CRIMINAL JUSTICE
COMMISSION

REPORT ON S.P. BOOKMAKING AND RELATED CRIMINAL ACTIVITIES IN QUEENSLAND

AUGUST 1991

ISBN 0-7242-4581-2

Printed by Goprint, Brisbane.

CRIMINAL JUSTICE COMMISSION
QUEENSLAND

Telephone: (07) 360 6060
Facsimile: (07) 360 6333

Your Ref.:
Our Ref.:
Contact Officer:

The Hon Dean Wells MLA
Attorney-General and Minister for Justice and the Arts
Parliament House
George Street
BRISBANE Q 4000

The Hon Jim Fouras MLA
Speaker of the Legislative Assembly
Parliament House
George Street
BRISBANE Q 4000

Mr Ken Davies MLA
Chairman
Parliamentary Criminal Justice Committee
Parliament House
George Street
BRISBANE Q 4000

Dear Sirs

In accordance with Section 2.18 of the Criminal Justice Act 1989, the Commission hereby furnishes to each of you its Report on SP Bookmaking and Related Criminal Activities in Queensland.

Although this report was completed in August 1991, it could not be released at that time on the advice of the Special Prosecutor, Mr Francis Clair. However, it was submitted to the Government and the Chairman of the Parliamentary Criminal Justice Committee in October of 1991 as a Confidential Briefing Paper.

The circumstances that prevented the release of this document as a public report at that time no longer apply, and the Commission therefore now furnishes to each of you its official Report.

Yours faithfully

SIR MAX BINGHAM QC
Chairman

Criminal Justice Commission
Queensland

This report is a publication of the
Research and Co-ordination Division

Research and Co-ordination Division

Satyanshu K. Mukherjee,
Director

Project Staff

Andrew McLean Williams
Phil Dickie
Jon Moore

FOREWORD

The Report of the Commission of Inquiry ("Fitzgerald Report") drew attention to what other writers have described as the "over-reach" of the criminal law. By this is meant the tendency for the law to intrude into areas which are more appropriately left to other forms of social control - morality, religion, education and the like.

The Report noted that where such extensions of the proper legal function occur, stresses and strains develop which have the effect of distorting the legal process. Having discovered the existence of such distortion (in the form of corruption), especially in those parts of the law enforcement system connected with sexual behaviour and gambling, the Commission of Inquiry deduced that this situation might be a case in which the law was being forced to extend beyond the bounds of its effective operation - a case of "over-reach". Accordingly, the Report recommended that this Commission should undertake a review of the relevant law - especially in relation to prostitution and "SP bookmaking".

For reasons of which the Queensland Government is aware, this document was presented to it in October 1991 as a confidential briefing paper. However the Commission is now in a position to release the findings of its research into SP bookmaking as an official report.

This report is intended to present the findings of the Commission's research and thereby enable informed decisions to be made in relation to reform of the law and its enforcement. As such, information that may tend to implicate individuals is largely unnecessary. As a result, individuals are referred to by code and some information has been generalised or omitted if it points too markedly to specific persons.

All information contained in this report is current up to August 1991.

Two major questions are involved. First, is legal intervention required; and secondly, if so, in what form?

The Commission has concluded that some degree of regulation is inevitable. While the possibility of complete deregulation is logically available, such a position is not realistic, for the reasons set out in the body of the report. Having reached that conclusion, the Commission goes on to recommend certain legislative and administrative action. The report presents the factual material upon which the recommendations are based, and the results of experience in Queensland and elsewhere.

As the Commission of Inquiry intended, decisions about future legislation, if any, can then be made by government in the light of an informed opinion. It must be emphasised that in our parliamentary democracy recommendations from bodies like the Commission are only recommendations; the ultimate decisions rest with the elected representatives of the people.

SIR MAX BINGHAM Q.C.
Chairman

ACKNOWLEDGEMENTS

In the preparation of this report, the Criminal Justice Commission has received the assistance and advice of numerous organisations and individuals. The Commission acknowledges with thanks the contribution that each of these have made.

In particular, the Queensland TAB and the Division of Racing within the Department of Tourism, Sport and Racing, have obligingly provided a considerable body of relevant information to the Commission. The Police Forces of all the Australian jurisdictions have supplied valuable insights into operations of SP bookmaking and the Commission gratefully acknowledges such assistance.

Although they must remain nameless for obvious reasons, the Commission wishes to expressly thank a select number of serving officers of the Queensland Police Service, for providing the benefit of their knowledge and for relating their considerable operational experiences. Equally, their advice in relation to the process of reform has been invaluable. Without their assistance, this report would not have been possible.

This report was substantially prepared by Andrew Williams. Phil Dickie contributed to the chapter on History of SP Bookmaking in Queensland and Jon Moore contributed to the economic analysis part of the report. The subject matter of the paper is very complex and there exists limited empirical and other research. The authors therefore deserve credit for this substantial contribution to knowledge. The Commission is grateful for their efforts.

I also wish to express my thanks to Avril Alley, Amanda Carter and Paul Bailey for their research assistance, and Linda McGilvery, Megan Atterton, Andrea Faux and Tracey Stenzel who undertook the tedious task of preparing the several drafts and final manuscript. The staff of the Commission's library must also be thanked for their patience. Susan Johnson, Greg Cummings and Marshall Irwin, all of the Commission, must also be recognised for providing their considerable assistance in the painstaking editorial process.

Finally, I wish to express my gratitude to Sir Max Bingham Q.C., Chairman, the Commissioners and the Directors of the Commission for their continued support.

S. K. Mukherjee

Satyanshu Mukherjee
Director
Research and Co-ordination

CONTENTS

EXECUTIVE SUMMARY

Before substantive changes to either the law or law enforcement methods can be made, grounds to justify such change must be established. On the basis of the studies that it has undertaken over the last twelve months, the Commission is satisfied that such grounds do exist. Moreover, if there were to be no change in current arrangements, the Commission believes that Queensland will experience a progressive increase in SP bookmaking activity to the detriment of legal gambling, consolidated revenue, and the community as a whole.

To summarise briefly, the aspects of concern in unlawful bookmaking that give rise to grounds for some action to be taken would appear to be as follows:

* SP bookmakers pay no turnover tax or licensing fees. This represents a substantial denial of government revenue;

* SP bookmakers do not pay their full share of income tax;

* The racing industry suffers as a direct result of SP bookmaking;

* The greater economy must also be seen to suffer as the result of money being siphoned into the black economy by unlawful bookmakers;

* There are other costs associated with unlawful bookmaking. These include such matters as the need for additional police resources, and the significant costs associated with the prosecution of SP bookmakers. Significant amounts of time and resources must be devoted by various government departments to the on-going SP bookmaking problem;

* Unlawful bookmaking has connections with other forms of major and organised crime;

* Because of the associations between SP bookmakers and other criminals, the SP network provides an ideal conduit for crime. Criminals who may otherwise have been regionally confined, are given the opportunity to expand their activities and make contact with other criminals and crime opportunities in other states;

* The SP bookmaking industry has consistently proven itself to be one of the principal sources of corruption of police and other public officials;

* SP bookmakers are able to resort to either the threat, or actual use of violence;

* There is a nexus between SP bookmaking and racefixing;

* There are significant social problems involved with SP bookmaking. These include the family dysfunction that tends to result from gambling addiction.

The Approach That Should Be Adopted

It is often claimed that SP bookmaking continues to prosper due to the inability to sentence unlawful bookmakers to terms of imprisonment in Queensland.[1] However, the SP industry also continues to thrive in other states despite those states having default imprisonment, and notwithstanding efforts directed at its suppression.

While the absence of risk of imprisonment in Queensland has certainly been *one* factor that continues to be conducive to unlawful bookmaking, it is certainly not a complete explanation for its continued existence. Nor could it be said that simply re-introducing default imprisonment will be the complete solution. Giving the law more "coercive teeth" may result in some decline in SP bookmaking activity, but it is likely that some of this decline could be expected to be due to SP bookmakers simply shifting out of Queensland and into other jurisdictions of lesser enforcement or lesser penalties. Significantly, where SP bookmakers do "border hop" they usually retain contact with their existing clients by telephone. The problem will not therefore be removed, but merely relocated.

It is most unlikely that the enactment of stiffer penalties alone will have any more effect than to make the industry more mobile and circumspect, and may even lead to a change in industry personality, to one where it is primarily constituted by ruthless and violent criminal entrepreneurs, who are more prepared to accept the risks of harsh penalty.

Changes to lawful gambling

In the past, strategies aimed at the suppression of SP bookmaking have placed undue emphasis upon the ability of increased law enforcement efforts to solve the problem. This Commission's studies have indicated that the principal initiatives that are adopted to suppress SP bookmaking must instead become economic.

SP bookmaking continues to exist despite efforts directed at its suppression and despite a wide diversity of lawful gambling options, because it provides a service that a substantial minority of punters demand. The service that is currently provided by unlawful bookmakers must be supplanted by some legal alternative. The aim must be to attract the market share that SP bookmakers currently hold away from the unlawful operators by offering legal alternatives to those aspects of their service that attract punters in the first place.

---

1 This point was made several times in submissions received by the Commission on the issue of SP bookmaking. Several police officers interviewed in the course of this study have expressed this opinion, and it has also been expressed in internal police departmental reports and memorandums viewed by officers of this Commission.

In this regard, it must be recognised that the crucial aspect is not merely to simply expand the array of legal options, but to replace the specific type of service that is currently offered (only) by SP bookmakers. Recent experiences in other states where attempts have been made to simply expand legal gambling options (by such means as the introduction of FootyTAB and PubTAB), do not appear to have led to any significant reduction in the incidence of SP bookmaking.

This Commission has identified the following as being the most significant aspects of SP bookmaking that are attractive to punters. Any major extension in available legal gambling should be directed towards replicating as far as possible these services:

* SP bookmakers offer telephone access;
* SP bookmakers offer fixed odds betting;
* SP bookmakers offer credit; and additionally,
* SP bookmakers accept wagers on a diverse range of contingencies; and
* SP bookmakers often offer a discount on losing bets.

The legal gambling options currently available to punters are rigid, inflexible and largely unappealing to those who bet SP. The legal gambling industry must become more flexible and responsive to market demand. It is probably reasonable to conclude that the community is either neutral towards the present off-course betting arrangements provided by the TAB, or alternatively that it believes the TAB is not adequately servicing a legitimate social activity.

SP operators have a flexibility which allows them to tailor their products to match their customers' requirements - they offer credit, a personalized and convenient service, and a more acceptable betting form. Fluctuating totalisator odds are essentially unattractive to many large punters.

The TAB's Potential to Counter SP Bookmaking

The TAB believes that there are two areas of their own operation which could improve their capacity to compete with SP bookmakers:

* a relaxation of legislation which has previously prohibited the Queensland TAB from trading in licensed areas (Pub TAB); and
* further investigation of either fixed odds betting or national win and place betting pools.

While TAB facilities in licensed premises may have some impact on the SP trade, its potential should not be overstated. The introduction of PubTAB in other states has not been able to demonstrate any significant impact upon the continued viability of SP bookmakers. PubTAB is only likely to impact upon the

few remaining small-time SP bookmakers who still may field from licensed premises. The net impact of PubTAB on SP bookmaking is therefore likely to prove to be negligible.

The introduction of fixed odds betting is however, likely to be substantially more effective. Fixed odds betting has been identified by this Commission as being one of the most significant attractions that SP bookmakers are able to offer. Whilst the TAB continues to offer only a *pari-mutuel* form of betting odds, it cannot present itself as an attractive alternative to wagering with SP bookmakers. As such, the introduction of fixed odds betting should be explored by the TAB as a matter of some urgency.

Whilst the introduction of fixed odds would mean that the TAB could then offer the dual advantages of telephone access and fixed price betting, it is still unable to offer punters a favourable credit facility. The TAB has admitted that major obstacles still remain before it could present any real alternative to the convenience and bet forms offered by SP bookmakers.

The Role of the Licensed Bookmaker

Given that the TAB foresees the introduction of TAB credit betting as an impossibility, the best alternative would appear to be to allow licensed bookmakers to field by telephone.

If licensed bookmakers were allowed to field by telephone, the "need" to bet SP, experienced by many punters to obtain the service that they so clearly demand could then be obviated. The issue of allowing licensed bookmakers to field by telephone has always been rejected in the past.[2] The predominating consideration has invariably been fear as to its likely impact upon TAB revenue.

This Commission's research has indicated that given the inability of the TAB to offer a system of credit, the provision of telephone betting with on-course bookmakers should be seriously explored. The Commission believes that the arguments that have traditionally been advanced in opposition to telephone betting can be largely overcome. In this regard, the following points are made for consideration:

* Fears about the impact of telephone betting with bookmakers upon government revenue have generally been premised upon an assumption that bookmakers will continue to pay turnover tax at the same nominal rate. There is no reason why turnover tax should not also increase, nor why bookmakers could not also make some direct financial contribution to the racing industry, thereby preserving government revenue;

---

2 The proposal was most recently rejected by the Conference of State Racing Ministers, held in Perth in February of this Year.

* Fears about the impact upon TAB turnover have largely been based upon an assumption that bookmaker telephone betting would be introduced with "all other factors remaining constant". If nothing else were changed, then the likely impact upon the TAB would perhaps be more significant. However, if the TAB were simultaneously to introduce either national pools or fixed-price betting, then the impact of telephone betting with bookmakers upon the TAB should be minimal. In any event, this Commission's studies tend to indicate that SP bookmaking is more deleterious to bookmakers than it is to the TAB;[3]

* The belief that the TAB should be recouping the money currently bet with SP bookmakers' is unnecessarily centralist. Punters should be allowed the freedom to choose whether they wish to bet with a bookmaker or alternatively with the state run TAB. Similarly, the rights of on-course bookmakers to earn a living should not be denied to them by a policy designed to minimise competition for the TAB;

* There needs to be some recognition that the role of on-course bookmakers is an important one. On-course bookmakers have an important cultural and historical role within the Australian community. Bookmakers fielding at racing carnivals provide one of the prime attractions for racegoers. As such, their presence (or otherwise) at race meetings will have an important determinant effect on the overall viability of the racing industry. Policy decisions that impact upon the future viability of bookmaking should take such factors into account;

* This Commission's studies support the view that if licensed bookmaking becomes unprofitable and continues to demise, then the way will be left open for a substantial enhancement of the role of the SP bookmaker.

The Commission believes that the integrity of bookmaker telephone betting could be ensured by the introduction of a computer telephone betting system. Appropriate measures are envisaged to include:

* the number of telephones that each on-course bookmaker is allowed to operate should be strictly limited;

* the entire system should be made to be tamperproof and be purchased, owned and maintained by an appropriate Government instrumentality, who then lease the equipment to bookmakers;

* all bets received should be automatically recorded by computer. The recording of bets must include the date and *exact* time of each bet. All betting tickets issued to punters should be computer generated; and

---

3 Information contained in the TAB's submission that is said to have been provided by the New South Wales TAB, lends support for such a view and indicates that SP bookmakers in New South Wales are actually benefiting the TAB. This occurs in the sense that they are increasingly less prepared to accept small bets, and are telling punters to take their smaller bets to the TAB. New South Wales TAB turnover is thought to have actually increased by somewhere between 8.1 and 14 per cent accordingly.

* in order to minimise any perceived threat to TAB operations, a minimum value bet should be introduced for bookmaker telephone betting.

In addition to recording the transmission of bets, integrity can be better safeguarded by increasing the presence of betting inspectors and giving them extensive new supervisory powers. Simultaneously, stringent vetting of all current and future holders of bookmakers' licences will be required.

Conviction for any offence under the *Racing and Betting Act 1980 (Qld)* should become grounds for the automatic disqualification from the right to hold a bookmaker's licence. As a further deterrent, licensed bookmakers convicted of any betting offence should be also subjected to the mechanism for default stamp duty assessment discussed elsewhere in this report.

The Commission feels that the following advantages will flow from strictly supervised telephone betting by on-course bookmakers:

* a substantial amount of money that is currently bet unlawfully will now be able to be wagered legally, in so doing a substantial criminal enterprise will be minimised;

* bookmakers' turnover will substantially increase, which could then justify the levying of higher levels of turnover tax;

* computer recording of all bets will minimise the possibility of money laundering.

Legislative Reform

Although this Commission has seen fit to recommend that the principal strategy that should be adopted to deal with unlawful bookmaking should be economic, it has recognised that single issue strategies are not the complete answer. Given the significant levels of persistent and insidious criminality found in association with unlawful bookmaking, substantive changes to the law should also be considered. The Commission recommends that the following reforms be introduced to the law of Queensland.

Upon conviction for the Offence of Unlawful Bookmaking

The fines presently provided by section 218 of the Racing and Betting Act are among the most substantial in the country. However, the civil process for recovery of such fines provided by section 218A is essentially inoperable. Accordingly, the Commission recommends that section 218A be repealed in its entirety.

The magnitude of fines in section 218 should remain unchanged. Although some judicial discretion should be retained in the case of a first offence, in all other cases the discretion to impose a lesser penalty should be removed.

Notwithstanding the retention of some discretion to impose a lesser penalty in the case of a first offence, it should be accompanied by an absolute minimum, substantial enough to provide a significant deterrent.

In all cases default imprisonment should apply as the natural consequence of failure to pay the prescribed fine. The Commission envisages that fines and default imprisonment will be applied on the basis of an incremental range, depending on the magnitude of the unlawful operation that has lead to conviction. This would work somewhat similar to the following:

Upon conviction for a first offence:

Fine of $15,000 - $20,000 or less than this amount (but not less than $3,000), at the discretion of the court.

Default imprisonment three to six months depending on the circumstances of the case.

Upon conviction for a second offence:

Fine of not less than $20,000 and not more than $30,000. Default imprisonment 12 - 18 months depending on the circumstances of the case.

Upon conviction for a third or subsequent offence.

A fine of not less than $30,000 and not more than $50,000, and default imprisonment for three to five years, depending on the circumstances of the case.

When it is considered that a significant number of those with existing convictions for unlawful bookmaking in Queensland have failed to pay their fines, and when that fact is taken in conjunction with the fact that several of Queensland's largest presently operating SP bookmakers have numerous convictions for unlawful bookmaking, yet continue to hold the law in contempt, serious consideration should also be given to making this legislation retrospective to July 1981. (When default imprisonment was removed).

Section 217 Possession of instrument of betting

This section should be expanded so that it applies to any unauthorised "instrument of betting" including instruments for use in conjunction with the acceptance of bets upon any betting contingency, and not only betting that occurs on horse races, trotting races or greyhound races.

The Definition of Bookmaker

The *Racing and Betting Act* needs to be amended so that the acceptance of a singular bet is deemed to be sufficient for purposes of "acting as a bookmaker" and "carrying on the business of bookmaking".

The Concepts of "Using" and "Suffering"

Difficulties have been encountered in establishing that premises have been opened, kept or used for unlawful bookmaking, in cases where that is not the predominant use that is made of those premises. A provision should be included in the *Racing and Betting Act* that provides a definition of "use" that does not require the unlawful use to be the *predominating* or essential use that is made of those premises. In addition, difficulties have been encountered in securing convictions against owners or occupiers who "suffer" their premises to be used for the purpose of unlawful bookmaking. It would be appropriate if the amending legislation were to also define the concept of "suffer" to some objective standard. Under such a definition, any owner or occupier who could reasonably be expected to have known that his premises were used for an unlawful purpose, could then be convicted.

Section 221 Betting on Licensed Premises

Adequate penalties are provided for use against the licensees of licensed premises found to be permitting or suffering their premises to be used for the purposes of betting. However, the Commission has become aware of instances where the mechanism that allows for forfeiture of a liquor licence have been able to be avoided. Section 221 should therefore be amended so that convicted persons are also denied the ability to retain effective control of licensed premises.

Declared Gaming House Provisions for Queensland

Declared Gaming House provisions have been used to good effect in other states against premises used for both the purposes of unlawful gaming and SP bookmaking. Some similar provisions should be provided for Queensland.

A Stamp Duty Recovery Mechanism

SP bookmaking is, at first instance a revenue crime and its greatest victim is consolidated revenue. As a form of restitution, those who are convicted of unlawful bookmaking should be required to repay the turnover tax that they have sought to evade by fielding unlawfully. Default stamp duty should be assessed in addition to any punitive fine that is imposed.

Offences by Licensed Bookmakers

Given the associations between licensed bookmakers and unlawful bookmaking identified by this Commission, the activities of licensed bookmakers need to be more closely monitored. All licence holders within the racing industry should be subjected to strict vetting. Those convicted of serious racing industry offences

such as unlawful bookmaking, should be disqualified absolutely from holding an industry licence. Those bookmakers apprehended fielding in contravention of their bookmaking licence should also be subject to the default stamp duty mechanism outlined above.

The Need to Criminalise SP Betting

Currently, section 222 of the *Racing and Betting Act* contains a prohibition on public betting. The legislative scheme would be better served if this provision were amended so that the prohibition simply applies to those who bet unlawfully. Those who choose to bet unlawfully not only deny government consolidated revenue substantial receipts, but also enhance the black economy that is then available to finance other serious forms of crime. Specific penalties should be provided for this offence to reflect the seriousness with which it should be regarded.

Confiscation of the Proceeds of Crime

Legislative mechanisms that provide for the confiscation of the proceeds of crime should be vigorously applied in all cases of conviction for unlawful bookmaking. This must include the Crown pursuing assets that have been divested by subterfuge so as to give the true owners the appearance of being asset-less. When it becomes common knowledge that convicted SP bookmakers will be subjected to fines, default stamp duty assessments *and* the forfeiture of assets, it is most likely that many will think twice before fielding unlawfully. Consideration should also be given to application of forfeiture provisions to those who bet unlawfully with SP bookmakers.

Proscription of Pricing Services

In all other Australian states it is illegal to operate a pricing service. In Queensland, operating a pricing service does not constitute an offence, yet the operation of a pricing service usually entails unlawfully relaying pricing information from racing venues. In order to remove this inconsistency, and to make Queensland law more consistent with that of the other states, pricing services should also be proscribed. Given the importance of Queensland pricing services to SP bookmakers *nationally* it would be appropriate if the worth of that proscription were sufficient to reflect these facts.

Automatic Reference of unlawful bookmaking convictions to the Federal Commissioner for Taxation

It is recommended that upon conviction for an unlawful bookmaking offence, notification of that conviction and its particulars should be forwarded to the Federal Commissioner for Taxation. This requirement should be specifically embodied within the *Racing and Betting Act*.

The Telecommunications (Interception) Act 1979 (Commonwealth)

It is strongly recommended that the Premier and Attorney-General, in concert with both the Police and the Racing Ministers should, as a matter of urgency consult with their counterparts in the other states, and then collectively make representations to the Commonwealth Minister for Transport and Communications and the Commonwealth Attorney-General to have the *Telecommunications (Interception) Act* amended. This is because it otherwise is highly doubtful that efforts directed at the suppression of SP bookmaking will be any more than partially effective.

Law Enforcement

The Commission has reason to believe that law enforcement efforts directed at the suppression of SP bookmaking that are directed from a local or regional level will be largely ineffective. SP bookmaking is not regionally or locally confined and the parameters of this unlawful activity are continuing to expand. Attempts to police it at a localised level do not therefore correspond with the nature of this illicit industry. The Commission's research has indicated an emerging need to establish some centralised police unit who will become responsible for the policing of unlawful bookmaking.

The Role of the Criminal Justice Commission

It is envisaged that the role of the Criminal Justice Commission will entail the following:

* All police and civilian staff of the proposed Racing and Betting Unit should be subjected to independent integrity vetting by the Criminal Justice Commission;

* The operational strategy for this unit should be established after close liaison with the Criminal Justice Commission;

* Given the level of community concern about police units of this nature, once the guidelines for operation of this unit have been established, they should be publicly announced.

- Therefore, the Criminal Justice Commission should review the continuing need for such an arrangement on at least an annual basis.

Deficiencies in Criminal Intelligence

It remains the fact that there is still little useful criminal intelligence data on the SP bookmaking industry in Australia. More particularly, the Commission's studies indicate that police operations in this field are hampered by the lack of a complete appreciation of the economic aspects of this unlawful enterprise. There is an immediate need to start a complete strategic profile of the unlawful bookmaking industry that focuses upon its specific economic elements. Such strategic profile should become the basis of any intelligence data base for future use in law enforcement.

Police Training

Presently, the Queensland Police Service does have a handful of officers with developed expertise in this field. To safeguard that body of knowledge, it needs to be broadly disseminated. This will require an ongoing, adequately structured in-service training program.

The Need for a Co-ordinated National Scheme

Efforts directed at the suppression of SP bookmaking have been a feature of Australian law enforcement for decades. Notwithstanding some short term successes, it remains the case that those efforts have been largely unsuccessful. This could be viewed as being the combined result of both the community's demonstrated willingness to persist with SP gambling, and as the result of a lack of co-ordination between the various state law enforcement agencies.

Commissioner Fitzgerald (Fitzgerald Report 1989, p. 195), in summarising these difficulties merely mirrors the sentiments that were expressed by Costigan half a decade before:

> "A campaign against SP bookmaking will only be made truly effective by co-operative legislation involving the states and the Commonwealth Government. Otherwise it will be defeated by the fragmentation of jurisdictions under the federal system".

To the extent that inconsistencies between the laws of the various states governing SP bookmaking continue, difficulties with SP bookmaking will also continue. Given the far-reaching ability of the telephone, and the facility it affords the SP bookmaker, it is most likely that after some states have reformed their SP bookmaking laws, the *locus conveniens* for SP bookmaking will simply become those states of least enforcement. To this end, all the Australian states should be urged to standardise the regime of criminal law that is used to counter

SP bookmaking. It is recommended that as part of the overall reform process, the Queensland government should also endeavour to initiate the development of a national scheme to deal with SP bookmaking. The other states should be encouraged to better accommodate the gambling public, by providing the type of betting amenity they have so amply demonstrated they are not prepared to forgo.

Provision of Social Services for Compulsive Gamblers

It is essential that any planned introduction of an increased range of gambling options be accompanied by adequate planning for the provision of an effective range of services so that compulsive gamblers are able to obtain assistance.

CHAPTER ONE

INTRODUCTION

The Reasons for this Study

During December and January of 1987, *The Courier-Mail* published a series of articles concerning police inactivity in relation to a number of brothels, illegal casinos and other vice services in Queensland, particularly in and around Brisbane's Fortitude Valley.

There was nothing particularly unusual about this most recent series of revelations. Similar controversies had periodically surfaced over the years, and in the ordinary course of events such allegations were met by routine police denials and attacks upon those who dared question police efforts.

However, instead of the controversy merely subsiding after a few weeks as had always been the case previously, this time it was refuelled by the telecast of the "Moonlight State" - a television documentary aired nationally on the ABC's *Four Corners* program on 11 May 1987.

On the following day, the acting Premier, the Honourable William Angus Manson Gunn M.L.A., announced that there would be an inquiry. Mr G.E. Fitzgerald Q.C., was appointed as Chairman to preside over a Commission of Inquiry Pursuant to Orders in Council. The initial terms of reference for the Inquiry, published in the *Queensland Government Gazette* on 26 May 1987, were largely confined to matters that arose out of the "Moonlight State".

The general public expectation was that this inquiry would, like those that had preceded it, be brief and largely ineffectual. However, the Acting Premier gave Commissioner Fitzgerald Q.C. assurances that a proper, honest and comprehensive inquiry was both possible and necessary (*Report of a Commission of Inquiry Pursuant to Orders in Council 1989*, p. 3, hereinafter referred to as the "Fitzgerald Report" 1989).

By the time the Commission of Inquiry's public hearings commenced on the 27 July 1987, it had become clear that police corruption was not confined to the protection of premises used for unlawful casinos, prostitution and the sex industry, but was more widespread and simply part of a greater problem. Clearly there was a need for the Inquiry to examine wider issues.

It was in this context that the payment of protection money by SP bookmakers to corrupt police officers was also investigated before the Commission of Inquiry.

Whilst giving testimony under oath, Jack Reginald Herbert, former Licensing Branch Inspectors Noel Francis, Peter Dwyer and Allen Stuart Bulger, former Inspector (then Assistant Commissioner) Graeme Robert Joseph Parker, and former branch Senior Sergeants John William Boulton, Noel Thomas Kelly and Harry Reginald Burgess all admitted to having received corrupt payments for allowing the operations of SP bookmakers, gaming house owners and prostitution entrepreneurs.

This corruption was subsequently confirmed by other witnesses who were "players" from the illicit gaming and vice industries. The general body of SP evidence before the inquiry was sufficient to give rise to the gravest suspicions about the real magnitude of the Queensland SP industry. Fitzgerald Q.C. (Fitzgerald Report 1989, pp. 72-73) summarised the SP bracket of evidence thus:

> "There are undoubtedly a large number of SP bookmakers paying protection through Herbert. He named 32. Many had earlier been in the first joke in the 1960s and 1970s. One had operated in a provincial centre for 13 years and had settled with his clients at the same hotel at the same time on the same day each week for 11 years. Many SP bookmakers were recorded in Licensing Branch records. Few had been questioned or charged since the beginning of 1980. Where action had been taken against any who had commenced to take protection, it was a result of a mistake or a dispute.
>
> Although it is disadvantaged by the activities of SP bookmakers, they are tolerated within the racing industry.
>
> There is widespread knowledge of SP operations in that industry and a number of those who engage in SP bookmaking are also registered bookmakers, or are otherwise involved in the industry. Registered bookmakers lay off bets with SP bookmakers, and allow SP bookmakers to lay off bets with them. Vast sums of money passed back and forth.
>
> Despite its extent and significance, including the losses which it occasions, SP bookmaking has been passively tolerated by the Government . . . the few convictions for SP bookmaking which have resulted in recent years have had little impact. Most have been against minor offenders, including some without assets. Generally, fines have not been paid or compulsorily collected. For example, there were five convictions in 1986, but only one fine had been paid by the end of 1988. The loss of the revenue from fines which are not collected is probably the least significant aspect of SP bookmaking. Much greater losses are sustained by both the public revenue and the racing industry . . . there are enormous losses of revenue to the Totalisator Administration Board. In 1980, the estimate was $20 million dollars, which had increased to $200 million, according to TAB estimates by early 1989".

The Commission of Inquiry found that a central figure in the corruption of police officers and the collection of illegal payments from a multitude of diverse underworld operations, was former police officer Jack Reginald Herbert. On this basis, there were reasonable grounds to assume that some connection between illegal bookmaking and other forms of organised crime may be possible. In his report Mr G.E. Fitzgerald Q.C. dealt with the possibility that SP bookmaking was linked to organised crime in the following terms:

> "Less obvious but more sinister, is the association between SP bookmaking and organised crime" (Fitzgerald Report 1989, p. 73).

Although the link was not established conclusively the evidence was suggestive. In the first instance, the illegal activity is known to be highly organised. Many SP bookmakers are associated with syndicates which operate throughout Australia (*Final Report of the Royal Commission on the Activities of the Federated Ship Painters and Dockers Union* 1984, vol. 4, p. 85, hereinafter referred to as the "Costigan Report" 1984). The huge profits which are generated are then available for investment in other illegal activities. Even if profits are not used for those purposes, they are used widely to corrupt public officials, including police. That conduct is a manifestation of the much deeper disrespect which is held by many SP bookmakers for law and authority.

There have been numerous investigations and Royal Commissions in Australia's history into the racing industry and SP bookmaking. In the State of Queensland, there have been no fewer than three separate Royal Commissions into racing that have touched upon unlawful bookmaking.[1] Despite this fact, there is still very little understanding of the reasons behind the phenomenon. Equally, little by way of empirical data exists on SP bookmaking and there is a paucity of academic literature on the subject.

The Royal Commission on the activities of the Federated Ship Painters and Dockers Union undertook extensive investigations of SP bookmaking in 1984. In his report, Commissioner Costigan Q.C. alluded to several aspects of community concern presented by SP bookmaking. Such aspects concerned such matters as the following:

* the involvement of SP bookmakers in race-fixing;
* the laundering of illegal monies;
* the financing of narcotics;
* the corruption of public officials;
* the use of violence both to enforce debts and the code of silence; and
* significant losses to government revenue.

Additionally, Costigan Q.C. recognised that SP bookmaking went beyond being an isolated issue of criminality, and that certain sociological and cultural aspects were important contributing factors to its existence. All of these issues again became a distinct possibility on the basis of the material evidenced before the Commission of Inquiry in 1987. Clearly there was an emerging need for some further broadly based investigation that would go beyond the specific criminal conduct of a few named individuals.

---

1 *Report of the Royal Commission Appointed to Inquire into and Report Upon the Control and Management of Horse Racing and Racecourses in and around Brisbane and Ipswich* 1930; *Report of the Royal Commission Appointed to Inquire into Certain Matters Relating to Racing and Gaming,* 1936; *Report of the Royal Commission Appointed to Inquire into Whether it is Desirable to Make Legal the Method of Betting and Wagering Commonly Known as Off-the-Course Betting,* 1952 Queensland Government Printer.

While the Commission of Inquiry was able to highlight the inadequacies of the current Queensland legislation intended to control SP bookmaking, and raised certain suspicions about the magnitude of the industry and its likely criminal connections, it was confined in its ability to be able to give such a complex issue a complete investigation. Therefore, it was recommended that this topic be given a thorough review by the Criminal Justice Commission.

Commissioner Fitzgerald Q.C. made the comment that:

> "A review of the criminal laws, particularly those affecting prostitution and SP bookmaking, needs more information if it is to make decisions with reasonable confidence that it is not simply creating more problems" (Fitzgerald Report 1989, p. 190) and that;
>
> "Law reform in relation to gambling needs to be approached in a comprehensive, considered way, and, until such a comprehensive review is undertaken, narrowly focused piecemeal action (including greater access to expanded forms of legal gambling), is inadvisable" (Fitzgerald Report 1989, p. 195).

Commissioner Fitzgerald Q.C. made the following recommendation with respect to SP bookmaking:

> "This Commission recommends that the Criminal Justice Commission, as an essential part of its immediate functions, undertake investigation, review, reform and consideration of criminal justice matters arising from this report, including:
>
> A general review of the criminal law, including laws relating to voluntary sexual or sex-related behaviour, SP bookmaking, illegal gambling, and illicit drugs, to determine:
>
> (a) The extent and nature of organised crime in these activities;
>
> (b) The type, availability and costs of law enforcement resources which would be necessary to effectively police criminal laws against such activities;
>
> (c) The extent (if at all) to which any presently illegal activities should be legalized or decriminalized" (Fitzgerald Report 1989, p. 377).

In accordance with these recommendations, the *Criminal Justice Act 1989* has vested the Criminal Justice Commission (the Commission) with the statutory function to monitor, review, co-ordinate, and if the Commission considers it necessary, initiate reform of the administration of criminal justice (*Criminal Justice Act 1989* (Qld), section 2.14(1)(a)).

In order to facilitate the discharge of such functions, the Commission has then been given certain responsibilities, which include such matters as follows:

> Monitoring and reporting on the suitability, sufficiency and use of law enforcement resources and the sufficiency of funding for law enforcement and criminal justice agencies;
>
> Researching, generating and reporting on proposals for reform of the criminal law and the law and practice relating to enforcement of, or administration of, criminal justice including assessment of relevant initiatives and systems outside the State;

> Providing the Commissioner of Police with policy directives based on the Commission's research, investigation and analysis, including with respect to law enforcement priorities, education and training of police, revised methods of police operation, and the optimum use of law enforcement resources;
>
> Reporting regularly on the effectiveness of the administration of criminal justice, with particular reference to the incidence and prevention of crime (and in particular, organized crime) and the efficiency of law enforcement by the Police Force;
>
> Reporting, with a view to advising the Legislative Assembly, on the implementation of the recommendations in the Report of the Commission of Inquiry relating to the administration of criminal justice, and to the Police Force. (*Criminal Justice Act 1989*, (Qld), section 2.15).

In the discharge of its functions, the Commission is obliged by statute that wherever practicable, it should consult with persons or bodies known to it to have special competence or knowledge in the area, and additionally, to seek submissions from the public. Importantly, in its report on the matter the Commission is obliged to present a fair view of all submissions and recommendations made to it, whether they are supportive of, or contrary to, the Commission's recommendations on the matter (*Criminal Justice Act 1989*, (Qld), section 2.14(1)).

The Commission's research project into SP bookmaking commenced in August 1990. In the preparation of this report and in keeping with its statutory requirements, the Commission has sought the advice of police in each of the Australian States, the Australian Federal Police and a number of other public authorities such as the Australian Institute of Criminology, who were known to have particular knowledge or expertise that may be useful in an analysis of unlawful bookmaking.[2]

In order to obtain information, officers of the Commission travelled to Sydney and Melbourne, to consult with the police in those States, as well as with other agencies such as the Victorian TAB, and the Cash Transaction Reports Agency. Police in the other Australian States were extensively consulted by telephone, prior to a detailed request being made by this Commission of each of the Australian police forces for information on SP bookmaking.

Equally, and pursuant to its statutory requirement, (*Criminal Justice Act 1989*, (Qld), section 2.14(1)) the Commission has written to all of the 186 racing clubs in Queensland, each of the controlling authorities, and various other interest groups involved in racing. Each such body was sent a pro-forma questionnaire asking a range of questions about SP bookmaking issues. The intention was to solicit from participants in the racing industry submissions on the incidence of SP bookmaking, their attitudes towards it, and then seeking advice on directions for possible future change.[3]

---

2 Each of the agencies and bodies that the Commission approached for information or advice is listed in the Appendix .

3 Sample of pro-forma letter in Appendix. D

Each body that was approached in this way was advised that the list of issues was intended only as a guide, and they could choose to answer all or any of the issues as they saw fit. Additionally, each such body was invited to present further information if they felt it to be relevant. Some 29 racing clubs and other racing bodies chose to respond to this invitation.

