quality aside, a further consequence of these arrangements is the associated anti-competitive 'protection' of funding for state racing industries (and State revenues). The 'protection' includes severe limitations on the competitive environment both locally and nationally. The operations of bookmakers locally and offshore are constrained to force betting turnover through monopolist TABs. As between the states, there is apparently a 'gentleman's agreement' against competition between TABs that might be seen as poaching customers residing in other states. Almost unbelievably the Governments (and taxpayers) of the States producing the best racing entertainment give that product away free of charge to other states for the conduct of monopolistic betting operations in those other states.

The protection of monopoly rights by State governments begets other regulation that distorts the proper operation of betting markets. In particular, notwithstanding that almost-all betting activity takes place off-course, customers betting off-course are denied access to bookmaker betting market fluctuations, on-course. The resulting situation -- asymmetric information, two prices for the same product etc. -- is totally contrary to modern public policy that demands fair trading protections of customers.

The attention of the National Competition Council has been drawn to this ongoing disregard of national competition policy. A beggars-belief example of the inability of state administrations to cope with racing industry policy issues, was a report released last December by the NSW government. Following a four-year review of racing policy matters, it canvassed a range of obviously necessary reforms before concluding that 'no change' was appropriate.

Castling about for solutions there are some more and less obvious options. Obviously, compliance with national competition policy needs to be encouraged -- not least by the exposure of the consequences of inappropriate monopolisation in individual states. The Committee might like to consider strengthening the incentives to comply with national competition policy. Among the less obvious options would be some catalytic initiative by the Commonwealth government to bring some sensible national coordination to the operation of the racing industry across states.

### **End piece**

State governments, and their taxpayers, would best be rescued from the politically predatory behaviour of local racing industries. Customers looking for quality racing entertainment would in turn best be rescued from State governments misusing taxpayer funds in subsidising indiscriminately racing industry participants unable to pay their way by delivering racing entertainment that customers want. The racing industry is an example of government support for small business -- rural racing clubs -- going beyond the bounds of commonsense.

Unless the Australian racing industry is given a different sense of direction its chance of having any meaningful role in the global racing industry will be limited to breeding operations and providing pre-training facilities for horses competing on the Asian racing circuit.

This widely believed prospect alone is a damning indictment of Australia's inability to run an industry where one might once have thought Australia had an almost unassailable comparative advantage -- an advantage that would have seen Australia conducting a major export industry supplying racing entertainment to the Asia-Pacific region.

The Australian racing industry must be one of the last surviving that continues to be run along the lines of a business in a 'socialist' command economy. In this business 'model', administrative discretion both displaces proper commercial disciplines and is exercised in favour of a particular interest group against the best interests of the broader community.

The leadership of the Australian racing industry stands indicted, along with the State governments that have condoned and encouraged trade practices more consistent with destroying a major national industry and national pastime, than ensuring it holds pride of place in Australia and on the global stage.

An 'icon' Australian industry deserves better.

Peter Mair  
4 July 2002

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**PETER MAIR: SUBMISSION 2**

**SUBMISSION TO TPA REVIEW  
"RACING INDUSTRY"**

This attachment comprises seven extracts from published discussion papers and commentaries written by Peter Mair about racing industry policy issues. He is the Consumer Representative on the Racing Industry Participants Advisory Committee in NSW.

**ATTACHMENT 1**

**NOVEMBER 2000, GENERAL DISCUSSION PAPER**

***A CONSUMER PERSPECTIVE ON THE RACING INDUSTRY***

What follows is a consumer perspective on the racing industry. This note puts a non-golden slipper into racing a bit -- not entirely unfairly, I believe, from a customer point of view.

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Respect for the customers is invariably a casualty of industries characterised by features of monopoly. Racing is one such industry with strong cultural foundations and a largely captive market. The customers are often treated as captives. Respect for the customer needs to be restored in the racing industry.

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Stimulating customer-protecting, competitive disciplines in monopolistic industries is difficult.

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A fair starting point would recognise that the customers provide the money -- especially TAB customers betting off-course. The customers are important. I would like to see:

- a commitment to both finding out what do the customers want and being responsive to what the customers say;
- a communication channel on the TRB internet site to obtain customer feedback and ideas; and
- generally encourage and facilitate customer involvement by

holding an open industry seminar

Very relevant 'customer talk' for the racing industry is, of course, spoken in the relative value of the bets placed and the location at which those bets are placed and, if asked, the customers would say a few (rude) words about the 'no-choice' of media for race broadcasts.

