



16 February 2011

The Hon James Wood AO QC
NSW Law Reform Commission
GPO Box 5199
Sydney NSW 2001

Dear Mr Wood,

Thank you for your invitation for Racing NSW to make a submission to your Inquiry into activities that might constitute cheating in the course of gambling.

Background and Supporting Information

In making this submission Racing NSW will deal separately with thoroughbred racing and associated wagering activities and with wagering activities on other sporting events.

Thoroughbred Racing

Thoroughbred racing has been conducted in New South Wales for over 200 years. The NSW thoroughbred racing industry is a major contributor to the NSW economy and employment with approximately 50,000 participants providing the equivalent of full time employment for more than 16,000 people.

The scale and breadth of the NSW thoroughbred industry and its contribution to NSW have been consistently verified in numerous independent reviews.

The size of the NSW racing industry combined with the vast geographic area which the industry covers is virtually without parallel in racing anywhere else in the world. In addition NSW has one of the world's largest thoroughbred racing industries.

Racing is a particularly important part of the economic and social fabric of many NSW rural and regional centres, with the annual racing carnival being a major social event for many small rural communities which in turn providing the work and financial support for that annual race meeting.

While thoroughbred racing provides a form of recreation and entertainment for a large section of the population it is also the major activity on which people wager. In fact during the 2009/10 financial year a total of \$4 billion was invested on NSW thoroughbred racing events through the totalisator and bookmaking systems. In addition NSW residents invested a significant amount on thoroughbred races conducted in other States and Territories of Australia as well as on events conducted in other countries throughout the world.

The major source of income for the thoroughbred racing industry is derived from these wagering activities. Accordingly, the financial well-being of the industry is highly dependent on the racing activities and associated betting activities being conducted with the highest levels of integrity.

In Australia the industry is controlled and regulated on a State by State basis, generally in accordance with legislation enacted in each particular State. In New South Wales, Racing NSW has the statutory responsibility for the control and regulation of thoroughbred racing. Its composition and its role, functions and authorities are set out in the NSW Thoroughbred Racing Act 1996.

In the 200 years since its commencement the industry has developed a highly sophisticated and efficient means of ensuring its general integrity and that it is operated in the interest of not only the industry itself but also the general public. It operates under a set of national rules (Australian Rules of Racing) agreed upon between the States which include the mutual adoption of penalties imposed by a particular State controlling authority. The Rules of Racing in New South Wales also include Local Rules of Racing and Betting Rules imposed by Racing NSW under the Thoroughbred Racing Act 1996.

The Rules of Racing cover all aspects of racing, including the registration of horses and the licensing of industry participants (trainers, jockeys, etc.) and the actual conduct of the racing events. The Rules of Racing also provide for a range of offences and the imposition of penalties ranging from cautions through to fines, suspensions and disqualifications

The registration/licensing procedure involves detailed background assessments of all applicants including appropriate criminal record checks so as to ensure that all persons desirous of participating in the industry are fit and proper and are not or have not been engaged in any criminal activity. In addition all racehorses are required to be registered.

The conduct of the race meetings are overseen by an efficient panel of highly trained stewards who verify the bona-fides of all competing racehorses and monitor the running of the races to ensure that all starters are allowed to compete to the best of their ability.

A comprehensive program is also undertaken to ensure that all racing is conducted on a drug free basis with pre and post-race drug testing undertaken. All samples are analysed at the Australian Racing Forensic laboratory (a Division of Racing NSW).

A statutory appeals system is in place to allow persons aggrieved by decisions to penalise them for infringement of the rules. These appeals panels are constituted under the Thoroughbred Racing Act (the Appeals Panel) and the Racing Appeals Tribunal Act 1983 (the Racing Appeals Tribunal).

While the empowering legislation coupled with the Rules of Racing allows for the efficient control of thoroughbred racing there is one matter which should be clarified by the enacting legislation in order to ensure that Racing NSW and its stewards can effectively supervise all aspects of the industry. That matter is the extent to which unlicensed persons are subject to the Rules of Racing.

Licensed persons are expressly bound by the Rules of Racing and subject to the procedures and findings of the stewards and the associated Appeals Panel and Tribunals. The Rules of Racing empower Racing NSW and the Stewards to compel persons to appear before them and to produce mobile phones, computers, electronic devices, books, documents and records, including any telephone or financial records relating to any meeting or inquiry. Persons failing to comply with any such direction can be penalised.