The Commission has resolved that it shall, as a matter of policy, endeavour to incorporate a wide diversity of public opinion in any research activity that is likely to result in changes to the law. In many instances this often entails firstly adequately informing the public about the issues that are involved. In keeping with this policy, the Commission prepared and then released an issues paper entitled:

> *"SP Bookmaking and Other Aspects of Criminal Activity in the Racing Industry".*

In order to incorporate the views of the wider public (particularly the non-racing public), a call for public submissions was advertised in a number of major newspapers throughout the State, as well as nationally in November 1990. Sixteen submissions were then received by the Commission in response to this call for public submissions.

All submissions received by the Commission from racing industry bodies, as well as submissions received from members of the public in response to the issues paper, have been collated, analysed and then compared with information derived via the Commission's own studies of SP bookmaking, and information that the Commission has received from police, intelligence and other sources both in Queensland and other States.

The Commission's own studies have been diverse. Extensive discussions were held between officers of this Commission and police officers in every State, Telecom investigators, officials from the various TABs, the Division of Racing, and some of the racing clubs and associations involved with racing in Queensland. Additionally, information for this report has been derived from a multitude of other sources, some of which include: police department records held by the Bureau of Criminal Intelligence; police annual reports; the statistical records of the Departments of Justice and Tourism, Sport and Racing; Crown briefs prepared for the prosecution of unlawful bookmakers; annual reports of the TAB; other criminal intelligence in the possession of the Commission; and the extensive body of exhibits and the transcript of proceedings from the Fitzgerald Commission of Inquiry.

In addition to its own original research, the Commission has made extensive use of information that has been prepared by a number of Australian Royal Commissions, Parliamentary Committees and the works of a relatively small number of academic authors who work principally in the fields of social history, organised crime and criminology.

Any recommendations for changes to the criminal law, police enforcement strategies, or aspects of legal gambling that the Commission has then seen fit to make, have been based upon a consideration of this information in its totality.

SP bookmaking is by nature a clandestine activity. A certain amount of the Commission's studies have, of necessity, required the gathering of criminal intelligence data that is often difficult and time consuming to obtain. Equally, such data is often based on either estimates, or an appraisal of information from sources the reliability of which is unable to be substantiated. These considerations must be borne in mind in any use of, or reference to such data particularly in so far as it relates to the financial aspects of unlawful bookmaking. Reproduction of any statistical or financial material contained in this report should not be done in such a way as to infer that such data is in any way definitive.

In circumstances where no reliable data exists and the Commission has been required to formulate estimates as to the size and extent of the SP bookmaking industry in Queensland, the Commission has determined that it shall as a matter of policy prefer to adopt the more conservative of the possible estimates.

Alternatively, given the clandestine nature of SP bookmaking and the frequent absence of definitive or reliable information, the Commission has in some circumstances where it would prove to be more meaningful, adopted the practice of presenting a range of informed estimates. In such circumstances the Commission has also included its own appraisal of the reliability of such estimates, and the preference that each is given by the Commission so as to assist readers of this report in drawing their own conclusions.

References

Commission of Inquiry Pursuant to Orders in Council 1989, *Report* (Chairman: G.E. Fitzgerald Q.C.), Government Printer, Brisbane.

Criminal Justice Commission 1990, *SP Bookmaking and Other Aspects of Criminal Activity in the Racing Industry: An Issues Paper.*

Royal Commission on the Activities of the Federated Ship Painters and Dockers Union 1984, vol. 4, *Final Report*, (Chairman: F. Costigan Q.C.) Government Printer, Canberra.

CHAPTER TWO

A DEFINITION OF SP BOOKMAKING

It is highly likely that SP bookmaking represents a total mystery to many people. A 1991 national recreational participation survey, commissioned by the Federal Arts, Sport, Environment, Tourism and Territories Minister, indicates that only two per cent of the Australian population go to race-meetings (*The Sunday-Mail* 28 April 1991). A market research survey conducted by the Queensland TAB in 1988, indicates that only nine per cent of the Queensland adult population are regular TAB punters.[1] Although the same research tends to indicate that perhaps as much as 34 per cent of the adult population may be occasional punters, these types of figures give the Commission reason to surmise that a substantial proportion of the population probably has little understanding of the often mysterious world of racing and betting. This lack of understanding probably also means that many people will have little understanding of what is meant by "SP bookmaking".

Michael Bersten believes that the process of definition is of paramount importance. He feels that "definitions act as an instrument to unify a dispersed field of objects, differentiating it from other fields", and that they "... import important theoretical and methodological commitments" (Bersten 1990, p. 49). For these sorts of reasons, the Commission feels that it is most important that it provides an adequate definition of SP bookmaking.

Although SP bookmaking has been examined by a number of Royal Commissions, police investigations and official inquiries, and despite SP bookmakers being referred to in the media regularly, the Commission is not yet aware of any formal attempt having been made to define SP bookmaking.

This is perhaps somewhat curious, and may be the result of the assumption being made that all Australians have some cultural identification with SP bookmakers. However, even the most cursory personal poll will reveal that there are many people who do not know what SP bookmaking is, how it operates, or why it is illegal.

The Costigan Royal Commission represents the most extensive official enquiry into SP bookmaking that has been recently undertaken in Australia. Yet Commissioner Costigan Q.C., did not define SP bookmaking. In the Final Report of that investigation, readers were told that in Australia there are both legal and illegal bookmakers, but were then only given the briefest description of SP bookmaking. Commissioner Costigan Q.C. wrote:

> "These off-course bookmakers offer starting price odds to the punters. Thus they have been referred to over many, many years as SP bookmakers or 'the SP's'" (Costigan Report 1984, vol. 4, p. 1).

---

1 Letter, TAB to Criminal Justice Commission, 1 May 1991.

As Commissioner Costigan Q.C. has indicated, the term "SP" refers to the starting price of horses. This is the price that a horse is quoted at by bookmakers on-course when the barrier opens, and the race commences.

A practice has developed over the years of the starting price being subsequently reported in daily newspapers, usually the day after the race. Unlawful bookmakers came to be known as "the SPs" during the earlier part of this century, because of their widespread practice of paying winning bets on the basis of the horse's starting price.

This occurred because the unlawful bookmakers who operated away from the race-tracks, had no way of knowing the price fluctuations across the field being offered by bookmakers in the betting rings. Bookmakers who fielded on-course were not restricted to starting price odds as, being in the betting ring amongst other bookmakers, they were able to observe betting fluctuations first-hand and were able to set their own books accordingly.

The term "SP" has come to be used as a general epithet for all forms of unlawful bookmaking and is somewhat misleading, in that unlawful bookmakers today do not generally confine their activities to only the acceptance of bets on horse and greyhound racing. It is now common practice for SP bookmakers to accept bets on a variety of sporting fixtures such as the New South Wales Rugby League competition, as well as on other events and "contingencies". Equally, it is also common practice for unlawful bookmakers to offer odds at other than starting price, as they now have access to reliable information about on-course price fluctuations.

Definitions of SP bookmaking tend to be fairly fluid, and are often used to also include the activities of licensed bookmakers when conducted outside the parameters set for lawful operation by the conditions of their licence. Bearing this in mind, the Commission has determined that it is appropriate for the purposes of this report to use the terms illegal bookmaking, unlawful bookmaking and SP bookmaking interchangeably.

For the purposes of its investigations and this report, the Commission has developed the following definition of SP bookmaking:

> The acceptance of unlawful wagers by a person on his own behalf or on the behalf of another, at an agreed rate, on the outcome of any sporting event or other event or contingency.

Unlawful bookmaking currently employs three principal modes of operation, all of which can be considered using this definition:

* illegal activities by registered bookmakers;

* illegal bookmaking conducted on licensed premises; and

* illegal bookmaking through the telecommunications networks.

References

Bersten, M. 1990, 'Defining Organised Crime in Australia and the United States of America', *Australian and New Zealand Journal of Criminology*, vol. 23, no. 1.

Royal Commission on the Activities of the Federated Ship Painters and Dockers Union 1984, vol. 4, *Final Report*, (Chairman: F. Costigan Q.C.), Commonwealth Government Printer, Canberra.

The Sunday-Mail, 28 April 1991.

CHAPTER THREE

SP BOOKMAKING - A QUEENSLAND HISTORY

In contrast to New South Wales and (to some extent) Victoria, the illicit gambling industry in Queensland has been little studied. Dr. Alfred W. McCoy (1980) has described the involvement of the criminal underworld in all forms of illegal gambling in terms of being a *milieu*, thus describing a class of professional criminals in fluid association in particular ventures, rather than as being a rigidly hierarchical structure.[1] However, the *milieu* described by McCoy is principally a Sydney phenomenon. The unlawful bookmaking industry in Queensland, little examined until the Fitzgerald Commission of Inquiry, has both similarities to and significant differences from the industry in New South Wales.

The industry and its links with criminal activities are perhaps best examined from an evolutionary perspective. This has the advantage of illuminating the effect of past attempts at the eradication of illegal bookmaking through regulation and the expansion of the parameters of legal gambling. It also permits an examination of the influence of social attitudes, enforcement styles and advances in technology.

Illegal bookmaking is as old as Australian racing, and owes much of its early genesis to the desire of racing clubs to control all transactions relating to racing. Gambling transactions, except those concluded between club members, were thought to be best confined to specified areas of racecourses. The single most significant measure of a turf club's success was taken to be attendance. Betting facilities outside the course were correctly assumed to directly affect attendances and the all important gate takings.

Confining gambling in this way had the natural but unintended consequence of creating opportunity for those of entrepreneurial mind prepared to brave some risk in satisfying the demand that the restriction sustained. Consequently the first illegal bookmaking activities were those of unrecognised or unregistered amateur bookmakers operating in unspecified areas of the racecourses. Enforcement of club restrictions on gambling activities by the clubs and on occasion other authorities merely reinforced a natural progression from the paddock to outside the racecourse gates. The consequent loss of gate takings spurred renewed attempts to control the illegal activities and what had been club rules were now elevated to the level of statute. Improvements in communications technology beginning with the mass publication newspaper were beginning to tip the balance in favour of the illegal operator. Although the designation "SP" did not become general usage until the 1920s the basic parameters of the struggle between illegal bookmakers and authority were set in the mid to late 1800s.

---

1 In the sense that McCoy chooses to use the descriptive term *milieu*, he is saying that Australian organised crime is roughly analogous to the Marseilles criminal *milieu*, and dissimilar to the Sicilian *Mafia* and the *La Cosa Nostra* of the United States.

The first organised race-meeting in what was to become Queensland is believed to have taken place in 1843, at Coopers Plains. The Queensland Turf Club (QTC) received a grant of land at Eagle Farm in 1863 and Tattersall's Club, with a special class of bookmaker members, formed in 1883. Although off-course betting was conducted quite openly at Tattersall's Club, there was discernible pressure by the principal racing associations for the government to keep other off-course betting under check.[2] The general favour in which these racing bodies were held was illustrated in other ways as well, with Police Commissioner David Seymour complaining in 1888 of "the constant demands for police assistance from racing, sporting, and other clubs and associations . . . to get constables to perform services which should be undertaken by the employees of the associations" (*Report of the Commissioner of Police* 1888).

Under the *Gaming Act 1850* and the *Suppression of Gambling Act 1895* all bookmaking on or off-course in Queensland was technically illegal, although for enforcement purposes an effective distinction seems to have been drawn by the toleration of bookmakers registered by principal racing clubs and periodic police action against other bookmakers. Bookmaking in fact received no legal recognition until the *Racecourses Act* of 1923, but the principle that on-course betting was tolerable while off-course betting (unless at the better clubs) was not, was legally established in legislation to cover totalisators in 1889.

The totalisator, initially a mechanical device totalling all bets and calculating odds accordingly, was invented in France in 1871. Perceived to be "the fairest system of betting in existence" it was adopted in South Australia, at licensed racecourses, as early as 1879. As a machine or in smaller establishments a system of calculation to emulate the machine, the "tote" was equally adapted for legal or illegal use:

> "The barber man was small and flash, as barbers mostly are,
> He wore a strike-your-fancy sash, he smoked a huge cigar,
> He was a humorist of note and keen at repartee,
> He laid the odds and kept a 'tote', whatever that may be" (Paterson 1892).

With the exception of a short period in South Australia its introduction was everywhere illegal.

The machine and its derived mathematics appear to have reached Queensland some time in the decade of their invention and totalisator betting "carried on in a quiet, unostentatious, manner in certain betting shops in the city of Brisbane" (*Report of the Royal Commission Appointed to Inquire into Certain Matters Relating to Racing and Gaming* 1936, p. 9, hereinafter referred to as the "Report on Racing and Gaming" 1936).

---

2 This background is drawn from a number of sources of which the most useful were three Royal Commissions on racing related matters in 1930, 1936 and 1952 to which reference is made later in this paper.

The keepers of some of the shops were brought to court by the police but the magistrate determined that totalisator betting did not infringe the Gaming Acts. Not surprisingly "betting shops rapidly increased and the proprietors advertised their business in shop windows and in the press" (Report on Racing and Gaming 1936, p. 9). The government response, made even before the Supreme Court was able to consider the totalisator's status under existing legislation, was the *Totalisator Restriction Act 1889*, legalising the use of totalisators at racecourses only. The realisation that legalising gambling could have revenue benefits came only later, despite the financially strapped position of the colony at the time. The *Totalisator Tax Act 1892* redressed this omission three years later. In more recent times, potential benefits to the revenue have been one of the first arguments advanced for allowing previously illegal behaviour.

Although the introduction of the totalisator machine focussed some attention on illegal betting shops, the majority of police action under the Gambling Suppression Acts in the State's early years was directed against the Chinese, who numbered 100 of the 105 persons arrested for gambling offences in 1877 (*Report of the Commissioner of Police* 1877). As the alluvial and easily worked gold became more scarce, or at least more remotely located, community concern over the Chinese did likewise; by the turn of the century police were more concerned with two-up and betting shops than with the Chinese game of fan-tan:

> "As I reported last year, the present position regarding gambling was not satisfactory. The police have endeavoured to check the evil as far as possible, but two-up is still in full swing and unchecked as there is no legal power to stop it. Betting on horse racing also continues to attract a very large section of the community, who visit betting shops for the purpose, and though I have given very definite instructions to the police to suppress this and every species of gambling, it is found, especially in the case of betting shops, most difficult to obtain evidence sufficient for convictions. In this, as in the case of the licensing laws, far larger powers are required by police to readily and effectually enable them to suppress or even keep in check the gambling which so large a section of the public now indulge in" (*Report of the Commissioner of Police* 1907).

Another new form of gambling established itself in 1881, when George Adams of Sydney's Tattersalls Hotel extended his sweepstakes on local horse races from his clientele to the public at large: "Tatts became a public institution offering fabulous prizes to its investors but an even more splendid way of life to its founder and director, George Adams" (Brennan 1971, p. 24).

Adams' enterprises were at times deemed legal and at times deemed illegal and Adams himself hopped from one jurisdiction to another, before finally settling with official blessing in Tasmania in 1895. When the New South Wales legislature ran Adams and his lottery out of town in 1892 he came to Queensland; when the Queensland Deposits Bank closed its doors the following year Adams seemed to some to be the logical choice to run a public lottery to dispose of its assets. But Adams soon wore out his welcome - a year later the Queensland legislature followed its southern counterpart with the passage of a Bill to achieve the "suppression of lotteries and consultations, and the suppression of the habit of betting in the young" (Attorney-General T.J. Byrne quoted Charlton 1987, p. 177).

Sending Adams into exile did not completely achieve the objective. Queensland Police Commissioner William Cahill lamented in 1910 that "a large business is done with Hobart in relation to Tattersall Sweeps, but, owing to the precautions taken, both in advertising and carrying on the business, successful action for its suppression is quite impossible under our existing laws" (*Report of the Commissioner of Police* 1910).

By 1916, however, the perceived needs of wartime patriotism were such that the Queensland Golden Casket was established under conditions of extremely dubious legality as the first State sponsored lottery in Australia. The lottery being an enterprise of the Patriotic Fund and its purpose being to provide homes for war widows meant that the anti-gambling lobby, dominated as always by some among the Protestant clergy, remained uncharacteristically silent (Charlton 1987, p. 189).

Early opposition to gambling among the populace at large came from an uneasy coalition of interests; clergy trying to root out a social evil often found themselves on the same side of the argument as the social elite of the race clubs. When the arguments prevailed the result was often tainted by an element of hypocrisy. The inherent contradiction between all gambling being irredeemably evil and some being acceptable, did not always go unnoted:

> "Our whole gambling law seems constructed on the principle of straining at the gnat and swallowing the camel. We run boys in for playing pitch and toss in a back street, and make systematic raids on the miserable Chinese players of fan-tan, but our virtue collapses before the popular betting of thousands on the gamble of the racecourse, and we thrust our people into what has been described as a sink of iniquity and a deathly evil by systematic proclamation of race holidays" (Charlton 1987, p. 180).

Hypocrisy had another formulation; gambling by some was acceptable but gambling by others constituted moral risk. This was a point taken up in debate on the 1895 *Suppression of Gambling Act* in Queensland, aimed principally at Adams and Tattslotto. Labor member J.H. Dunsford complained that "though the Act may prevent poor man's gambling, it does not prevent gambling in high places - gambling in clubs, on racecourses, and on change [the stock exchange] - where men may still gamble as much as they like". The justification for this state of affairs was expressed by prominent conservative Catholic Legislative Councillor A.J. Thyne, as follows:

> "I do not see any great evil in a sporting bet of a small amount; but the evil comes in when a person stakes a sum of money in the grasping and greedy spirit of wishing to take money out of the pocket of another person for the sake of personal gains. When a man begins to gamble for the sake of making money, it becomes a sordid and discreditable thing" (Charlton 1987, p. 178).

Catholic author Niall Brennan, in a generally sympathetic biography of illegal gambling entrepreneur John Wren, set out some of the class and religious overtones of the debate thus:

> "When one reformer announced boldly in 1893 that 'Victoria is one state that will never be blighted by the iniquitous evil of Tatts', it might almost have been a challenge. A red-blooded young man from the slums would find such a challenge irresistible. Not only would he take a perverse delight in initiating such a pleasant form of wickedness but he might also ask himself, as many did, why a working man's bet was so immoral while the bet of a rich man in the Victorian Club was not. There were several such clubs and they were called 'our well-known betting institutions' by some voices which loudly condemned the poor man's flutter" (Brennan 1971, p. 25).

Wren's "Collingwood Tote" became one of the most noted illegal gaming institutions in Australia. It operated virtually continuously from 1893 until the passage of severe anti-gambling legislation in 1906. Wren was apprehended only once - on Melbourne Cup Day 1893 - and fined £50. Victorian Detective Herbert William Sainsbury told a 1912 New South Wales Royal Commission on totalisator gambling that in the heyday of the tote "Wren would average £750 a week" (*Report of the Royal Commission of Inquiry Respecting the Question of Legalising and Regulating the Use of the Totalisator in New South Wales* 1912, p. 134, hereinafter referred to as the "Report of Totalisators" 1912).

Wren went on to become a shadowy and controversial figure of influence in Victorian, Queensland and Federal Labor politics, and is believed, even by sympathetic biographers, to have provided the bulk of a £5,000 inducement to a Labor member to stand aside to allow the entry into the Federal Parliament of former Queensland Premier E.G. Theodore (Brennan 1971, p. 165).

Wren was also deeply involved in the central public issue in Queensland racing regulation from 1915 to 1930 - the challenge to the established racing hierarchy of "unregistered" or "proprietary" racing. Although illegal betting shops still existed and police still periodically requested more effective laws to deal with them, public debate focussed on the often unruly private race-tracks and clubs. The debate appears to have mounted in intensity to the degree that the unregistered industry threatened the interests of the Queensland Turf Club and it culminated in a Royal Commission into the racing industry in 1930.

> "The first connection of the Melbourne partnership of Nathan and Wren with Queensland racing was on the purchase in 1909 of Albion Park . . .
>
> Being desirous, as Mr Wren now admits, of securing a monopoly of metropolitan racing in Brisbane outside Eagle Farm, they proceeded gradually to acquire, partly in their own names and partly in the names or through the agency of various associates, control of all the other courses or projected courses around Brisbane . . . Thus, by the end of 1922, the desired monopoly was completely attained, and the monopolists had nothing further to fear except from a possible interference by Parliament" (*Report of the Royal Commission Appointed to Inquire into and Report Upon the Control and Management of Horse Racing and Racecourses in and around Brisbane Ipswich* 1930, p. 25, hereinafter referred to as the "Report on Horse Racing and Racecourses" 1930).

These courses raced during the week and featured large fields but little in the way of amenities:

> "Like his (Wren's) trotting tracks, the Queensland courses showed starkly the weaknesses of running racecourses as private industries. Races were geared to the profit of the courses, and generally the courses were untidy, sometimes unruly, and many of the desirable amenities were neglected . . . Other racing men said that the short sprints for ageing horses made victory a matter of desperation, and the races were full of interference, bad tempers, flailing of the whip and the curses of despondent jockeys" (Brennan 1971, p. 170).

The first issue on which the courses were attacked was safety, with, according to another of Wren's biographers, the Queensland Police Commissioner writing to Wren at the behest of the Queensland Turf Club seeking reductions in the fields. After three fatalities among jockeys at Kedron Park Racecourse a Royal Commission was held in 1921, which did no more than produce a recommendation for the minimum radius of turns (*Report of the Royal Commission Appointed to Inquire and Report Upon the Safety of the Kedron Park Racecourse at Brisbane for Racing and Trotting Purposes, and Matters Incidental Thereto* 1921, hereinafter referred to as "Kedron Park Racecourse Report" 1921).

Opposition continued to mount, now on the basis that Queensland racing was falling under the control of southern syndicates. In 1923 the Brisbane Amateur Turf Club (BATC) was formed and promptly bought two of Wren's racecourses. Brennan, referring to this "bold move for an organisation without a penny to its name", commented:

> "A cloud of secrecy lay over the sudden acquisition of wealth by the club, but there was little doubt in the minds of onlookers that in effect, Wren had been the moving spirit behind the new club and had in effect sold the racecourses to himself" (Brennan 1971, pp. 169-170).

The 1930 Royal Commission found that, although Wren and his partners had not interfered in the management of the club's affairs, "the Commission is still left in doubt as to whether Nathan and Wren and the original promoters did intend a genuine sale, and whether the terms of sale were not designedly and by preconcert so arranged as to keep the property always within the reach of the vendors, should they determine to resume control" (Report on Horseracing and Racecourses 1930, p. 28).

In the case of the BATC, Wren amended the offending agreement of sale while the Royal Commission was sitting but it also found that a number of other independent clubs and associations were not bona fide. Unregistered racing was abolished by the *Racing Regulation Amendment Act* of 1930.

Despite such questionable dealings, Wren by this stage was essentially a businessman and sports promoter with political influence. While he made a highly profitable start in illegal gambling and while gambling by others, both legal and illegal, was what made his race-tracks the business proposition they were, Wren himself does not appear to fit the criteria of an organised crime

figure. His activities following the closure of the Collingwood Tote were more shady than overtly criminal and his biographers, generally sympathetic, do not attribute any violence to him in this period. It may also be that even his political activities were principally attacked due to the interests they favoured rather than because they were extraordinary for the time. In the long run, Wren's money can be seen to have wielded less influence than the established interests of the principal racing clubs.

The principal criminal concern of the 1920s appears to have been with the "larrikin" element, some of whom were later to evolve into standover men for the vice and gambling trades generally. The "razor gangs" of Sydney, dominating discrete areas and extracting a toll from illegal activities in those areas, had some counterparts in Brisbane but one gets the impression that the "larrikin" element predominated over the criminal element and the level of violence was considerably less.

According to McCoy, the emergence of the "male standover merchant" during the 1920s was an important step in the development of organised crime:

> "While the cultural prerequisites for an underworld, such as the rule of silence and hostility toward police authority, were well developed by the 1890s, Australia's urban economies were still incapable of sustaining a large class of powerful professional criminals. It was not until the 1920s that conditions changed enough to allow the emergence of organised crime. Paralleling developments in the United States and Europe, Australia imposed severe restrictions on the sale of alcohol and banned outright the sale of narcotics, both important commercial opportunities for the nascent milieu. The sudden proliferation of telephones and radios throughout urban Australia tied a majority of households into a statewide electronic network and facilitated the rise of the illegal SP bookmaking industry. By the late 1920s the combination of prostitution, illegal gambling, narcotics traffic and the operation of 'sly grog shops' after 6 p.m. hotel closing provided a sufficient economic base for the establishment of a pervasive milieu outside the traditional waterside vice areas . . . Perhaps unimpressive by comparison with the United States, the establishment of criminal milieu in Sydney and Melbourne during the 1920s still represented an important step in the growth of organised crime. The expansion of the illegal economic sector spawned a new figure, the progenitor of the contemporary syndicate leader: the male standover merchant. While nineteenth century Australian illegals had been specialists in a particular field, mainly prostitution or gambling, the 1920s saw the emergence of entrepreneurs in violence who collected a form of tax on a whole range of illicit activities. Instead of living on income earned by his own violation of the law, the standover merchant profited from almost every aspect of the economy's illegal sphere by imposing a turnover tax on his comrades in the milieu: prostitutes, cocaine dealers, sly grog vendors, SP bookmakers and thieves" (McCoy 1980, pp. 103-104).

How closely Brisbane paralleled these developments is not known; certainly no local equivalent of Melbourne's "Squizzy" Taylor or Sydney's Phil "The Jew" Jeffs comes to mind. Queensland did mirror the various prohibitions of the 1920s, with "dangerous drugs" (including cocaine, cannabis and heroin) being enshrined in health regulations in 1924 and "sly-grogging" remaining the perennial problem it appears to have been since the birth of the State. Annual reports of the Commissioner of Police may not give a complete picture but the principal offenders against the liquor trading restrictions appear to have been publicans. Although concern was registered in 1924 over an upsurge in the

opium trade, Queensland's participation in the cocaine traffic appears to have been relatively minimal. Police powers to deal with dangerous drugs were strengthened in 1929 and the number of cocaine prosecutions peaked, at eight, in 1930-31. A medical practitioner and a number of pharmacists were also prosecuted for selling narcotics (Annual Reports 1930, 1931, 1932). The weapon of choice in the southern "cocaine wars" of the late 1920s, the razor, was not once mentioned by the Commissioner of Police (*Annual Report of the Commissioner of Police* 1932).

SP betting, as it was then generally known, rose sharply during the depression years in all States of Australia. In 1924, the Queensland Commissioner of Police Frederick Ryan had reported "a considerable diminution" in illegal gambling following the passage of the *Racecourses Act 1923* (*Annual Report of the Commission of Police* 1924). Prosecutions for all types of illegal gambling were 300 in 1921-22, 596 in 1929-30 and 1,221 in 1932-33 (*Annual Reports of the Commissioner of Police* 1930, 1931, 1932).

> "Owing to the scarceness of money, it is undoubted that people who are accustomed to visit race courses now indulge in betting elsewhere, having facilities to do so at normal outlay, and the wireless and telephone facilities enable them to gratify their desire with the latest and adventitious aids with consequent loss to the clubs, as well as to the state's revenue" (*Report of the Commissioner of Police* 1932).

Although the depression was often singled out as the principal reason for the explosion in illegal gambling, technology would also seem to have played a significant and generally under-appreciated role; in the late 1920s the radio and the telephone were introduced into an increasing proportion of homes and offices. In 1933 the attention of the Commissioner of Police was focussed on "the broadcasting of racing news which has been brought to such a fine point that persons away from the racecourse are kept in as close touch with the starters in a horse race, positions at barrier and description of the races as persons on the course itself" (*Report of the Commissioner of Police* 1933).

McCoy also notes that the sharp rise in SP bookmaking coincided with the decline in the illicit drug (principally cocaine) trafficking industry following vigorous enforcement by police in New South Wales. In Sydney, the razor gang wars between vice and cocaine syndicates led to the passing of the "Consorting Clause" amendment to the *Vagrancy Act* in 1929 providing penalties for anyone who "habitually consorts with reputed thieves, or prostitutes, or persons who have no visible or lawful means of support". McCoy (1980, p. 137) labelled it "one of the most authoritarian and effective measures against organised crime ever passed in a Western democracy".

McCoy (1980, p. 153) said that in Sydney:

> "The resilience and popularity of SP bookmaking made it the major 'illegal' activity of the 1930s. Denied access to police protection, SP operators were vulnerable to extortion demands from the standover men. As the illicit cocaine trade was reduced, standover men shifted to SP operators as an alternative source of income . . . As standover exactions from the SP men increased, smaller operators armed themselves and the larger ones hired their own gunmen. Occasional killings plagued the SP business until the start of World War II".

Police could enlist the support of most of the population for their moves against the cocaine traffickers but could arouse no comparable sense of evil about SP bookmakers. "Bookmakers as a class are reputable people . . .", wrote Queensland Commissioner of Police William Ryan in his 1931 Annual Report. In these circumstances it was hardly surprising that in New South Wales reports of corruption began to circulate. These reports, combined with race club lobbying, led to a Royal Commission being appointed in New South Wales in 1936, in turn leading to a severe crackdown on SP betting (McCoy 1980, p. 40-41).

Queensland's experience was quite different: allegations of corruption by both police and political figures were ignored, but the increasing scale of illegal bookmaking led to a Royal Commission into racing. Some cosmetic amendments to the law followed and another Royal Commission 16 years later found the scope and scale of the SP betting industry unchanged.

McCoy noted that in New South Wales, conservative governments favoured the interests of the racing clubs and Labor Governments those of the ordinary working man's right to have a bet, with the consequent risk this posed of allegations that they were soft on illegal bookmaking. Similar dispositions can be discerned in Queensland where, however, the period of conservative rule (1929-32) was comparatively brief. Allegations of police and political corruption derived from the activities of publicans, bookmakers and the owners of other gambling houses, particularly in North Queensland. Those of most note were first aired in an anonymous letter in the Police Union Journal in September 1933 and led to calls for a Royal Commission into whether certain police who commenced to enforce the gambling laws in the north and west of the State had been subject to sudden and unjustified transfer as a consequence. The Government dismissed the allegations in November.[3]

Concerns about the scale of SP betting in Queensland had led to the formation of a Royal Commission under the chairmanship of Thomas Ferry, a member of the Industrial Court, the year before. One of the three men appointed to inquire into off-course betting and the operation of the State's racing and gambling legislation was the newly appointed Commissioner of Police, Cecil James Carroll.

While there is no reference to any police or other corruption, the Royal Commission's Report, tabled in 1936, detailed police estimates of 749 illegal bookmakers in Queensland of whom 380 operated in Brisbane. Some 205 hotels, 117 billiard rooms, 196 barbers and tobacconists, and 156 other premises were stated to be used for illegal gambling (Report on Racing and Gaming 1936, p. 48).

3 See Queensland *Parliamentary Debates*, 7 November 1933, pp. 1240-1251.

The Licensing Inspector estimated that in Brisbane 25 per cent of the total adult population were "habitual bettors"; Brisbane Tattersall's club was singled out for special attention:

> "In this club the 'card' is called on the night preceding important race meetings, and the betting members are accommodated by bookmakers registered with the Queensland Turf Club. A number of registered bookmakers also have offices situated on the ground floor of the club's premises in what is known as Tattersall's Arcade, and illegal betting was said to be carried on in these premises by employees of the bookmakers when the latter are fielding on course" (Report on Racing and Gaming 1936, p. 47).

The bookmakers operations in Tattersall's club were described by the Chairman of the Brisbane Amateur Turf Club as 'the root of the betting evil' and the same witness expressed the opinion that "if betting in Tattersall's club and in the adjoining premises was suppressed the betting evil would be cut down by two thirds" (Report on Racing and Gaming 1936, p. 48).

The Royal Commission visited "one important town in North Queensland, where, in the larger betting shops visited we found from 200-300 persons, mostly males, engaged in betting".

> ". . . the proprietors of the illegal betting shops pay no attention to the comfort of patrons, for the seating accommodation provided is enough for only a mere handful of the frequenters, and the remainder find it difficult to obtain even standing room.
>
> The larger betting shops are equipped with a number of telephones, not only to receive bets from patrons unable to attend personally, but also to receive the racing information from the South Coast Press Agency. The walls are covered with large blackboards which show particulars of the jockeys, barrier positions, and ruling prices in respect not only of Brisbane, but also of Sydney and Melbourne races. A wireless receiving set entertains the audience with an actual description of the race, at the conclusion of which winnings are paid and betting is renewed. Most of the bettors were 'silver' bettors, and we noticed that the majority appeared to spend the afternoon in the betting shop, except for occasional visits to nearby hotels.
>
> The majority of the betting shops we visited were conducted by bookmakers registered with the principal racing club of the district" (Report on Racing and Gaming 1936, p. 49).

As in the case of most such inquiries the Royal Commission heard much evidence from the two interest groups historically most concerned with respect to illegal gambling - the religious anti-gambling lobby and the racing clubs. The viewpoint of racing clubs received the greater sympathy; the Commission deploring the "depleted attendances and consequent financial loss" to the clubs resulting from even registered bookmakers preferring to ply their trade illegally:

> "We are satisfied that betting shops which are so well equipped with racing information as to put their patrons in almost as good a position as the person who actually attends the course have attracted many persons away from the racecourse, particularly those persons to whom the expense of visiting a racecourse is a matter of some importance" (Report on Racing and Gaming 1936, p. 50).

The sources of this information, in approximate order of descending reliability, were the radio, the newspaper, the pricing service and the professional tipster. The Royal Commission explored each, reserving its most vehement condemnation for the tipster:

> "Advertisements by professional tipsters representing that they can successfully forecast the results of certain races, occupy a great deal of space in the Queensland press, and one newspaper put in evidence had a full page devoted to the advertisements of one tipster . . . such persons represent to the public that they have confidential information in regard to the capabilities of the contestants in certain races; but the evidence shows that they are possessed of no unusual discernment in racing matters. It came to our notice that sometimes a tipster will select more than one horse to win the same race, but is careful to send the information in regard to the 'certainties' to different parts of the country . . . we see no reason to doubt the often repeated statements of responsible racing officials that some jockeys are connected with tipping agencies" (Report on Racing and Gaming 1936, p. 34).

Tipsters employed by newspapers were not so morally objectionable, but broadcasts of their tips over the radio "took gambling information right into the home, and was calculated to foster a desire to bet on the part of persons who are not otherwise likely to acquire the gambling habit". The publication of betting odds by newspapers prior to race-meetings was however held to be a direct impetus to the off-course betting industry; "no evidence was given by any representatives of the press, but we think that the publication of this information is not in the best public interest, and should be strictly prohibited" (Report on Racing and Gaming 1936, p. 36).

Racing broadcasts in Queensland had commenced in 1926 with the licensing of the first radio station. Permission was obtained from the Queensland Turf Club to broadcast racing and the broadcasts included starters, riders, barrier positions, pre-post betting, running description of races, starting prices and totalisator dividends. Race attendances fell and the Queensland Turf Club withdrew permission to broadcast races after only two years. Similar developments in other States had been followed by the radio stations broadcasting from venues outside but overlooking racing clubs but in Queensland 4QG, then a Queensland Government enterprise, ceased broadcasting following additional complaints from the Commissioner of Police. In about 1932 the commercial radio station 4BC assumed sole rights for race broadcasting.

The Royal Commission's view was that:

> "The evidence points to the fact that, in this matter, the racing clubs are on the horns of a dilemma. They do not desire their races to be broadcast, but it seems they must either grant the right and get some monetary recompense therefore, or allow proceedings to be broadcast from outside the racecourse without the obligation on the part of the broadcasting company to pay any fee for the privilege" (Report on Racing and Gaming 1936, p. 37).

A Charles Bonham appeared before the Commission to give evidence on the South Coast Press Agency, basically a pricing service:

> "Despite his protestations that the service is a great benefit to the public it is in our view essentially a bookmaker's service, and was designed for their protection.
>
> The latest racing information is distributed by telephone to persons throughout the State of Queensland who are sufficiently interested in racing to become subscribers, all of whom, we apprehend, are conducting betting shops" (Report on Racing and Gaming 1936, p. 39).

Brisbane clients of the service paid 30 shillings a week for Brisbane racing information while a Cairns subscriber would pay £5 a week for racing information from Brisbane, Sydney and Melbourne. Mr Bonham himself stated that between 1928-29 when the service had been in operation for some eight months and 1934-35 the number of Brisbane clients had risen from 38 to 55 and the number of country clients from 35 to 114. His agency now employed a staff of 34, and its telephone bill amounted to more than £11,000 per annum. Bonham claimed that his agency helped to keep racing clean but the Royal Commission took the view that "it would be extremely difficult for illegal betting to be carried on successfully in Queensland without aid of the services of this or some such agency" (Report on Racing and Gaming 1936, p. 40).

Royal Commissioners Ferry and McCarthy determined that betting shops were a "corrupting and destroying influence" and made numerous minor recommendations to enable the law to be enforced. Police Commissioner C.J. Carroll however submitted a dissenting report claiming public demand for off-the-course betting facilities should be met, and opposing proposed restrictions on race broadcasts.

Legislative action following the Royal Commission served cosmetic more than deterrent purposes. It prohibited the proprietors of betting shops from advertising or touting for business, and also prohibited tipster's advertisements, illegal press agencies and the conveying of information from racecourses during meetings, a provision later relaxed for radio stations.