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Most of the customers do not attend race meetings. Most bets are placed with the TAB at off-course locations -- we are talking about 90% of 'show me the money'. For the customers that show the most money, racing is a national sporting entertainment. These customers don't care about State boundaries -- except as fairness and quality is more likely to be found in some States than others.

That said, the customers have spoken -- they will not be going to race meetings in droves. The industry can accept that reality as it has done in the past, or it can really accept that reality -- and start to address issues relevant to the TAB customers off-course.

Media content (i)

The racing broadcast media business is in Henry Ford territory -- any colour as long as it is 2KSKY. Except of course on the big days in Sydney and Melbourne when national free-to-air TV opens the customers' eyes to a very different colour.

It is simply not possible in one afternoon to properly cover in a reasonably entertaining way, some 50 races involving some 500 horses in either the pre-race commentary or the actual race broadcasts. Choices have to be made. The choices made should reflect the preferences of racing customers.

Media content (ii)

The role of advertising on 2KY on 'Sacred Saturdays' needs to be reconsidered by the industry. Customers' time is valuable. People also act as if their time is valuable -- including their leisure time -- which can be shown to be 'valued' at (at least) 10 cents per minute when they are not at work. A one-minute ad on 2KY costs a few hundred dollars -- a listening public of some 200,000 is collectively 'paying' \$20,000 per minute.

The public policy equation in this trade-off is not good. The industry -- perhaps the TAB -- could buy all the advertising space at the going rate that is necessary to pay the freight at 2KY and allow 'advertising free' racing coverage on 2KY, at least on Sacred Saturdays. Perhaps the cost could be funded from the 'rounding

down' deductions from TAB dividends.

## **ATTACHMENT 2**

### **DECEMBER 2000, SUBMISSION TO NSW DEPARTMENT OF FAIR TRADING**

#### ***THE RACING INDUSTRY AND THE FAIR TRADING ACT REVIEW***

As a starting point I take it that government policy promoting fair-trading will apply except in special circumstances where it is appropriate for public policy, considered more broadly, to decide that trading may, reasonably, be conducted unfairly.

Some may see the racing industry as such a special circumstance. I do not.

My main general request is that 'someone', some delegated authority (perhaps the **TRB**) be given accountable responsibility for delivering good quality racing entertainment and associated betting opportunities on demonstrably fair and equal terms for all the customers.

There are some particular issues where I believe the Fair Trading Act should be reviewed to encompass the racing industry and better protect consumers. One is about ensuring fairness in betting markets. A second is about the measurement and disclosure of characteristics of racing products that bear on issues of fairness and product safety (problem gamblers). The third is about the development of industry codes of practice. Finally there are issues about competition and overall industry efficiency, including the likely benefit of establishing arrangements for the industry to obtain, and respond to, feedback from the customers about product policy matters. These issues are related.

#### **Fair betting markets**

##### **(i) dual pricing/asymmetric information**

The market for betting on horse races is segmented between customers on-course and customers off-course. On-course customers may bet with bookmakers or the TAB, off-course customers may bet only with the TAB.

The continued presence of bookmakers is a considerable consumer-protection benefit in that they provide competition for the government sponsored TAB totalisator facilities. Competition

which, incidentally, is unreasonably constrained by inappropriate restrictions on the minimum value of bets that bookmakers may take over the 'phone. The confrontational, 'fixed price' nature of the relationship between bookmakers and their customers is a useful characteristic promoting a fair and open market for betting on racing, including betting into the TAB totalisator pool.

In the event, customers in different 'shops' buying the same product -- a bet on a horse -- may be unaware of different prices being offered and different relevant information available about the product available only to some customers (other than owners and trainers). Another way of characterising the difference would identify two classes of customer - "insiders" and "outsiders": it is a short step to realise that the on-course insiders may have an unfair advantage over the off-course outsiders. It is not such a big further step to decide that this unfairness is unnecessary and that it should not continue.

The racing industry stands as a major national business where unfairness is endemic -- institutionalised unfairness that would rarely be tolerated in any other national industry.

Customers on-course are advantaged by access to bookmaker betting fluctuations for races both at that course and at other racecourses nationally. The product information implicit in the on-course betting markets can be relevant to customer choices. Customers betting off-course are presently denied access to bookmaker betting fluctuations on all racecourses -- consequently, off-course customers are at risk of exploitation by better informed on-course customers.

There are various concepts of market failure identified in the review document that underlay legislation about fair trading and that have application to the racing industry -- including "unconscionable conduct" (p.12 & 39) and "dual pricing" (p.12&24).