The decision of the Victorian Civil and Administrative Tribunal (President Justice Ross, Senior Sessional Member J Nixon and Senior Member E Riegler) in the case of *Clements v Racing Victoria Limited (Occupational and Business Regulation) [2010] VCAT 1144* determined that a non-licensed person, Mr Neville Clements, was not subject to the Rules of Racing. In arriving at that decision, the Tribunal noted at paragraph 59 that the position in New South Wales was different to that in Victoria and referred to the decision of the New South Wales Thoroughbred Racing Appeals Panel in the case of Dr Tim Roberts in 1998. In that case, the Tribunal was of the view that the Thoroughbred Racing Act 1996 contained a statutory recognition of the Rules of Racing, and authorises and empowers Racing NSW and its Stewards to give effect to those Rules.

Notwithstanding the findings in the case of Dr Tim Roberts (and the recognition of those findings in the Clements case), contrary views as to the statutory recognition of the Rules of Racing in New South Wales have been expressed by several persons including former High Court Judge Michael McHugh, QC. Ideally, the situation should be clarified so that there cannot be any argument that Racing NSW and its Stewards are able to exercise the powers in the Rules of Racing against non-licensed persons to the extent that they are participating in thoroughbred racing. Previous independent inquiries into the administration of racing in NSW have recommended that the Government introduce legislation to clarify this position.

We also recommend that legislation be enacted to provide criminal sanctions against persons found to have cheated in a manner whereby the outcome of an event, or an element of the event is altered. In such cases Racing NSW Stewards should be able to refer serious matters to the Police for further investigation and the laying of charges where appropriate. Persons convicted of such offences should then be liable to heavy penalties. Legislation of this type would act a major deterrent.

Wagering on Racing

Wagering on racing in New South Wales is conducted by Tabcorp and by licensed bookmakers.

Tabcorp operates under a license issued to it by the NSW Government in terms of the Totalizator Act 1997 and conducts totalisator betting and fixed odds betting. Oversight of Tabcorp's operations is undertaken by the NSW Government through the Office of Liquor, Gaming and Racing.

Bookmakers operate in terms of licenses issued to them by Racing NSW after having undergone relevant probity assessments. In addition bookmakers are required to have in place appropriate guarantees to protect the interests of those persons who wager with them. Racing NSW has appropriate rules of betting in place to cover all aspects of betting by and with bookmakers and their activities are monitored by Racing NSW Stewards.

Residents of NSW are also able to place wagers with interstate totalizators, bookmakers and betting exchanges that are licensed and controlled by the respective Government or Controlling Authority in the State or territory in which they operate.

Sports Betting

Legalised sports betting is a recent phenomenon in New South Wales having first been approved in the mid 1990's. It was also legalised in other States and Territories around the same time. In the 15 or so years since its inception there has been substantial growth in Sports betting with wagering opportunities being offered on a myriad of sports and contingencies within those sports. Sports Betting is offered by NSW and interstate bookmakers as well as Tabcorp and UniTAB.

In New South Wales, Tabcorp operates under the license issued to it by the NSW Government and bookmakers operate under their license with Racing NSW and a separate approval from the Government to conduct sports betting. Sports betting rules have been implemented by the Government and a Sports Betting Disputes Panel has been established to arbitrate on disputes between wagering operators and punters.

Unlike the Racing Industry which has highly developed processes in place to ensure the integrity of racing, sporting bodies have little or no procedures in place to monitor the betting which takes place on their particular sporting events.

In this regard, from its inception the Racing Industry was set up as a vehicle associated with betting activities. Therefore it was essential that proper procedures be put in place to ensure its integrity. On the other hand general sporting events were established as a form of recreation and entertainment. Therefore there was no need to establish integrity systems similar to racing.

Wagering on sport was approved by various State and Territory Governments and wagering operators commenced betting on sporting events without any regard to the effect such betting would have on the integrity of the sport.

Therefore, the advent of sports betting has exposed a number of sports and their governing bodies to allegations of corruption and match fixing which have the potential to bring the sports into public disrepute through no fault of the sport itself. The recent matters involving the betting plunge in an NRL match between the North Queensland Cowboys and the Canterbury Bulldogs and the findings in respect of the Pakistan cricket team are cases in question. The cost of establishing sophisticated integrity systems could be prohibitive to most sporting bodies. It is only of recent times that wagering operators have begun paying small or negligible fees for the right to operate on the major sporting codes. Whether or not those fees are sufficient for the governing bodies of those sports to establish integrity systems is a matter on which Racing NSW is not able to comment.