In contrast, the New South Wales Royal Commission was followed by a police crackdown, heralded by a threat to declare some 200 city hotels "common gaming houses". Severe new legislation was passed after a great deal of opposition, but after some months disruption, the industry had adjusted to it:

> "Barred from monitoring telephones by PMG regulations, police only succeeded in driving the illegal bookmakers out of New South Wales State territory (the hotels) into federal jurisdiction (the telephone system and the Australian Capital Territory) where they operated with near impunity . . . One Saturday afternoon on the eve of war with Japan, Prime Minister Curtin tried to place an urgent call to a state premier, but encountered inordinate delays and learned that there were sixty SP betting calls booked ahead of him" (McCoy 1980, p. 182).

Wartime proved a bonanza for the illegal industry, despite State and Commonwealth Government efforts to curb what was seen as a drain on the war mobilisation effort, including reducing the number of race-meetings to one per week in Sydney and restricting all interstate racing broadcasting:

> "Despite these restrictions Sydney's SP networks do not seem to have been adversely affected. Betters [sic] simply plunged their stakes on the one weekly meeting. While ordinary citizens found it impossible to get new telephone connections because of wartime austerity, SP bookmakers managed to obtain illegal connections for the six or so telephones they each needed to cope with the Saturday rush" (McCoy 180, p. 165).

No specific indications of how the SP industry fared in Queensland are known, but there is every reason to believe that there was a local equivalent of the Southern boom. Racing itself suffered some restriction, not because the State Government assiduously followed Commonwealth edict but rather because some racecourses disappeared under the tents and other amenities of Allied troops.

In 1951 the government of V.C. Gair appointed a Royal Commission to inquire into whether it was desirable "to make legal the method of betting and wagering commonly known as Off-the-Course Betting". It was chaired by William Riordan, like the head of the previous Racing Royal Commission a member of the Industrial Court of Queensland. The Commission's Report provides a useful summary of its investigations:

> "In our own state, the tentacles of illegal off-course betting have penetrated deeply into the social life of the community, and apparently existing legislation is not effective in dealing with this growing evil.
>
> From the evidence placed before us, largely that of illegal off-course bookmakers themselves, we are satisfied that it is carried on extensively throughout the length and breadth of Queensland. Even small townships have one or more off-course bookmakers and a witness deposed to there being three in Julia Creek where the latest census gives the population as 507, though admittedly these bookmakers provide betting facilities for people in the surrounding districts also. We have come to the conclusion that so far from over stating the volume of off-course betting carried on in this state, the collective effect of the evidence has been to understate; in our opinion every off-course bookmaker who appeared before us without exception under estimated (for reasons not relevant to our inquiry) the volume of his own particular business . . .
>
> In almost every centre outside the metropolis, off course betting is carried on openly by illegal bookmakers, in that the location and nature of their business is a matter of common knowledge to the citizens. These betting shops have for all practical purposes apparently resulted in the elimination from those areas of betting in hotels, lane ways, and other undercover places. The evidence placed before us reveal they are not the scene of the abuses that some witnesses contended in evidence are necessarily associated with betting shops . . .
>
> The Commissioner of Police stated in evidence that there were 980 suspected illegal bookmakers in the state, no fewer than 530 in the metropolitan area, which in itself is an indictment of our statutes for their impedance in dealing with this evil.

> According to him, most of this illegal betting is conducted in private houses over the telephone, and the difficulty in obtaining a conviction was in the ability to prove that the place was 'common'. We accept his evidence that off-course betting, in the main, is carried on by means of the telephone. Agents operate over extensive areas and communicate results of their canvassing to the illegal bookmakers possessed of several telephones, some of them 'silent numbers'. Some of these illegal bookmakers operate from concrete 'fortresses' within or underneath the premises they occupy . . .
>
> The telephone is, in our opinion, a necessary and perhaps the principal adjunct to the carrying on of an off-course betting shop . . . We believe that off course betting has been fostered by the generous telephone facilities placed at its disposal by the Postmaster General's Department . . .
>
> It is clear that with telephone facilities the people conducting the business require little in the way of written records. They operate behind locked doors and the time occupied by police action in overcoming the obstruction of barriers, though brief, is sufficient to enable those records to be destroyed. One witness . . . openly told the Commission that he operated in a concrete room under his house with the aid of three telephones. He only required as a written record two sheets of paper and when the police made a surprise visit the outward barriers delayed their entrances long enough for him to burn them. The difficulty of the police is aggravated by the fact that if the telephone service of a person convicted of keeping a common gaming house is disconnected, no difficulty or delay seems to be experienced in transferring to another person, who to all intents and purposes is a 'stooge' . . . We were informed that in the metropolis bets are received by telephone at one place and promptly recorded at another by means of a second telephone. Accordingly, when the police raid premises to which it is suspected bets are telephoned all they find is a man and a couple of telephones" (*Report of the Royal Commission Appointed to Inquire into Whether it is Desirable to Make Legal the Method of Betting and Wagering Commonly known as Off-The-Course Betting* 1952, pp. 32-33, hereinafter referred to as "Report on Off-The-Course Betting" 1952).

The report was trenchantly critical of the Postmaster General's Department saying that "in all these matters the department's (PMG) action is dictated solely by the desire of revenue . . . it would be foolish to believe that any person would want a number of telephones or extensions in each premises, or that an illegal off-course bookmaker would require a silent line or extension for any reason other than to defeat the law . . . " (Report on Off-The-Course Betting 1952, p. 33).

Rather acidly the Commission commented that "the space and publicity devoted by newspapers to disseminating racing news and information is also universally admitted as being far in excess of that devoted to other branches of sport and recreation, or to questions effecting our national, social or economic welfare" (Report on Off-The-Course Betting 1952, p. 49). It said that newspapers and radio stations had found "astute method(s)" of bypassing the 1936 legislation prohibiting the broadcast of betting tips and odds and that most of the information so used was provided by the South-Coast Press Agency, then operating from a concrete fortress in the basement of an inner city private hotel (Report on Off-The-Course Betting 1952, p. 49). The agency owner, Mr C.W.B. Black, was called and discovered to be identical to the "Mr Bonham" who had given evidence to the 1936 Royal Commission. Mr Black, like Mr Bonham earlier, fell ill after being called and was unable to complete his evidence.

After examining the agency manager, a Mr N.C. Black (Jnr.) who professed not to know the source of the agency's information, the Commission concluded that:

> "The method he related was so unimpressive that your Commissioners could arrive at only one conclusion, namely, that the information so far as the betting was concerned, was most unreliable. The unfortunate aspect of the matter on this point lies on the fact that "*The Courier-Mail*" published overnight information supplied by Mr Black, which evidence disclosed did not come from overnight charts. Consequently, punters were at the mercy of the illegal bookmaker" (Report on Off-The-Course Betting 1952, p. 52).

The Commission could take this phase of its investigation no further and concluded by saying that "the organisation and service of the press agencies in this State resemble those operating in the United States of America, where the Senate appointed Crime Investigating Committee (said) that press agencies, not bookmakers, are the power controlling racing in America".

> "The Committee said that they 'kept alive the illegal gambling empire', that 'there was no doubt as to the vastness of its operations', that it was 'a powerful and indispensable ally of the underworld', that it created dummy operators 'under the guise of distributorships, supposedly operating as independent distributors', and recommended that Congress pass legislation 'placing a legal strait jacket on its operations" (Report on Off-The-Course Betting 1952, p. 52).

On the giving of this evidence *The Courier-Mail* and the *Telegraph* promptly ceased their pre-post betting service.

The Commission recommended that betting shops be licensed or legalised except in the areas surrounding Brisbane, Ipswich, Toowoomba, Warwick and Rockhampton on the grounds that "the evidence was overwhelmingly against legalisation in these areas and the betting public in these centres are already well catered for".

In 1954, the government amended the *Racing and Betting Act* to permit off-course betting by bookmakers, providing that it was approved by a local referendum. Eight years later the amendment was assessed as having very little effect on illegal bookmaking:

> "It is idle to look backwards and try to assess why this legislation remained inoperative. It is sufficient to record that the flood of illegal off-course betting, which impelled the then Government to institute a Royal Commission, and in turn to bring down their 1954 amendments, has continued with only spasmodic and local checks. Contributing nothing to the industry on which it lives, breeding a habit of law breaking in far too many of our citizens, and unquestionably the vehicle of some undesirable practices, the problem basically is the same as that which caused such concern to our predecessors in office back in 1954" (Queensland, *Parliamentary Debates* 1961, p. 1940).

In retrospect, the appointment of the 1952 Royal Commission may have been a supremely cynical act of the then government. If material given by certain witnesses to the Fitzgerald Commission of Inquiry is correct, and there was no contrary evidence given, major country illegal bookmakers were among the subscribers to what was known as the "Premier's fund". A former police officer resolutely opposed to corruption gave evidence of his knowledge of a fund

under this name where senior police collected from a range of illegal activities and kept a proportion for themselves (*Queensland Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct Transcript* 1989, pp. 7288-7289, hereinafter referred to as the "Fitzgerald Inquiry" 1989). According to a statement to the Commission of Inquiry, members of ministerial staff allegedly received rail passes to travel the State and were given police escorts to convey cash collected from SP bookmakers back to Brisbane, where the money would be delivered to the office of the Premier. The fund was stated to have existed prior to Mr Gair's premiership. This description of the fund made no reference to any police beneficiaries. However, other statements indicated that some police, particularly in country areas, had their own arrangements with illegal bookmakers (Fitzgerald Inquiry 1989).[4]

Whatever the truth of the Premier's Fund, there is no doubt about evidence a few years later of well entrenched corruption involving illegal bookmakers and the police force. Payments were being received by both officers directly responsible for enforcing the gambling laws and by at least one senior officer of the force. Particularly with regard to the Licensing Branch it would be hard to envisage these arrangements springing suddenly into place. It is more likely that such corruption had been going on for years.

In January 1958, the then Officer-in-Charge of the Criminal Investigation Bureau, Francis Eric Bischof, was appointed Queensland Police Commissioner by the newly elected Country Liberal Party Government. This appointment occurred despite allegations being made by at least three other police officers including a union official that Bischof was either corrupt or strongly reputed to be so.

In July 1959 the then plain clothes Constable Jack Reginald Herbert was appointed to the Licensing Branch, where he was to remain until July 1974. His later evidence to the Fitzgerald Commission of Inquiry was summarised by Commissioner G. E. Fitzgerald Q.C. thus:

> "When Herbert joined the Licensing Branch in 1959, he was not a naive man and he had an eye for the main chance. Until then he had no inkling or perception of systematic corruption in the police force.
>
> Almost as soon as he joined the Licensing Branch, Herbert was warned to steer clear of certain of his fellows and their activities. He did not ask any questions. He could see what was going on. Some members of the Licensing Branch were living beyond their means. By drinking with various officers, he came to know 'there was something doing' relating to the protection of SP bookmakers.
>
> He had not been in the Licensing Branch long when some colleagues told him he had been accepted into a group of men who were protecting SP bookmakers, and that he could expect 20 pounds a month. Herbert's salary was then about 90 pounds gross per month. Those involved in the corrupt scheme were identified and Herbert was told who could be trusted.
>
> Although officers came and went, Herbert estimates that on average about half of those in the Licensing Branch at any one time would have been involved in corruption. It became 'second nature' to know those involved.

4 Sir Thomas Hiley, Statement to the Commission, 2 October 1988.

> The members of the protection system referred to it as 'the joke'. Members of 'the joke' dealt personally with their 'own' SP bookmakers, and a list of all those paying for protection was held by the organiser. Initially each bookmaker paid about 20 pounds per month. Raids were carried out on SP bookmakers who were not protected, providing opportunities for extending the corruption.
>
> There was then no central bank of corrupt money. Those members of 'the joke' who did not have personal contact with an SP bookmaker were paid by the organiser out of funds collected from those who were receiving 'more than their share'. Members were not paid equally, but according to their importance in the system.
>
> SP bookmakers were warned of impending raids by a cumbersome process involving lists of telephone systems of SP bookmakers. The lists were held by whichever members of 'the joke' happened to be on duty. Later a different, more efficient system was organised.
>
> Herbert became the organiser of 'the joke' in 1964, and took charge of recruiting new members. Every single officer whom Herbert approached to join in 'the joke' agreed to do so quite willingly.
>
> 'The joke' was fairly self contained, although Herbert was aware of police outside the Licensing Branch who were also corrupt. In 1966, he was warned not to 'let a day go by' without offering money to a certain officer who had just joined the Branch. Herbert immediately included him. A few weeks later, this officer approached him and suggested that another officer should also be paid. Although the officer concerned did not work in the Branch and could not help with 'the joke', Herbert paid him because 'the word' was that he was friendly with the then Police Commissioner.
>
> Gradually, as various members left the Licensing Branch, Herbert took over their SP bookmakers and gathered his own 'stable' . By the early 1970s, he was dealing with most of the protected SP bookmakers himself, and was taking up to $800 a month in corrupt payments - more than twice his gross salary. During the 1960s and 1970s Licensing Branch members in 'the joke' protected 40-50 SP bookmakers" (Fitzgerald Report 1989, pp. 32-33).

Knowledge of the second and apparently independent system of corruption derives from a series of press articles attributed to a former Treasurer, Sir Thomas Hiley, published in *The Courier-Mail* in 1982 (Blanch 1982). Sir Thomas, also the Minister in charge of Racing from 1957-65, later provided a statement to the Fitzgerald Commission of Inquiry. He said that as the Racing Minister, he was aware of considerable SP activity in the coastal belt and the north and west of the State:

> "Detection was a police responsibility. They rarely came up with evidence and the scale of punishment was abused in that with most police raids the major operator was not charged and in his place a clean skin first offender would admit guilt, suffer a minimal fine, to be followed a month or two later by another raid, another clean skin and again a minimum penalty. This went on and on and on" (Fitzgerald Inquiry 1989, p. 10).

Hiley later received a deputation of western SP bookmakers who told him that there was an organised SP ring operating under a direct arrangement with the police. It involved the setting of an annual fee which was collected from SP operators; quotations for the year in question were the not inconsiderable sums

of $80,000 for major towns and $40,000 down to $20,000 for smaller towns. In return the police were to leave the bookmakers alone. Sir Thomas said:

> "Surprisingly the bookmakers had no complaint about the bargain that had been struck. Their complaint was that they were being hit for a second bite. When I asked these bookmakers how the money was dispersed they said half was split up among the local police and the other half went to Brisbane. Although they could not be certain the bookmakers said that Brisbane meant Bischof.
>
> I asked these bookmakers whether they were prepared to give evidence. They looked me in the face and said 'Mr Hiley, we'd be dead, we'd be dead'. They just would not budge one inch" (Fitzgerald Inquiry 1989, p. 11).

Hiley later discovered that Bischof was a compulsive gambler himself, wagering up to £2,000 a race-meeting, supposedly from an annual salary amounting to about £12,000. A conversation between one of Hiley's treasury officers and a bookmaker provided the next advance in the Treasurer's private investigation. The bookmaker and Bischof fell into dispute over a transaction; the bookmaker then told the Inspector of Totalisators that Bischof, by arrangement with the bookmakers, bet on credit under the pseudonym "Mr B". If his horse came home the entry was completed in Bischof's name and if it didn't, the entry was completed under another name, most commonly Baystone.

Hiley's officers went through betting sheets lodged with the Commissioner of Stamp Duties in fine detail. This investigation established the truth of what the bookmaker alleged: Bischof was a miraculously successful punter and the record of "Baystone" was correspondingly disastrous. The Solicitor-General was consulted but advised there was no chance of prosecuting Bischof without any of the bookmakers, legal or illegal, giving evidence. The Premier was informed and a meeting arranged with the Premier, Hiley and Police Minister Alex Dewar:

> "When Bischof arrived I told him of the Government's concern over SP betting and asked him what it was like in Western Queensland. We got reassurances from him that SP bookmaking was almost non-existent in the west. He also said that Mt Isa was very clean. As he crossed those bridges we burnt them behind him. I described to him in detail the payments being made to the police from SP bookmakers in each town in the west. I described to him that the graft collected by police from SP bookmakers in the west including amounts for police in Brisbane and I told him that Brisbane and himself were synonymous.
>
> Bischof caved in front of us. He made no denials of the statements that I made about the organised graft from SP bookmakers . . . Bischof offered no resistance and he simply said to me what do you want me to do.
>
> I said to him 'you started all this, you stop it'" (Fitzgerald Inquiry 1989).

Police raids were stepped up but Hiley doubts that the malpractice ended. No date is given for the confrontation with Bischof, except that it occurred prior to the National Hotel Royal Commission, which investigated and exonerated police, including Bischof, from allegations of corrupt or improper behaviour regarding the policing of prostitution and liquor licensing laws at a Brisbane Hotel (Fitzgerald Inquiry 1989).

Legal off-course betting, in the shape of a Totalisator Administration Board, was introduced by Hiley in 1962. The measure was controversial and the parliamentary debate vigorous, but it was overshadowed by the events which accompanied similar developments in New South Wales and Victoria.

The first witness to the Victorian Royal Commission on off-the-course betting, recently appointed gaming squads commander Inspector Maurice Healey, created a furore with a carefully considered and unusually honest estimate that some 60 per cent of the police charged with gaming law enforcement were corrupt (*Report of the Royal Commissioner Appointed to Inquire into Off-the-Course Betting* 1959 p. 15, hereinafter referred to as the "Report on Off-The-Course Betting" 1959; *Daily Telegraph* 19 Oct. 1958). Allegations that the same state of affairs prevailed in New South Wales provoked an extraordinary Royal Commission where illegal bookmakers formed a Racing Commission Agents Association and retained a Queen's Counsel for the hearings. In his report, Judge Kinsella found that New South Wales' estimated 6000 illegal bookmakers had an annual turnover of £275 million from a clientele comprising 28.7 per cent of the adult population. The Royal Commission recommended the establishment of a TAB.

When, after much lobbying to license instead the existing illegal bookmakers, the government agreed to establish the TAB, the SP bookmakers countered with the offer of a guaranteed payment of £10 million per annum in advance to the State Treasury in return for the franchise for legal off-course betting (McCoy 1980, p. 181). After much conflict within the then ALP Government, the New South Wales TAB was introduced in 1964. However the more severe illegal betting penalties recommended by the Royal Commission were not introduced.

McCoy contended that the introduction of the TAB did not much impede the New South Wales SP industry:

> "The State government's failure to suppress the SP business was a development of considerable importance in the postwar history of organised crime. Faced with a choice between a frontal police assault on the illegal bookmaking industry or its gradual erosion through the establishment of a legal substitute, the New South Wales Government had taken the politically less painful alternative with the creation of the TAB. In theory, the proliferation of TAB betting shops was supposed to wean the off-course bettor away from the SP and producing gradual withering away of the illegal bookmaking business. But the SP network simply transferred operation from hotel to telephone without losing any turnover, and the illegal industry survived into the 1970s as one of the state's largest potential sources of organised crime revenue" (McCoy 1980, p. 182).

Such optimism that the TAB would destroy the illegal bookmaking industry seems to have been similarly misplaced in Queensland. Although no turnover figures are available, the SP industry, in that stage known to be significantly protected by certain police, continued to thrive. When in 1964 Commissioner of Police Bischof claimed that SP betting had been practically wiped out, TAB Chairman Albert Sakzewski caused some minor embarrassment by responding that SP betting was widespread and prevalent (Queensland *Parliamentary Debates* 1964, pp. 27-29).

McCoy asserts that organised crime began to assume a dominant position in the SP industry in New South Wales as the decade drew to a close:

> "Although the technical complexities of the off-course betting had long protected the SP fraternity from anything but simple standover demands by (Sydney's) violent professional criminals, the consolidation of control within the milieu by several syndicates after the gang wars of 1967/68 eventually produced a major change in the relationship between organised crime and SP bookmaking. The more disciplined and sophisticated syndicates that emerged in the late 1960s soon gained both capital and competence to establish to their own illegal betting operations. By the late 1970s a leading organised crime figure controlled Sydney's largest SP telephone network and the old independent SP men were in retreat" (McCoy 1980, p. 182).

The principal event to highlight the emergence and the problems attendant upon organised crime was Mr Justice Moffitt's Royal Commission into Allegations of Organised Crime in Clubs. SP bookmaking was not specifically referred to during the Royal Commission. Few of those called before the Moffitt Royal Commission suffered much from their exposure and many went on to become noted in a range of other criminal activities. One of those so identified - for his association with a reputed American underworld financier - became possibly Australia's best known SP bookmaker of recent times. Consideration of the career of the late George David Freeman illustrates the two divergent viewpoints on whether SP bookmaking constitutes organised crime:

> "(Leonard) McPherson and his mates, Stanley Smith and George Freeman, did not achieve their reputations until the 1970s. Throughout the decade their names, sometimes individually or sometimes jointly, figured prominently in almost every NSW government inquiry into organised crime . . . Called before the NSW Drugs Royal Commission to explain his sources of income, Smith relied on a declaration by George Freeman and others about his alleged racing wins to justify his lavish lifestyle. In the changing world of the post-war Sydney milieu the mateship of McPherson, Smith and Freeman has survived as one constant point of reference" (McCoy 1980, pp. 211-233).

In contrast, Freeman's preferred image of himself was "a bit of a scallywag, yes, but no super crook" and this view was shared by some in the media and the racing fraternity (Freeman 1988, p. 175). In a self-published autobiography shortly before his death Freeman dismissed a selective sample of the allegations levelled at him over a period of nearly three decades, using the term "commission agent" as a euphemism to cover the latter part of his career. In contrast to a New South Wales Crime Intelligence Report on him in 1977, (Crime Intelligence Unit 1977)[5] many of Freeman's proffered explanations stretch credulity. His career as an SP bookmaker can be documented to have included the following elements:

* large and conspicuous personal wealth;
* numbers of apparently subordinate associates/employees;
* close personal and/or business associations with a large number of criminal identities including standover men, narcotics traffickers and professional killers;

---

5 Extract also tabled New South Wales Legislative Assembly, 24 April 1979.

* an association of suspicious proximity to a number of murders and serious assaults, including the shooting of a police officer;

* an association of suspicious proximity to a number of known or suspected racing and betting scams;

* suspicious international associations and financial transactions;

* suspicious police and other official associations;

* highly improbable long term success in gambling and tipping;

* an immunity to successful apprehension or prosecution inconsistent with known activities and reputation;

* adverse witnesses reluctant to testify or varying earlier testimony;

* provision of bail monies for apparently unrelated major criminal matters; and

* provision of explanations for the possession of monies by other persons, such monies otherwise believed to be the proceeds of serious criminal activity (Confidential Report 1977; McCoy 1980; Freeman 1988).

Under virtually any definition Freeman's activities qualify as organised crime. Freeman's career was that of a professional criminal, not someone on the fringes of the racing industry. It is additionally disturbing to note that although Freeman's activities were extremely subversive of the integrity of the racing industry, he enjoyed considerable acceptance within it. Included within his autobiography are testimonials from many leading registered bookmakers (Freeman 1988).

Although Freeman was a leading figure he was far from the only example of extreme criminality in the illegal bookmaking industry. John Wesley Egan was a former New South Wales police officer who organised the first known large scale trafficking of South East Asian heroin into the United States (McCoy 1980, pp. 262-264). After serving time in prison in the US for his role in "the Corset Gang" as it came to be known, Egan returned to Australia and became an SP bookmaker in the Gold Coast Tweed Heads area. Michael John Sayers was an SP bookmaker, gambling club proprietor, and narcotics wholesaler reputed to have played a prominent role in the Fine Cotton horse substitution scandal in Queensland in August 1984. Sayers was shot in Sydney in February 1985 (Whitton 1987, pp. 115-116). Prominent Victorian Q.C. Mr Frank Costigan was appointed to inquire into the legendary violence and wage frauds of the Federated Ship Painters and Dockers Union and its members in the early 1980s. He found that union members performed much useful service to those engaged in corporate and other organised criminal conspiracies including, notably, SP bookmaking. Such persons have little in common with the image of the well-regarded, obliging SP bookmaker of Australian folklore.

The popular image of the SP bookmaker is to an unfortunate extent still tied up with the "Old Fred" of the 1930s:

> "Under the village poplar tree, The village butcher sets. The butch, a popular man is he, For he takes SP bets" (Lower).

But "Old Fred" may have survived in Queensland public bars for longer than he retained a healthy business in New South Wales. Queensland has no equivalent figure to George Freeman and the degree to which organised crime came to dominate the industry in New South Wales in the 1970s was not duplicated in this State.

However there were disturbing parallels. Experienced police noted that a new type of more professional criminal became involved in the industry in the early 1960s. In November 1961, police including Detective Sergeant Bill Osborne, and Constables Jack Herbert and Graeme Parker of the Licensing Branch were involved in twice arresting Brian James Maher for illegal bookmaking (Dickie 1988). Maher received 15 months imprisonment; he was later to assume a much greater notoriety as one of the principal architects of tax evasion schemes which made use of members of the criminally versatile Ship Painters and Dockers Union as straw directors. Royal Commissioner Mr Frank Costigan Q.C., going on to note that some of Maher's early employers and later business associates could well be importing drugs or financing their importation, commented:

> "Brian Maher should not be supposed to have limited his activities to taxation fraud" (*Interim Report of the Royal Commission on the Activities of the Federated Ship Painters and Dockers Union 1982*, p. 67, hereinafter referred to as the "Costigan Interim Report" 1982).

However persons such as Maher did not dislodge the racing fraternity types in Queensland's SP industry to anything near the same extent as occurred in New South Wales. Ironically it may have been the established police protection afforded to the old time SP bookmakers that safeguarded their position. However the protection system began to unravel in the early 1970s, following the appointment of Raymond Wells Whitrod as Queensland Police Commissioner in 1971.

Whitrod had a realistic attitude to corruption:

> "Police misconduct ranging from minor infringements to more serious corruption is likely to appear in all types of law enforcement organisations. Experience elsewhere has shown that the introduction of an adequate Internal Investigations Unit, with an accompanying Civilian Review Board are not sufficient in themselves to prevent misconduct occurring. One essential condition is the development of an anti-corruption climate amongst the members of the force, and a precautionary rotation of duties, especially of those officers in the more vulnerable duties. We have been following the last requirement for some years but how to provide greater encouragement to the problem of an anti-corruption climate is a more difficult problem. Endeavours along these lines always seem to run into industrial opposition of one type or another. Individual officers who cannot see any worthwhile return by way of advancement for their more effective performance as compared with 'time

serving' members understandably become cynical and disillusioned, and in this frame of mind are likely to be less resolute in resisting temptation" (*Report of the Commissioner of Police* 1975).

Whitrod's major anti-corruption measure was the Crime Intelligence Unit (CIU) formed in September 1971 under Superintendent Norman Gulbransen. Initially it concentrated to no successful effect on the allegations of large scale criminal activity and associated police corruption in Queensland and New South Wales made by prostitute Shirley Brifman, a major witness before the National Hotel Royal Commission in 1964. Following Gulbransen's promotion to Assistant Commissioner (Crime) with responsibility over the Licensing Branch the focus of attention of the CIU shifted to encompass the past and present personnel of the Branch and its apparent impotence in dealing with SP bookmakers:

> "In about April, 1974, it emerged that SP betting convictions mainly concerned minor operations, and that large scale businesses were being conducted with immunity because of collusion with the Licensing Branch. The CIU heard that there were some 40 to 50 SP bookmakers operating in Brisbane and many were paying protection monies to members of the Licensing Branch.
>
> Herbert and others were transferred out of the Licensing Branch. By the time he was transferred, in July 1974, Herbert had been in the Licensing Branch for 15 years. A number of others, including some who were mentioned adversely in evidence before this Inquiry and some who have been the subject of wide reference for a generation, also had extraordinarily long service in the Licensing Branch or another major area of police misconduct, the Consorting Squad, in the 1950s and 1960s through into the Whitrod Administration.
>
> In October, 1974, Herbert retired medically unfit. By then the CIU had information that Herbert was the organiser of Licensing Branch protection for major SP operators and was being paid bribes of $1,200 to $1,500 per week on behalf of police. The CIU began to mount an operation against him. Although its suspicions were well founded, the operation was to be a disaster for the CIU" (Fitzgerald Report 1989, pp. 37-38).

In July 1974 Inspector Arthur Victor Pitts was placed in charge of the Licensing Branch and the Branch commenced serious operations against SP bookmakers. Some of the bookmakers pioneered the predictable gambit of fleeing over the Tweed River into New South Wales and operating from there. Others sought to re-establish the old order and Pitts, warned by the CIU to expect corrupt offers, was to receive three independent offers, all relayed via different detectives in the Criminal Investigation Bureau. In relation to the first-made offer Jack Herbert, an SP bookmaker and a detective were arrested and charged with official corruption on 13 December 1974.

Just prior to these arrests, the Licensing Branch had arrested two suspected Gold Coast SP bookmakers Brian Leonard George Sieber and Stanley Derwent Saunders. The trial of Seiber and Saunders has gone down in history as the Southport SP Betting Case, ultimately lost by the Crown because of the dubious methods used by the Licensing Branch to collect evidence. The evidence of these methods was provided by Herbert and his associates who thereby provided themselves with a partial defence in Herbert's trial; together with some

orchestrated perjury, mainly involving police officers, it was sufficient to secure acquittals for Herbert and his associates:

> "At the same time the trial of those charges came to provide an excuse for allegations of police corruption to be ignored, and instead for an Inquiry to be set up with terms of reference limited to an investigation of allegations of police fabrication of evidence.
>
> . . . the loss was devastating to the campaign against corruption. The CIU had failed to secure a prosecution in a seemingly iron clad case - one where money was actually paid over, the vital conversations had been taped and most of the activities had been observed by members of the CIU. Ten days after Herbert's acquittal, (Inspector Terence) Lewis was promoted to Assistant Commissioner and Whitrod resigned" (Fitzgerald Report 1989, pp. 39-40).

As Inspector of the Licensing Branch Lewis appointed an honest police officer Alec Jeppesen. Jeppesen was however, one of the walking wounded of the Southport SP betting case, having stood aside as prosecutor following allegations being levelled against him. Jeppesen, together with some trusted subordinate officers, waged a vigorous and for some time effective campaign against SP bookmakers, inducing many of them to conduct their operations in Tweed Heads. But success in this regard led to its own problems and restrictions on and interference with the Branch's operations led Jeppesen to suspect that senior police were involved in protecting certain SP bookmakers. Indeed, a lengthy statement to that effect was not long afterwards made to the Queensland Legislative Assembly on 13 March 1979 by Opposition Member, Keith Wright M.L.A. The speech referred by initials to a number of police and SP bookmakers many of whom could be quite easily identified and predicted that Jeppesen's demise would be followed by the migrations of bookmakers back across the Tweed and the flourishing of the industry in Queensland. The prediction was entirely accurate and the Fitzgerald Commission of Inquiry later confirmed that the listing, both of police and bookmakers, was also an uncommonly accurate guide to those involved. Jeppesen, who denied any role in authorship of the speech, was well on the way out.

The immediate pretext was the handling of moiety monies (portions of fines paid to informants following convictions) within the branch. Allegations against Jeppesen were made by one of his junior officers, himself the subject of allegations and charges in part engineered by and then resolved through the actions of a senior police officer. The allegations against Jeppesen were investigated by two senior officers who were later to be the subject of allegations of corruption before the Fitzgerald Commission of Inquiry. Their report condemned Jeppesen and recommended his transfer. After initially resisting the moves, State Cabinet approved Jeppesen's transfer in February 1979. Jeppesen and his most loyal officers were severely victimised in the following years (Fitzgerald Report 1989, pp. 51-57).

The Moiety Investigation had led to the introduction of a "moiety register" into which were to be entered the names of informants, payments and so on. Thereafter if any were silly enough to inform, their identities would be available to the entire staff of the Licensing Branch and other more senior police,

including those police involved in corruption. Most preferred to remain silent, which was equally satisfactory for those involved in SP bookmaking and the corrupt police by whom they were protected . . . One SP bookmaker who was arrested offered $1,000 for the name of the person who had informed on him. Whether or not a police officer provided the required detail, the informant later had his arms broken. But, in general, the flow of information to the Licensing Branch slowed dramatically even though Jeppesen had provided Rigney with details of his informants (Fitzgerald Report 1989, p. 57).

Whether or not there was a system of corruption applying outside the Licensing Branch during Jeppesen's stewardship of it, one certainly prospered within the branch in the years following. Before the Fitzgerald Commission of Inquiry Jack Herbert, former Licensing Branch Inspectors Noel Dwyer and Alan Bulger, former Inspector then Assistant Commissioner Graeme Parker, and former branch Senior Sergeants William Boulton, Noel Kelly and Harry Burgess all admitted to receiving corrupt payments for allowing the operations of SP bookmakers, gaming house owners and prostitution entrepreneurs. This corruption was also confirmed by some witnesses from the illicit gaming and vice industries. However, despite a considerable number of SP bookmakers being called to give evidence to the Inquiry, there was none prepared to admit any involvement in corruption in the period from 1980 on, and two suffered prison terms for contempt in preference to giving evidence. In one case a bookmaker gave several conflicting accounts of an accident that had befallen him prior to his giving evidence. Fitzgerald Q.C. (Fitzgerald Report 1989, pp. 72-73) summarised the evidence thus:

> "There are undoubtedly a large number of SP bookmakers paying protection through Herbert. He named 32. Many had earlier been in the first joke in the 1960s and 1970s. One had operated in a provincial centre for 13 years and had settled with his clients at the same hotel at the same time on the same day each week for 11 years. Many SP bookmakers were recorded in Licensing Branch records. Few had been questioned or charged since the beginning of 1980. Where action had been taken against any who had commenced to take protection, it was a result of a mistake or a dispute.
>
> Although it is disadvantaged by the activities of SP bookmakers, they are tolerated within the racing industry.
>
> There is wide spread knowledge of SP operations in that industry and a number of those who engage in SP bookmaking are also registered bookmakers, or are otherwise involved in the industry. Registered bookmakers lay off bets with SP bookmakers, and allow SP bookmakers to lay off bets with them. Vast sums of money passed back and forth".
>
> Despite its extent and significance, including the losses which it occasions, SP bookmaking has been passively tolerated by the Government . . . the few convictions for SP bookmaking which have resulted in recent years have had little impact. Most have been against minor offenders, including some without assets. Generally, fines have not been paid or compulsorily collected. For example, there were 5 convictions in 1986, but only 1 fine had been paid by the end of 1988. The loss of the revenue from fines which are not collected is probably the least significant aspect of SP bookmaking. Much greater losses are sustained by both the public revenue and the racing industry . . . there are enormous losses of revenue to the Totalisator Administration Board. In 1980, the estimate was $20 million, which had increased to $200 million, according to TAB estimates by early 1989".

In 1980 a show had been made of increasing the penalties for SP bookmaking. Amendments were proposed to the *Racing and Betting Act* in 1981 which, as originally proposed, increased fines for illegal betting to the highest levels in Australia with prison as an alternative. However the reference to imprisonment was removed prior to the legislation being enacted. It was this legislation and its substantial penalty that was referred to whenever there was any public disquiet about SP bookmaking. The reality was however, that fines for unlawful bookmaking were rarely paid, as without the coercive benefit of default imprisonment for non-payment, there was little compulsion on SP bookmakers to pay any fines. "For example there were five convictions in 1986 but only one fine had been paid by the end of 1988" (Fitzgerald Report 1989, p. 73). Such convictions as there were tended to be of those taking bets in hotels rather than those who operated extensive telephone networks. As a judge remarked after the new penalties had been in operation for some time:

> "It seems odd that the resources of modern technology and the records of the telephone system cannot identify someone more prominent in the system than a 71 year old pensioner acting as treasurer of a $2 a week betting club of 10 persons" (per Connolly J., *R v Chadwick* (1985), 1 Qd R 320 at 326).

The Fitzgerald Commission of Inquiry was commissioned in Queensland in 1987 to examine media allegations of police corruption with respect to prostitution and illegal casino gambling. It was found that a central figure in this corruption was former police officer Jack Herbert and that corruption in the police force also entailed extending protection to SP bookmakers. In his report Mr G.E. Fitzgerald Q.C. dealt with the possibility that SP bookmaking was linked to organised crime in the following terms:

> "Less obvious but more sinister, is the association between SP bookmaking and organised crime" (Fitzgerald Report 1989, p. 73).

In the first instance, the illegal activity itself is highly organised. Many SP bookmakers are associated with syndicates which operate throughout Australia.

Plainly the huge profits which are generated are available for investment in other illegal activities. Even if they are not used for those purposes, they are used widely to corrupt public officials, including police. That conduct is a manifestation of the much deeper disrespect which is held by many SP bookmakers for law and authority. Before the Inquiry, there was a clear demonstration of orchestrated silence and perjury, and, in two instances, persistent contempt (Fitzgerald Report 1989, p. 73).

This Commission conducted an investigation of SP bookmaking networks operating within Queensland during 1990. The investigations demonstrated that the revelations of the Fitzgerald Commission of Inquiry have had little lasting effect on the scale of the industry. Although some of the SP bookmakers identified during the inquiry have apparently left the industry, others who were identified are still involved. Some have continued to operate despite being convicted of offences.

Most of the networks, and all of the larger ones, run operations that are thoroughly integrated with similar operations in other States, particularly New South Wales and Victoria. There is evidence of connections to or influence by known or reputed criminal identities. With at least some of the syndicates there is every possibility that monies are being received from and utilised in other criminal activities including trafficking in drugs.

The existence of a "legal" pricing service in Queensland, while probably not crucial to the operations of the industry does considerably facilitate its operations. The existence of this service in Queensland undoubtedly undermines provisions designed to limit SP bookmaking in other jurisdictions.

There has been considerable growth in the utilisation of new telecommunications technology in the industry, particularly the use of the mobile telephone. This in itself renders tracking the modern SP bookmaking network extremely difficult for law enforcement authorities; the use of telecommunications equipment in false names, or hired or stolen equipment makes it yet more difficult.