It is not equitable, fair or honest dealing for the racing industry to put the majority of its customers in such a disadvantageous position relative to the minority of customers that attend a racecourse. 93% of money wagered on the TAB comes from customers betting off-course. The off-course customers are the source of most of the revenue that pays for the conduct of racing and its prizemoney -- and most of the tax collected by government.

The origins of this institutionalised unfairness go back a long way - - betting off-course was once illegal. Continuing this unfair practice is unreasonable, some 35 years after off-course betting at TAB was legalised.

There is a public policy concern to protect revenue flowing from betting with the TAB and with registered bookmakers. This is a policing matter unlikely to be very relevant to the majority of customers betting off-course with the TAB and the revenue they contribute to the racing industry and the government coffers. The majority should not be penalised for the possible inappropriate behaviour of a few.

**(ii) auditing fairness**

Nationally, each year, bets totalling some \$10 billion are placed on some 25,000 horse races involving some 40,000 horses. The vast majority of the betting activity is off-course with TABs operating in all States.

The quality of the races covered varies greatly as, probably, does the fairness of the betting markets.

A key question is -- are TAB bets placed on-course and late in the betting more likely to be winning bets than bets placed off-course?

Few would doubt that the answer to this question is generally "yes". Just how "yes" is a fact that could be measured automatically by a computer program running in conjunction with the betting activity on individual races. The measurement of this imbalance would indicate, among other things, the possible incidence of unfairness in the information available to different customers for different races.

More generally, the overall difference between the pre-post and starting price market odds can be measured to indicate the weight of relevant information that became available on the day the racing was conducted. Both measures of "fairness" could be converted to a simple index number that could subsequently be published with the official race results. If both pieces of information were collected for a representative sample of races of a particular class and at a particular track, they could be published as a prior indicator of the likely fairness of the betting market for a particular race.

The customers both on and off course would probably appreciate an indication of the races likely to offer 'more' and 'less' fair betting opportunities. They would also like to know when the race result reflected information that they were denied.

Whether the Department of Fair Trading negotiates such a system of fairness audits with the TAB or uses its "inspectorial powers" to establish a separate audit body is a moot point.

It is relevant that the Australian Stock Exchange in association with

the Australian Securities and Investment Commission announced last week the establishment of such a separate audit body to monitor trading on the national stock exchange. The TAB is akin to a 'stock exchange' for many in the community and a similar auditing arrangement could be put in place cost effectively. I regard such an innovation as reasonably essential to help ensure the integrity of this \$10 billion p.a. industry, over and above the excellent efforts already made by the racing stewards observing races and swabbing horses for prohibited substances.

Would the racing industry oppose monitoring the fairness and integrity of the industry and publishing the results? Would they do it voluntarily?

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### **Competition and efficiency**

#### **(i) approximating a 'competitive' market**

Beyond all that, the racing industry has come to have some unfortunate characteristics associated usually with sole-provider industries. The one authorised off-course-betting agency -- the 'sole-provider' TAB -- financially controls the 'sole-provider' race broadcast media (SKY and 2KY) and some elements of the print media -- dictating the delivery of a 'maximum quantity' of racing product that it obtains from race clubs financially beholden to distributions they receive from TAB revenue.

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There is a real chance that this industry -- run by the TAB -- is delivering the proverbial 'one ton nail' to customers it has lost contact with and to whom it does not listen when they 'vote' with their money -- more for good quality racing than for less. If racing is entertainment for the customers then much of what is delivered in the pursuit of maximum turnover is questionable as quality entertainment -- the delivery of which often 'crowds out' better quality entertainment.

If a sole-provider, monopoly structure is deemed appropriate for the key elements of this industry then the customers (among others) would probably be pleased to see some 'fair trading' checks and balances put in place. Arrangements that would approximate quality-managed product delivery standards in a competitive market to ensure the customers get entertainment value for their money.

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The racing industry monopoly needs some 'fair-trading' style

arrangements put in place for obtaining and responding to feedback from its customers. Arrangements that would approximate a competitive market outcome and possibly facilitate a shift from a policy of 'take what you get -- as much as we can cram in' to a policy more attuned to delivering comfortably what the customers would like -- and what they pay most for. All races are not the same.

### **ATTACHMENT 3**

#### **JUNE 2001, DISCUSSION PAPER**

##### ***AUSTRALIAN RACING: OUT OF CONTROL?***

Australian racing is about to collide with commercial reality.

Australian racing now has the quantity-not-quality feel of a proverbial 1950s hardware factory in Russia proudly meeting weighty production targets by delivering one-ton nails.

With parochial administrators, automatic 'entitlement' to taxpayer funds and little commercial discipline, racing is confusing 'success' with running too many races at too many places and broadcasting them all as if they were of equal importance.