As matters stand the public is being invited to participate in betting activities on sporting events where there can be no guarantee that such events are conducted free from manipulation and Racing NSW believes that this is a matter which should be addressed at the earliest opportunity. In this regard we understand that the NSW Police Service has experienced some difficulty in investigating allegations regarding cheating in sport and associated wagering on those events because of a lack of coercive powers to compel persons to assist with their inquiries.

In both racing and sport where large sums of money are invested on the outcome of events it would be naïve to suggest that some persons would not be inclined to manipulate

the outcome of the event for their financial benefit. Even unsubstantiated allegations of this nature can cause significant damage to the public's perception of the sport in question.

Accordingly we strongly recommend that specific legislation be enacted to criminalise the act of cheating in sport to manipulate the outcome of an event, or an element of an event and that heavy penalties apply to persons convicted of that offence.

Summary

In summary and responding to the specific bullet points in your letter dated 6 January 2011, I provide the following views:

- *Any rules of conduct, or professional or contractual obligations, applicable to those who participate in the activities within your area of interest, that may apply to conduct of the kind mentioned*

The Australian Rules of Racing, the local NSW Rules and any licensing conditions imposed by Racing NSW upon licensed persons.

- *The adequacy of current laws to deal with that conduct in the criminal context*

As mentioned above, the position in respect of unlicensed persons requires some clarification. Further, the sanctions under the Rules of Racing and the Thoroughbred Racing Act extend to such matters as imposing a penalty in the form of a fine, suspension or disqualification. It is also our understanding that the NSW Police Service also faces restrictions when it is called upon to investigate matters.

Given the very serious impact upon the integrity of racing and sports, Racing NSW and the Police should be equipped with more coercive powers in the nature of those available to the NSW Crime Commission. Further, the criminality of the act of cheating in sport or racing should be specifically defined so that the police can properly prosecute persons who are involved in such cheating.

- *The extent to which you perceive that such conduct does occur, or is at risk of occurring within your area of interest*

As mentioned above, where large sums of money are invested on the outcome of a racing or sporting event there will always be an incentive for unscrupulous persons to attempt to manipulate the outcome of that event and it is essential that the rules of the particular sporting body and the provisions of the Law are adequate to investigate and deal with allegations of this nature.

The Clements case in Victoria and the associated case of Queensland licensed trainer John Nikolic both involved allegations of insider information being provided to professional punters by licensed persons. The inability of the relevant authorities in those cases to require production of documents and equipment hampered their ability to investigate and prosecute those matters.

Any reform of the current laws concerning cheating at gaming in the context of betting on sports events, (for example through the fixing of results or the manipulation or incidents in the course of a sporting event) that you would consider desirable

Whilst I am primarily concerned with the impact upon racing, the recent cases involving the betting plunge in the NRL match between North Queensland Cowboys and the Canterbury Bulldogs and the findings in respect of the Pakistan cricket team clearly illustrate the amount of money being wagered on fixing of results or the manipulation of incidents such as the first scoring option and the bowling of a no-ball.

The current laws do not seem to me to properly equip the governing sporting bodies or the Police to properly investigate and prosecute such incidents of cheating.

- *Any difficulties that you have perceived in investigating, responding to, or prosecuting conduct of the kind mentioned*

I have outlined above the clarification required in respect of unlicensed persons and the restrictions on the coercive powers of Racing NSW and its Stewards and the Police. Given the vast amounts of money wagered on racing and sporting events, it is imperative that the sanctions match the crime. The powers of Racing NSW are limited to imposing fines of up to \$75,000 and suspending or disqualifying a person. Such a sanction would be of little deterrent to a person standing to win millions of dollars from a wager. I firmly believe that cheating and manipulating results could easily overtake most serious white collar crimes and steps should be taken now to halt its advances.

The coercive powers of the authorities need to be enhanced. Further, the criminality of the conduct should be specifically defined so that the Police can properly prosecute persons who are involved in cheating.

I would be happy to discuss the above matters further with you should you so desire.

Yours Sincerely
RACING NSW



P N V'LANDYS
CHIEF EXECUTIVE