Illegal bookmaking operations in licensed establishments persist in Queensland but by far the largest proportion of the industry conducts its business through the telecommunications system. It is this tendency which is leading to an integrated industry Australia-wide, with the potential for an enhanced level of criminal involvement.

Conclusion

Illegal bookmaking generally, with the exception of small and very localised operations usually conducted on licensed premises, qualifies as organised crime under most accepted definitions. It is illegal commerce on a large scale, and additionally, it has frequently been shown to be linked with other criminal activity and with corruption.

Matters of particular concern can be summarised as follows:

* Criminal ventures in general cannot be financed through normal financial channels. To at least some extent the large cash flows of the illegal bookmaking industry are available to finance other criminal activities, in particular trafficking in narcotics.

* The intersection between the legal and illegal gambling industries and the laundering of monies from criminal activities. It has not been uncommon for Commissions of Inquiry to be informed that money suspected of being derived from trafficking in narcotics or other criminal activities has in fact been derived from SP bookmaking wins.

* By its nature the illegal bookmaking industry, which offers relatively easy gambling credit, cannot employ normal, legal methods of debt recovery. If debts are to be recovered at all non-legal means must be employed and there are indications that these involve threats of violence or actual violence.

* The illegal bookmaking industry has a long historical association with the corruption of police, telecommunications employees and other public officials.

* Particularly with regard to engineering the results of sporting events (e.g. race-fixing), there are apparent strong links between professional criminals and illegal bookmakers.

* Particularly in relation to New South Wales there have been strong links between some persons in the illegal bookmaking industry and prominent syndicated criminal identities whose basic activity consists of arranging protection for and extracting payments from a range of illegal activities. Indeed some of those persons and others involved directly in other illegal activities are themselves prominent in the illegal bookmaking industry.

The illegal bookmaking industry in Queensland was long protected from takeover by dominant criminal interests and by long standing and relatively uninterrupted corrupt arrangements with State police.

The end of these arrangements with the Fitzgerald Commission of Inquiry has removed this protection and the older, independent SP men are in retreat. The dominant technology of the cellular telephone is another factor leading to an integrated Australia-wide industry dominated by professional criminals.

References

Annual Report of the Commissioner of Police 1918-1932.

Annual Report of the Commissioner of Police for the 12 Months ended 30 June 1924.

Blanch, K. 1982, 'The Hiley File', *The Courier-Mail.*

Brennan, N. 1971, *John Wren, Gambler: His Life and Times,* Hill of Content, Melbourne.

Charlton, P. 1987, *Two Flies Up a Wall - The Australian Passion for Gambling,* Methuen and Hynes, North Ryde.

Commissioner for Public Health 1929-1930, *Annual Report*
--1930-1931 *Annual Report*
--1931-1932 *Annual Report*

Commission of Inquiry Pursuant to Orders in Council 1989, Report, (Chairman: G. E. Fitzgerald Q.C.), Government Printer, Brisbane.

Commissioner of Police 1877, Report.

Commissioner of Police 1888, Report.

Commissioner of Police 1907, Report.

Commissioner of Police 1910, Report.

Commissioner of Police for the 12 months ending 30 June 1975, Report.

Commissioner of Police for the 12 months ending 30 June 1932, Report.

Commissioner of Police for the 12 months ending 30 June 1933, Report.

Crime Intelligence Unit 1977, *Confidential Report: George David Freeman.*

Daily Telegraph 19 Oct. 1988.

Dickie, P. 1988, 'Spotlight on the S.P. Kings', *The Courier-Mail.*

Freeman, G. 1988, *George Freeman: An Autobiography,* George Freeman, New South Wales.

Lower, L. (n.d.) *Confessions of a Village Blacksmith.*

McCoy, A.W. 1980, *Drug Traffic: Narcotics and Organised Crime in Australia,* Harper and Row, New South Wales.

Paterson, A.B. 1892, 'The Man From Ironbark', the *Bulletin.*

Queensland Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct Transcript 1989, Government Printer, Brisbane.

Queensland, *Parliamentary Debates* 1961.

Queensland, *Parliamentary Debates* 1964.

Royal Commission Appointed to Inquire into Certain Matters Relating to Racing and Gaming 1936, *Report,* Government Printer, Brisbane.

Royal Commission Appointed to Inquire into and Report Upon the Control and Management of Horse Racing and Racecourse in and around Brisbane and Ipswich 1930, *Report*, Government Printer, Brisbane.

Royal Commission Appointed to Inquire into and Report Upon the Safety of the Kedron Park Racecourse at Brisbane for Racing and Trotting Purposes, and Matters Incidental Thereto 1921, *Report*, Government Printer, Brisbane.

Royal Commissioner Appointed to Inquire into Off-the-Course Betting 1959, *Report*, Government Printer, Melbourne.

Royal Commission Appointed to Inquire into Whether it is Desirable to make Legal the Method of Betting and Wagering Commonly Known as Off-the-Course Betting 1952, *Report*, Government Printer, Brisbane.

Royal Commission of Inquiry Respecting the Question of Legalising and Regulating the Use of the Totalisator in New South Wales 1912, *Report*, New South Wales Legislative Assembly.

Royal Commission on the Activities of the Federated Ship Painters and Dockers Union 1982, vol. 3, *Final Report*, (Chairman: Costigan Q.C.), *Interim Report*, Government Printer.

Whitton, E. 1987, *Can of Worms II*, The Fairfax Library, New South Wales.

CHAPTER FOUR

THE SOCIAL CONTEXT

Kenny's dad was the town bookie. He scarcely needed publicity since everyone had to pass his barber shop on the main street, but he believed in advertising and it pleased his ego. A surprising number of men walked into the shop, hung around, read the racing pages, left a coin or two and went to the pub next door. Kids brought in shilling and two-shilling pieces wrapped in scraps of paper with horses' names on them. Women made quick darts in and out. Kenny's dad was a real barber and he cut a lot of hair, but not after 12 noon on Saturdays. Then his wireless would blare with race calls right through to five o'clock in the afternoon.

The small boy found it very hard to make sense of the whole business.

* ***Kenny's father took bets on horse races.***

* ***This was against the law.***

* ***The local sergeant should make him stop, even do something pretty awful to him.***

* ***Sergeant Casey did nothing except avoid the main street on Saturday afternoon.***

There were murmurs that the sergeant was paid some money not to see or hear what everyone for miles around saw and heard. Well, why didn't someone report the sergeant to the highups in Brisbane? And the really funny thing was that when grownups talked about the barber shop - even the ones that didn't bet at all - they seemed to think it was all right for Kenny's father to break the law. They used to grin about the sergeant's blind eye. And these were the people always telling kids to be good and obey the law!

"The Bookie Book" - Harry Robinson 1985.

The Blind-Eye Syndrome

Any consideration of SP bookmaking in Australia must include due consideration of the role that the Australian ethos has had in the development of the SP phenomenon.

As several commentators have noted, "Australians have an international reputation as inveterate gamblers" (Caldwell 1974, p. 3). Whether this belief has a foundation in fact or is mere speculative myth is a matter that has been the subject of considerable debate over the years. The debate has been fuelled by an unfortunate paucity of reliable information that could resolve the issue once and for all.

Notwithstanding the ongoing academic debate as to the accuracy of such a characterisation, it has become an integral part of the contemporary Australian self-image to believe that Australians are a people that like to "have a go". Such a myth, it is said, has served to "preserve a romantic link with a more venturesome past" (McCoy 1981, p. 34).

Some social commentators have speculated that this "have a go" ethos is now part of the national psyche, and as such represents an identifiable national trait. As a result, the big gambler, be he an entrepreneur or horse-race punter, is likely to receive a generally favourable public appraisal (Costigan Report 1984, vol. 4, p. 1). In keeping with this myth, leading illegal gamblers, the most venturesome of them all, have been regarded as cultural archetypes (McCoy 1980).

The reasons advanced by social commentators for Australians being wont to align themselves with these "high flyers", despite their often operating at the very fringe of legality, are numerous. Explanations advanced by Costigan Q.C. include Australia's convict origins, and the large numbers of Irish immigrants that together have given rise to an underlying ethos of anti-authoritarianism (Costigan Report 1984, vol. 4, p. 1).

Whatever the precise reason for this phenomenon may be, Australians have always been, or at least it is asserted, avid gamblers and gambling has always been viewed as one of the traditional forms of recreation for the working classes (O'Hara 1981). Russell Ward (1966, p. 2) in *The Australian Legend* contends that "the typical Australian gambles heavily and often". Although Ward maintains that this characteristic is a part of the legendary Australian self image, he devotes relatively little attention to validating such a claim. Indeed, it would appear to be one of the constant factors throughout Australian social history, that the assertion made by Ward and others, about the voracious all-consuming Australian urge to punt, has simply been presented for acceptance as a trite and immutable fact.

Although the vision is romanticised and exaggerated, there is some basis to argue that the tradition has existed, and continues to exist. Further, irrespective of the accuracy of the myth, the acceptance of this tradition has partly determined the attitudes and actions of Australians and has served to shape and formulate the policies of government in relation to gambling and law enforcement (Cashman & McKernan 1981, p. 69).

Racing - Myths and Realities

Although the sport of horse racing has been a major preoccupation for Australians virtually from the beginnings of settlement, it would be misleading and overly simplistic to assert that the historic popularity of horse racing is proof enough that Australians are avid punters. To do so would also be a denial of the other important reasons for the central role of horse racing in Australian history; that of improving the bloodstock of horses for use in work, transportation, war and pleasure.

Equally, it is also true that the citizens of other nations gamble and are enthusiastic about horse racing. Thus in order to be able to understand the Australian attitude to SP, we need firstly consider why Australians should believe that there is something peculiar about their own punting activities.

There are other factors, however, other than the historic dominance of horse racing, that can be pointed to in support of the assertion about the Australian preoccupation with gambling. One is the continued growth and popularity of horse racing long-after the demise of the importance of the horse to everyday life and another is the historical significance of pony-racing proprietary companies, which emerged more to provide a sheer punting spectacle than to cater for the special needs of horse breeders (Cashman & McKernan 1981, pp. 69-70).[1]

O'Hara has asserted that the tradition of the gambling Australian is by no means solely a myth; it does have a solid basis in fact, though it may well be the case that the current enthusiasm for gambling can be attributed in part to the self-propagating qualities of the tradition.

Because of the Australian attitude to gambling which has led to the now famous but perhaps erroneous generalisation that "Australians would bet on two flies crawling up a wall", and the willingness amongst Australians to subscribe to the likeable-larrikin myth that has enveloped the SP bookmaker, SP bookmaking continues to thrive, despite being illegal in all Australian States. The prevailing Australian attitude is perhaps typified by the following:

> "In the drab 1930s the local SP was truly friendly and did belong to his neighbourhood. He was popular because he helped ordinary people squeeze some joy out of life. Poor people could buy a thrill from him at sixpence a bet. (It cost three times sixpence to go to a movie.) Given a two-shilling bank to start the day and a couple of winners through the afternoon, a punter could enjoy picking, betting, hoping, urging, cheering his horses to go, go, go! . . . In hard times only a rare few had the money to travel to a course and pay their way in. The SP man was nearby. The business boomed when the new-fangled wireless came in with blasts of static and nasal race callers chanting their way through the fields, screaming from turn to post. Suddenly, the races came to everybody. Before the weekend, they heard acceptances and riders, on Saturday morning they heard turf talk and tips, and in the afternoon their adrenals pumped as the callers shouted 'They're off!' . . . Here was a true romance. The SP bookies and the radio were made for each other. The country broke out in a rash of SP bookmakers. The question was not if a punter could get a bet on, but where was the nearest, or the straightest or the nicest SP bookie? Every second barber took bets; darned near all pubs had their bar-room bookies; no self-respecting billiard room was without one; some boarding house-keepers offered their guests the convenience of betting at home. These ladies whose heads were hard, often acted as agents for SP bookies but those with a talent for figures took the risks and the profits themselves" (Robinson 1985, p. 20).

The answer to the apparent unswerving and dogmatic belief in the "punting Australian" - the belief that has facilitated the SP industry - can be found in the romanticism of gambling. For the romanticisation of anything to occur, some say that "there is a need for some sense of struggle or some heroic quality contained in the reality onto which fantasy can be grafted" (Broome 1974, pp. 444-445). Crusades are often depicted as being a form of romantic struggle. Richard Broome places the war over gambling in the context of a Protestant moral crusade, based as much on class as religion (Broome 1974, p. 72). Broome asserts that the war over gambling took place in the context of a wider struggle which

---

1 Further discussion of the development of proprietary racing is contained in the chapter of this report that deals with the History of SP in Queensland.

included an attempt by the Protestant Churches to reverse the trend of falling working class attendance at church services. After the failure of attempts in the 1870s and 1880s to make church attendance more attractive, churchmen, towards the end of the century, began to blame their failure on the attractions of gambling and drinking and the Australian working man's inability to resist these "evils". They believed that if gambling and imbibing of alcohol were prohibited by law, then the Australian working man would be able to devote proper attention to other things such as his work and his church attendance (Phillips 1969, pp. 149-152).

Blind-Eye vs Temperance

The best known battles of the ensuing "war"[2] were those concerning the infamous John Wren and his Collingwood Tote, and his arch-opponent W.H. Judkins, a Melbourne Methodist preacher (Cashman & McKernan 1981, pp. 73-74). Judkins rarely made a speech without mentioning John Wren and he announced, "I will not rest night or day until the Collingwood Tote is closed for ever" (Dunstan 1968, p. 253).

> "Both men had the ability to inspire passionate loyalty and passionate hatred. John Norton of *Truth* called Judkins either a holy, howling humbug or a Bible-banging, pulpit-pounding, penny-pinching, 'trey-bit'-trapping, pharisaical parasite .... *Review of Reviews*, on behalf of the Wowser push, had this to say of John Wren: 'Wren produces nothing, manufactures nothing, does no useful work; he is merely a parasite who thrives on the monumental folly of the community'" (Dunstan 1968, p. 251).

In this era, Judkins was certainly the most identifiable if not the most fiery of all our reformers:

> "He was Superintendent and founder of the Social Reform Bureau, editor of the church journal, *Review of Reviews*, and a top conference member of the Methodist Church ... He quickly proved that no one in the Methodist Church - or any other church for that matter - could talk as he did. He was sought after for every Methodist pulpit. He was the top lay preacher, the leading Temperance advocate, and the church would always be full to hear Juddy assault all that was evil, from the demon drink through to the festering sins of gambling, dancing and smoking .... In sizzling language, day after day, Judkins kept uncovering more sin. In the city and suburbs he spoke three or four times a week, and when the pace was on, three times in one day. One would have thought that Melbourne barely contained enough evil to keep up with Mr Judkins, but he was always coming up with more eye-popping revelations. ... He switched from Sunday drinking to barmaids, those voluptuous sirens who snared men into hotels to partake of the demon drink and thereby lead men to ruin. ... Another Sunday he would reveal all concerning the lottery evil and the shame of George Adams of Tattersalls in particular. He would rail against John Wren and the Collingwood Tote, against the brothels of Lonsdale Street, against Two Up, pony tracks, against opium smoking and from here he would switch to the insidious danger of the liquor interests and the desecration of the Sabbath. Juddy was always worth hearing" (Dunstan 1968, pp. 249-252).

---

2 Dunstan describes the conflict as the "battle of the wowsers and the anti wowsers" in *Wowsers*, Cassell Australia Ltd, Victoria, 1968.

Judkins' foremost aim was to see the introduction of the Gambling Suppression Bill. It was finally presented for a second reading on 13 September 1906. The Bill promised to virtually wipe out John Wren's pony tracks at Richmond and Fitzroy (Dunstan 1968, p. 252).

The "war" launched by organised Protestantism against drinking and gambling also traversed other fields of popular recreational amenity, such as smoking, dancing, bicycle riding and mixed bathing with a similar result. This moral crusade was popularly viewed as a struggle worthy of derision. The views represented by the cartoons of Norman Lindsay and by newspapers such as *Truth* and the *Bulletin* are indicative of this popular image. Lindsay saw the war as an attempt by wowsers to spoil everyone else's fun by imposing their own twisted morality upon a people who had few other means of finding comfort and pleasure (Bollen 1972).

O'Hara asserts that the wowser concept was romanticised and went on to become the accepted version of the struggle, which took place with minor variations in time and emphasis in each Australian State.

Despite the importance of the anti-gambling crusade, gambling has also been romanticised in other ways not directly connected with this period of "heroic struggle". Australian literature, as part of the wider process of describing the national self image, saw gambling as an expression of egalitarianism. Both Lords and paupers ranked as equals in the battle with the ledgerman.

Henry Lawson and Banjo Patterson included a propensity to gamble among the attributes of their typical Australians, while Adam Lindsay Gordon, an accomplished steeplechase jockey, gave expression to the dreams of most punters, that of "getting a longshot up", in his popular verse, "How We Beat the Favourite".

The mythology of gambling abounds with stories of sharps and hustlers being beaten at their own game, and the belief has now been grafted onto popular lore that the only reason why a punter loses money on any race is because the horse he backed was "dead". Yet typically, such a belief does not prevent the punter from investing again in the next race. He simply accepts as part of the challenge, the need to discriminate between the "dead uns" and the "goers". The existence of such an attitude emphasises the extent to which the Australian gambler accepts the gambling tradition (Cashman & McKernan 1981, p. 82).

The Attitudes of Governments, Police and Courts

Just as the citizen gambler accepts the traditional SP myth, Australian governments in the twentieth century have been influenced by its existence. By about the time of the end of the first World War, governments had all but given up any attempts to prohibit gambling. Instead, efforts were devoted to ways of increasing revenue from legalised forms of gambling. Although gambling is often accused of financing the State through dirty money, the standard use of it has revealed the acceptance of the tradition by governments.

O'Hara asserts that governments have claimed that the Australian male is an inveterate gambler and that any attempts made to educate him away from his passion, or to prevent him from exercising his inheritance, were doomed to fail; that prohibition would simply force the gamblers under cover, away from the scrutiny and control of the state, into the waiting arms of the criminal element which would set about relieving him of his money through unfair practices; that it was the government's duty to protect the gambler from himself by providing properly supervised facilities for him; and that the increased State revenue resulting from government supervision was simply a happy bonus (Cashman & McKernan 1981, p. 83).

Arguments of this type have been used to promote new gambling ventures as well as to justify the continued existence of the more established practices such as lotteries, on-course bookmakers and on-course totalisators. They were used to justify government promotion of greyhound racing and pacing and, later, the introduction of the off-course Totalisator Administration Board, Soccer Pools, Tattslotto and eventually the legalisation of gambling casinos. The belief that Australians will gamble on anything and that it is pointless to attempt to stop them is also relevant to the various State governments' laxity or half-heartedness in moving to destroy the illegal starting price bookmakers.

Police attitudes towards law enforcement have also been sidetracked by the SP myth. This has perhaps been demonstrated by the recent history of SP enforcement in Queensland. Police enforcement in this State was, for a period, largely abandoned only to be replaced with defacto regulation by a minority core of corrupt officers who decided that unlawful bookmaking should be allowed to continue to the benefit of all those involved.

The SP myth has also had its effect on our judicial officers. Despite the facade of severe punishment, the proscriptive worth of the penalty for unlawful bookmaking has been all but demolished (Fitzgerald Report 1989, p. 194). Throughout the history of law enforcement against SP bookmaking, judges and magistrates have consistently striven to impose fines well below the maximum, a fact that moved one Queensland parliamentary draftsman to comment that:

> "The preservation of a power in the court to impose less penalty as seems just in the circumstances renders the stipulation of any hoped for minimum penalty irrelevant . . . It seems to me but a forlorn hope that, in the absence of true minimum penalties, the courts will impose penalties approximating those suggested in the legislation".[3]

3 Letter Parliamentary Counsel (Qld) to Director of the Department of Local Government, 26 March 1981.

Seemingly, the very act of punishing those convicted of SP bookmaking has served only to enforce the cultural belief that SP bookmaking as an offence is deserving of no more than token admonishment.

Australian newspapers have also provided evidence of their acceptance of Australia's gambling tradition and of their preparedness to be influenced by the existence of such a tradition. O'Hara comments that:

> "Whilst the secular press has long been prepared to criticise gambling as an undesirable and potentially evil aspect of our society, circulation has remained its prime concern. Consequently, it has catered for what it sees as the known demands of the newspaper-buying public, and almost any edition of the daily papers published during the last one hundred years, demonstrates the newspapers' belief that the Australian public demands information concerning gambling".
>
> "The influence of the Australian gambling tradition is also important in the sense that it allows the Australian gambler to exist in what is otherwise a somewhat puritan society, without social stigma attaching to him. This is not to suggest that all Australians are avid gamblers or even that all accept or are influenced by the tradition. Many people are uninterested or opposed to gambling, but still have to face the sneers of their associates if they refuse to place a bet or purchase a sweep ticket on Melbourne Cup day. The tradition has achieved more than the promotion of gambling as an acceptable exercise. On at least one day each year it has made gambling almost compulsory" (Cashman & McKernan 1981, p. 84).

It is evident from this brief examination that an Australian gambling tradition does exist, and although the image of the Australian as a gambler does have a firm basis in fact, it has been romanticised and exaggerated. The myth has even grown to such a degree that today it is largely self-perpetuating.

Today in Australia, given the fact that the average punter now places his bets with the TAB;[4] very few people have any contact with the SP bookmaker. Despite this, and in keeping with the SP myth and the gambling tradition, the attitude of general acceptance and even tacit approval of the SP continues.

The Popular Image

The SP bookmaker has assumed a place in popular history, and despite the limited contact that the community has with SP, the illegal bookmaker has been accorded an acknowledged role in our community (Costigan Report 1984).

He is not regarded as a sinister criminal as is the drug trafficker, but rather he is regarded as being a businessman providing a service that at its worst should be regarded as merely a quasi-criminal activity, from which a great many people derive relaxation and enjoyment. The attitude seems to be that notwithstanding the failure of the SP bookmakers to pay either turnover taxes or income tax, they are likeable rogues who do the community no great harm.

---

4 According to Australian Racing Statistics TAB betting accounts for 75 per cent of all racing gambling. The average TAB bet in Queensland in 1990-91 was only $8.21.

Further, any sinister aspects of SP are lost on the lay public. The SP bookmaker may well be a person like "Kenny's Dad" - of some prominence within the community, who is both admired and held up as being a role model for success and upstanding citizenship. It is not uncommon for SP bookmakers to also be successful businessmen in their own right or to be high profile, colourful members of the general turf scene which is followed with keen interest by the public, and that is accorded the "glamour image" usually associated with such a convergence point for fashion, finance and political power. In such a setting, it becomes difficult for the public to accept that SP has identifiable links with organised crime.

Community Attitudes

The community seemingly continues to view SP in the context of what it may have been like during another era. Meanwhile those who are deriving substantial incomes from illegal bookmaking, and who are likely to be involved in activity far more criminal than simple tax evasion, are not the subject of either public scrutiny, or valid criticism.

This attitude has probably emerged both as the result of community acceptance of the SP myth, and due to the lack of reliable information upon which the community could develop an informed opinion about SP. Whilst historically accurate, the prevailing community perception is now unfortunately unfounded. Any function that the SP may have served in providing recreational amenity to working class gamblers is now simply a thing of the past. The perpetuation of the "SP myth", has served only to obfuscate the real issues of concern with respect to SP. The real issue is the level of criminality to be found in association with illegal bookmaking in particular, and in the racing industry in general.

Lack of community awareness as to the true extent of SP is one thing, but more peculiar is the attitude of many of those involved legitimately in the racing industry. Bookmakers and the various racing clubs suffer directly at the hands of the SP bookmaker, and although in many cases well aware of SP operators, many within the industry tolerate their presence and stand idly by, doing little to bring their activities to police attention (Fitzgerald Report 1989, p. 72).

Time For a Change of Attitude: The Possible Links of SP and Organised Crime

In the past, SP bookmaking was an activity on the periphery of the racing industry. There is every indication that this is increasingly no longer the case. Given the data that indicate this alarming trend, some critical analysis of our prevailing social, economic and political structures must be undertaken to determine to what extent they are conducive to organised crime. For too long, the assumption has been made that all aspects of organised crime are external to society, and are not a problem from within. The "internal aspect", whereby

organised crime is present within structures in our community, is well demonstrated by the racing industry. Even if known criminals have not infiltrated the echelons of power within racing, the grip that illegality has over the industry has been sufficient for the industry to develop its own sub-culture and set of values that facilitates the SP bookmaker, the race-fixer and the money launderer.

The fact that it is the racing industry that stands to lose most from parasitism by SP, yet apparently does little to suppress it (Fitzgerald Report 1989, p. 72), is simply indicative that SP bookmaking is no longer an externality to the racing industry but is now an integral part of it. The investigations that this Commission has undertaken tend to support this belief. The Racing Industry more than any other community sector has demonstrated by both its orientation and its performance, a dedication to the mythology that surrounds both SP bookmaking, and the imagery of the Australian gambler.

It will be futile to continue to examine SP in isolation. The whole racing industry must be carefully scrutinised for impropriety. The questions that must be asked are, for whom does racing exist? Who are the real beneficiaries? In this regard it is useful to note the observations of Dr Alfred W. McCoy. McCoy sees current New South Wales SP bookmaking as being the evolution of an enterprise conducted by persons on the fringe of the racing industry to one dominated by professional criminals. McCoy (1981, p. 35) says of the current SP industry of New South Wales:

> "The SP industry is, in fact, a modern enterprise which has adapted constantly during the last fifty years in response to new technology, consumer demand and government policy. As an industry there is very little about it that is romantic. Among its essential components are controlled violence, political and police corruption, and economic integration with other forms of syndicated vice - prostitution, narcotics trafficking and illegal gambling. Moreover, the illegal bookmaking business is in the process of corrupting racing, the very sport that sustains it. Since it is a highly profitable industry vulnerable to eradication, the rise of the SP industry over the past half century has left an indelible imprint on the State's political process and the quality of its governance".

In his final report Costigan Q.C. (1984) summarises by stating:

> "It would be unwise to underestimate the mythology of the SP bookmaker. His position is so entrenched and the myth of innocence so pervasive that a concerted and national programme is needed to eliminate what should be recognised as an insidious, corruptive influence. It is necessary for Governments, on behalf of the community, to show where their sympathies lie in this area".

References

Bollen, J.D. 1972, *Protestantism and Social Reform in New South Wales 1890-1910*, Melbourne University Press, Victoria.

Broome, R.L. 1974 *Prostestantism in New South Wales Society 1900-1914*, Ph. D. Thesis, Sydney University.

Caldwell, G. 1974, 'The Gambling Australian', Edgar D.E. (ed.) *Social Changes in Australia: Readings in Sociology*, Cheshire, Melbourne.

Cashman, R. & McKernan, M. (ed.) 1981, *Sport: Money, Morality and the Media*, University of New South Wales Press, Kensington.

Commission of Inquiry Pursuant to Orders in Council 1989, *Report*, (Chairman: G.E. Fitzgerald Q.C.), Government Printer, Brisbane.

Dunstan, K. 1968, *Wowsers*, Cassell Australia Ltd, Victoria.

McCoy, A.W. 1980, *Drug Traffic: Narcotics and Organised Crime in Australia*, Harper and Row, New South Wales.

McCoy, A.W. 1981, 'Sport as Modern Mythology: SP Bookmaking in New South Wales 1920-1979'; Cashman, R. & McKernan M. (eds), *Sport: Money, Morality and the Media*, University of New South Wales Press, Kensington.

O' Hara, J. 1981, 'The Australian Gambling Tradition', Cashman, R. & McKernan, M. (eds), *Sport: Money, Morality and the Media*, University of New South Wales Press, Kensington.

Phillips, W.W. 1969, *Christianity and its Defence in New South Wales 1880-1890*, Ph. D. Thesis, Australian National University.

Robinson, H. 1985, *The Bookie Book*, John Fairfax Marketing, New South Wales.

Royal Commission on the Activities of the Federated Ship Painters and Dockers Union 1984, vol. 4, *Final Report*, (Chairman: F. Costigan Q.C.), Government Printer, Canberra.

Ward, R. 1966, *The Australian Legend*, 2nd edn., Oxford University Press, Melbourne.

CHAPTER FIVE

SP BOOKMAKING AND CRIME

Introduction

Commissioner G.E. Fitzgerald Q.C., recommended that the Criminal Justice Commission conduct a general review of the criminal law in relation to SP bookmaking, in order to make some determination about the following:

(a) the extent and nature of organised crime's involvement in SP bookmaking;

(b) the type, availability and costs of law enforcement resources which would be necessary to effectively police criminal laws against such activities; and

(c) the extent (if at all) to which any presently illegal activities should be legalised or decriminalised (Fitzgerald Report 1989, p. 377).

This involves making some appraisal as to the degree of criminality involved in (or found in conjunction with), SP bookmaking. To address properly the particular issue of the involvement of organised crime, an adequate definition of "organised crime" must first be provided.

The importance that the Commission attaches to first defining organised crime in a report on SP bookmaking, is based on the fact that it can be said that "seriously embarking on this process, carries with it important policy implications" (Bersten 1990, pp. 39-59). Such policy implications become evident in the matters outlined by Commissioner Fitzgerald Q.C. in (b) and (c) (above).

The particular issue of this Commission being able to make recommendations about the type, availability and costs of law enforcement resources required to deal with SP bookmaking, cannot be addressed until after a determination has been made in relation to the other items outlined in (a) and (c) (above). For this reason, recommendations about law enforcement resources shall not be made until a later chapter in this report.

The extent to which any aspect of currently illegal activity is to remain unlawful, or alternatively is to be in some way regulated, must first wait until the point where the reasons for criminal involvement in unlawful bookmaking have been established. Essentially in this regard, it must be asked: is unlawful bookmaking the domain of criminals merely because it is illegal? If this proves to be the case, then cogent grounds would exist for expanding the parameters of legal operation. However, it may prove to be the case that there are still some other reasons based upon matters of social policy that will dictate that criminal sanctions must be retained for SP bookmaking.

In order to make recommendations of this nature, the Commission has determined that it is necessary to have recourse to criminal intelligence material. It must be recognised from the outset, that in terms of imparting an understanding of the illegal bookmaking industry, this type of information is of limited application.

Criminal intelligence is usually gathered by agencies other than this Commission as part of a "headhunting strategy" and does not usually attempt to develop an accurate picture of the operation of illicit industries. The fact that current intelligence gathering focuses primarily upon the criminal actor and not the criminal act is certainly a deficiency that needs to be redressed. Most intelligence agencies are beginning to recognise this shortcoming. However, it still impacts upon the usefulness of intelligence information to a report of this nature. Despite this inherent deficiency, the Commission has still been obliged to use available criminal intelligence as one basis upon which to study SP bookmaking, as little other information is currently available.

Much of the material that is contained in this chapter has consequently been obtained from confidential police intelligence sources. The Commission is also engaged in its own intelligence gathering and the active targeting of specific criminals. Many of the operations to which this information relates are still on-going. Accordingly, reference to this material has been presented in such a manner as not to jeopardise these operations.

Additionally, much of the material in this report that relates to the *modus operandi* and criminal associations of SP bookmakers has been based upon an analysis of information on individuals named as SP bookmakers before the Commission of Inquiry. In the circumstances, certain "ground rules" have had to be established governing the use of the information. It is not the desire of this Commission to jeopardize any prosecution, nor to risk the conduct of a defence case by any person.

It should also be noted that this report is not intended to be an intelligence report and does not by any means constitute a definitive survey of the operations of SP bookmakers in Queensland. What follows can best be described as being only a general synthesis of information obtained by scanning the "state of play" in unlawful bookmaking in Queensland, and the other States. To this end, it is important to bear in mind that any information contained in this report that could be classified as being criminal intelligence material, has been disclosed solely to assist in making a determination about the matters outlined above. It is the intention of this Commission to present only sufficient intelligence information in this report so that the lay reader will gain some appreciation of the degree of complexity, interrelatedness, and criminality involved in SP bookmaking, and thereby better understand the rationale for the recommendations that the Commission has seen fit to make.

Readers of this report must also bear in mind the fact that information that is divulged in police intelligence documents *per se* is usually insufficient to satisfy the high standard of proof required to sustain a conviction before a criminal

court. Criminal intelligence material sometimes includes unconfirmed information such as hearsay, rumour, and suspicion. The limited criminal intelligence material that is presented in this report is not a basis upon which to predetermine the guilt of any individual. The guilt or otherwise of any person rumoured to be involved in SP bookmaking is a matter that can only be determined before a court of law and, accordingly, conjecture about the guilt of certain individuals based upon a general reading of this publication would be highly inappropriate.

However, these precautionary warnings do not belie the usefulness of this type of information in assisting in gaining a better understanding of SP bookmaking. The usefulness of criminal intelligence material to a report such as this lies in its providing some of the details in the "greater picture" of a criminal scenario.

For the most part, the information that is presented here relates only to the post-Fitzgerald period. The Commission has attempted to confine discussions of criminal activity in relation to unlawful bookmaking and the racing industry to instances of criminal activity that are still relatively current[1] and thus indicate the need for legislative change. Some information from the pre-Fitzgerald period will be presented, for comparative purposes, and to highlight the fact that the criminal *modus operandi* (although evolving) has been relatively continuous. Historical information is also presented in order to emphasise the fact that irrespective of law enforcement efforts, and notwithstanding the conviction of some SP bookmakers, the same "players" continue to reappear as Australia's largest unlawful bookmakers. This fact alone is perhaps indicative of the fact that the financial rewards to be made as an SP bookmaker far outweigh any disincentive that the law may currently hold.

This chapter will also attempt to pin-point issues of criminality where such activities transgress what are popularly presumed as being the strict and "traditional" parameters of SP bookmaking, in order to highlight the fact that unlawful bookmakers are often also involved in other crimes such as race-fixing, financing the unlawful trade in narcotics, and making their services available for money laundering.

It was the initial intention of this Commission also to produce a companion intelligence document that would expansively detail the extent of SP operations in Queensland. In furtherance of this objective, a substantial amount of information was collected. However, due to difficulties presented by Commonwealth telecommunications legislation,[2] the Commission was left with no alternative but to defer the intelligence portion of this project for the time being.

---

1 1988 to August 1991

2 Difficulties created for SP investigations and enforcement of the criminal law due to Commonwealth Legislation will be discussed in a later chapter of this report.

Defining Organised Crime

While addressing a 1988 ANZAAS Congress in Sydney, Michael Bersten noted that:

> "Although of great importance and widespread usage, the phrase 'organised crime' has no settled meaning. It is often defined imprecisely and inadequately, thereby having a misleading and unhelpful effect in the many contexts in which it is used" (Bersten 1990, p. 39).

A great deal of confusion surrounds the notion of organised crime and little empirical evidence is available that could help to clarify the issue. Instead, the term "organised crime" is usually defined by way of nothing more concrete than a series of examples.

This uncertainty has led Norval Morris and Gordon Hawkins (1970, p. 203) to declare that "it is almost as though what is referred to as organised crime belonged to the realm of metaphysics or theology".

In more recent times, a number of writers in this field have come to question seriously the basic tenets of many of the leading works on organised crime. The emerging concern is that much of the contemporary sociology of organised crime has been constructed from the interpretive framework of various popular histories on organised crime. There is now the belief that "the historical insensitivity and sociological primitivism of the popular account has been incorporated into academic scholarship, where it has inspired further mistakes" (Block 1991, p. 8).

Block believes that academic sociology has displayed a strong affinity with the ideological preconceptions of the creators of popular works.[3] Consequently he asserts that many contemporary scholars have fallen into the trap of simply propagating the "mafia myth" of organised crime. Bersten believes that in many respects, this has also become the case in Australia, where a popular, journalistic perspective upon organised crime has come to predominate much of our thinking on the issue.

The "journalistic approach" to organised crime essentially involves definition by way of description. Usually, this involves equating organised crime with a number of metaphors. Robert Haupt believes that journalistic investigators are "unreasonable" and "prejudiced"; having long ago decided that organised crime exists they are now interested only in proving it to the general public (Haupt 1984, p. 46). Bersten (1990, p. 40) believes that the dramatic imagery employed by

---

3 Block, (1991, p. 9) even asserts of the highly influential and authoritative works of Donald Cressey: "With just a few changes Cressey's seemingly inferential sociology could have been lifted from the pages of Murder Inc. (a popular polemic on organised crime) . . . The problem with the sociology of organised crime advanced in Murder Inc. is that it was wrong, as a long and careful search through all the trial transcripts and extant internal documents from the investigation of murderers in Brooklyn reveals".

such writers to describe organised crime gives a clear "evil enemy status to organised crime but neither describes factually nor defines conceptually the phenomenon".

Definitions that seek to equate organised crime with a "community of evil" or the "mafia myth" are often called alien conspiracy theories and are now generally considered to be inappropriate.

In attempting to come to terms with the reasons behind the evolution of the "demonology of organised crime", Morris and Hawkins (1970) have concluded that there is a considerable body of folklore relating to organised crime, and that much of the widely cited literature on the subject has been shaped by myths and folktales. Although the significance of this has never been fully studied, they believe that (particularly in light of the significance that anthropologists are prepared to attribute to myths), it should not be dismissed in any cursory way.[4]

This "broad brushing" is evident in much of the limited analysis of organised crime that has been attempted in Australia in the post war period. Of particular concern in this context is the fact that those "empirical studies" that have formed the basis for much of current law enforcement policy have really not been anything more than popular dissertations on the "sinister menace" that is supposed to exist somewhere on the "other side". Despite the paucity of reliable information about the existence of organised crime in Australia, it is clear that for the believer, there is nothing which could count decisively against the assertion that organised crime exists. Indeed, so pervasive is the effect of the mythology that "precisely those features which in ordinary discourse about human affairs might be regarded as evidence in rebuttal are instantly assimilated as further strengthening the case for the hypothesis" (Morris & Hawkins 1970, p. 230).