One might say ..... "this can't go on".

I say that in this discussion paper --- the first part "*The Racing Revolution*" is about a different future for the Australian racing industry: the second part "*The Revolutionary Context*" explains why.

#### **THE RACING REVOLUTION**

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Australia still has a chance to get its racing industry back on a track that will be relevant to the future of racing in the global economy -- but time is slipping away. Other countries have taken the 'first mover' advantage. Not every player will find a comfortably relevant chair in the global sun when the music stops.

This is no time for the continued substitution of nostalgic rural-racing nonsense for proper racing industry policy. Australia's racing administrators are unfortunately a bit prone to making that substitution.

**Racing is not automatically 'entitled' to anything**

The current 'entitlement' nationally, is to some \$600 million that is deducted from the punting public's purse.

There is of course no 'entitlement' of the racing industry to be given gambling tax revenues. That concept of 'entitlement' is a myth. And the nonsense of it is everywhere to be seen -- it is racing, around the country.

Rather, 'government' (the community) is entitled to tax gambling and 'government' should then sensibly spend gambling tax revenue to benefit the community generally -- not mindlessly, automatically on the racing industry.

Such sensible spending from the public purse would, of course, include buying both local and imported racing as input for TAB gambling -- but, in the future, more limited quantities of quality racing will be bought on an open, global market.

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## **THE REVOLUTIONARY CONTEXT**

### **The customers want 'what'?**

Last November, newly the 'consumer representative' for racing in NSW, I circulated comments about the racing industry and its off-course TAB customers. These comments reinforced remarks previously made to the National Gambling Inquiry and NSW's, Temby Inquiry before that.

The still-relevant assessments included,

- 'too much' low-grade racing is overwhelming the print and broadcast media, sapping the quality of racing entertainment;
- governments are over-funding bloated local racing industries that do not deliver value for money to the customers; and
- a culture favouring industry insiders unfairly disadvantages TAB customers betting off-course.

The call to address these issues apparently fell on deaf ears.

Among other things,

- advertising of very little value on the broadcast media still crowds out needed racing commentary;
- the broadcast every five minutes of don't-bet, low-grade races

from 'anywhere', including New Zealand, compounds the evident disrespect for racing's customers;

- TAB customers betting off-course are still denied access to bookmaker betting fluctuations on-course;
- the industry still does not coordinate the delivery in the print and broadcast media of adequate back-up information necessary for customers to properly enjoy their racing gambling; and
- there is still no audit of the integrity of betting markets even though 'insiders' systematically benefit unfairly.

In short, racing's leaders are not much interested in off-course TAB customers -- and they won't be until the industry is reformed.

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### **How did the Australian racing industry get lost?**

The Australian racing industry is in disarray. Some racing administrations are apparently so preoccupied with local 'survival' issues it leaves them little time if any to look after the paying TAB customers.

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### **"bugger the customers"**

Surprisingly, still the customers of 'racing' are not entitled to the usual protections of the 'fair-trading' laws. Clearly unfair treatment of TAB customers that would not be tolerated by any other national retail business, is legitimised as 'fair' in the racing industry.

State racing administrators (and State Treasurers) would silently lament the real decline in betting turnover -- one State even runs advertisements warning in Orwellian tones, the consequences for customers betting with 'an overseas operator'.

## **ATTACHMENT 4**

### **SUBMISSION TO THE NSW MINISTER FOR RACING**

#### ***THOROUGHBRED RACING BOARD REVIEW***

This paper responds to the call for submissions about a review of

policy objectives in the Thoroughbred Racing Board Act 1996 and the provisions of that Act appropriate for securing those objectives.

Though addressed to the nominated Minister, many relevant issues warrant the close attention of the NSW Treasurer as well as the Office of State Revenue and the Minister for Fair Trading.

Notwithstanding that the operational focus of this legislation is the State of New South Wales, I see the appropriate policy objectives for TRB as including:

- the provision of high-quality racing gambling entertainment to customers in Australia (and overseas) that is acquired from the racing industry in both NSW and Australia more generally and, in due course, from other countries, especially those in the Asian region;
- contracting with local race clubs and interstate and overseas suppliers, for the delivery of racing product on terms that will maximise the betting tax revenue accruing to government net of any 'purchase' costs that government may incur to secure the delivery of appropriate racing product; and
- the delivery to 'racing' customers of high-quality racing entertainment that is conducted without question as to its integrity; appropriately supported by print and broadcast media outlets meeting high standards of racing product presentation and more generally is delivered on fair-trading terms that demonstrably protect the best interests of all customers.

There is a way to go.

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This submission has three parts. First, there is some in-principle ground to be cleared. Second, separable racing industry functions need to be identified in broad terms and allocated to racing industry institutions. The third part draws some general implications for the TRB.

## **A. CLEARING THE GROUND**

In management jargon the following proposition may be described as a paradigm shift -- which simply means a completely different way of seeing things in the future. And that is what is needed to save Australian racing.

The proposition is:

*The Australian racing industry is not automatically entitled to any of the taxes that are legitimately collected from racing gambling by Australian State Governments.*

The key words here are "not" and "any".

The corollary is that government will choose to allocate funds to purchase racing product from general consolidated revenue on commercial criteria.

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**-- is this 'proposition' believable?**

What is not believable is letting Australian 'racing' run on 'as is'.

It will be easier all-round if the industry nationally accepts that there will be much less taxpayer money used to subsidise racing and that redundant racing industry resources will be equitably retrenched.

The commonsense of all this will be more easily marketed to the industry nationally if there is a reasonable consensus reached between the separate Australian States.

National policy coordination for the Australian racing industry is long overdue. It will come. What remains to be agreed is "who will make the coordination decisions?" and "by what process will the coordination issues be decided?". Among the options for clear answers to those questions are 'the market will decide' and 'the process will be brutal'.

## **B. RACING FUNCTIONS AND RACING INSTITUTIONS**

The TRB in NSW does not stand alone, it stands alongside other institutions that also service the racing entertainment industry.

In NSW, the other institutions involved in producing a total product package, include the race clubs that put on the show; the print and broadcast media that deliver the show and the TAB that sells the tickets for the gambling.

**-- k.i.s.s. racing**

In making decisions about 'functions' and 'institutions' it is best to keep it simple.

To achieve simplicity it is necessary to have a guiding principle. The guiding light is:

***Government is entitled to tax racing gambling so as to maximise the taxes collected on behalf of the general community. Government will spend general taxpayer funds to buy racing entertainment (product packages) that will generate the maximum net tax take in the relevant window of racing broadcast time.***

The key words here are "maximum net tax revenues for government in every time slot".

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Racing product acquired from local sources will compete with product imported from suppliers located interstate and overseas. The choice of product will be based solely on a hard commercial reality, it is:

***The purchase of racing product from local, interstate and overseas sources will be based solely on prospective gambling turnover (net taxes) that would be substantially guaranteed by the supplier of the racing product.*** The prices paid to purchase racing product would be competitive but they could also accumulate to a very high total if the product were widely sold on the Australian and international market. There will be big rewards to those able to market the complete racing product packages that will 'win' the betting customers.

Using 'pay-only-for-performance' as the guiding light, other policy decisions about the national racing industry will follow fairly simply.

#### **-- what functions and which institutions?**

There is one central function in the supply of racing product.

***The central function is to generate in the community a passionate difference of opinion about the winning chance of every horse in the race.***

There are four complementary functions.

One, the races have to be programmed, organised and run, preferably sponsored and preferably (but not necessarily) witnessed by people at the track. Race clubs have that function -- too many of which presently do far too much of it.

Two, passions in the community must be aroused to generate betting turnover. This is done by promoting the entertainment and supplying current information that meets strict criteria of soundness and completeness, as a basis for ordinary people to make confident judgments about the likely outcome of races. The print and broadcast media have that function (in association with the race clubs). The media function is presently done poorly because there is little if any competitive discipline and there is far too much to print and broadcast. (A wonderful exception is the facts-only "Sportsman")

Third, someone has to sell the tickets to exploit the passion for betting aroused in the community. The TAB performs this mass-distribution function -- and it does it exceptionally well. The TAB is the best retail 'bank' in town, has been for years. (Bookmakers are an essential element of racing entertainment but usually in a low-tax niche of the overall ticket-selling operation. Ideally they would be allowed to 'stand' in local pubs and clubs.)

Finally, the racing industry being naturally prone to corruption must be properly regulated. And it must be clearly seen as 'no question' properly regulated if local racing product is to be marketed successfully interstate and overseas. This regulatory function is performed by the TRB (presumably sometimes in association with the Minister for Racing).

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Some regulatory functions that are appropriate for the TRB are not yet fully recognised. For example, normal fair-trading protections do not extend to TAB customers in Australia and the general fairness of TAB betting market activity is not intelligently monitored either. The industry should be made more accountable to its customers.

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### **End Piece**

In November 2000 a submission was lodged with the relevant Minister (and others) in respect of a review of the Fair Trading Act.

The submission advocated that well established fair trading principles be newly applied faithfully to the benefit of the gambling customers of the racing industry.