Such is the power of the need to be able to attribute blame to some alien conspiracy that, as Morris and Hawkins note, in the end it is often difficult to "resist the conclusion that one is not dealing with an empirical phenomenon at all, but with an article of faith, transcending the contingent particularity of everyday experience and logically unassailable" (Morris & Hawkins 1970, p. 230). Organised crime has gone on to become, in the popular mindset, one of those reassuring demonologies which as William Buckley observes the "successful politician has to cherish and preserve, and may, in the end come to believe".

Although it may sometimes seem easier simply to avoid all the difficulties surrounding defining organised crime, and not attempt a definition, an option which, as Bersten (1990, p. 39) notes, has been taken by some law enforcement agencies, Australian Royal Commissions and organised crime-related legislation, the phrase is too widely used to be simply "wished away" in this manner.

---

4 Morris and Hawkins point to Malinowski for support, who holds that "myth fulfils in primitive culture an indispensable function: it expresses, enhances and codifies belief; it safeguards and enforces morality".

Moreover, as Bersten states, the very centrality of the term in public and political discourse on the subject means, that to avoid defining organised crime necessarily also entails avoiding many of the main related issues. This has the unfortunate effect of imposing "an intellectual closure which harms the prospects of informed, rational and high quality policy decisions about organised crime" (Bersten 1990, p. 39).

The prospects of ever reaching a settled definition may however, be slim. According to the National Crime Authority (NCA) in its 1985-1986 Annual Report (p. 2), "There continues to be no agreement in Australia on what is meant by organised crime, let alone a firm indication of its extent".

More recently, in 1988, the Federal Parliamentary Joint Committee on the National Crime Authority (PJC NCA 1988, para. 2.1) attempted to set out what it understood the phrase to mean (Bersten 1990, p. 39). After reviewing various major drug-related cases that had been attributed to "organised crime" (PJC NCA 1988, paras 2.2–2.22), the PJC NCA (1988, para. 2.21) was only able to conclude, somewhat disappointingly, that: "'Organised crime' in the Australian context is therefore difficult analytically to define".

While the PJC NCA was unable to provide a definition of organised crime, it did speculate that whilst there was some evidence of "American model" structured organised crime, "the preponderance of organised criminal activity in Australia takes the more loosely structured form . . ." (PJC NCA 1988, para. 2.22).

Such an observation is of little assistance, and really offers nothing by way of clarification to an understanding of the nature of organised crime. Surely it could be reasonably said that even the most traditional types of crime such as housebreaking (or even purse-snatching for that matter), take on something of a "loosely structured form".

Bersten (1990, p. 39) believes that this then begs the question as to what elements these "types" of crime (meaning those that fall within the "American model", and those with the "more loosely structured form") share in common which require that they both be labelled as being "organised crime". It is this question which Bersten (1990, p. 39) believes is at the very root of defining organised crime, and that "seriously embarking on this process carries with it important explanatory and policy implications".

Michael Bersten (1990, p. 39) has examined the major definitions of organised crime that have been advanced over the years, in an article that appeared recently in the *Australian and New Zealand Journal of Criminology*. In that article, much is made of the many disparate, and often confusing aspects that these definitions have thrown up, and the somewhat alarming fact that, to date, no one definition has been able to dominate (at least at a policy level) over the others. In the event, we are left in the situation where the field is cluttered with definitional tools, and there is a resultant lack of uniformity in approach and

even a lack of consensus in opinion on the issue. He then proposes an alternative definition of organised crime, more in keeping with what is observable both in Australia and elsewhere.[5]

Bersten's Approach

This definition is partially shaped by an awareness of many of the problems perceived to render other definitions unsatisfactory.

Bersten has chosen to define organised crime as:

> "The field of transactions materially connected to markets in illegal goods and services".

He believes that such a definition is "applicable to any given social, historical and political arrangement be it in Australia or the USA or some other place, now, 50 years ago, or some other time" (Bersten 1990, p. 55).

The words "materially connected to" serve to extend the definition beyond the crimes themselves, to other activities which are required to constitute the illegal markets. The words also operate to limit the domain of the definition so as to exclude those transactions which are only incidentally or remotely connected to the illegal market.

Finally, the adoption of this definition could help to facilitate the management, evaluation and public accountability of State law enforcement programmes in the field of organised crime, as this approach provides a coherent conceptual approach with specific and real points of reference, namely the conditions that make organised crime both possible and likely.

Having adopted the above definition of organised crime it remains now to determine whether SP bookmaking falls within the ambit of this definition.

As will be noted, this is not the precise formulation of the question that was posed for resolution by the report of the Commission of Inquiry (Fitzgerald Report 1989, p. 377). It is however, simply not possible to answer that question in its present format. This is because asking about the "extent and nature of organised crime's involvement in SP bookmaking" is based upon an assumption that "organised crime" is in some way a completely separate, and identifiable entity. Such an assumption would mean that the only task for this Commission would be to gauge empirically the involvement of such an entity in unlawful bookmaking.

However, it is this Commission's belief that the connections between the term "organised crime" and the notion of an alien conspiracy and its attendant "Mafia Myth", run so deep that employment of it is increasingly to imply acceptance of the conspiracy. This difficulty has moved several other contemporary

5 For a detailed account of the analytical procedures that Bersten has used the reader is directed to the above article.

researchers to abandon the term organised crime altogether in favour of the term "illegal enterprises". As can be seen, this is essentially the definitional perspective that the Commission has also chosen to adopt.

Having had more time and resources upon which to conduct a more complete analysis of "organised crime", this Commission is able to demur to the original question (on the basis that it is logically unanswerable), and instead ask: whether SP bookmaking falls within the field of transactions that are materially connected to markets in illegal goods and services, and, as such is able to be studied as being a form of organised crime.

It can be seen that unlawful bookmaking automatically falls within the ambit of this definition, and may as the result be described as "organised crime". Although this is not the original issue that fell upon the Criminal Justice Commission to be determined, it is believed that proceeding in this manner will impart more meaningful information on the operation of SP bookmaking in Queensland.

References

Annual Report, National Crime Authority 1985-1986, Australian Government Printing Service, Canberra.

Bersten, M. 1990, 'Defining Organised Crime in Australia and the United States of America, *Australian and New Zealand Journal of Criminology,* vol. 23, no. 1.

Block, A. 1991, *Perspectives on Organising Crime,* Essays in Opposition, Kluwer Academic Publishers, 'n.p.'.

Commission of Inquiry Pursuant to Orders in Council 1989, *Report,* (Chairman: G.E. Fitzgerald Q.C.), Government Printer, Brisbane.

Haupt, R. 1984, *Sydney Morning Herald.*

Morris, N. & Hawkins, G. 1970, *The Honest Politician's Guide to Crime Control,* University of Chicago Press, Chicago.

Parliamentary Joint Committee on the National Crime Authority 1988, *National Crime Authority: An Initial Evaluation Parliament of the Commonwealth of Australia,* Canberra.

CHAPTER SIX

SP - THE CRIMINAL ASPECT

Early in 1990, the Queensland Police Service indicated that they were aware of some 43 known or suspected SP bookmakers in Queensland. The majority of these were based in or around the south east corner of the State, particularly Brisbane and the Gold Coast. However, other unlawful bookmakers were known to operate as far afield as Ayr, Mount Isa, Cairns, Blackall and Winton.

Perusal of the relevant data obtained indicates the following consistent factors in current Queensland SP bookmaking:

1. the use of mobile telephones by many of the suspected unlawful bookmakers;

2. "networking" - where SP bookmakers and licensed bookmakers were in frequent telephone contact with one another in order to obtain up-to-date prices and in order to lay off bets. Of particular note in this regard, is the fact that members of the "network" include unlawful bookmakers in other States;

3. the continuation of the long established practice of laundering of SP monies;

4. the involvement of pricing services and the use of the same as a front for SP activity;

5. the fact that suspected unlawful bookmakers were particularly wary of surveillance and their use of technology to avoid the same;

6. associations between lawful and unlawful bookmakers;

7. unlawful bookmaking activity by licensed bookmakers;

8. increased wariness among all unlawful bookmakers as the result of revelations before the Fitzgerald Commission of Inquiry;

9. a decline in the use of hotels and licensed premises for the purposes of SP bookmaking. The tendency has been to move increasingly towards the use of the telecommunications system;

10. association and involvement by some bookmakers (both licensed and SP) with illegal drugs and known drug criminals;

11. involvement in race-fixing by both SP and licensed bookmakers; and

12. that some of the smaller SP bookmakers have ceased activities as a result of the Fitzgerald Inquiry, with the consequential concentration of their clientele into the hands of others.

Numerous Royal Commissions and Commissions of Inquiry in Australia's recent past, such as the Costigan Royal Commission (Australia and Victoria 1984), the Connor Inquiry (Victoria 1983), the Moffitt Royal Commission (New South Wales 1974), and the Fitzgerald Inquiry (Queensland 1989), have found that there are vast networks of SP bookmakers operating throughout Australia. They found that the monetary flow in this illegal industry was huge, and as such that it has the potential to finance other forms of illegal activity.

The Moffitt Royal Commission warned that there was evidence to indicate that New South Wales SP syndicates were in contact with major heroin smugglers, and domestic drug distributors (Pinto & Wilson 1990). Current criminal intelligence available gives this Commission cause to believe that the warnings that were given by the Moffitt Royal Commission in 1974 are still of equal application today.

Despite the extra scrutiny that was applied to the SP industry by the Commission of Inquiry, criminal intelligence indicates that SP bookmaking activities in Queensland are still extensive, and they are believed by this Commission to be on the increase.

Currently, the Commission estimates that there are approximately 70 significant SP bookmakers who are still operating in Queensland and who are rapidly increasing the size and extent of their operations. There are also a significant number of licensed bookmakers who engage in SP activities, and an unknown number of smaller scale SP operations. The majority of these operators are interconnected both with one another, and with other unlawful bookmakers interstate.

Police information from both New South Wales and Queensland tends to suggest that a number of unlawful bookmakers from the southern States are in the process of relocating their operations to Queensland. The Gold Coast appears to be a favoured destination.

Although this report is not intended to be confined in any way to SP bookmaking in the south east region of the State (nor is SP bookmaking confined to this area), it seems that SP bookmaking is particularly prevalent in this area.

Some efforts were made by officers of this Commission to determine why this should be the case. In discussions with various police officers and Telecom employees, it was suggested that the south east corner has a number of attributes that are attractive to unlawful bookmakers. While some of these attributes can be found in other parts of Queensland, the following list of factors (other than

the obvious population concentration) were advanced in partial explanation of the attraction of this area to SP bookmakers:

* access to two significant airports as well as several secondary airfields and regular interstate airline connections that allow some SP bookmakers to live interstate and field in South East Queensland;

* the fact that South East Queensland has one of the best "mobilenet" telephone networks in the country;

* proximity to the New South Wales border, which enables quick and regular "border hops", and which ensures that police responsibility for detection, surveillance and enforcement is divided between the two States and is thus less effective;

* access to a casino possibly for purposes of money laundering and because of the professional gamblers attracted thereby, who are an additional source of affluent punters;

* easy access to high-rise tourist accommodation particularly on the Gold Coast, which is highly suitable for SP operations (particularly when mobile telephones are used), and where high short-term occupancy turnover does not attract adverse attention;

* access to an established pricing service;

* the concentration of quality racing venues and racing events on which to field;

* a significant number of other SPs and licensed bookmakers who also bet unlawfully, with whom to lay off bets;

* a large and affluent betting population and a significant population movement from the southern States during the tourist season;

* regular interstate movement of racing horses into and out of South East Queensland, and the consequent movement of the racing fraternity who are both a source of punters, and of information. Particularly important in this regard may be the relocation of a number of trainers and jockeys, whom the police believe to be corrupt, and with whom race-fixing can be arranged;

* the fragmentation and lack of uniformity in administrative control over Racing Integrity Services in Queensland, that only assists in creating "windows of opportunity" for race-fixing;

* the lack of effective legislation with which SP bookmakers can be prosecuted; and

* the general lack of police resources, particularly of the type needed to apprehend SP bookmakers.[1]

References

Pinto, S. & Wilson, P. 1990, 'Gambling in Australia', *Trends and Issues Paper*, no. 24, Australian Institute of Criminology, Canberra.

1 See Chapter 17 for further remarks on police resourcing and law enforcement strategies, for further remarks in this regard.

CHAPTER SEVEN

A SUMMARY OF SP BOOKMAKING ACTIVITY IN QUEENSLAND

Selected Examples

While it is not feasible to discuss the operations of each and every unlawful bookmaker, what follows is a discussion of the operations of a selection of them. They have assigned code numbers.

A prominent figure within Queensland SP bookmaking circles is 001. 001 is believed to have suspended his operations for the duration of the Fitzgerald Inquiry but is believed to have now resumed fielding. Police surveillance has revealed that 001 is using telephone diverters and other electronic equipment in order to minimise the possibility of detection. Although 001's and 002's operations are separate, they are known by police to be close associates.

Another prominent SP bookmaker in Brisbane is 004. 004 has been arrested and prosecuted several times for SP bookmaking offences. Although he has an extensive criminal record for unlawful bookmaking offences and is well known to police, regular enforcement efforts appear to have had little deterrent effect upon him.

Police believe 005 to be a leading SP bookmaker in Queensland.[1] 005 has operated in association with an SP by the name of 006. 005 appears to have distanced himself from the "hands on" aspect of his SP betting operation, which is currently organised and run by 007. 005 may have sold his operation to 007, although police believe this to be improbable, and it is more likely that 005 is now the financier of the unlawful ledger. 007 has an associate, 008 who also has convictions for SP bookmaking. They are both believed to be once more working together for another SP bookmaker and his operation is believed to be based primarily in one area of South East Queensland.

1988 inquiries and police raids conducted jointly in Queensland and New South Wales, have revealed that SP activities were being conducted by 009 who is also strongly suspected of now being active in other fields of serious criminal activity in addition to unlawful bookmaking.

010 and 011 have been operating as unlawful bookmakers in New South Wales and South East Queensland. Although these operations are apparently separate, there are still connections between the two, in order to facilitate the laying-off of bets. Both are believed to have connections with 002.

---

1 Police Intelligence, Bureau of Criminal Intelligence.

Further police intelligence information indicates that 011 has ties with most of the major South East Queensland SP Syndicates. There is some police information that suggests that 011's mobile telephone is currently being used in a southern area of New South Wales. Both 011's and 010's operations are believed to be extensive. 011 in particular, is known to have had connections with the New South Wales crime identity 024. 011 also has connections with SP bookmakers in Western and Northern New South Wales.

010 is believed to be operating in South East Queensland at the present time, in conjunction with 012. 012 is a notorious and violent criminal. 012 has previous convictions for SP bookmaking in both New South Wales and Queensland, and the last time he was arrested in Queensland, he was found to have a .38 Smith and Wesson revolver in his possession. 012 is known to also be an associate of 009. Both 009 and 012 (by merit of his association with 009) are strongly suspected of involvement in the illegal drug trade.

Police believe that a former New South Wales SP may have "border hopped" into Queensland. He is 013, whose preferred *modus operandi* is believed to be to have a number of "touts" relay bets to him from sporting clubs and other licensed premises. This type of operation is similar to that often observed in Victoria, and is organised in such a manner that the public face of the SP operation accords with the popular perception of SP as being "small scale" and harmless. 013's operation is thought to be to the contrary, and quite extensive. Little is known about 013, although it is known that he is surveillance conscious and that he makes extensive use of all available technology in his SP operations.

014 and 015, are said to be heavily involved with SP bookmaking activities. 014's organisation is comprised primarily of members of the Painters and Dockers Union, and they are said to also be involved in forms of criminality other than SP bookmaking. 014 is suspected of being involved in the interstate trade in amphetamines, and is associated with a well known legitimate business company. Police suspect that 014 may use this business front to help legitimize his illegal activities. An associate of 014 was arrested in New South Wales in relation to his SP operation, and betting sheets and bank records found in that associate's possession at that time, indicated a substantial turnover. 015's telephone number has been found in the possession of an SP bookmaker who was apprehended in Prahran, Melbourne, which tends to indicate that he may have criminal connections in Victoria.

There is some evidence to suggest that 016 is still engaged in SP bookmaking on the Sunshine Coast. An individual named 017 may also still be operating as an SP bookmaker somewhere in the Brisbane area.

The SP bookmaker 062 is known to be an habitual user of cannabis, and has been arrested on drug related charges after raids at his premises. Given the substantial amounts of money that can be made in SP bookmaking, this information is at least suggestive of the possibility that 062 may have some drug association beyond that of merely being a drug user who is in frequent contact with drug suppliers.

Patterns and Scope of Operations

In the first half of 1990, the Commission conducted an extensive amount of CLI[2] profiling of suspected SP bookmakers with the assistance of Telecom. A review of the types of operational pattern divulged by this profiling has made it apparent to this Commission that most of the major SP bookmakers operating in Queensland and Northern New South Wales are heavily inter-connected.

This factor accords with observations made by officers of this Commission of the *modus operandi* of SP bookmakers in Victoria and Sydney, and is the basis for the Commission's belief that interconnectedness and "networking" between bookmakers is one of the predominant aspects of unlawful betting enterprises. CLI profiling has also indicated that known and suspected SP bookmakers are in frequent contact with other known and suspected SP bookmakers not only locally, but all over Australia.

Laying Off

By necessity, all bookmakers must be able to "lay off". "Laying off" is simply the process of on-betting with other bookmakers, to minimise the potential for loss. This need is perhaps best understood when it is borne in mind that the skill in bookmaking is for the bookmaker to set his odds across the entire day's ledger, so that at the end of the day he has still made a profit. If a substantial amount of money is then wagered with the bookmaker on certain horses, he may form the view that the heavy backing of those horses constitutes a "betting plunge" and that he will not have sufficient holdings to cover all bets on those horses. Rather than be "stung" (or lose heavily), the bookmaker will be anxious to "lay off" and on-bet with other bookmakers. Hence the need for all SP bookmakers to be in regular contact with other bookmakers. Although SP bookmakers can lay off with on-course bookmakers, laying off is more common with other SP bookmakers who are more convenient, being accessible by telephone. Equally, there is a need to be in regular contact with other SPs in order to obtain sufficient information to frame proper markets.[3]

The fact that SP bookmakers are in frequent contact with one another in order to lay off has been repeatedly confirmed by information gathered in police raids on SP bookmakers all over the country for several years now. Such information serves to validate this Commission's belief that SP bookmaking should not be regarded as a geographically isolated criminal event. The nature of SP bookmaking is such that all unlawful bookmakers must be in frequent contact with others, and the more unlawful bookmakers they are able to establish a line of communication with, the more advantageous it will be to their unlawful enterprise. It is arguable that in this regard, the prevalence of SP bookmaking in Queensland's south east corner has taken on a self perpetuating quality. The more SP bookmakers there are, the easier it becomes to lay off quickly and thus

---

2 CLI (Call Line Identification) profiling is explained later in this report in Chapter 14.

3 This fact is often under-appreciated, due to the commonly held belief that SP bookmakers are only offering "starting prices".

avoid betting plunges, and thus the more profitable the enterprise becomes, and the more "players" it attracts. The fact that SP bookmakers are laying off with licensed bookmakers and vice versa, is also a contributing factor in this regard. Some use is also being made of TAB telephone accounts as a "backup service" for laying off.

One recent example that serves to demonstrate this phenomenon is provided by the teledex taken from SP bookmaker 011 when he was charged with SP bookmaking offences following a police raid in 1989. Police involved in that case have told officers of the Commission that 011 was known to be making frequent contact with other known and suspected SP bookmakers and criminals suspected of involvement in other racing industry crimes. In that teledex, the following names (amongst others) appeared:

018	-	businessman and believed to associate with race-fixers, SP bookmakers and criminals involved in the drug trade. Possible SP bookmaker or financier of SP;
019	-	SP bookmaker;
001	-	SP bookmaker;
004	-	SP bookmaker;
003	-	SP bookmaker;
020	-	former horse trainer, alleged race-fixer and suspected SP bookmaker, heavy SP punter;
016	-	SP bookmaker;
021	-	horse trainer;
022	-	known to police as an interstate criminal with extensive SP and other criminal associations;
017	-	suspected SP bookmaker;
023	-	SP bookmaker;
025	-	jockey; and
026	-	former police officer.

011 is also believed to associate with the criminal 027. 020 and 029 have also admitted to police that they were laying off with 011. 020 is known still to have strong associations and connections within the Queensland racing industry.

030 was apprehended by police in one particular South East Queensland area. Subsequent undercover police surveillance in the same area, has revealed that although 030 was apprehended, the other major SP bookmaker in that area, 031, escaped detection. The SP operations of 030 and 031, are thought to be heavily interconnected and financed by 032 and 033.

031 has prior convictions for SP bookmaking and also for various other serious offences. The same police surveillance operation has unearthed information that gives police reason to believe 031 is also contemplating the purchase of a motor vessel, and then fielding by mobile telephone from offshore.

It is known that there are a number of unlawful bookmakers operating in a provincial Queensland city. At least four of these people are also registered bookmakers. This SP bookmaking syndicate was the subject of an extensive police operation. However, the prosecution in this matter failed, due to difficulties created by the *Racing and Betting Act*. Police involved in that operation believe that their success in avoiding conviction has "reinvigorated" this particular SP syndicate, who have now both increased their SP operation and become more circumspect so as to avoid further detection.

Continued SP Activity by Individuals Named before the Commission of Inquiry

Several individuals were named as SP bookmakers before the Commission of Inquiry. A number of them are believed by police to still be active as unlawful bookmakers. The fact that these individuals appear to have continued with their SP activity, notwithstanding their very public exposure before the Fitzgerald Commission of Inquiry is significant, and may be indicative of the regard in which SP bookmakers hold the law.

Interstate Linkages

There is a substantial body of evidence that clearly indicates to this Commission that the majority of SP bookmakers regularly engage in interstate, and even on occasion, overseas SP bookmaking.[4] These activities consist of both accepting bets and laying off with interstate SP bookmakers.

Unfortunately, the popular misconceptions surrounding SP bookmaking that have their basis in "cultural myths"[5] have attributed a degree of localisation to SP bookmaking that simply does not accord with the modern reality of this unlawful industry.

The near total reliance by modern unlawful bookmakers on access to the telecommunications network, and increasingly access via cellular phones, has meant that there are very few limits to the actual location of their unlawful operation. The increased mobility afforded to SP bookmakers by the mobile telephone is accompanied by the accessibility that the telephone gives SP bookmakers to punters and other bookmakers who are well removed from their immediate locality. This phenomenon is probably best demonstrated by way of a few select examples.

---

4 Some of the named SP bookmakers are known to accept bets from Papua New Guinea. Some are reputed to accept bets from Hong Kong and New Zealand. Additionally, SP bookmakers are known to be in association with racing industry crime figures responsible for the commission of offences in other countries.

5 The role of cultural myths in SP bookmaking is explained in a previous chapter (The Social Context).

In 1988, the Tasmanian Bureau of Criminal Intelligence seized a teledex from an SP bookmaker by the name of 042. This individual had been connected with 039's Northern Territory SP operations. A number of names of Queensland individuals suspected of SP bookmaking appeared in that teledex.

Tasmanian police requested information from Queensland as to how many of these persons were also registered bookmakers in Queensland. It was found that over half of these persons suspected of SP bookmaking were also registered bookmakers:

* **035,** yes;

* **048,** yes;

* **049,** no, although previously held a licence;

* **050,** no, although previously held a licence;

* **051,** yes;

* **052,** no; and

* **053,** yes.

Although the appearance of a name in an SP bookmaker's teledex is certainly not conclusive, it is at least suggestive, tending to indicate some association, although not able to explain the context of that association. However, the significant aspect of this example is that it serves to demonstrate that geographic isolation no longer prevents interstate networking between unlawful bookmakers. Moreover, interstate networking is not confined to SP bookmakers, but also includes licensed bookmakers. The distinction between lawful and unlawful bookmaking is therefore often unclear.

Further circumstantial evidence indicating interstate and national connections between SP bookmakers was provided when an SP bookmaker named 054, was arrested in 1989 in Adelaide. Records that were confiscated from him at that time, indicated that he was associated with the following individuals, all of whom were resident in Queensland:

* **055** of Cairns - who is a person with a number of convictions for SP bookmaking;

* **056** of Townsville - suspected by police of being involved in race-fixing activities; and

* **057** a person recorded as having involvement with cocaine (which may be significant for at this time cocaine had been used in Brisbane in an attempted race-fixing incident).

More conclusive proof of interstate connections was however, provided before the Costigan Royal Commission in 1984. Costigan Q.C. devoted a significant amount of attention to an investigation of one particular SP bookmaker, who has several convictions for SP bookmaking in both Victoria and Queensland. Banking records seized by that Royal Commission were able to identify a network of individuals in the States of South Australia, Tasmania, the Northern Territory and Queensland all of whom were in regular receipt of money from this SP bookmaker. In due course, the Costigan Royal Commission was approached by police officers from each of those States, seeking information from that network to assist in the identification of individuals who acted as unlawful bookmakers in those States (Costigan Report 1984, vol. 4, p. 39).

In addition, the Commission's own CLI profiling has instanced repeated cases of suspected SP bookmakers calling the interstate numbers of other suspected SP bookmakers, which is simply a further indication of the fact that SP bookmaking is not confined on a State by State basis, and that the SP network has a national dimension which does not respect geographic boundaries.

References

Royal Commission on the Activities of the Federated Ship Painters and Dockers Union 1984, vol. 4, *Final Report*, (Chairman: F. Costigan Q.C.), Government Printer, Canberra.

CHAPTER EIGHT

THE ROLE OF PRICING SERVICES

One factor in the relationship among SP bookmakers in Queensland (and for that matter the rest of Australia) that has continued to re-emerge throughout this Commission's studies is their reliance upon pricing services similar to that run by 002 and 040 in Queensland. This Commission believes that a report on the SP phenomenon would be incomplete without also including some comment about the importance of the facility provided by this ostensibly legal enterprise (and others like it) to unlawful bookmakers.

Ready access to a reliable pricing service is at the very crux of any successful SP bookmaking operation. Pricing services provide SP bookmakers with up-to-date information about fluctuations in prices that are being offered by on-course bookmakers on various horses. This information is essential for modern SP bookmakers, as it enables them to frame their markets and gives them information that allows them to determine if they should be laying off[1] on-course.

Contrary to popular belief, the modern SP bookmaker does not usually offer only starting prices. Notwithstanding the "SP" epithet and the popular perception of SP, modern unlawful bookmakers have little in common with their forebears. It is usual for the modern SP bookmaker to offer both fixed and fluctuating odds, as well as starting price odds. Rapid information transfer has enabled the SP bookmaker to offer a service that is today more akin to those of licensed bookmakers (with the added convenience of telephone access). The fact that punters can negotiate odds when they telephone an SP bookmaker is also indicative of this fact.[2]

In contrast, SP bookmakers of the past were essentially confined to starting price odds, lacking as they did, a reliable source of information about on-course price changes. This is no longer the case, due primarily to the existence of reliable pricing service facilities.

002 has been convicted of several offences under the *Racing and Betting Act 1980 (Qld)*, and has admitted while under oath to having engaged in SP bookmaking "consistently since the early 1960s". Since his return to Queensland in 1983 or 1984, police have suspected that 002 has operated as an SP bookmaker from a number of premises. This fact has been subsequently verified by 002, who has admitted that he has operated as an SP bookmaker from at least "three or four

---

1 If an SP bookmaker has accepted an excessive number of bets on one particular horse and runs the risk of not being able to cover all bets if that horse should win, he will be anxious to "lay-off" - that is place bets with other bookmakers to minimise his potential loss. This can be done either with other SP's or on-course. Occasionally bets may even be laid off on the TAB.

2 The fact that major daily newspapers quote SP prices, also indicates the offering of variable odds by the modern SP. If SP bookmakers were still offering simple starting price odds (only), they could settle on the starting price quoted in the paper and would not need to have recourse to a pricing service.

premises". 002 asserts that he is now no longer engaged in SP bookmaking, and has instead chosen to concentrate his efforts into the operation of his pricing service. Although it is currently quite legal to operate a pricing service in Queensland, it is believed that Queensland based pricing services are central to most of the larger SP syndicates in Australia.

Police raids on SP bookmakers in the States of Tasmania, New South Wales, Western Australia and Queensland have all revealed evidence that indicates that interstate SP bookmakers subscribe to Queensland based pricing services. Information from these raids also indicates that 002 has been accepting lay-off bets from SP bookmakers all over the country. The offering of pricing service facilities is (as is the case in all other States but Queensland) illegal in New South Wales.[3] Police from New South Wales have informed officers of this Commission that they believe that Queensland based pricing services are of central importance to the profitability of many of the major SP operators in that State. As such, it should be borne in mind that pricing services although situated in Queensland, are creating major difficulties for law enforcement in New South Wales and the other States.

002 asserts that he has discontinued his SP bookmaking operation, and is merely continuing to participate in the offering of pricing services in conjunction with his business partner 040. 002 is known to operate 19 separate telephones, as well as a facsimile machine. Intelligence documents held by the Bureau of Criminal Intelligence indicate that on several occasions, 002 and 040 have been approached by marketing representatives from Telecom, who have tried to persuade them that a "Commander" style PABX telephone system would be more efficient and cheaper for their business in the long run. On each of these occasions either 002 or 040 have refused to update their present system of 19 separate telephones. If a cheaper and more efficient system is available, it does not seem to accord with normal business sense to continue to operate 19 separate telephones.

The operation of the pricing service that is run by 002 and 040, although perhaps more prominent than some, is thought to be largely indicative of the operation of pricing services generally. Analysis of the 002-040 pricing service reveals that pricing services endeavour to supply clients with "up to the minute on-course prices" for horses entered in races in each of the major racing States. Usually, in order to be able to do this, an employee or associate of the pricing service operator must be positioned within the betting ring at the race-track. It then becomes the responsibility of this person to inform his principal of the price fluctuations among on-course bookmakers at metropolitan race-meetings.

3 See the New South Wales *Gaming and Betting Act 1912*, section 47A.

Operational Details - A Typical Scenario

As it is illegal to relay pricing information from within the confines of a racing track to any place elsewhere, communication of this information will often entail the use of a secret transmitter that must be hidden about their person. Often the initial transmission will be over only a short distance, such as to a car, car park or house somewhere conveniently outside the track where the race-meeting is being conducted. The information is then subsequently re-transmitted to the principal place of operation which may be some distance away. Usually, this second relay of pricing information will be conducted by mobile telephone.

Typically, the place of principal operation will require a minimum of two rooms for efficiency. The first room is used for incoming and outgoing telephone calls, while the second room is generally utilised by the service principal as a place to frame pre-post markets free from interruption.

Framing of pre-post markets before the commencement of business is a complicated and time consuming process. The principal will typically need to arrive at the operations centre on a racing day by 7.00 - 7.30 in the morning, in order to ensure sufficient time to frame the market before the commencement of betting. Initially, the principal will commence to frame the market by copying down the market provided in the newspaper. The principal will then generally contact registered bookmakers for further information to assist in the completion of the initial market. These activities are then usually finalised by listening to racing tips such as those that are broadcast by racing tipsters on radio 4BC. This usually occurs at about 8.15 am.

The operator will then probably spend the remainder of the morning contacting persons within the racing industry in both Sydney and Melbourne in order to exchange information concerning the Sydney and Melbourne markets. This information will then subsequently be offered as part of the pricing service facility. The informal network of interstate contacts who provide racing tips and track information is the key to a successful pricing service. Obviously the more reliable contacts that an operator has, the more reliable the product will be, and the more desired it will become. Sometimes the operator through this informal network will actually gain access to market information from other countries, such as Papua New Guinea or New Zealand. Notably, the exchange of this information with colleagues in other States also facilitates the conduct of interstate SP betting.

Persons who wish to use the facility are charged a fee on a per-day basis. $30 per day is considered to be usual. An examination by the Commission of pricing service facilities available in Queensland, indicates that one operator has a clientele of about 80 persons for Saturday races. Most of these clients are either known to police as SP bookmakers, or are suspected SP bookmakers. Assuming that each client pays a fee of approximately $30 per day, this would mean that the

pricing service would draw an income of between $2,500 and $3,000 every Saturday.[4] This same operator, by reference to believed clientele, would earn approximately half this amount on mid week races.

As previously noted, the essential aspect of any viable pricing service is the ability to provide unlawful bookmakers with up to the minute on-course prices. While it is not illegal *per se* to offer pricing service facilities in Queensland, it is illegal to relay on-course pricing information to an off-course location.

This illegally acquired information constitutes the very substance of any pricing service, and it is for this reason that the on-course employees of pricing services who are responsible for obtaining the key pricing information will frequently use some form of secret transmitter. The QTC has, on occasions, apprehended persons in the process of attempting to relay information from Eagle Farm racecourse by means of such a hidden transmitter.

It would appear that the primary purpose of various persons' continued presence at race-meetings is to obtain information for the conduct of pricing services. Police have some reason to suspect that such persons may also be present on the racecourse in order to lay off with on-course bookmakers. This would tend to suggest that the operators of some pricing services are also engaged in additional SP bookmaking activity.

While police may engage in surveillance of persons suspected of relaying information from race-tracks, it is very difficult to obtain proof of such activity. For example, while police may observe a person leave the track and go to the car park to use a mobile telephone, the substance of any conversation had there is unknown to the police. As soon as the police approach it is easy to either terminate the call or engage in innocent conversation.

Pricing service facilities based in Queensland are known to exert a strong influence over the entire east coast betting market. This is done via the operation of services which would, if they operated from any other State, be illegal. It bears repeating that Queensland is now the only State in mainland Australia where the offering of pricing service facilities is not illegal. As already indicated, pricing service facilities while based in Queensland are not confined only to the provision of Queensland racing information. Information from other States is also collected and then disseminated to interstate unlawful bookmakers.

The fact that the Australian Jockey Club (AJC) provides an accurate computer pricing service, for use by on-course bookmakers betting in the interstate rings, also tends to negate any argument that the pricing service facilities offered in Queensland are primarily intended for use by legitimate bookmakers. This legitimate pricing information is not available to SPs.

---

4 80 clients x $30 per day = $2400 per day. It is known that some clients pay for extra service.

Additionally, this Commission's investigations and interstate enquiries have indicated that Queensland based pricing services are operated primarily as a support service for SP bookmakers all over the country. Given the fact that this type of facility is illegal in all other States, and given the additional fact that they exist almost solely to facilitate the illegal purposes of SP bookmakers, it would be appropriate if the offering of pricing services was also proscribed in Queensland.

The eradication of pricing service facilities will deny SP bookmakers access to accurate market information and put them more at the mercy of "betting plunges". The Commission therefore believes that the effective suppression of pricing service facilities will remove one of the market advantages presently enjoyed by SP bookmakers. The suppression of pricing service facilities will have a substantial impact on the continued viability of many unlawful bookmakers not only in Queensland, but also throughout the country.

CHAPTER NINE

RECENT INFORMATION[1] ABOUT INCREASED SP ACTIVITY IN QUEENSLAND

Police have reason to believe that 058, an interstate SP bookmaker who is suspected of being involved in other forms of crime, has increased his activities in Queensland recently. He is believed to associate with 059 who runs a brothel.

058 is thought to make extensive use of mobile telephones which he acquires under a variety of false names. The ease with which telephones can be acquired in false names by unlawful bookmakers will be discussed in the chapter on Telecom. All of these mobile telephones are linked to interstate addresses. 058 is well known to police and moves in the same circles as drug offenders and dealers, and he is said to be a man of extreme violence. Police inform that 058 is never seen in public without a "minder", who is well versed in anti-surveillance techniques. Police suggest that 058 may be an imminent target for an underworld killing.

058 is known by police to be an associate of 060, who is a licensed bookmaker and suspected SP bookmaker who is also believed to be very active in Queensland. Both 058 and 060 have been put under surveillance by police, and have been seen associating with the suspected cocaine trafficker 061. 060 is known by police to have used 061's residence on at least one occasion in 1990 to field illegally as an SP bookmaker.

061 is known to be friendly with the SP bookmaker 011, as well as the businessman 018. 061's name has also been found on 002's records as being a "client". Police feel that these associations are sufficient to suggest that 061 may also be on the payroll of one of these SP bookmakers, as a "penciller" or in some similar capacity.

Police also believe that the interstate SP bookmakers 063 and 064 are increasing the extent of their Queensland operations. 064 in particular, has a massive SP turnover[2] and is a prime target of interstate police. His movement out of that jurisdiction could therefore be seen as another case of "border hopping". In the second week of February 1991, a police source informed officers of this Commission that at least another 10 mobile telephones are operating in one Queensland area in a manner that gives every indication that they may be being used for SP bookmaking. It is believed that this is an entirely new ring of interstate SP bookmakers who have not operated from Queensland before.

---

1 This information was current as at 14 February 1991.

2 064 was recorded by New South Wales Police as having had a turnover of $3.9 million in a ten day period in 1989. It is interesting to then compare this figure with the operational budget of the entire New South Wales Police Drug Enforcement Agency Gaming Squad, which was only $2.6 million. Such a comparison serves only to demonstrate the magnitude of the SP trade.

The area surrounding Cairns also has many of the Telecommunications advantages that are enjoyed by South East Queensland. Police believe that Cairns SPs are also increasingly active. Police surveillance in this area tends to confirm this belief, as many SP operators have been able to be picked up on monitoring equipment.