Issues raised in that submission would seem to be relevant to a review of the TRB Act: in particular, it would seem to be entirely appropriate for the TRB to be now given a comprehensive

'customer protection' brief.

## **ATTACHMENT 5**

### **OCTOBER 2001, DISCUSSION PAPER**

#### ***TAB SHARE PRICE***

What will be good for TAB customers will be good for the TAB share price. That's why this 'customer' is standing for the TAB board.

The TAB share price reflects TAB betting off-course. The better the racing entertainment provided and the more the customers will bet, the higher will go the TAB share price. It is fair to say that TAB customers want the TAB share price to increase, as do those that speak for TAB customers and the wider community\*.

The over supply of no-bet 'rubbish racing' is holding TAB back. Over supplied with 'free' racing product on Saturdays, TAB bets and broadcasts the lot, a race every five minutes, in an overcrowded 'entertainment' program that drives the customers to distraction and indifference. There is no sense in this -- for anyone.

Following some summary thoughts on 'fixing the races', Part A lists a few things that TAB customers reasonably 'want' and reasonably should get. Part B offers some explanation.

#### **A. FIXING THE RACES<sup>i</sup>**

TAB will not prosper until the races are fixed.

Australian racing is in disarray because Australian racing lacks any commercial discipline. The current socialist alliance of government and the 'interests of racing', against the wider community, is an affront to good public policy.

The automatic entitlement of the 'interests of racing' to public funding (a fixed share of betting turnover) has no sensible rationale. The current distribution of the 'entitlement' among the 'interests of racing' is simply perverse.

The predictable result is the delivery of no-bet 'rubbish racing'

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product to the TAB and its customers. There is a 'catch 22' in this game. It is a foolish belief that, no-bet rubbish racing, though delivered to TABs free-of-charge and force-fed to their customers, will maximise TAB turnover and profits. TAB executives who believe this had best start honing their mind changing skills. The customers are not that silly.

The failure of TABs to speak out on the perverse incentives driving them and the industry, not only condemns the Australian public to poor quality racing entertainment it causes the TAB share price to languish.

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### **What TAB customers want?**

TAB has a responsibility to use its powerful voice to protect TAB customers.

**Quality Control:** TAB customers want quality-controlled racing entertainment. The quality of racing entertainment is measured by TAB turnover -- only by TAB turnover. The broadcast on Saturdays of no-bet 'rubbish racing' from anywhere in Australia, or New Zealand, insults most TAB customers. 'Rubbish' is identified by 'no turnover'.

**Respect:** TAB customers want to be treated as professional punters like to be -- armed with information critical to understanding race outcomes -- and not as 'mugs'. TAB customers 'off course', contributing 90% of TAB turnover, are insulted by their second-class treatment relative to the on-course 'privileged'. TAB should overturn such apartheid.

**Value:** TAB customers want to be properly entertained for the time and money they put into their racing entertainment. An appropriate benchmark would see 2KSKY allocating broadcast time to individual races broadly proportional to expected betting turnover on the different races. Beyond that, 2KSKY has enough to do promoting and broadcasting racing: when TAB accepts advertisements for used car dealers, strippers, equine dietary supplements etc., it is declaring a problem with its primary product, racing entertainment. Every advertisement run on 2KSKY in the Saturday racing time slot lowers the TAB share price. TAB customers and shareholders want problem racing fixed, not compounded.

**National focus:** TAB customers want the debilitating separation of Australian racing across six states (and New Zealand) to be abandoned in favour of a national, Australasian, program of racing

excellence perhaps centered on Victoria but accommodating 'carnivals' and 'carnival' lead-ups in most capital cities and some provincial centers. A national TAB betting pool would be a useful step in this direction -- it would point up the misallocation of taxpayer funds to high-cost spongers on the national racing scene. The 'interests of racing' should be free to race when and where they like but low-grade racing should not be subsidised from the public purse nor broadcast to TAB customers on Saturdays -- it wastes time and money.

**Professional broadcasting:** TAB customers want race broadcasters, and production teams, delivering thoughtful quality and not thoughtless and irrelevant quantity -- broadcast journalists are driven to distraction by overcrowded race schedules overlaid with unnecessary advertising commitments. 2KSKY delivers poor quality broadcast journalism -- it does not serve its customers properly. It is akin to a single national ABC station delivering the different local news to everyone in every State capital and major regional center -- it is simply crazy. That is not the fault of the journalists, it is a TAB management matter.

**Accountability:** TAB customers and the community more generally want government and the 'interests of racing', to be accountable on commercial criteria when spending public funds in the racing industry. If government does not care where 'TAB money' goes, it should be paid back to TAB customers as higher dividends. The general community would care about the misallocation of public funds to no-bet 'rubbish racing' -- if it were disclosed. TAB knows the numbers that, if disclosed, would precipitate a revolt.

**Fair-trading:** TAB customers want on-course betting fluctuations broadcast to them, off-course. That's a fair ask. Mobile phones on-course mock the current 'prohibition' to the benefit of a select few at the expense of the majority. More generally the transmission of on-course betting fluctuations to other on-course venues underscores the disrespect shown to the majority of the customer base that bets off-course with TABs. Similarly, TAB customers want race 'tipsters' to be accountable, to annotate any public statement of their 'tips' of race outcomes with their established record -- advertising a '0' to '100' index of their prior 'success', calculated on objective criteria, should put this common use of media time and space in perspective.

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**-- bookmakers: competition beneficial to TAB**

The less important are bookmakers, the lower will be the TAB share-price. Some think that every dollar bet with a bookmaker 'costs' the racing industry, the government and the TAB. Such thoughts could not be further from the truth. TAB needs a strong bookmaking ring.

The 'customers' have four betting options -- the TAB; bookmakers; 'overseas operators' and don't bet. We are led by TAB to believe that only TAB customers 'contribute' to racing (and to government).

Now. The biggest group of customers 'not contributing' is the 'customers' that don't bet at all -- these 'customers' cost the TAB heaps. As for customers betting 'win' and 'place' with bookmakers, the probabilities are that these customers would bet little if the percentage in their betting market was equivalent to TAB's 15%. Bookmakers and their customers are in a quite different business to TAB and its customers, notwithstanding some overlap at the margin.

The conundrum is whether TAB turnover (and the TAB share price) is higher or lower as a consequence of bookmakers bringing colour and excitement (and integrity) to racing entertainment. Those at TAB who would drive the bookmakers from the industry would do well to research the importance of a strong and free betting market to protecting customer confidence -- including in the integrity of TAB betting markets and dividends.

TAB should facilitate the disclosure off-course of bookmaker betting fluctuations and accept the option for customers to make 'phone bets with bookmakers with a 'low', if any, required minimum. TAB 'customers' not presently betting may do so if treated more fairly in a competitive market.

It is the old 'bigger slice' or 'bigger cake' dilemma -- increased bookmaker turnover could make the cake bigger and be very good for the TAB share price. In short, the true 'backers' on the races bet 'big' with bookmakers and are not really TAB customers anyway.

In another of life's little ironies, the role of bookmakers is protected by setting the TAB house percentage at a relatively comfortable 15%, on win and place bets. In a sense it is the price the TAB pays bookmakers for their services to TAB customers. More ironic still, bookmakers find it hard to make a living -- their customers have gone to the casino.

It would be quite perverse if one 'error', taking too high a rate of

'deduction' from TAB customers, were to be compounded by another, taking bookmakers out of the game. One really would like to identify the policy wizards at TAB who argue against bookmakers, already a species needing environmental protection.

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### **-- TAB and government**

Australian State governments hold the key to higher TAB turnover and a higher TAB share price.

Government, on behalf of the people, is entitled to maximise the total deducted from TAB betting turnover. Government, having regard to the best interests of the community generally, is not then entitled to grant an entitlement to public funds to the racing industry (or to anyone else) without ensuring it gets value for that money. The 'interests of racing' are not automatically entitled to any public funding at all. Conversely, having regard to the public demand for racing entertainment, government would sensibly invest public funds into the racing industry -- for a 'commercial' (net tax) return. Government will sensibly do so on terms that ensure the maximum excess of the tax it takes over the costs it outlays to underwrite the supply of an optimum quantity and quality of racing entertainment. That's good government business on behalf of the people -- it is in sharp contrast to the prevailing, stupid practice.

### **End piece**

An insightful customer voice on the TAB board would be beneficial to TAB shareholders. Especially beneficial also would be a commitment to fix the races from the 'Dads Army' coalition of the 'interests of racing' and their allied government forces now 'managing' racing into an ever sillier mess. That commitment will not be given without a bloody fight. The TAB will have to fight on behalf of its shareholders and its customers.

It will be worth it -- when TAB customers get what they deserve, the TAB share price will increase. I welcome TAB shareholders to the side of the angels, TAB customers.