Police information suggests that one North Queensland SP bookmaker 065, is a frequent mover and that he is also operating in Brisbane, and is known to have assisted licensed bookmakers at both North Queensland and Brisbane race-meetings on occasions. The most recent information available indicates that 065's telephone bill is now being sent to a provincial city address.

This type of information tends to confirm this Commission's assertion that SP bookmaking should not be considered as either a discrete or geographically confined criminal phenomenon. Quite to the contrary, available information suggests that SP bookmakers tend to be both highly mobile, and operationally flexible.

CHAPTER TEN

THE MODUS OPERANDI IN QUEENSLAND

It is a reasonable proposition to say that the way in which laws against SP bookmaking have been enforced has served to shape the way in which the SP industry operates. Costigan Q.C. noted that the highly publicised "Zebra Taskforce" operations in Victoria had the effect of temporarily driving Victorian SP bookmakers interstate (Costigan Report 1984, vol. 4, pp. 40 and 90).

Past crackdowns on hotel SPs in Queensland have only had the effect of ensuring that operators have largely abandoned the hotels. SP bookmaking in hotels is usually highly detectable by undercover police agents.

Telephone use by SPs has been common since telephones were made widely available in the 1920s. However, it was the heavy enforcement against SP in the hotels, coupled with the takeover of the Licensing Branch by corrupt officers around the end of the 1970s, that heralded the predominant practice of setting up operations in private premises, and then paying for police protection.

Police enforcement practices then were the catalyst for the evolution of the SP industry in Queensland to one where its core is virtually entirely centred on the use of telephones. SP operators are in this way able to operate with virtual impunity, due to loopholes in Commonwealth legislation that prevent police from monitoring suspicious telephone use.

The introduction of cellular telephones on the "mobilenet" network has further enhanced this modus operandi for SP bookmakers and has created even greater detection difficulties. This technological advance has possibly been the most significant bonus for the SP bookmaking industry in recent times, giving them true mobility and making their operations virtually totally immune to police surveillance efforts. Cellular telephones have meant that it is quite possible for an SP bookmaker to operate from a moving car or even from a boat while offshore.

In addition to the use of cellular phones, there are a number of other technological factors relevant to the increasing profitability of SP bookmakers, which they embrace with enthusiasm.

These include the racing and pricing services available on Sky Channel. A number of SP bookmakers are known to have Sky Channel satellite dishes in the yards of their homes. Similarly, pricing and result information is available on the Seven Network's Austext. Another more readily accessible racing information service is provided by Viatel.

Viatel is Telecom Australia's national videotext service combining two way interactive communications with the visual display of text and graphics.[1] Viatel can be accessed through a personal computer (with appropriate software) connected to a modem, or by using a Viatel keyboard adaptor connected to a television set. The first option, using a personal computer, is by far the most popular in Australia. Virtually any computer can become a Viatel terminal. Suitable equipment can be purchased from chain stores for a total of $750 or less.

The costs involved in obtaining Viatel include a small monthly membership fee, and the usual local call connection fee. While connected to the service, there is a further fee of between seven and 11 cents per minute. Additionally, there is a fee to access some particular services or facilities within Viatel. The costs associated with Viatel are minimal when compared with the turnover of an SP bookmaker.

An enormous range of racing information and services is available and can be accessed via Viatel.

Viatel Racing Information[2]

Tracks

This is the focal point for racing and trotting information. Tracks acts as an index to other racing information services.

Viabet

The Western Australian TAB offers a facility for on-line TAB betting. Viabet includes a complete list of meetings, description of bet types and general information such as scratchings, provisional dividends, results and final dividends. In the future Viabet will provide bets on football and cricket. The facility is available to persons in all parts of Australia and overseas. Winnings can be transferred electronically to Commonwealth Bank accounts.

Skybet

Sky Channel offers a system of computerised rating. This service is now available through Viatel via Skybet. For a cost of 25 cents, a rating of the runners in a particular nominated race is provided.

1 Viatel is based on the British Telecom PRESTEL system.
2 This information was obtained from Viatel marketing literature and discussions with police officers.

Neddybank

Neddybank is a service which provides detailed harness racing information on the following:

1. registration details on 40,000 horses with sire, dam, foaling date, freeze brands, and owners;

2. details on foals of broodmares (13,500 records); and

3. racing performance on any horse that has raced since 1980.

Accuratings

This service is an on-line form guide. It provides ratings information on individual horses and races as well as providing information on "best bets". This service produces an"Ultimate Form Guide" available on computer disk for use by any person wanting to do their own decision making.

Teletips

Teletips is another ratings and information service which specialises in offering win and place probability.

Teletab

The Victorian TAB offers an information service under the name Teletab. This service covers information on fields, jockeys, weights and winning dividends. Further information on Footybet and other sports betting is also available.

Comment

Access to information of this type has largely taken the element of risk out of SP bookmaking, and has allowed SP bookmakers to increase substantially the profitability of their operations. Access to these services also means that it would be entirely feasible for an SP to operate without actually using a telephone. The SP bookmaker now has the option of using electronic mail facilities for receiving and processing bets. The various information services provided on Viatel can assist the decision making process, and electronic banking facilities can be used to settle bets.

The Commission believes that it is most probable that persons in the SP industry are taking advantage of at least some of these facilities that are on offer, in the conduct of their illicit enterprises.

When all such available facilities are utilised by an SP bookmaker, the operation becomes highly sophisticated. An organised SP could conceivably have several mobile telephones that have been rented in false names, access to Sky Channel,

Austext and Viatel, as well as access to a reliable pricing service for up to the minute on-course fluctuations, their own knowledge, and extensive connections with other bookmakers (both lawful and unlawful) with whom to lay off bets.

In addition, such is the *milieu* of the racing industry, SP bookmakers are also invariably well informed about intended race fixes. Given such advantages, SP bookmakers are placed in a position where they are quite capable of generating inordinate turnovers and substantial profits.

As previously mentioned, the enforcement policy adopted in a particular State will affect the *modus operandi* of unlawful bookmakers. The operational structure of SP identified by Costigan Q.C. in Victoria in 1984 is believed to have largely evolved since then in response to changes in police enforcement strategy.

Police enforcement strategies are largely determined by the legislative framework within which the police are required to work. There is a body of opinion held amongst police officers interviewed by this Commission in three States to suggest that many SPs in Victoria have reformulated their *modus operandi* to try to circumvent the recommendations for legislative change that were made by Costigan Q.C.[3] It was one of Costigan Q.C.'s (1984, vol. 4, p. 91) several recommendations that imprisonment for SP bookmaking should apply from a third conviction, and that no minimum should be imposed in the case of a first offence, so that there would be "more latitude (allowed) to the Courts to impose an appropriate penalty on minor functionaries".

Subsequent to the enactment of legislation to give effect to this recommendation, Victorian SP bookmakers appear to have re-organised their operations, so as increasingly to utilise "minor functionaries" who stand less chance of attracting severe fines and imprisonment. These minor functionaries act as "bar touts" and then telephone-relay bets to central locations.[4]

Costigan Q.C. observed that SP bookmakers attempted to find a *locus conveniens* in which to commit their offences. This inevitably resulted in their moving to a favourable *lex fori* (Costigan Report 1984, p. 89). In the case of Victoria in 1984, this meant doing a "border hop" into New South Wales, where at that time, no default imprisonment applied (Costigan Report 1984, p. 89).[5] Legislative change post-Costigan has meant that some of the larger SP bookmakers in Victoria have even permanently re-located to New South Wales, and have retained contact with their clientele via the "minor functionaries". The current operations of the prominent SP bookmaker 066 are perhaps demonstrative of this tendency.

Queensland (not unlike the case in New South Wales until 1989) has no default imprisonment for SP bookmaking. Now that New South Wales has introduced default imprisonment, it is very likely that the new and favourable *lex fori* for

---

3 Officers of the Commission spoke at length with police in Queensland, New South Wales and Victoria. From these discussions this fact became evident.

4 Discussions, Victoria.

5 Equally, Victorian SP Bookmakers could not be apprehended in transit to and from New South Wales, as Victoria did not have an offence of possession of instruments of gaming.

many of the SP bookmakers who formerly sought safe-refuge in New South Wales, will be Queensland. The investigations that this Commission has undertaken over the past months tend to confirm such a suspicion.

Although there have been some instances in Queensland similar to those observed by Costigan Q.C. in Victoria of the use of "minor functionaries" to ensure that fines were inconsequential (Fitzgerald Report 1989, p. 194), Queensland's enforcement history is in many ways quite unique for reasons that were revealed before the Commission of Inquiry.[6] For these reasons, we do not see an identical *modus operandi* to that observed in the other States. While there are still some hotel based SP bookmakers both of the "old time" variety and of the variety where a bar-room tout relays bets to a central bookie, this is not the principal means of operation of SPs in Queensland. These types of activities are really quite minimal in the context of the totality of the SP problem.

The real issue with the few SP bookmakers who may still be operating from licensed premises is their referring business to the larger SPs. Being small operators, they are unable to cover bigger bets and subsequently tend to pass these on to other larger SP operators.

While it is improbable that a strict "criminal network" is controlling SP bookmaking in licensed premises in Queensland, the small hotel SPs are known to be in contact with the larger operators, and this is an issue of which the community ought to be aware when forming opinions about the degree of criminality involved in even "minor SP". In a Brisbane talkback radio program as recently as 14 February 1991, the view was expressed that the "community should forget about the small SPs and target the Mr Bigs".[7] This attitude is perhaps indicative of community misconceptions about the relationship that exists between many "small-time" SP bookmakers, and the larger operators.

References

Royal Commission on the Activities of the Federated Ship Painters and Dockers Union 1984, *Final Report*, vol. 4, (Chairman: F. Costigan Q.C.), Government Printer, Canberra.

Commission of Inquiry Pursuant to Orders in Council 1989, *Report*, (Chairman: G.E. Fitzgerald Q.C.), Government Printer, Brisbane.

6 To a large degree, SP Bookmaking was regulated by corrupt police. Consequently those corrupt police dictated the terms for the *modus operandi*. The preferred method was to set up operations in premises and field by telephones as it facilitated the collection of graft payments.

7 Radio 4BH. *The Courier-Mail* racing journalist Peter Cameron talking to John Miller.

CHAPTER ELEVEN

UNLAWFUL BOOKMAKING BY LICENSED BOOKMAKERS

As Commissioner Fitzgerald Q.C. observed, (Fitzgerald Report 1989, p. 72) a number of those who are licensed as bookmakers also take bets unlawfully. This factor has in large part formed the Commission's determination to consider unlawful bookmaking in its broader context and not in terms of simple starting price bookmaking. Equally, it must be borne in mind that some of the largest SP bookmakers in Queensland are also licensed bookmakers, and the distinction between their lawful and unlawful operations is often unclear.

Deliberate manipulation of betting records by bookmakers has been a problem in Australia virtually since the inception of regulated bookmaking. If this were not the case, there would be no need for Betting Inspectors from the Commissioner of Stamp Duties Office to be stationed in the betting rings. It is also highly improbable that this problem will ever be entirely eradicated.

While this Commission does not think that minor infractions of revenue collection laws are worthy of any special comment, this Commission does have reason to believe that the failure by bookmakers to record bets is more extensive than is commonly believed, and is both deliberate and highly organised.

Deliberate manipulation of records by bookmakers is capable of happening in a number of ways.

All bets placed with an on-course bookmaker are entered into the bookmakers betting sheet. When money is taken from the punter, the bet is recorded on the betting sheet, and then a numbered ticket showing the name of the horse (or greyhound) and the amount that the punter stands to win is given in return to the punter. At the start of each race the bookmaker is required to rule a line across the betting sheet and no further bets are to be recorded.

Other than the presence of Betting Inspectors who cannot be everywhere all the time, there is really nothing to stop a bookmaker from "fixing the books". Once the result of the race is known, the bookmaker can enter "bogus bets" on his betting sheets. For example: if a 10 to 1 priced runner wins the race, the bookmaker could write a bogus bet of $500 to $5,000 the winner. By entering this bogus bet in the bookmaker's betting sheets, it is made to appear that the bookmaker has paid $5,000 out to a "lucky punter", where in reality what the bookmaker has done is simply to keep the money. In so doing, bookmakers are able to evade income tax on the $5,000.[1] Should they be involved in organised crime activities, they could also be laundering the proceeds of crime.[2]

---

1 A nominal amount of turnover tax will however, be paid by the bookmaker on the bogus bet.

2 See the chapter on Money Laundering for comments that relate to the difficulties of detecting money laundering via bookmakers.

Inquiries with Inspectors from the Stamp Duties Office (where all bookmaker's sheets are forwarded), reveal that the above example is not uncommon among bookmakers. This fact is confirmed by interstate experience. On 15 May 1990, in the Adelaide Magistrates Court, evidence was given by a registered bookmaker that the practice of "writing in bets" after an event was reasonably widespread. Similar comments have been expressed by the Victorian police in their submission to this Commission.

Bookmakers often take credit bets. Credit bets are simply bets where persons who are known to the bookmaker are allowed to place bets on credit. At the end of the day, each credit bettor is then advised of the amount that they have won or lost, and the amounts owed by either party are settled. This may occur either immediately, at the next race-meeting, or at some other time and place.

Bookmakers are required to enter each credit bet in their betting sheets along with the name of the person making the credit bet. However, there is very little that can be done to prevent a bookmaker using fictitious names.

Recent police investigations have revealed that:

1. Not all bookmakers enter all credit bets in their betting sheets. If the horse/greyhound loses, then the bookmaker is able to pocket the amount of the bet without having to pay either income tax or turnover tax.[3]

2. Some bookmakers accept and enter credit bets from persons who supply false names even though the bookmaker knows the true identity of the person/s placing these bets.

3. Some bookmakers accept and enter credit bets and the bookmakers themselves give these persons assumed names. For example: a bookmaker was asked by a Betting Steward the name of a person who had just placed a credit bet with the bookmaker. The bookmaker replied that he did not know this person's name, but he knew he was a "plumber" and entered the credit bet in his betting sheet with the name "plumber" as having made the bet.

   It does not seem probable that if the "plumber" owed the bookmaker a substantial amount of money that the bookmaker would not know the true identity of this person and where to find him in order to extract the amount owing.

3 The Paddock Bookmakers Association has asserted that their members always write in all credit bets. If it were otherwise they argue that a bookmaker could never collect from losing punters. However, it does not seem probable to this Commission that a bookmaker who is about to extend credit will not first ascertain the name and whereabouts of his debtor.

4. Bookmakers do not always enter the credit bettors' full names on their betting sheets with some only entering the initials and full surname of the credit bettor, e.g. J.A. JONES or alternatively only the initials of the creditor. This practice was also exposed before the Commission of Inquiry where the corrupt former Police Commissioner Bischoff often had bets recorded as simply "Mr B".

5. Some bookmakers are strongly suspected of having interests in race-horses/greyhounds but of then ensuring that these race-horses/greyhounds are registered in another person's name. By so doing, it is believed that the bookmakers can exert some untoward influence over whether the animal is to be allowed to race on its merits.

6. Some bookmakers are strongly suspected of betting with SP bookmakers, and allowing SP bookmakers to bet with them. By entering some form of arrangement whereby the on-course bookmaker accepts losing bets for the SP bookmaker, no turnover tax and no income tax is paid by either person.

Licensed Bookmakers Suspected by Police of also Accepting SP Bets

Some licensed Queensland bookmakers are strongly suspected of also engaging in a significant amount of unlawful bookmaking. Calculations of their legal turnover have been made based upon records of turnover tax paid to the Commissioner of Stamps, and is estimated to be a total combined legal turnover of $120,954,680.00.

It is simply not possible to make any accurate assessment of their SP turnover, but police experienced in this field of investigation have indicated that collectively, this group has an unlawful turnover likely to be "half as much again" of their legal turnover, or a figure in excess of $60 million. It should perhaps also be noted that the majority of this illegal turnover is attributed to a "handful" of those bookmakers.

The suspicions raised by Queensland police about some licensed bookmakers have also been raised by Victorian police during discussions with officers of this Commission. Victorian police have provided officers of this Commission with an estimate that up to 25 per cent of all licensed bookmakers in Victoria take SP bets. The Victorian police also believe that the majority of licensed bookmakers lay-off with SP bookmakers, and that virtually all bookmakers do not record all bets all the time.

References

Commission of Inquiry Pursuant to Orders in Council 1989, *Report*, (Chairman: G.E. Fitzgerald Q.C.), Government Printer, Brisbane.

CHAPTER TWELVE

RACE-FIXING

If a known favourite is nobbled, or the performance of a long-odds outsider is enhanced, the aspects of uncertainty and chance involved in the punt are considerably reduced. Those that bet on a particular race with knowledge of "the fix" then have a substantially greater chance of winning. It is not only the relative merit of the animal that is affected, simultaneously the race-fixer is able to manipulate the odds across the entire field and the flow of betting to his advantage.

The aspects of community concern in such activity are numerous:

* honest and innocent punters with no knowledge of the fix stand to lose;

* the honest bookmaker and the Totalizator stand to be required to make potentially massive payouts to criminals; and

* those who have fixed the race stand to have a massive, potentially non-traceable windfall, and in the process may well have laundered proceeds of other crimes.

Not only can criminal proceeds be laundered, but they can be exponentially increased in the process, giving criminals sizeable amounts of "honestly" acquired funds with which they can acquire legitimate assets and conduct business ventures, through which further illicit funds can be passed and hidden.

The wealth and power of the criminal figures involved in race-fixing continues to grow, as does their ability to instigate and finance ever more complex forms of criminal endeavour. As the stakes get higher, so too does the degree of their preparedness to resort to violence to enforce the "code of silence" and their ability to corrupt public officials and avoid detection.

Intelligence suggests to this Commission that a number of those involved in race-fixing are also involved in the drug trade. Police investigations in Queensland to date have been sufficient to identify links between the importation and distribution of heroin and race-fixing.

Some SP bookmakers are known to be involved in race-fixing, and information also tends to suggest some complicity by SP bookmakers in the importation and distribution of narcotics, or, if not directly involved, that they at least have some financial association with drug dealers.

In 1984 Costigan Q.C. commented that:

> "The bigger SP operators, particularly in Sydney, adopt a system of manipulating the odds on-course to limit their potential loss to their client and/or to ensure a winning margin for themselves . . . Given the amount of money involved, it is hardly surprising that steps are taken by the big SP's to prevent horses which are "bad risks" from winning. SP bookmakers and, for that matter, registered bookmakers are not usually punters. As far as possible, they set a book to win - even if it is only five per cent of turnover - not to lose.
>
> The dishonest bookmaker sets out to increase his percentages. The pressures on jockeys are no doubt immense. The allegations about these activities have continued for years . . . I believe they deserve a higher profile in the listing of criminal activities to be monitored by law enforcement agencies" (Costigan Report 1984, vol. 4, pp. 81-82).

Costigan Q.C.'s comments about race-fixing appear to be of no less application in Queensland today than they were in Victoria in 1984.

While it is not intended that this report be a criminal intelligence report *per se*, Queensland police have been able to furnish this Commission with several recent examples of race-fixing. As this information has been able to link both SP bookmakers and some of their licensed counterparts to race-fixing, it is appropriate that the issue be explored in order to give an appreciation of the degree of inter-relatedness between SP bookmakers, cases of race-fixing, and other criminals.

This intelligence material is also sufficient to satisfy this Commission that Queensland is rapidly becoming the base of operations for a number of national crime figures who are also involved in the racing industry.

Drugs may be administered to animals by "fence jumpers", who may be associated with SPs or punters outside the ranks of the racing industry, who are intent on fixing race results for their independent purposes. Criminal intelligence has positively linked past instances of fence jumping with known organised crime figures involved in the importation and distribution of heroin.

Alternatively, "dopers" may come from within the ranks of the racing industry itself. Such doping may be done by trainers, vets, stable hands, jockeys or even owners, either at their own instigation, or under commission from some other crime figure. Irrespective of whether the race-fixer is a fence jumper or comes from within the ranks of those who have legitimate reasons for access to animals, the reasons are invariably the same - in order to manipulate the form of a particular beast, and thus the outcome of the race.

The Australian Bureau of Criminal Intelligence (ABCI), is currently conducting a national intelligence gathering project in relation to the Australian racing industry. The object of the project is to analyse intelligence of a criminal nature that relates to race-fixing, SP bookmaking and illegal gambling. Intelligence gained from Bureau of Criminal Intelligence units Australia-wide is forwarded to the ABCI, and after analysis is disseminated for information and attention by user-agencies.

When this Commission determined that it had gathered sufficient intelligence for the purposes of this report, the ABCI had linked 119 Queenslanders to offences related to racing. The operation of race-fixing in Queensland revolves around, but is not by any means restricted to these individuals.

Again, it must be stressed that the following information is not intended to be definitive, but is presented simply as an overview of the types of crimes that can be found in association with the racing industry, and to highlight the linkages between SP bookmaking and other forms of crime.

The SP bookmakers 011, and 060 are all believed to be involved in race-fixing. Additionally, attempts have been made to prosecute 020, who was involved in SP bookmaking offences in association with 011 and 029, who is also thought to be a race-fixer. Police have informed this Commission that they believe that 011 telephones a jockey, 025, regularly. 025 apparently then tells 011 who would be trying and who would not.

Although there are other methods of manipulating the outcome of races, such as the use of electric shock devices, or the substitution of animals,[1] the use of race-fixing drugs, and particularly the "pulling up" of horses by jockeys appear to be the most prevalent.

In 1989 a total of 49 positive drug swabs were returned on racing animals in Queensland.[2] Of these, 23 were returned on greyhounds. Only 931 greyhounds were actually tested in 1989, yet there are 13 greyhound racing venues in Queensland that each conduct at least one race-meeting every week. At each meeting at least 10 races are held, and each race usually has eight starters. Arithmetic indicates that conservatively, there were in excess of 54,000 greyhound starts in 1989.[3] Accordingly, only 1.7 per cent of all greyhound starts were actually tested. The chance of detection is then so minuscule as to often make the potential windfall for the race-fixer well worth the gamble.

A number of police informants have confirmed that the low probability of a dog actually being swabbed is a prime consideration for dopers. Another motivating factor advanced by police to explain the particular prevalence of doping in greyhound racing is the system of grading currently used in the greyhound industry in Queensland.

Currently, any dog that has been unplaced in three consecutive races is able to drop a grade. If a dog has had two consecutive unplaced runs, and then draws an unfavourable box in its next start, the decision may be made to "pull the dog up" by the administration of a "go-slow" drug. Having performed poorly in its third and final race, the greyhound will then automatically drop a grade, and meet a lesser class of competition at its next start.

---

1 The most famous recent example of the latter occurred in Brisbane in 1984 when *Bold Personality* was substituted for *Fine Cotton* at Eagle Farm.

2 Information provided by Queensland Government Racing Science Centre, Albion, 1 July 1991.

3 13 tracks x 10 races x 8 greyhounds x 52 weeks = 54,080 greyhound starts.

The types of race-fixing that have been most noticed by police across the three racing codes, fall into the following general categories:

1. Fence jumpers - These persons are actively involved in the fixing of races. They are believed to have links with major organised crime figures in Australia. At the time this Commission ceased collecting data for this report there were four such fence jumpers know to police, who were active in and around the racing industry in Queensland.

2. The horse/dog dopers - These persons are believed to be actively involved in the doping of horses and dogs in Queensland. At the time that this Commission's data collecting ceased, there were thought to be three such dopers.

Horse and greyhound nobbling involves the administration of drugs to animals to affect their performance. In order to acquire drugs, it is necessary that doctors, veterinarians or pharmacists be corrupted to guarantee sources of illicit supply. There have been cases detected in Queensland where the drug used in the nobbling attempt was one that is not available in Australia, but is available in New Zealand. Other race-fixing drugs are thought to originate in either the Philippines or Malaysia. Race-fixers are also known to stockpile pharmaceutical drugs long after they have been withdrawn from the market. This fact has been confirmed by the fact that drug testing centres have detected the metabolites of certain betablockers that were withdrawn from the human market several years ago. The ongoing demand for race-fixing drugs by criminals within the racing industry has fostered a burgeoning black market trade in controlled substances that is a separate, but related issue of criminal activity in itself.

In a 1988 Queensland police report, doping was said to be particularly a problem in greyhound racing. The preferred drug among dog-dopers at that time was indicated as being the depressant drug chlorbutol. Greyhounds that have been "hit" with chlorbutol display the symptoms attributed to that drug known as "wobbly dog syndrome". Police inquiries in relation to chlorbutol dopings indicated that a suspected doper at that time is well known amongst participants in the greyhound industry, and had in fact doped greyhounds at the instigation of a number of registered bookmakers who regularly fielded on the dogs. The fact that more honest members of the greyhound racing industry were not more forthcoming to the police with information about these dopings is also worthy of note.

Further police inquiries also indicate a number of connections with dog dopers in southern States. Upon being interviewed by police, one suspected doper, 067, denied the specific doping allegations, but readily admitted to associations with other convicted dog dopers and suspected dog dopers. One of the suspect's associates 068, has been disqualified from race-tracks for his race-fixing activities, yet still trains greyhounds of his own, and now resides at an address in South East Queensland. The fact that a disqualified race-fixer is still able to train (and presumably race) animals of his own, is an issue of some concern to this Commission.

068 is known by police to associate with criminal identities who are heavy casino gamblers. One of those associates, 027, is known to police to use at least 10 different aliases, and to have 40 convictions for various criminal offences. 027 is thought to be responsible for many of the larger scale break and enter offences in one particular area of South East Queensland, and is thought to have subsequently laundered the proceeds of these crimes via his gambling. 027 has also been observed regularly entertaining a number of southern crime figures including SP bookmakers and suspected drug traffickers. Also included amongst the regular guests of 027 has been 024.

Police believe that a number of trainers are currently training animals for known and suspected organised crime figures. Some of these trainers have associations with jockeys who also associate with known and suspected criminal figures. Queensland police are aware of one current horse trainer named 069, who is known to have trained horses for a Sydney crime figure, 070, who is currently serving a 25 year term of imprisonment for the importation of heroin.

Sydney police are aware that 070 has over 30 confirmed criminal associates. A number of these associates are prominent Australian underworld crime figures, some of whom have met with untimely deaths. 069 has been a registered trainer in Queensland. In the period of time that 069 has been training horses, a sum of money in excess of $1 million has been transferred from 070 to 069.

This Commission's attention has also been drawn to a punter named 071, who, although having no criminal convictions personally, has received a number of mentions in an official investigation conducted in Victoria that inquired into various aspects of the racing industry in that State. It is known that on race days, 071 will telephone the crime figure 072 and betting information is exchanged. 072 has a lengthy criminal record. He is also reputed to be a heavy punter, with wide-spread criminal associations. Unconfirmed information which is currently being assessed by police in several States tends to suggest that 072 is heavily involved in the importation of heroin in association with members of the Sydney Chinese community.

071 and 072 often associate with a third party, named 073. 073 has a number of previous criminal convictions and is believed to be very heavily involved in the prostitution and gambling industry within the New South Wales Chinese community. He is also known to have a number of other criminal associates. It is also strongly suspected that 072 and 073 have financial associations with some jockeys. The very fact that jockeys and known crime figures are in association raises the spectre of possible race-fixing. It is also known that 072 frequently associates with several trainers.

Police believe that a number of other criminals within the Greyhound and Trotting industries regularly visit an Australian expatriate in the Philippines. He is believed to have several criminal connections within the racing industry generally, and harness racing in particular.

Race-fixing - An Overview

The following information is a synthesis of police intelligence data gathered in relation to the three racing codes. Again, it is presented merely to emphasise the degree of interrelatedness between these types of crime and SP bookmaking, in order to support this Commission's belief that it would be incorrect for the community to continue to view SP bookmaking as a form of criminality in isolation. This information is presented to highlight the fact that unlawful bookmaking has a number of identifiable linkages with other serious forms of criminal activity. For the most part this information was gathered in 1990.

The Greyhound Industry

Police have received information as to regular use of drugs in greyhound racing, and that dog dopers were "experimenting" with their doses and timing to minimise detection. It is believed that a veterinarian openly administers "go-fast" drugs to greyhounds for a fee.

Criminal activity is not seemingly limited to owners and trainers, but also includes some officials within the code. Police have received information that suggests a betting supervisor at one Queensland greyhound track offers his services to trainers to back the trainer's dogs for them. Police information also suggests that another official at one South East Queensland greyhound track allegedly sells ritalin tablets for $29 per tablet.

The Commission has been made aware of at least one case where a police informant telephoned an ex-New South Wales greyhound trainer while in the presence of police in the major crime squad office at Brisbane Police Headquarters, and asked that trainer if he could give his greyhound a "hit" prior to racing at a South Coast meeting on a Saturday. The trainer replied in the affirmative. This trainer is also believed to supply the drug dextroamphetamine sulphate to trainers on request.

Further information received from the greyhound industry by police reveal instances of the following:

* A resident of a regional Queensland city is a chief suspect in many of the instances of greyhound nobbling to which police have been alerted.

* A group of persons within the greyhound industry have recently passed themselves off as a form of "animal masseur". While supposedly massaging the animals, they "needle" greyhounds with illegal drugs either for a "go-fast" or "go-slow" effect.

* A number of bookmakers involved in greyhound racing do not write betting transactions into their official betting sheets. In 1989, one greyhound bookmaker won in excess of $1 million. Police have determined that this money was not recorded on betting sheets.

* Police have advised that suspected heroin suppliers are currently registered owners and trainers of greyhounds in Brisbane. Police strongly suspect that at least two greyhound owners and trainers have brought substantial amounts of heroin from Sydney for distribution in Queensland. One of these individuals has been missing for over 18 months, and it is currently believed he may be dead.

* It is suspected that shipments of heroin are regularly delivered in the car parks of certain race-tracks in Brisbane.

* A person who is alleged to be one of the leaders in the interstate "fence jumping" gang, now resides in a South East Queensland area. This person has been seen in the company of known organised crime figures. This same person's father is a licensed bookmaker in New South Wales. He and his father are believed to be in partnership in their criminal activities.

* Information received from a number of trainers suggests that kennel staff employed by the Greyhound Racing Control Board may also be operating in conjunction with these fence jumpers.

* A number of trainers suspected of criminal activity in New South Wales have moved their training operations to Queensland in the past few years.

Harness Racing

There have been a number of allegations received by police in relation to the harness racing industry. Some of the more recent allegations include the following:

* Information has been received from the police that a number of trainers have been administering the drug palfium to their horses. One of these trainers is believed to train horses for members of organised crime syndicates. The same person has allegedly received preferential draws for his horses in some races. This person is reputed to have received 100 ampoules of the drug palfium on consignment. Information obtained by Victorian police via a reliable informant, indicates that this consignment may have had its origins in Melbourne.

* Police are aware of an individual whom they believe to be a criminal, who has recently returned to Brisbane in the company of a individual who is alleged to be the main supplier of illegal drugs to people involved in the harness racing industry. These two individuals are believed to travel frequently to the Philippines. It is believed that one of the principal reasons for these trips is to obtain supplies of race-fixing drugs.

* Information recently received by police indicates that there has been at least one recent incident between harness racing drivers where one driver has tried to "stand over" the other, and tell him how he is to drive his horse in a particular race. The second driver was threatened with violence if he did not "toe the line". However, no complaint was ever laid with either harness racing officials, or the police.

Thoroughbred Racing

* Although bookmakers and SP bookmakers are suspected of being involved in "nobbling" animals in all racing codes, police have suggested that these persons are particularly anxious to try to attack horses running in trifecta races, as it is believed that by nobbling the favourite "they can have at least 90 per cent of the trifecta pools to themselves". The same effect can be achieved in "legs of the treble", where it is believed that by nobbling a favourite, "90 per cent of punters are out of the picture".

* Police are aware of a racing industry employee who was originally based in a southern State, but has since moved to Queensland. This person is also known to associate with other crime figures, SP bookmakers and people who have been "warned off" race-tracks all over Australia, for race-fixing.

* Another Queensland racing industry employee has come to police attention for regularly travelling interstate, often under an assumed name, at times and dates that do not correspond with race-meetings. This person is strongly suspected of acting as a courier for a drug syndicate. This racing industry employee is also known to have various financial dealings with several persons who are known to have criminal connections, including at least one individual who describes himself as a "professional punter". The described racing industry employee is also known to be a heavy gambler who often has consequential financial difficulties. It is thought that his gambling related difficulties may have made him more amenable to criminal corruption.

* Police believe that a trainer received $1 million to "cop the rap" over the positive swab of a horse with a race-fixing drug.

* It is believed that there are a group of Queensland jockeys who are involved in "team riding". It is known that a licensed bookmaker is closely involved with at least one of these jockeys.

* A registered Queensland bookmaker is suspected of being involved with "fence jumpers".

* One trainer is known to police as an associate of heroin dealers, licensed bookmakers, disqualified trainers and a number of SP bookmakers. The aforementioned trainer previously trained for a number of persons who police believe belong to drug cartels.

* A person who is the current holder of a Queensland Owner's Licence is known to police as being a close associate of criminals who are strongly suspected of being involved in gang-land killings. This individual currently resides interstate. It is alleged that each time his horses race in Queensland, a shipment of heroin is delivered at the same time.

* There is information to suggest that one senior official involved in the racing industry had prior knowledge of the use of a race-fixing drug on horses, and used this information for his own betting, prior to it being able to be detected.

* Police have received information that a club committee member offered an apprenticed jockey $200 to "pull up" a favourite at a country race-meeting, so that his own horse could win the race.

* Police task forces in the early 1980s have identified specific syndicates within the racing industry who have resorted to the importation and distribution of narcotics from South East Asia. It has been suggested that the racing industry offers perfect cover for the importation and distribution of narcotics, and offers a readily explainable reason for overseas travel, close association with Asian nationals and possession of large sums of money.

* Members of one Queensland family are strongly suspected of being responsible for establishing contact with Asian drug syndicates, and of having used their racing industry contacts as the facilitator and cover for this criminal liaison. This criminal network includes trainers, owners and jockeys. This group has been actively involved in race-fixing and the defrauding of race goers in a number of international centres, and also associates with unlawful bookmakers. The international dimensions to the criminal activities of this group are not confined to the importation and distribution of narcotics. Other criminal activities have included the stealing and fraudulent conversion of US government welfare cheques. Members of this particular syndicate even placed stolen cheques in a Brisbane bank. Associates of this particular syndicate at the Australian end of the operation have included a number of high profile business people who are also involved in the racing industry. While these high profile business people are not suspected of direct involvement in the importation of heroin, they are suspected of being the financiers of the importation and quite possibly of also being the purchasers. Employees of this syndicate have been arrested after being apprehended in Asia attempting to import heroin into Australia.

* The Brisbane based member of this syndicate is believed also to be an associate of known race-fixers in Queensland. The Brisbane man is known to have attempted to arrange the use of Australia as a transhipment point in the attempted sale of heroin to American crime syndicates. Again, initial contact was made with these American criminals via mutual interests in the racing industry.

* This particular syndicate is also suspected of having laundered funds via SP bookmakers.

Racing Identity Murders

At least four murders have occurred in the last few years that are related to the racing industry. Whether these murders are the result of bad debts, bad blood, ill will, or other causes is really a matter for speculation. However, these murders are cause for concern in the sense that they indicate the preparedness of criminals within the racing industry to resort to the most extreme use of violence in furtherance of their illegal purposes.

Money Laundering

It is well established that an important concern for organised criminals is to find a way to "launder" the proceeds of their illicit activity. Money laundering can best be described as the adoption of some technique so as to make dishonestly acquired monies appear to have been legitimately obtained.

Money laundering by necessity involves two equally important steps, first, adequately disguising the real source of revenue, and then the construction of some fictitious source by which the income takes on the veil of legitimacy.

The acquisition of the facade of legitimacy allows criminals more openly to display their wealth by enabling them to distance themselves from their crime and thus live a luxurious and often prominent lifestyle. Acquisition of legitimacy also allows the criminal to use criminally derived funds more openly to earn even more money from legitimate sources.

During the course of hearings, the Commission of Inquiry became aware of a wide array of techniques employed to launder illicitly obtained funds. Included amongst such techniques was employing the services provided by both legal and SP bookmakers. Such bookmaker related techniques include:

* buying winning betting tickets at a premium;

* falsifying significant wins with registered bookmakers; or

* by the simple expedient of placing bets with an SP.[4]

Individuals investigated in association with suspicious cash transactions are commonly known simply to state as a defence that the money was won "betting with an SP", such is the presumed public perception of the lack of criminality involved in a "harmless flutter" with SP bookmakers.

---

4 024 was in the practise of providing individuals questioned about the source of suspicious funds with affidavits stating they were SP winnings from him.

This Commission has received indications that such laundering techniques continue to be used, albeit on a lesser scale and not as openly as was once the case. This is probably as the result of the revelations of the Commission of Inquiry, and also due to the recent introduction of Commonwealth cash transactions reporting legislation.

Costigan Q.C. was pointed in his comments about the attitudes of certain banks and their managers who at times demonstrated a "peculiar disregard for the breach of the criminal law by their customers" (Costigan Report 1984, vol. 4, p. 23) and even facilitating the same by the provision of "managers accounts" and other such unusual facilities. At the time, Costigan Q.C. was making specific reference of the use that one particular SP bookmaker was making of the banking system. Fitzgerald Q.C. (Fitzgerald Report 1989, p. 166) also took up the issue when he said:

> "The attitude of these reputable major commercial organisations as expressed through their senior officers may be regarded as a window into the community's moral attitude: the banks seemed to feel no obligation to help in the exposure and punishment of clandestine and illegal conduct".

Under cash transaction reports legislation, all cash dealers are now compelled by law to report to the Cash Transactions Reports Agency (CTRA) any substantial transaction (in excess of $10,000) or any transaction of a "suspicious nature". The Cash Transaction reporting legislation has included bookmakers and totalizators in its definition of "cash dealers". This was done in response to revelations made before a variety of Royal Commissions that the gambling industry was being heavily utilised in order to launder money (Costigan Report 1984, vol. 4, p. 98).

While the flow of suspect and sizeable transaction reports from the lending institutions, casinos and TABs has been generally good, the CTRA has informed this Commission that the number of reports received from bookmakers in Queensland, is well below the number expected.[5] This fact in itself, is enough to indicate that bookmakers services are still available to criminals in order to launder funds.

Discussions held between officers of this Commission and officers of the CTRA and police responsible for racing industry matters indicate that a degree of cynicism is being expressed about the likelihood of bookmakers ever properly complying with the spirit of the cash transaction reporting requirements.

Further inquiries made by officers of this Commission indicate that bookmakers have, in many cases simply altered the manner in which they are receiving bets - by encouraging larger punters to break their sizable bets down into amounts below the $10,000 threshold for a substantial cash transaction - in that way "avoiding the paperwork".

---

5 Submission of Cash Transaction Reports Agency to Criminal Justice Commission, 22 January 1991, p. 6.

Equally, difficulties are encountered with having bookmakers lodge a suspect transaction report, as the lodgement of such a report requires the bookmaker to first make a personal assessment as to whether the transaction is in any way suspicious. Such is the *milieu* of the racecourse, that seemingly there is no such thing as a suspicious bet.

There are probably a number of factors behind the poor compliance record of Queensland bookmakers with the cash transaction reporting requirements. Firstly, the reporting requirements are relatively new, and some latitude must be allowed for a period of "settling in" and adaptation to the new requirements; further, given the increasing difficulties that bookmakers face in order to survive, most are probably loathe to turn down any bet, irrespective of its source. Such a fact does not however, detract from the fact that the facilities offered by bookmakers continue to be made available for the laundering of illegal profit.

SP bookmakers also have the problem of laundering their profits, and may do so through licensed bookmakers, or adopt some of the host of other techniques used by criminals to launder money.

It is known that SP bookmakers frequently lay off and bet with licensed bookmakers, which suggests to this Commission that SP bookmakers are also still laundering money with licensed bookmakers.

Some police have expressed the view that it is simply too lucrative a proposition for bookmakers ever to contemplate giving up accepting suspicious bets, as it often involves the payment of a 10 per cent commission to the bookmaker by the punter. Police also express the view that as a result of cash transaction reporting requirements, some licensed bookmakers are simply increasing the portion of bets they are accepting on an unrecorded (and thus unlawful) basis.

There are currently some 52,000 telephone accounts with the Queensland TAB (TAB Annual Report 1990, p. 7) and it is known to this Commission that there have been instances of persons using TAB telephone betting accounts to deposit and withdraw funds without betting. The money may stay in the account for a period of time and then later be withdrawn. Having done so, the source of such money can be stated as being TAB winnings, thus giving those funds an air of legitimacy.

Equally, TAB telephone accounts may be used for the purposes of transferring money without any records being kept. A person may go to a TAB agency, deposit a sum of money into an account and monies may then be withdrawn from that account at another location. This system allows for a transfer of funds without a detailed record being kept as would happen if either an Australia Post postal order, or bank transfer were used.

It has come to the attention of this Commission that this system has been utilised by some unlawful bookmakers both to launder money and in order to have debts paid by punters and to settle with punters. It is expected that, as cash transaction reports become more effective, the use of TAB phone betting

accounts for such purposes will become more easily detected and thus less available to unlawful bookmakers. In the event, use of TAB accounts for money laundering should decline. However, it should be recognised that whilst cash transaction reporting legislation will have the effect of "tightening the net", and making the use of TAB accounts for money laundering increasingly difficult, it is also likely that SP bookmakers will simply have further recourse to alternative methods of money laundering.

Money Laundering via On-Course Totalizators

At present, private companies are able to tender and receive authority to operate the on-course totalisator at certain race-tracks in Queensland. A number of persons who can best be described as "professional totalisator investors" are catered for by race clubs and totalisator companies in a manner generally unknown to most people.

Professional tote punters can regularly invest up to $100,000 each race day. Understandably, many race clubs are anxious to secure their attendance at their race-meetings, and have recently entered the practice of offering professional tote punters inducements to attend at their race-meetings and not others. This matter has been addressed to some degree by recent investigations carried out by this Commission as well as by the Division of Racing within the Department of Tourism, Sport and Racing. The concern raised by such a practice for this Commission is that, while racing clubs are competing for the attendance of large scale professional punters, a climate that is conducive to money laundering is also being created. While it is not this Commission's contention that any one racing club or totalizator company is guilty of knowingly facilitating money laundering, it must be recognised that competitive fervour has the potential to cause sufficient laxity to assist those with a criminal intent who may wish to launder the proceeds of crime.

Police recently had cause to investigate the activities of a particular individual. This person was believed to be attending at most metropolitan race-meetings, and was conservatively estimated to be investing over $50,000 per week with bookmakers on a credit basis. This person was also investing heavily with the on-course totalisator.

During investigations into the activities of this person, police had cause to conduct various inquiries with the Queensland manager of one on-course totalisator company, and discussions were held relating to the operational practices of this company. Under its current operating system, this company and possibly all other on-course totalisator companies appear to provide a potential and readily usable facility for money launderers.

The following provides an example of the method by which the on-course totalisator could be used for money laundering:

> Under the current system, a punter could go to four separate tote windows on race day and deposit $5,000 at each. The punter would then be given a ticket with an account number on it. During the course of the day, the punter could then go to five separate tote windows, and withdraw $4,000 at each. He does not have to place bets on his account in order to be able to do this. The hypothetical punter used in this example, may well have obtained the $20,000 from some form of criminal activity. If subsequent police investigations lead to his apprehension and he is challenged and required to prove that he has not obtained this money unlawfully, he is able to show that the money was obtained from a successful day of tote betting at the races.
>
> When money is deposited on the on-course tote, no personal details need to be supplied. Any tote punter who deposits money is simply furnished with an account number. Nor is there a need to place any bets against the credit of account before any money is withdrawn from the account. Equally, there is no central system which records what bets have been placed on each account. Person "A" after depositing this illicitly obtained money could quite conceivably give the tote ticket with the account number on it, to person "B" and person "B" could then withdraw money from the account.
>
> When questioned by police about such a possibility, the manager of the tote company readily agreed that the envisaged scenario was quite possible, and that under the current operating system the on-course totalisator could be manipulated by persons of ill repute. He added that his company had in fact experienced similar problems during the Commission of Inquiry, when various witnesses alleged that they had won money at the race-track. When subsequent requests were received from the Commission of Inquiry to furnish details of these alleged transactions, the company was simply unable to trace whether these persons had won the money in the manner they had asserted.
>
> As on-course totalisator companies receive a percentage of all money invested through tote operations, it stands to reason that the more money invested the more profit that the company will receive. While profitability remains the paramount consideration of on-course totalisator companies, there is the very real possibility that the types of difficulties instanced above will continue. In the event, there is an identifiable need for the introduction of adequate statutorily regulated business practices for on-course totalisator companies. Consideration could be given to making compliance a condition of licence, and failure to comply with such regulations could become grounds for both the imposition of heavy penalties and the suspension of an operator's licence.

Money Laundering via the Casinos

In the past few years, police have identified several groups strongly suspected of being associated with criminal activities frequenting Jupiters Casino. The Casino Crime Squad, based at Jupiters Casino has reported sightings of known crime figures who are believed to be involved in the importation and distribution of heroin as well as in the racing industry, betting at the casino.

Intelligence gathered from various sources indicates that the criminal 027, has often entertained visiting interstate criminals at the casino. Included on this list have been 024, 077, 078, 079, 080 and 081.

Another criminal associate of 027 who frequents the casino is the suspected cocaine dealer 061. 027 is also known to be an associate and friend of 082.

The Casino Control Division have assured police that money laundering through the casino is not possible. However, this would not appear to this Commission as being probable.

A number of people suspected of being SP bookmakers are regularly seen at Jupiters Casino on Saturday evenings. It is estimated that some of these unlawful bookmakers have an individual illegal turnover that is in excess of $10 million per annum. Some licensed bookmakers who are also suspected of engaging in additional SP activity, are also known to bet heavily at the casino.

Although it is probably still too early to be sure, it is expected that the new CTRA requirements will make it increasingly difficult for SP bookmakers to launder their illicit turnovers, particularly via the banks and other lending institutions, as well as via the TAB and casinos. Notwithstanding the recent availability of cash transaction reports to the police, the Casino Crime Squad have reported a degree of difficulty in the past in obtaining the full co-operation of casino management in the identification and apprehension of money launderers.

A number of Casino Crime Squad reports submitted in Brisbane dated from the latter half of the 1980s and viewed by officers of this Commission, repeatedly expressed police consternation at the failure of casino management in this regard.

The problem would appear to be as follows. Casino management has access to detailed records of all large casino bettors who are designated by the casino as being "high rollers". All high rollers are given a code number, and kept on computer record. These records are far more detailed than those capable of being obtained by either police or treasury officials, who have access only to their own on-premises surveillance. Casino management on the other hand are able to trace the complete money trail of all gambling transactions through the player/dealer/supervisor surveillance system.

Casino management have complete records of all high rollers' names and addresses, and both cash deposits made by high rollers to the casino and withdrawals made in the form of cheque payments. The only information that is provided to police are records of cheque disbursements made to winners. Without also having records of the cash deposits made by high rollers to the casino, it is particularly difficult to detect instances of money laundering. The attitude of the casino's management is seemingly based upon the perceived need to protect (and thus encourage) their gambling clients.

It is hoped that this situation will now be rectified by CTRA reports and that substantial deposits will also be reported to police as a matter of course. However, given the difficulties that police have experienced in the past, difficulty may still be encountered by police in receiving information about "suspect" transactions with amounts below the $10,000 threshold for a substantial cash transaction. Such a deposit may be suspicious and should be reported under cash transaction reporting requirements as a suspect transaction, however, its classification as suspect is firstly dependent upon the attitude of the casino.

What constitutes a suspicious transaction to a body motivated by profit, is likely to be subject to a far narrower interpretation, than would be the case if the interpretation of "suspect" were left to the police who are likely to be more aware of the indicia of "suspect", and who are not restrained by the need to turn a profit. If police continue to be denied access to deposit records, notice of smaller transactions that may well be suspicious but have failed to be categorised as such, will continue to be denied to them.

In light of information that has been received by this Commission about money laundering at the casino, it would be prudent if police were given complete access to all gambler transaction records of the casino. Such access must include all gamblers deposit records, and not merely those that are passed to police via the CTRA.

Money Laundering via On-Course Bookmakers

Given that it will become increasingly difficult to launder illicit funds through lending institutions, the TAB, and casinos as a result of cash transaction reporting requirements, it is worthwhile recognising in advance that money laundering via bookmakers is likely to become increasingly evident.

To date, cash dealers have largely been given the option of voluntary compliance with cash transaction reporting requirements by the CTRA. The CTRA has advised that self compliance has been largely successful in the case of banks and other lending institutions. However, bookmakers who are also "cash dealers" under the legislation have to-date, displayed a disappointing level of compliance. The Agency has also reported that Queensland bookmakers have been particularly slow in both accepting and complying with the reporting requirements.

Given the disappointing level of compliance by Queensland bookmakers with the requirements, noted by the CTRA in its submission to this Commission, the agency has recognised that compliance by bookmakers is an area in which they are likely to experience on-going difficulty. Stricter monitoring of bookmakers compliance with reporting requirements may be needed.

Given the poor compliance record of Queensland bookmakers, Queensland should take the initiative in seeking to assist the CTRA in preventing the laundering of money on Queensland race-tracks. It would therefore be appropriate if it were to become a positive requirement incumbent upon all who hold a licence as a registered bookmaker in Queensland, if they were expressly obliged by the conditions of their licence to obey all legal requirements imposed on them under State and Commonwealth law. Presently, convictions are not grounds for the absolute denial or revocation of Queensland bookmakers' licences. If obeying the law were to become a positive requirement for all licensed bookmakers, a licence could then be revoked for failure to comply with the cash transaction reporting requirements. This would then give the State a measure of authority to ensure that all bookmakers comply with this responsibility.

References

Annual Report, TAB 1990.

Royal Commission on the Activities of the Federated Ship Painters and Dockers Union 1984, vol. 4, *Final Report*, (Chairman: F. Costigan Q.C.), Government Printer, Canberra.

Commission of Inquiry Pursuant to Orders in Council 1989, *Report* (Chairman: G.E. Fitzgerald Q.C.), Government Printer, Brisbane.

CHAPTER THIRTEEN

THE EFFECT OF SP BOOKMAKING ON REVENUE

In order to ascertain the impact of SP bookmaking on the community, it is desirable to make some assessment of its impact upon government revenue. Apart from the often highlighted issues of increased crime and violence, and the social costs of SP bookmaking which are difficult to assess in any meaningful quantitative way, the most readily identifiable impact of SP bookmaking is its effect on revenue.

The impact of SP bookmaking on revenue[1] can be broken down into various categories. These are as follows:

* revenue denied to the lawful gambling industry and the wider economy;

* revenue denied to government from direct taxation of gambling turnover; and

* revenue denied to government due to "leakage" from the legal economy to the "black economy".

Police experienced in the investigation of SP bookmaking in Queensland have estimated that if there were "no such thing" as unlawful bookmaking, and current SP punters were therefore obliged to place their bets elsewhere, then 60 per cent of current SP turnover would go to on-course bookmakers, and the other 40 per cent would be shared between the TAB, other forms of gambling (such as casino gambling) or would not be gambled and would be simply "lost" to the gambling industry.[2]

In their submission to this Commission, the Queensland TAB have estimated that at current levels, their revenue would increase by $200 million annually if SP bookmaking were to be eradicated.

If an assumption is made for the purposes of this exercise that these estimates are correct, it is then possible to set a lower limit for SP turnover. This will be when the "leakage" from legal betting is zero. That is, in the circumstances that SP bookmaking is eliminated, then 60 per cent of SP turnover goes on-course, and 40 per cent goes to either the TAB or another form of lawful gambling.

If leakage to other forms of gambling is for the moment excluded, and it is assumed that the former SP punter now only has the option of TAB or on-course bookmaker betting, we can notionally determine that $200 million is 40 per cent of SP turnover, and that the total SP turnover is $500 million (=200/.4). In these

---

1 The effect of SP bookmaking on revenue is discussed here only in terms of its effect on the legal receipts of government and the private sector. The costs of SP bookmaking to the community will be discussed later.

2 This estimation has been based upon some personal assessment of the nature and betting habits of the "average" SP punter by the police involved.

circumstances, the turnover enjoyed by on-course bookmakers would increase by $300 million.

Government revenue benefits significantly from gambling turnover. Currently, the TAB contributes to State consolidated revenue at the rate of 6.5 per cent of its total turnover. If TAB revenues were to increase by $200 million, State consolidated revenue would gain an additional $13 million (6.5 per cent of $200 million).

Licensed bookmakers also pay tax on turnover, currently at the rate of one per cent. If turnover of registered bookmakers were to be increased by $300 million, then State consolidated revenue could expect to receive an additional $3 million from licensed bookmakers.

Therefore, it can be said that on these estimates of the size of the SP turnover in Queensland, State consolidated revenue would increase by $16 million as the direct result of expected increases in receipts of betting turnover tax.

This exercise can be repeated using other estimates of the size of the SP industry. Commissioner Connor Q.C., estimated that the SP turnover for Victoria in 1983 was $1 billion, and that of New South Wales in that year was $1.8 billion. At the time, legal racing gambling turnover was $1.567 billion for Victoria, and $2.556 billion for New South Wales.

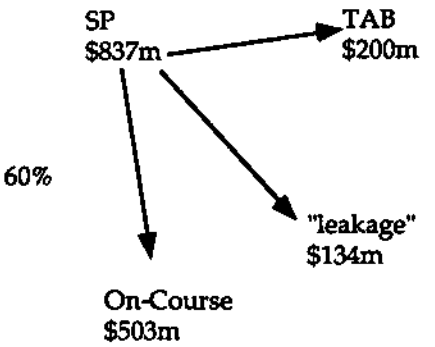
From such estimates we are able to determine that the SP trade in Victoria and New South Wales was somewhere in the vicinity of 63.8 per cent of legal turnover in Victoria and 70.4 per cent of legal turnover in New South Wales. The following year (1984), Commissioner Frank Costigan Q.C., estimated that the national SP industry had an annual turnover of $4 billion, while at that time the annual turnover for all legal racing gambling in all States and territories was $6.9 billion, which would mean that magnitude of SP turnover was the equivalent of 58 per cent of all legal turnover in 1984.

As the "ratio" determined by Costigan Q.C. is more conservative than those derived by Connor, and as the Costigan Royal Commission had more opportunity to gather more detailed evidence, it is perhaps worthwhile also notionally to apply it to Queensland.

Applying the ratio of SP turnover to legitimate turnover estimated by Costigan Q.C. in 1984 (58 per cent) to the 1988-89 national legal racing turnover of $10.4 billion gives an estimate of $6 billion as being the turnover for SP bookmaking in the same period. Equally, applying the same rate to Queensland State legal racing turnover for this period ($1.444 billion) gives an estimate of $837 million for SP turnover in Queensland in 1988-89.

If $837 million is then taken to be the turnover of SP bookmaking in Queensland in 1989-90, and the figure of $200 million is accepted as the amount of revenue denied to the TAB, and 60 per cent of current SP turnover were to find its way

on-course, this would then give the following in the event that SP bookmaking was eradicated:



Contributions to State consolidated revenue from the TAB will be the same ($13 million). Contributions to State consolidated revenue from on-course turnover tax will increase to $5 million. Thus it can be said that if the "Costigan ratio" figure of $837 million is also a reasonable estimate of the current size of the SP bookmaking industry in Queensland, there is a direct loss to State consolidated revenue of $18 million.

It should be noted however, that the revenue impact of SP bookmaking is not confined in any way to the denial to government of turnover tax revenue opportunities. State consolidated revenue will also suffer in other ways.

The level of State revenue is connected to the level of economic activity. The greater the level of economic activity in any given year as indicated by such indicators as house and land sales, employment, etc. the greater the potential level of State consolidated revenue.

It is possible to derive an equation that will give us the relationship between State consolidated revenue and the level of economic activity in the State of Queensland, as measured by Gross State Product (GSP).

If the relationship is of the form

$R = aG^b$, where:

R is the equivalent of State consolidated revenue (Taxes, fees and fines);

G is equivalent to Gross State Production (GSP); and

a and b are numbers; then:

b is the elasticity between R and G. That is, it is the percentage change in R brought about by a one per cent change in G.

For Queensland for the years 1980-81 to 1989-90 this relationship was:

$$R = 0.001036G^{1.335}$$

That is, for every 10 per cent change in the Gross State Product, State consolidated revenue changed by 13 per cent.

If the turnover of unlawful bookmakers is taken to be $837 million, and if all of this turnover were to then stay in the legitimate economy in the event of the demise of SP bookmaking, State consolidated revenue would increase by a further $50 million as the result of increased economic activity in the legal economy.

It is however, most unlikely that all of SP turnover will stay in the legal economy if SP were to be eradicated. Therefore we can set some limits to the likely revenue loss for an $837 million SP turnover; they are $18 million direct revenue loss, and $50 million for induced economic activity loss.

An estimate provided by the former Bureau of Criminal Intelligence puts SP turnover in Queensland at $500 million. Repeating the above analysis for that estimate, the corresponding figures are $16 million for direct revenue loss and $30 million for induced economic activity loss.

Similar calculations were carried out by the Commission on the footing that the SP turnover for Queensland was $1 billion. This figure was chosen on the basis that police in both Queensland and New South Wales believe that the margin for profit in SP bookmaking may run as high as 20 per cent. Some speculators have placed the collective profit of SP bookmakers in Queensland as high as $200 million. If that figure is to be accepted, and if the police estimation of "margin for profit" is reliable, that would then place unlawful turnover at $1 billion.

While it is quite impossible to verify the accuracy of an assumed $200 million profit for the totality of the SP bookmaking industry in Queensland, it is perhaps useful to take the figure as acceptable as an upper limit for this type of "range analysis". All of the results are summarised below:

SP Turnover $m	Extra TAB Revenue * $m	Extra on-course revenue $m	Leakage $m	Revenue loss direct $m **	Revenue loss economic activity $m
500	200	300	-	16	30
837	200	503	134	18	50
1000	200	600	200	19	60

* The figure of $200 million is based on the TAB estimate of the loss to TAB turnover caused by SP bookmaking.

** The estimates in this column are included in the economic activity revenue loss estimates.

CHAPTER FOURTEEN

UTILIZATION OF TELECOM FACILITIES

The use of telecommunications facilities is central to most current SP activities, in particular:

- Most bets are placed with SP bookmakers by telephone calls either directly to the SP, or to a front man representing the SP. The telephone call may be made directly to an SP's number or indirectly via a call diversion device. Bets may be placed by punters or by other SPs laying off some of the bets taken by themselves.

- Up to date pricing information is an integral part of SP activities. The use of telecommunications facilities is central to the derivation of up to date pricing information and its dissemination.

SP bookmakers are circumspect in all aspects of their activities. What physical traces there may be of SP activities are usually minimal and so kept as to be able to be successfully obliterated at short notice.

Most SPs deal on a first name basis with their clients. Since bets are usually received via telephone it is unlikely that becoming a client of an SP bookmaker will reveal the identity of other clients or even the extent of an SP's operations. It is for these reasons that undercover police operations against SPs have been time consuming, and largely ineffectual.

Clearly the monitoring of telephone calls received or made by suspected SPs would provide very strong direct or circumstantial evidence of SP activity, as well as the identities of those involved. However, since 1960 and until recently[1] Commonwealth legislation has been interpreted as precluding Queensland law enforcement agencies from access to any information that could be derived from monitoring suspected SP telephone calls, at least in relation to SP activities *per se*.

A brief review of both the physical elements of the telecommunications system and pertinent Commonwealth legislation reveals the nature of the difficulties encountered by law enforcement agencies in their efforts to procure evidence of SP activity.

All telecommunications depend on the conveyance of electromagnetic energy in one form or another. A common form of transmission, which would be familiar to most Australians, is the transmission of speech via DC current conveyed over metal wires and switching between one telephone receiver and another.

---

1 23 May 1991

Despite appearances, a telephone call comprises several transmissions of electro magnetic energy. One group of these signals only carries the actual telephone conversation. Other signals are generated but these merely facilitate direct voice communications.

The monitoring of voice communications signals will enable a person, with adequate equipment, to listen to or record a telephone conversation.

The monitoring of facility signals will not permit any person, no matter what equipment they possess, to monitor an actual telephone conversation. Nor can any information be obtained from which the contents of a telephone conversation could be derived.

By the monitoring of these facility signals it can be discerned when a telephone number was called, the duration of the call and whether the call was local or STD. In the case of Mobile Phones the number of the service from which an incoming call was made can also be discerned. It is understood that through special monitoring such information can also be obtained in relation to ordinary telephones.

All information derived from monitoring of telecommunications is initially related to the telephone service number monitored. Additional information from a carrier, such as Telecom, showing to whom the service is allocated is crucial in most instances to make the monitoring derived information meaningful.

By section 51(v) of the Constitution of the Commonwealth, on and from 1 January 1901, the Commonwealth had powers to make laws with respect to postal, telegraph, telephonic and other like services. Until 1960 the Commonwealth had used this legislative power merely to prohibit physical interference with telecommunications facilities. Section 130 of the *Post and Telegraph Act 1901* (Cwth) is typical of such provisions. It was no contravention of this provision to monitor a telephone conversation or facility signals unless damage or disruption to telegraphic services occurred. Until 1960 interception practices, at the Commonwealth level, were only regulated by Prime Ministerial direction.

In 1960 the *Telephonic Communications (Interception) Act 1960* (Cwth) was enacted. Under this legislation, as originally enacted, interception of a telephonic communication could only legally occur in two situations. Neither situation enabled the monitoring of telephonic communications for general law enforcement purposes, let alone the gathering of evidence of SP activity. Upon considering this legislation the High Court found a Commonwealth legislative intention to cover the field.[2] Whilst section 109 of the Constitution provides that Commonwealth legislation in a given area prevails over state legislation in the same area and that inconsistent state legislation is invalid, section 109 does not, *prima facie*, prevent the enactment of state legislation that is not in conflict

2 *Miller v Miller* 22 ALR 119.

with Commonwealth legislation. A legislative intent to cover the field on the part of the Commonwealth has the effect of rendering any state legislation in the same area inconsistent with the Commonwealth legislation[3] and hence invalid.

Surprisingly the law enforcement ramifications of this legislation were simply not considered by the Commonwealth Parliament before its enactment.

The 1960 Act was replaced by the *Telecommunications (Interception) Act 1979* (the *TI Act*). The same legislative intention to cover the field has been found in relation to that Act.[4]

Although the *TI Act* extended the circumstances in which telephone conversations could be legally intercepted, it again did not extend to more general law enforcement purposes.

However, the *TI Act* was amended by the *Telecommunications (Interception) Amendment Act 1987* and the *Crimes Legislation Amendment Act 1991* to enable warrants to be obtained in relation to certain serious State and Commonwealth offences, permitting the interception of telephone conversations to facilitate the investigation of those offences. The key elements of the legislative scheme are discussed more fully below. It is observed, at this point, that the operation of the *TI Act* was to be reviewed two years after the commencement of the 1987 amendments. This review is currently under way.

At present, the position remains that since 1960 the power to monitor telephone communications and use information derived therefrom has depended entirely upon Commonwealth legislation.

Section 7(1) of the *TI Act* prohibits the interception of communications passing over the telecommunications system. However section 7(1) does not apply to certain interceptions, most importantly those pursuant to a warrant.[5]

The word "communication" is defined in section 5(1) of the *TI Act* so as to include a conversation and a message. The term "telecommunications system" is also defined in section 5(1). Without attempting any recital of this definition, the telecommunications system includes the normal telephone service present in most Australian homes and businesses and the mobile telephone system.

As the *TI Act* has been amended not less than 19 times since its enactment, it is difficult to interpret and apply. In particular, there is some uncertainty as to what is a "communication" within the meaning of the Act. The meaning of the term "communication" determines to what extent the *TI Act* applies in any given situation. Several interpretations are cogently arguable and the

---

3 *Ex parte Mclean* (1930) 43 CLR 472 per Dixon J at 483.

4 *Edelsten v Investigating Committee of New South Wales* (1986) 7 NSWLRC 222 at 230 per Lee J. The TI Act has been amended considerably since being considered in this case, but not so as to in any way derogate from the legislative intention to cover the field then found.

5 Section 7 (2)(b). None of the other section 7 (2) exceptions would be relevant to detecting SP activities per se.

interpretation placed upon the term by Commonwealth organisations (in particular Telecom) in the past has been so wide as to include both telephone conversations and facility signals.

What constitutes the interception of a communication passing over the telecommunications system is defined in section 6(1) of the *TI Act* as meaning the listening to or recording of a communication in its passage over the telecommunications system without the knowledge of the person making the communication.

Section 6(2) provides that certain activities do not constitute an interception of a communication, such as a normal use of a telephone or approved answering machine.

Where an interception of a communication in its passage over the telecommunications system is involved, it is essential to do so pursuant to a warrant issued under the *TI Act*.

Putting aside warrants issued to ASIO pursuant to part III of the *TI Act*, which are not relevant to SP activities *per se*, warrants may only be issued in respect of a telecommunications service upon an application to a judge by an agency.[6]

Such applications can only be made by an agency within the meaning of the *TI Act*. For the purpose of such applications an agency is either a Commonwealth agency or an eligible authority of a State in relation to which a declaration under section 34 is in force.[7]

For the purpose of Queensland, only the Queensland Police Service is an eligible authority. Although advice has been received from the Commonwealth Attorney-General's Department that as part of its review of the legislation, it will be recommended that it be amended to include this Commission as an eligible authority.

By section 34, subject to section 35 of the *TI Act*, the Premier of a State can ask that the Minister[8] declare that an eligible authority of that State is an agency for the purposes of the Act. By section 35 the Minister may only make a declaration under section 34 if satisfied that there is enacted State legislation as prescribed that section.

Once an eligible authority is declared to be an agency, it may apply for the issue of a warrant on behalf of that agency in accordance with the *TI Act*.

---

6 See section 39 of the *TI Act*.

7 See the definition of "eligible authority" in section 5 (1) of the *TI Act*.

8 The word "Minister" is not defined by the TI Act . However, by section 17 of the *Acts Interpretation Act* 1901 (Cwth), the phrase "The Minister" means the Minister for the time being administering the Act. In the case of the *TI Act*, the Minister is the Commonwealth Attorney General.

The power conferred by a warrant obtained by an agency may only be exercised by certain members of the Australian Federal Police who may be assisted by a designated technical officer.[9]

However there are ancillary provisions permitting the receipt and utilisation of the information derived from the exercise of an authority conferred by a warrant on an agency.[10]

The Queensland Police Service has not been declared an agency by the Minister as permitted by the *TI Act*.

If, as anticipated, the Commission becomes such an eligible authority, it will also be necessary for it to be so declared before it can make application for the use of a warrant in accordance with that Act. The question of whether the power to intercept telephone conversations should be granted to the Queensland Police Service (and by implication the Commission) is considered in the issues paper on police powers in Queensland prepared jointly by the office of the Minister for Police and Emergency Services and the Commission (*Police Powers in Queensland: An Issues Paper* 1991, pp. 73-75).

However, by virtue of the present provisions of the *TI Act*, even if the Queensland Police Service or the Commission were to be declared as agencies, it would be of little practical significance in relation to the detection and prosecution of unlawful bookmaking or related offences. Warrants can only issue in relation to two classes of offences which are within the meaning of the term "serious offence" as defined in section 5(1) of the *TI Act*.[11]

Class 1 offences are defined by reference to a list of prescribed or equivalent offences such as murder, kidnapping and narcotics. Class 2 offences are defined by reference to conduct, but the conduct must constitute an offence punishable by a maximum term of imprisonment of at least seven years.

No regular SP bookmaking activity *per se* comprises either a Class 1 or Class 2 offence with the consequence that a warrant could not be obtained to assist in the investigation of unlawful bookmaking or related offences.

Further, even if a warrant could be so obtained, there is no provision in the *TI Act* which would permit information derived from the execution of such a warrant to be given in evidence in relevant prosecution proceedings.[12]

By section 63 of the *TI Act* lawfully obtained information or information obtained from the interception of a communication in contravention of section 7(1), shall not be communicated to another person, made use of, made a record of or given in evidence except as permitted by Part VII of the *TI Act*. Part IIA of the

---

9 See section 55 of the *TI Act*.

10 See sections 66, 67, 68, 71, 72 and 73 of the *TI Act*. None of these provisions enlarge upon the effect of sections 74 or 75.

11 Sections 5(1) and sections 45 and 46 of the *TI Act*.

12 That is proceedings by way of prosecution of unlawful bookmaking and related offences under the *Racing and Betting Act 1980 (Qld)*.

TI Act applies notwithstanding section 63[13] and permitted certain intercept information to be given to the Fitzgerald Inquiry and further communication therefrom in prescribed circumstances.

The phrase "lawfully obtained information" is relevantly defined in section 6E as meaning information obtained from the interception of a communication passing over the telecommunications system otherwise than in contravention of section 7(1).

Of most note is section 74(1)[14] which permits lawfully obtained information to be given in evidence in exempt proceedings. So far as relevant "exempt proceedings" is defined[15] so as to include proceedings in a court or examination of witnesses in a court by way of prosecution for an offence[16] punishable by life imprisonment or for a period, or maximum period, of at least three years.

Section 75(1) permits information obtained by an interception in contravention of section 7(1) to be given in evidence in certain circumstances in exempt proceedings, but only where the contravention of section 7(1) is a non-substantial defect or irregularity.[17]

Section 76 enables the giving of information in evidence in relation to prosecution of breaches of various provisions of the *TI Act*.

Sections 74, 75 and 76 are the only provisions of the *TI Act* that permit the giving in evidence of information to which the Act is applicable in proceedings by way of prosecution. Hence there is no provision in the *TI Act* which permits intercept derived information to be given in evidence in relation to proceedings by way of prosecution of unlawful bookmaking and related offences under the provisions of the *Racing and Betting Act 1980 (Qld)*.[18]

In short all information to which the *TI Act* is applicable is not available as evidence in the prosecution of unlawful bookmaking and related offences.

There can be no doubt that the denial to State police forces of access to current powers under the *TI Act* has inhibited them in detecting and prosecuting SP related offences during a period in which there has been the growth of SP bookmaking into a multi-million dollar industry with very real connections to organised criminal activities involving drug trafficking and money laundering both at a state and national level.

---

13 See section 8J of the *TI Act*.

14 Which appears in part VII of the *TI Act*.

15 See section 5B(a) of the *TI Act*, and related terms defined in section 5 (1).

16 Proceedings by way of prosecution include committal proceedings; see section 6J of the *TI Act*.

17 See section 75 (2) of the *TI Act*, where the terms "irregularity" or "defect" are defined so as to exclude substantial defects or irregularities.

18 The principal unlawful bookmaking or related offences under the *Racing and Betting Act 1980* (that is those under sections 214 to 217), are not punishable by a maximum term of imprisonment of three years; see sections 218, 218A and 236.

It is timely to consider what law enforcement methods are open to police in the absence of access to information derived from the interception of telephone calls in respect of unlawful bookmaking and related activities. The police can seldom expect to receive a complaint about SP activities. Offences related to SP activities are generally victimless or at the very least the victim can make no complaint without implicating him/herself. In the absence of complaint Queensland police are compelled to rely upon the use of undercover agents or raids. These methods have proved to be largely ineffectual. An undercover agent would have to remain under cover for several months in order to gather evidence against an SP, and even then usually could only give evidence of the SP's dealings with him. Police raids rarely obtain anything other than minor physical evidence of the activities of the SP at about the time of the raid. All other meaningful physical traces of an SP's activities have usually been obliterated by the SP either as a matter of course or between the commencement and conclusion of the raid.

Fortunately, there is now other information exclusively derived from facility signals only, which is lawfully available to law enforcement agencies and would be of great assistance in the detection and proof of an unlawful bookmaking and related offences. This is known as CLI and CCR information.

CLI or call line identification information is that derived from the facility signals mentioned above. It records the signals that generate the number dialled from a service and the date and time of the establishment of the communication channel.

CCR or call charge record information is CLI information, plus the monitoring of what is known as "B" signals. The B signal is generated when a telephone conversation is terminated. This coupled with the CLI information allows computers using specialised software to determine the duration of a call and the proper charge for a call.

This information had been thought to be unavailable to law enforcement agencies because of the difficulties in the interpretation of "communication" within the *TI Act* until an advice of the General Counsel to the Commonwealth Attorney-General, on 23 May 1991. This opinion is that at least on and after 1 July 1989 CLI and CCR information was not derived from the interception of a communication passing over the telecommunications system. That is, on and after that date, the *TI Act* does not apply to either CLI or CCR information. This opinion is based on 1989 amendments to the definition of "communication" in the Act. As both CLI and CCR information are derived exclusively from the facility signals generated by a telephone call, it is probable that the General Counsel's reasoning is equally applicable to all monitoring of facility signals.

Commission research and investigation, and the experience of the Fitzgerald Inquiry, reveals that SP activity is characterised by many short telephone calls to SP operators or their staff. CLI and CCR information is invaluable for:

- Gathering intelligence information concerning and monitoring the activities of SPs.
- Determining the nature and extent of SPs' operations.
- Profiling SP activity and determining targets for police raids and the priority of those targets.
- Detecting SP activities and providing direct or circumstantial evidence of SP activity.

It was such information which was available to the Fitzgerald Inquiry by virtue of Part IIA of the *TI Act*. It proved to be of immense value during the Inquiry's investigation into SP bookmaking activities and assisted in identifying who engaged in these activities and their links to other criminal identities.

Whilst the *TI Act* is currently interpreted as being no longer applicable to the monitoring of facility signals, and although the Commission agrees with this interpretation, it should be borne in mind that the issue has not as yet been judicially considered.

The Commission understands that the Commonwealth Attorney-General's Department is considering an amendment to the definition of 'interception' to clearly exclude information about customer and network use, such as CLI and CCR information from the scope of the Act.

This Commission considers that any such amendment would more closely align with what is ordinarily understood by the word 'interception'. It would support such amendment and recommends that the State support any such proposal.

In this Commission's view it would be a sufficient condition precedent to the disclosure of such information that it be certified to be "reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for protection of the public revenue". This is consistent with section 88(3)(g) of the *Telecommunications Act 1991* and regulation 3(e) of the recently repealed Australian Telecommunications Corporation Regulations 1989. Access by law enforcement agencies to electronic white pages information is currently obtained on this basis.

It is considered that any other control of the obtaining and dissemination of CLI and CCR and other facility signal information which prevents State law enforcement agencies from obtaining access to or giving evidence of such information in relation to SP activities would be a retrograde step in respect of the detection and prosecution of SP related offences.

Having regard to the growth of the SP bookmaking industry and its connections with organised crime as previously discussed, it is considered that there can be no justification for preventing state law enforcement agencies access to CLI and CCR information and the power to use such information in order to bring those who engage in SP and related criminal activity to justice.

However the monitoring of telephone conversations or facility signals in itself is of no use unless that information can be given in evidence and given in such a way that implicates a particular person. All such information is initially related to a particular telephone service. In order to implicate a particular person in SP bookmaking carried on from that service it is essential to obtain evidence as to who applied for the service, to whom it has been allocated, when it was connected, and its location. This information can only be obtained from carrier records.