## **ATTACHMENT 6**

**MARCH 2002, "OPEN" NOTE FOR MR FACE  
(NSW MINISTER FOR RACING)**

***TERRITORY BOOKMAKERS: A TAB CUSTOMER  
PERSPECTIVE***

I read in the SMH this morning that you are to convene a meeting on Monday to 'deal with' the low-tax, Territory bookmakers. I will accept that at the margin only, betting with bookmakers anywhere may draw turnover away from the TAB and thus from government tax collections. However, I would like you to accept that the 'presence' of a strong bookmaker betting ring (including over the 'phone) builds interest and confidence in racing and betting turnover all round -- but especially through the TAB.

Dealing with the 'Territory bookmakers' in the way I believe you have in mind is very unlikely to be helpful to TAB betting turnover and likely to drive racing even further over the edge. Already only some 7% of the adult population still bets regularly on racing -- a dangerously low critical market mass.

The ordinary TAB punters do not bet with bookmakers and the bulk of TAB turnover is about bets that bookmakers do not offer. The true punters that like to bet large amounts to 'win' are not likely to be accommodated by the 17% take-out TAB -- unable to bet with bookmakers, the bets of the big punters would not be placed at all. On this basis the idea that betting 'overseas' or in the 'Territories' gives nothing back to racing is not a sound one. More generally the idea that the TAB 'gives something back to racing' is also false.

The racing industry is not a taxing authority and the TAB does not 'give money back to racing' in any meaningful sense. It was politically expedient to tie the 'public funding' of the racing industry to the government take-out from the TAB betting pool but that 'tie' is, however, simply politically palatable 'sleight of hand'. Government raises all taxes and government spends all taxes, wisely on behalf of the people, we hope. A largely forlorn hope apparently in the case of the 'too-much' racing industry, unfortunately -- but I won't labour that point here.

Long term it may be that the big overseas betting operators will compete effectively with the TAB but that raises other issues -- especially the importance of protecting the TAB franchise by keeping tax rates low and turnover high.

The most pressing need for something to be 'dealt with' in the racing industry is the missallocation of public funds that underwrites the production of the 'far too many' races that are of little interest to anyone but which overcrowd the broadcast media and spoil racing entertainment for everyone. From my perspective the 'waste' of public money spent subsidising racing that is not viable and which no one wants, overwhelms any prospect of Territory bookmakers 'taking money away from racing'.

## **ATTACHMENT 7**

**MAY 2002, COMMENT PUBLISHED IN 'SMH'**

### ***ABOUT FACE -- RACING ON THE WRONG TRACK***

The Minister for Racing in NSW has declared war on 'foreign' bookmakers operating in Darwin and Canberra. These 'foreigners', by giving better and cheaper services to punters, are confronting State monopolies. Far from denying money 'that should go to racing' the competition is a very welcome force for better national racing policy.

This Minister is about to retire. He will be mindful of what happened to racing on his watch. Hopefully, as in Victoria, some ministerial aspirant will be keen to take on the racing portfolio. Meantime NSW can lazily follow Victoria's leadership on racing industry policy.

The departing Minister blames others for malaise in the racing industry. He wants to give ever more public funds to prop up an industry now widely agreed to be on the wrong track. He has, for example, not distanced himself from plans to impose, for 'the interests of racing', objectionable taxes on a vulnerable local thoroughbred breeding industry. The Minister looks for scapegoats - - making threats against those that would better serve and entertain the customers of racing, while pandering to the interests of racing dependent on him and from whom he draws 'support'. Resources from the public purse are being used to featherbed the racing industry -- an industry delivering on the racing broadcast media too-much product that no one wants.

The NSW Minister is reported to have said that failure to outlaw on-line bookmakers in Darwin and Canberra, "will see the demise of racing as we know it". One can only say the quicker the better --

far too much of racing "as we know it" is not worth broadcasting to the general community. The National Competition Council also may soon fairly rebuke NSW for its apparent refusal to comply with national competition policy, as confirmed in the 'racing policy' report issued by the NSW Government last December.

Racing is in decline as a preferred entertainment in Australia -- a major Australian industry has strategically plotted its demise in 'the interests of racing' but contrary to the wishes of the customers.

An Australian industry once renowned is now relegated. Its best assets are increasingly re-deployed overseas in emerging centers of racing excellence. The customers in Australia, once comfortably entertained are now assailed by an excess of racing crammed onto a broadcast media that has abandoned any pretense of delivering quality entertainment. The shareholders in TABs apparently take no interest in the racing product, have no understanding that delivering properly a limited quantity of quality product might generate greater turnover. The wider community has no idea of the way taxpayer funds are misused as subsidies to the racing industry.

It is time to face a few unpalatable facts about the racing industry. The State elections coming may be a good time to make a start.

END OF ATTACHMENT -- Peter Mair 4 July 2002