Further because facility signals are no longer to be regarded as intercept information within the meaning of the *TI Act*, CLI and CCR information can only be obtained from carrier records. Therefore the assistance of carriers is vital. Although presently Telecom is the sole carrier, the Commonwealth Government has announced an intention to allow competition from another carrier. In this respect, reference is made to the *Telecommunications 1991*[19] *(The Telecommunications Act).*

The *Telecommunications Act* creates a system whereby eligible corporations may apply to the Minister[20] for a general telecommunications licence or a public mobile licence.[21] A corporation so licensed is a carrier.[22]

The Minister has power to declare conditions upon which licences are granted from time to time.[23] Such conditions can be declared and become effective in relation to a licence even after it has been granted.[24]

It is understood that the Minister intends to declare conditions applicable to all carriers' licences. These conditions are still being determined. It is also understood that, the licence conditions in addition to requiring that carriers provide reasonable assistance in the enforcement of the law will address the cost of providing such assistance to law enforcement agencies.

The Commission is most concerned, not with the nature of the assistance that Telecom has provided and is expected to provide, but the cost of that assistance. The Commission in association with other law enforcement agencies, has

---

19 The Telecommunications Act 1991, except for sections 116 and 120, became entirely operational on 30 July 1991; see section 2.

20 The word "Minister" is not defined by the *Telecommunications Act*. However, by section 17 of the *Acts Interpretation Act 1901 (Cwth)*, the phrase "The Minister" means the minister for the time being administering the Act.

21 Section 56 of the *Telecommunications Act*.

22 See the definition of the terms and "carrier", "general carrier" and "mobile carrier" in section 5 of the *Telecommunications Act*.

23 See section 64 of the *Telecommunications Act*.

24 See section 65 of the *Telecommunications Act*.

expressed its view that there is a public interest in carriers assisting in the enforcement of the criminal law and that the fees charged by carriers for assistance should be on a strictly cost recovery basis, and not on a commercial basis.

The Commission and other law enforcement agencies are concerned to ensure that the fee structure not exceed the cost to Telecom of providing this assistance. Otherwise the costs of law enforcement agencies utilising carrier-provided information will inhibit the effective performance of their functions and responsibilities. In particular, such charges would further inhibit the effectual policing of SP activities in Queensland and elsewhere. The Commission is therefore concerned that any licence conditions require that the cost of providing assistance by carriers to law enforcement agencies be limited to cost recovery.

Finally, reference is made to the *Privacy Act* which provides that all agencies[25] shall not do an act or engage in a practice that breaches an Information Privacy Principle.[26] Section 14 of the *Privacy Act* sets out the Information Privacy Principles. By principle 11, so far as relevant, a record-keeper[27] in control of a record containing personal information is not to disclose the information to a person or body, unless the disclosure is reasonably necessary for the enforcement of the criminal law, or of a law imposing a pecuniary penalty, or for protection of the public revenue. The Commission does not consider this to be an inappropriate limitation on the dissemination of personal information to law enforcement agencies.

From this brief review it can be seen that since 1960 the Commonwealth legislation concerning telephone interceptions has inhibited law enforcement agencies in detecting and prosecuting SP bookmaking activities. Although certain information, including CLI and CCR information is now available from Telecom, there is a danger that limitations, including the cost of obtaining it, will continue to produce this result.

References

Attorney-General's Department June 1991, *Review of the Telecommunications (Interception) Act 1979.*

Office of the Minister for Police and Emergency Services and the Criminal Justice Commission 1991, *Police Powers in Queensland: An Issues Paper,* Queensland Government Printer, Brisbane.

25 The word "agency" is defined in section 6 (1) of the Privacy Act in such terms as would include a carrier within the meaning of the *Telecommunications Act* as well as Austel.

26 See section 16 of the *Privacy Act.*

27 The term "record-keeper" is defined in section 10 (1) of the *Privacy Act* so as to include an agency that has possession or control of personal information. Information concerning to whom a phone service has been allocated and their address would be personal information and hence a carrier would be a record-keeper in relation to such information.

CHAPTER FIFTEEN

COMPULSIVE GAMBLING

Any study of the unlawful gambling industry in Queensland would not be complete without including some consideration of the social impact of gambling, particularly that caused by unlawful bookmakers.

Such a discussion becomes especially important when it is borne in mind that this Commission has recognised that one of the most effective methods for suppressing and perhaps even finally eradicating unlawful bookmaking will be to expand the avenues for lawful gambling so that it can adequately respond to the demands of that sector of the gambling market that is currently catered for unlawfully.

There are those in our community that are addicted to gambling. These people are unable to control the grip that addiction has over their lives. As a result their health, work performance and families suffer as a direct consequence of that addiction. These individuals will satiate their addiction by any avenue open to them. Unfortunately for them, legal gambling options will often become unavailable. This is because their betting judgement is often erratic, controlled as it is by their addiction and, as a result they lose heavily, and will not be given credit.

Unable to obtain credit from the casino or the TAB, and soon ignored by legal bookmakers as being bad risks, they may have little option but to turn to an unlawful bookmaker who will offer them credit, in order to continue to gamble. As a result, the inveterate compulsive punter is particularly susceptible to being preyed upon by the SP bookmaker.

Mention must also be made of the ominous spectre of illegal debt enforcement. Operating as they do outside the parameters set for lawful bookmaking, SP bookmakers are able to employ to full effect wholly unlawful methods of debt enforcement by threat of physical harm.

Given the threat of bodily harm (or even death) that the SPs are able to use as an incentive to ensure prompt payment of punting debts, the quality of life and well being of individuals who suffer from gambling addiction are thus capable of being threatened by the operations of SP bookmakers.

Although it is perhaps an inherently flawed exercise to try to attribute a notional "dollar cost" to the damage that gambling addiction inflicts upon the social fabric of our community, it must be recognised that gambling addiction does create a significant financial burden that must be borne by the healthcare system, various government and private welfare agencies, employers and insurance companies. Additionally, compulsive gambling creates a recognisable burden upon the criminal justice system, as some major thefts and cases of fraud against

employers can be directly attributed to the financial desperation of gambling addicts. A proportion of the domestic disputes to which police are summonsed also have their origins in family tension that is the result of gambling addiction.

While economic costs of the types raised above can be distilled and then tabled on a balance sheet, the devastation that compulsive gambling can inflict upon the health, personal esteem and family life of individuals who suffer from the affliction is a social cost that cannot ever be quantified.

As a nation, Australians are heavy gamblers. In 1988-89 Australians legally wagered $24.655 billion (Tasmanian Gambling Commission 1990). During the same period, the unlawful gambling industry was estimated to have a turnover of $15.5 billion,[1] making for a total gambling turnover for the nation in 1988-89 in excess of $40 billion.

It has been estimated that 87 per cent of the Australian population gamble (Reverend John Tully 1990, p. 2). While it is both incorrect and somewhat alarmist to state that simply because 87 per cent of the population gamble, it is therefore a significant social evil, recognition should be made of the fact that a minority of gamblers are unable to control what is, for the majority, purely an occasional and recreational pastime.

Pathological gambling has been included in the *Diagnostic and Statistical Manual of Mental Disorders* of the American Psychiatric Association since 1980. The following diagnostic description of compulsive gambling is given in that publication:

> "The essential features of this disorder are a chronic and progressive failure to resist impulses to gamble, and gambling behaviour that comprises, disrupts, or damages personal, family, or vocational pursuits" (American Psychiatric Association 1980, p. 324).

Pathological gambling should be distinguished from social gambling where acceptable levels of loss are predetermined, and includes at least four of the following symptoms:

(1) frequent preoccupation with gambling or with obtaining money to gamble;

(2) frequent gambling of larger amounts of money or over a longer period of time than intended;

(3) a need to increase the size and frequency of bets to achieve the desired excitement;

(4) restlessness or irritability if unable to gamble;

(5) repeated loss of money by gambling and returning another day to win back losses ("chasing");

---

1 Estimate prepared by the Australian Bureau of Criminal Intelligence.

(6) repeated efforts to reduce or stop gambling;

(7) frequent gambling when expected to meet social or occupational obligations;

(8) sacrifice of some important social, occupational, or recreational activity in order to gamble; and

(9) continuation of gambling despite inability to pay mounting debts, or despite other significant social occupational, or legal problems that the person knows to be exacerbated by gambling" (American Psychiatric Association 1980, p. 325).

Gamblers Anonymous describes compulsive gambling as "an illness, progressive in nature, which can never be cured, but can be arrested" (Toms 1990, p. 2). The terms pathological gambling, compulsive gambling, excessive gambling and addictive gambling are interchangeable. Compulsive gambling may become more vigorous during times of stress which, given the nature of compulsive gambling, is highly likely to occur.

The Reverend John Tully has estimated that about 35 per cent of compulsive gamblers will engage in criminal activity, usually of a non-violent nature - such as fraud or forgery, in order to sustain their gambling habit (Reverend John Tully, p. 1).

In a New South Wales study (Dickerson 1988, p. 210) conducted in 1988, 77 patients seeking behavioural treatment for excessive gambling at the Psychiatric Unit of the Prince of Wales Hospital, Sydney and 32 members of Gamblers Anonymous, were interviewed regarding crimes committed by pathological gamblers. From that study, the following results were obtained:

* Of those interviewed, 54 per cent admitted to a gambling related offence and 21 per cent had been charged (Dickerson 1988, p. 210).

Numerous studies have been undertaken by researchers in the field of compulsive gambling in recent times. A brief summary of some of the findings of this research indicates the following:

* In one section of the Public Service in an Australian State 80 per cent of persons dismissed for dishonesty were gamblers (Reverend John Tully, p. 7).

* In some instances, compulsive gamblers may seek loans from illegal sources such as SP bookmakers in order to satisfy their addiction.

* A survey was conducted of Gamblers Anonymous members in Victoria, by Professor Michael Walker in June 1987. Out of approximately 90 regular members of Gamblers Anonymous in Melbourne, 12 surveys were completed and returned. Based on the findings of this survey, Fred Burns

had these conclusions to make: "compulsive gamblers are much more prone to lose jobs as a result of active gambling; steal from their employers; and take more days off work than non-compulsive gamblers" (Burns 1988, p. 5).

It would appear that there is currently a trend amongst compulsive gamblers in Australia to shift away from gambling on racing towards gaming - such as gambling at casinos, poker machines, lotteries, pools and lotto (Social Impact Report 1988, p. 78). It is widely believed that these types of gambling are of a kind which is most attractive to compulsive gamblers.

Some research has found that casinos offer the most seductive environment of any of the various gambling forms for compulsive gamblers (Walker 1986, p. 14). Doctor Alan Carless suggests that the nature of poker machine gambling is also likely to result in compulsive or uncontrolled gambling. He bases his argument on the following beliefs regarding this form of gambling:

* The erroneous belief that there is a greater chance of winning from a machine that has not had a jackpot in a while;

* The use of names and symbols on the machine that suggest wealth and good fortune; and

* Listing of the size of the jackpot without indicating the chance of winning.

Carless also claims that the "nature of the machine itself with its rapid succession of stake and play interspersed with relatively frequent small pays made it addictive" (*Report of the Board of Inquiry into Poker Machines* 1983, para. 7.01, hereinafter referred to as the Connor Inquiry 1983).

The same 1983 Victorian study found that 15 per cent of compulsive gamblers had poker machine problems. There is also an indication that compulsive gambling is more closely related with the "continuous" forms of gambling - off and on-course betting, poker machines, casino games, bingo, pinball machines, keno - rather than the discontinuous forms such as lotteries, lotto, pools and raffles (Connor Inquiry 1983, para. 7.02).

It has been estimated that approximately 10 per cent (or less) of the population gamble regularly (once a week or more often), on continuous forms of gambling (Dickerson 1988, p. 196). In a Canberra study of regular TAB bettors and poker machine players (those that gamble once a week or more often), it was estimated that about 2.9 per cent and 5.1 per cent respectively of these regular bettors satisfied the diagnostic criteria for excessive gambling (Dickerson 1988, p. 202).

Conducted surveys (Blaszczynski 1986, p. 307) and clinical reports[2] indicate that there is a positive relationship between participation rates in gambling and the number of available gambling outlets (Blaszczynski 1986, p. 307). As a result, it can be concluded, that an increase in the array and opportunities for legal

2 Moran 1974 in Walker, M. 1986.

gambling will increase the number of people participating in legal gambling. With an increase in the total number of gamblers there will almost certainly be a corresponding increase in the number of compulsive gamblers. However, this is certainly not to say that all gamblers will be, or will become compulsive.

Some researchers have confirmed such a view having concluded that the increased social availability of gambling outlets is the primary variable responsible in precipitating at-risk individuals into pathological gambling (Cornish 1978, Moran 1974 in Walker 1986). Recently, Doctor Rachael Volberg, a leading United States authority on gambling behaviour, warned New Zealanders that they "can expect major problems with Lotto, slot machines, Instant Kiwi and casinos" (News Release 1989). Volberg reached her conclusions from the results of studies in Nevada which has three times more compulsive gamblers per head of population than other non-casino States in America. The Australian National Council on Compulsive Gambling has also claimed "that an increased number of outlets offering betting had contributed to a rising rate of "pathological" gamblers in Australia" (The *Australian* 14 Nov. 1990).

The Commission on the Review of the National Policy Toward Gambling in the United States has also expressed the view that the availability of gambling "increases the risk of a gambler becoming a compulsive gambler" (Allcock 1986, p. 264).

Although there has been little intensive research into compulsive gambling in Australia, there have been some attempts to quantify the number of compulsive gamblers in Australia. The National Association for Gambling Studies has estimated that 0.25 per cent of the adult population might have gambling related problems ((eds) Dickerson & Walker 1989, p. 5).

Through her research, Shirley Toms (1990, p. 9) estimates that in 1990 there may be in excess of 300,000 compulsive gamblers in Australia. Allcock predicts a rate of 0.5 per cent to one per cent of compulsive gamblers in Australia particularly in States where gambling is readily accessible (Allcock 1986, p. 260). Bishop John Reid, senior assistant bishop in the Anglican Diocese of Sydney, estimates that one per cent of the population are addicted gamblers - the same number as are addicted hard drug users (*Weekend Australian* 5-6 Jan. 1980).

In Australia, the introduction of casinos in some States has led to an increase in gambling of up to 25 per cent (Social Impact Report 1988, p. 78). Queensland witnessed a significantly larger increase of 56 per cent in total gaming turnover in the first 12 months after the introduction of casinos, and by 1988-89 "Casino handle" had increased to the point that it was to represent 66 per cent of all gaming turnover in the State (Tasmanian Gaming Commission 1988, Table 22). Many of the submissions made to a study examining the possibility of the introduction of a casino to Canberra (Tasmanian Gaming Commission 1988) stated concerns that a casino would lead to an increase in the number of people gambling excessively. Due to this concern, the study team approached all of the

various Welfare, Community and Health Departments in each of the Australian States which have already established casinos in order to learn from their experiences.

All of those agencies were to report that the presence of a casino had not resulted in a detectable increase in social welfare problems. In its final report, the Canberra study team then concluded that a casino would result in an increase in gambling levels and that there was likely to be a small increase in the prevalence of excessive gambling and its related harmful effects (Tasmanian Gaming Commission 1988).

There is the possibility however, that the reported findings of the Canberra study team may not be conclusive, as it is theorised that some compulsive gamblers will not seek help even though they may be in definite need. Secondly, it may be the case that the compulsive gambler will only seek help after a lengthy period of time, as denial is usually a characteristic of addictive behaviour. As such, addicted gamblers must first recognise and then accept that they have a problem, and then concede the need for help. Given this period of "lagtime", it may be necessary to examine the length of time that each of the casinos had been in existence, at the time these reports indicating an absence of increased social problems were written. It may prove to be the case that the relative novelty of casinos at the time the reports were written may be partly responsible for the low incidence of compulsive gambling that was reported.

Indeed it has proven to be common for those who enter compulsive gambling programmes, or who attend Gamblers Anonymous meetings to report that their problem has existed for many years (Dickerson 1989, p. 198). Additionally, the extent to which compulsive gamblers or their families are aware of the availability of community help and the accessibility of these organisations must also be an important factor in assessing the low reported incidence of compulsive gambling.

Shirley Toms, from the Australian Institute of Counselling in Addiction, undertook research into compulsive gambling in 1990. Questionnaires were sent to every Gamblers Anonymous group in Australia. Fifty-seven were completed and returned. Only four questionnaires were answered by females, and the remaining 53 were answered by males. Although low response from females is probably more indicative of the predominantly male membership of Gamblers Anonymous, it may support the view expressed by the American Psychiatric Association (1987) that it is more likely for a male to be a compulsive gambler than a female. Before an assumption can be made about the likely gender of compulsive gamblers the cautionary note should be added that it could well prove to be the case that female compulsive gamblers are more numerous but similar to female alcoholics are simply being more secretive about their addiction.

The following results were found:

- **Age Distribution**

19 to 30 years	13 per cent
31 to 40 years	32 per cent
41 to 50 years	24 per cent
51 to 60 years	22 per cent
61 to 70 years	7 per cent
over 70 years	2 per cent

- **Average Membership in Gamblers Anonymous**

Five years three months
Range: 28 years four months to 11 days

- **Average Period of Abstinence**

Four years six months
Range: 26 years three months to zero days

- **Average period of attending Gamblers Anonymous till abstaining**

Nine months

- **Gamblers' Parents Gambling Habits**

	Heavily %	Sometimes %	Never %	Not Known %
Mother	5	43	46	6
Father	20	51	22	7

- **Gamblers' Parents Attitude to Gambling**

51 per cent	Approved
36 per cent	Disapproved
5 per cent	Strong mother-father disagreement
8 per cent	Not Known

- **Compulsive Gamblers in Family**

28 per cent had relatives who are compulsive gamblers and some indicated whole families as compulsive gamblers.

Persons who come from gambling families or families where gambling is accepted are at a higher risk.

- **Compulsive Gamblers With Multiple or Cross Addiction to Drugs or Pills**

  5 per cent

- **Compulsive Gamblers With Multiple or Cross Addiction to Alcohol**

  26 per cent

- **Alcoholics in Compulsive Gamblers Family**

  41 per cent of Compulsive Gamblers came from alcoholic families.

  Persons who come from alcoholic families are at a higher risk.

- **Child Abuse**

  25 per cent had been abused verbally, physically or sexually before the age of 15.

  Children who have suffered abuse are in a higher risk category.

- **Absent Parents before Compulsive Gamblers turned 15**

17 per cent	not raised by natural parents
9 per cent	mother's death
10 per cent	father's death

  Researchers such as Bolen and Boyd (1968) and Custer (1982) in the United States of America; Moody (1972) and Moran (1975) in Britain and McConaghy, Armstrong, Blaszcynski and Allcock (1983) in Australia, have all concluded that excessive gambling can be associated with complex personal and social problems that may require professional help (Social Impact Study 1988, pp. 35 and 78).

- **Educational background**

53 per cent	attended two or more Primary/Infant Schools
28 per cent	attended two or more Secondary Schools
4 per cent	had no Secondary Education
59 per cent	had Tertiary Education
54 per cent	had formal training in a trade or profession

  Shirley Toms expresses the view that compulsive gamblers in the banking and accountancy professions are particularly at risk because of the availability of funds.

- **Form of Gambling:**

	Heavily %	Sometimes %
Horse racing - Gallops	78	7
Horse racing - Trots	12	9
Poker Machines	29	18
Video-card Machines	5	15
Legal Casino	9	7
Illegal Casino	7	5
Two-Up	5	12
Cards	14	22
Bingo	5	9
Lottery Tickets	9	37
Instant Lottery	15	34
Footy Tab	5	5
Sports Betting	10	5
Raffles	7	37
Stock Exchange	0	5
Dog Racing	12	9
Lotto and Pools	2	3

- **Compulsive Gambling Habits**

  - 39 per cent gambled compulsively in 1 form only
  - 22 per cent gambled compulsively in 2 forms
  - 23 per cent gambled compulsively in 3 forms
  - 9 per cent gambled compulsively in 4 forms
  - 5 per cent gambled compulsively in 5 forms
  - 2 per cent gambled compulsively in 7 forms

  Although some research has found that most compulsive gamblers tend to be "loyal" to a particular form of gambling, it is possible for some to become addicted to more than one form. As the survey that has been reproduced above tends to indicate, gamblers can become compulsive on any type of gambling and 61 per cent became addicted to two or more forms of gambling.

- **Marital Breakdown**

  Thirty-three per cent reported a marriage breakdown (divorce or separation longer than three months) as the direct result of gambling.

  This figure would tend to substantiate the decision to include "disruption or damage to personal and family affairs" as one of the diagnostic criteria of pathological gambling in the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association (1988).

To conclude, research has indicated that an increase in the array of legal gambling options will probably result in an increase in the number of compulsive gamblers. However, it is likely that this increase will be fairly small relative to the total number of gamblers and there are many other factors (particularly personal predisposition) which can cause compulsive gambling. While there may be some basis for claiming that casino gambling is more likely to attract the compulsive gambler than is racing betting, a significant number of compulsive gamblers are still attracted to racing gambling.

If unlawful bookmaking in Queensland is to be minimised (or perhaps even eradicated), new avenues for legal gambling that are more capable of catering to that part of the gambling market that is currently being served by SP bookmakers must be created as part of the range of measures introduced to address the problem.

This Commission is of the opinion that in order to truly and effectively attack the SP problem, better and more attractive methods of lawful racing and sports contingency betting must be introduced as a matter of priority. While the existing range of lawful gambling options continues to be unable to provide the types of services that are able to be provided by the unlawful bookmaker, there will continue to be a demand of sufficient magnitude to induce a significant number of individuals to continue to operate outside the parameters that are prescribed for lawful operation notwithstanding the introduction of greater penalties.

In so providing a improved range of legal betting options, it will be important to address the attendant social issue of the likely increase in the numbers of compulsive gamblers within the community.

It will be most essential that any planned introduction of an improved range of gambling options be accompanied by adequate planning for the provision of an effective range of services so that compulsive gamblers are able to obtain assistance.

References

Allcock, C.C. 1986, 'Pathological Gambling', *Australian and New Zealand Journal of Psychiatry*, vol. 20.

American Psychiatric Association 1980, *Diagnostic and Statistical Manual of Mental Disorders*, 3rd rev. edn., Washington D. C.

Balszczynski, A. 1986, 'Does Compulsive Gambling Constitute and Illness? Responsibility of the State in Rehabilitation', Walker, M. (ed.) 1986, *Faces of Gambling, Proceedings of the Second National Conference of the National Association for Gambling Studies.*

Board of Inquiry into Poker Machines 1983, Report, (Chairman: Connor), Victoria.

Burns, F.S. 1988, 'Some Economic Effects of Compulsive Gambling on Government, Community and Employer, Paper presented at the *Third National Conference of the National Association for Gambling Studies.*

Dickerson, M. & Walker, M. (eds) 1989, *The National Association for Gambling Studies Newsletter,* vol. 1, no. 1.

Dickerson, M. (ed.) 1988, '200-up', *Proceedings of a Bicentennial Conference of Australian Gambling, The Third National Conference of the National Association for Gambling Studies.*

News Release 1989.

Reverend John Tully 1990, *Pathological Gambling and Crime,* (unpub.).

Social Impact Study 1988, 'Casino Development for Canberra: Social Impact Report' *Development and Casino.*

Tasmanian Gaming Commission 1990, *Australian Gambling Statistics 1972-73 to 1989-89,* 8th edn., Peter Bennett and Associates Pty Ltd, Hobart.

The Australian, Wednesday 14 November 1990.

Toms, S. 1990, 'When am I at Risk', Australian Institute of Counselling in the Addictions, *A Project Based on Research of Australian Compulsive Gamblers,* (unpub.).

Walker, M. (ed.) 1986, *Faces of Gambling, Proceedings of the Second National Conference of the National Association for Gambling Studies.*

Weekend Australian, 5-6 January 1990.

CHAPTER SIXTEEN

WHY DOES UNLAWFUL BOOKMAKING EXIST?

Introduction

Given the extensive range of legal gambling options that are now available to punters in Australia, we must start to examine critically why it is that SP bookmaking continues to exist. This is especially relevant when it is remembered that some of the presently available legal gambling mechanisms were introduced for the specific purpose of suppressing unlawful bookmaking.[1]

Some may assert that one of the reasons that SP bookmaking continues to thrive despite its illegality is because it is run by criminals who simply hold the law in contempt. As such it provides a valuable service for other criminals by providing funds to finance other crime, and as a means by which money may be laundered.

Such observations do have some validity, as it is true that there are documented and fairly extensive criminal associations involved in SP bookmaking, and SP bookmaking does provide a useful facility for the perpetrators of other major and organised crimes.[2]

However, while there is a need to be mindful of the wider criminal presence in this unlawful industry, it has become apparent to this Commission that unlawful bookmakers do not confine the provision of their services only to criminals, but predominantly rely upon the greater community to provide their clientele. Client lists and settling sheets confiscated by police from various SP bookmakers in police raids over the years tend to lend support to this belief. It is therefore necessary to look for some other reason for the continued existence of SP bookmaking. We must begin to question: "What is the 'customer-advantage' that continues to induce punters to step outside the law and bet illegally?"

It has often been argued by a number of academic writers[3] that any form of unlawful enterprise that provides a demanded consumer service will continue to exist, notwithstanding its proscription and consequential attempts by the police to enforce the criminal law. Proponents of this argument assert that the severity of any criminal penalty that is imposed, and the deployment of ever-increasing levels of police resources, cannot realistically be expected to have any meaningful impact upon the presence of such crimes within our community.

---

1 After 1960, State Governments all followed Victoria's example and introduced government operated Totalisator Administration Boards (TABs) to operate off-course totalisators. Aside from expected revenue windfalls for government, the principal objective behind such a move in all States was the suppression of unlawful bookmaking.

2 See: The Costigan Report 1984; The Connor Inquiry 1983; The Moffitt Royal Commission 1974; Fitzgerald Report 1989.

3 See for example: Morris, N., & Hawkins, G., There are in addition many others.

The basis for such an assertion is that increased penalties and vigorous law enforcement efforts are aimed only at the supply side of the black market equation, while nothing is being done to address the consumer demand that inspires the illicit entrepreneur in the first place. Proponents argue that so long as there is a demand within the community for illegal goods and services, there will always be entrepreneurs who are willing to step outside the law in order to reap the rewards to be made in meeting that demand .

In the context of demand and supply, the argument (Vold & Bernard 1986, p. 328) is that criminalisation of any particular consumer item for which a sizeable minority within the community have demonstrated a desire, and irrespective of whether that consumer item happens to be a sexual favour, a drug of dependence, or an SP bet will only have the effect of making delivery of supply more difficult. This then has the effect of driving up the retail price, which then only makes the prospect of being involved in "product delivery" all the more attractive for those who have little regard for the law.

In his book *Drug Traffic*, McCoy notes that despite periodic police harassment of New South Wales SP bookmakers in the first half of this century - particularly around the time of the Second World War - the SP industry in that State, emerged in the postwar era stronger than ever before. McCoy (1980, pp. 176-177) goes on to observe that the industry continued to survive well into the 1970s as one of the largest and most consistent sources of income available to organised crime. McCoy (1980, p. 177) asserts that this has been the case, notwithstanding at least eight significant police crackdowns on SP bookmaking in New South Wales since 1945, and at least two premature announcements of SP bookmaking's total demise. Ironically, each such crackdown was widely heralded as being intended to deal the final blow to this illicit industry. He also asserts that New South Wales SP operators have never been seriously hampered by any of the various police enforcement campaigns.[4]

McCoy attributes the survival and continued growth to two factors - firstly that SP operators provide a service which is, from a customer viewpoint, far superior to that which is available either on-course or via the TAB;[5] and second, that the profit sharing that has historically occurred between leading illegal bookmakers and influential members of both the New South Wales police and political parties, has served to ensure the insulation of SP bookmakers from unwanted official scrutiny (McCoy 1980, p. 177).

McCoy's analysis relates particularly to SP bookmaking in New South Wales. However, recent events in Queensland have demonstrated the similarities between SP bookmaking in Queensland and that in New South Wales. On the whole though, it appears that the criminal control of SP bookmaking is probably

---

4 Although some may contend that the NSW "21 Division" and "Becks Raiders" had a significant impact on SP bookmaking, history has shown that such success in law enforcement against SP bookmakers is temporal in nature, or alternatively only has the effect of relocating the problem. This issue is discussed in another chapter.

5 See the comments that will be made in relation to this issue, later in this chapter.

more sophisticated and extensive in New South Wales than that which is observable in Queensland.[6]

Notwithstanding the historical pre-eminence of the New South Wales SP bookmaking industry, an application of McCoy's analysis to the recent Queensland experience would also provide a reasonable explanation for the prosperity of SP bookmaking in this State. It can be seen that SP bookmaking in Queensland has continued to flourish because it provides a superior service to the customer, and because of the relationship that has existed between illegal bookmakers and select members of the Queensland Police Force. To the extent that this latter factor, that of payment being made to corrupt police and public officials so that they do not enforce the law, has already been thoroughly investigated by the Commission of Inquiry, and has now hopefully been eliminated, this issue need not be canvassed at any great length in this report.

However, the question of the superior service provided by SP operators has not been the subject of any official investigation in Queensland. The remainder of this chapter will therefore address McCoy's contention that SP bookmaking continues to survive and prosper despite the many legal alternatives available and despite law enforcement efforts because it provides a better service to punters.

Despite numerous observations by academic writers about the public's demand for illegal products, and the clear recognition by some law enforcement agencies of the existence of this demand,[7] there has so far been very little change to the types of approach that are being taken in dealing with the problem.

One explanation is that the prevailing beliefs about the nature of organised crime held within the community that are in all likelihood nurtured by certain elements within law enforcement agencies and other vested interest groups, have come to so dominate thinking on the issue, that they prevent any other form of analysis from guiding (or even partially influencing) law enforcement policy.

In this regard, it is often said that mythology has exerted a powerful influence on the study of all types of crime and the way in which policies to cope with crime have been formulated. Nowhere is this phenomenon perhaps more typified than in the case of organised crime which has had its policy response shaped by "the most seductive and persistent" of all the crime myths, that of the demonology of organised crime (Morris & Hawkins 1970, p. 232). This myth holds that organised crime is intrinsically alien to society and intent on the community's destruction. This belief is unrealistic, and largely unfounded.

---

6 A factor that McCoy attributes to the fact that until comparatively recently only Sydney and Melbourne had sufficient population to support a criminal underworld. McCoy's belief is supported by census figures that indicate that the population of Brisbane in 1988 (1,240,300) was still less than that of Sydney in 1939 (1,320,890).

7 Although it is perhaps somewhat trivial to need to explain the fact that consumer demand is the reason for supply, it has proven to be necessary in the case of demand for illegal goods and services, in order to dispel the "mindset" that demand for illegal goods and services is somehow different from demand for any other type of goods or services.

Another reason that has been advanced to explain the general attitude of law enforcement agencies to these types of crimes is that the criminal laws that proscribe these goods and services are based upon certain outdated moralistic notions. In this regard it can be observed that much of the current Australian law that prohibits gambling has its historic origins in the protestant moral crusades of the early part of this century.[8]

Norval Morris and Gordon Hawkins (1970, p. 235) are two noted authors who have been particularly outspoken in their belief about the true nature of the relationship between unnecessarily moralistic criminal laws and the supply of illegal goods and services. They have summarised their position by saying:

> "As long as we are determined to continue our futile efforts by means of the criminal law to prevent people from obtaining goods and services which they have clearly demonstrated they do not intend to forgo, criminals will supply those goods and services. And in so far as the market is of a character in which combination and organisation is profitable they will organise. As we have indicated . . . the way to eliminate organised crime is to remove the criminal laws which both stimulate and protect it".

Both of these reasons can be seen to have had their affect in shaping past attitudes and policies on unlawful bookmaking in Australia. Although little studied and despite there being little reliable data on the involvement of organised crime[9] in SP bookmaking, observers have still been quick to conclude that this is the case. This conclusion may then have coloured subsequent attempts at analysis.

Equally, it can be observed that early gambling suppression laws were promulgated more to impose pious moral standards on the community than to deal with what would later become an emerging field of criminal endeavour. This zealousness has in many ways been inherited by the modern anti-gambling statutes despite subsequent amendments, and it is now quite doubtful that they contain a great deal of social utility. However, this does not alter the fact that the entire issue of SP bookmaking must be studied via the framework of the existing laws that serve to proscribe it. Being able to overcome these inherited difficulties has therefore become the real challenge for this study. Mindful of these problems, and in an attempt to overcome them and thereby deal with the issue in an objective and non-inflammatory manner, this Commission has chosen to proceed with its analysis of unlawful bookmaking by looking at the issue in the context of it being a demanded service, albeit an illegal one.

This approach is then also in keeping with the definition of organised crime that has been adopted and which has the advantage of minimising the possible bias that could be imputed if SP bookmaking were approached in terms of some of the more "traditional" ideas about unlawful bookmaking. There will therefore,

---

8 Historically, objections to gambling were based on a mixture of paternalistic and moralistic considerations. This issue and its resultant "moral crusades" have been dealt with in a previous chapter of this report.

9 It should be noted that the assumed involvement of organised crime has been of "organised crime" as an identifiable criminal entity, capable of lawful recognition in the same way as a corporation or an individual. This is not the sense in which this Commission has chosen to use the term "organised crime".

be a deliberate effort to steer clear of moralism, and market analysis will be the predominant perspective used to try to understand SP bookmaking.

This approach also does not exclude the possibility of then considering the impact of various social, cultural, political, legal, geographical, historical and other factors that may have some relevance to the existence of unlawful bookmaking.

The Demand for Illegal Betting and Other Illegal Services

The fact that some people demand goods and services that are illegal is certainly no great revelation, and this fact has been officially recognised several times before. The appendix on organised crime in the Staff Report to the United States Commission on Violence stated:

> "It is well known that organised crime exists and thrives because it provides services the public demands," and; "organised crime depends not on victims but on customers" (Furstenburg 1969, pp. 916 and 925).

The Task Force on Organised Crime of the 1967 President's Commission (p. 1) opened its report by stating:

> "The core of organised crime activity is the supplying of illegal goods and services - gambling, loansharking, narcotics and other forms of vice - to countless numbers of citizen customers".

The fact has also been recognised here in Australia. Douglas Meagher Q.C. (1983, p. 25), Senior Counsel assisting the Royal Commission on the Activities of the Federated Ship Painters and Dockers Union, when discussing the business practices of organised crime, has also concluded that consumer demand is at the very core of the enterprise of organised crime:

> " . . . in vice, the desires of the "victims" (i.e. the clients) produce the demand by which the service becomes profitable to supply . . . so too in illegal gambling ventures, where the provision of starting price bookmaking or other illegal gambling activities is profitable only because of a significant demand".

In analysing black market economies and the involvement of organised crime in the United States, Thomas C. Schelling believes the correct approach is to address the issue by asking: Do a few core black market enterprises provide the organisational stimulus for organised crime? If the answer to this question happens to be "yes", then the next critical question becomes; whether the particular market - so essential for the economic development of the underworld - is a black market whose existence is dependent on the prohibition of legal competition, or is instead simply an inherently criminal activity? (Schelling 1984, p. 159)

As we have already been told by a variety of Australian Royal Commissions[10] that SP bookmaking does constitute one of the "core activities" that provide sufficient stimulus for crime to organise, we are justified then in proceeding with the second of Schelling's questions. Should the answer to that question prove to be that the activity of SP bookmaking is an inherently criminal activity, then we can probably safely and quickly conclude that the prevailing police response of reactive "taskforcing" driven by "tactical" intelligence aimed at the apprehension of individual criminals, is probably the correct approach. If it can be shown that the criminal enterprise is one that rests on criminality and violence, then relaxation of the law is likely to be both ineffectual and quite unappealing (Schelling 1984, p. 159).

Alternatively, should the black economy in question prove to be the inherent domain of criminals solely because the law prohibits suppliers legally catering for that consumer demand, then we must start to question critically why it is that we must persist with a policy of reactive police action against the supply side of the market equation.

Schelling (1984, p. 161) has noted that, "any successful black marketeer enjoys a "protected" market, in the same way a domestic industry is protected by a tariff". In the case of the black market, Schelling states that protection is afforded by the law, against all potential competitors who are unwilling to be so bold as to pursue a criminal career. For this reason, black markets always offer the policy maker at least in principle the option of ensuring their eradication by simply restructuring the market by increasing legal competition, by compromising the original prohibition, or selectively relaxing either the law itself, or the way in which it is enforced (Schelling 1984, p. 159).

Schelling tells us that the dominant approach to organised crime has always been by way of indictment and conviction, and that this is in striking contrast to the enforcement of anti-trust, food and drug laws and other such aspects of corporate operation, which work through regulation, accommodation and the restructuring of markets (Schelling 1984, p. 158). While it is conceivable, of course, that the economy of the underworld is totally different from that of legitimate business, it seems probable and reasonable to assume that, as Professor Schelling says:

> "a good many economic and business principles that operate in the 'upper-world' must, with suitable modification for change in environment, operate in the underworld as well, just as a good many economic principles that operate in an advanced competitive economy operate as well in a Socialist or a primitive economy".[11]

Observations upon the futility of a "supply side only" solution have not been confined to academic writers. A popular analogy among many police officers who work in the field of gaming, drugs and vice enforcement, and that has been relayed to officers of this Commission, involves likening attempts to knock out

10 Moffitt Royal Commission 1974; The Connor Inquiry 1983; Costigan Report 1984.

11 Schelling T.C., Economic Analysis and Organised Crime, printed as an appendix to the Presidents Commission *Task Force Report: Organised Crime*, supra.

the suppliers of these goods and services to that of pushing down on one side of a waterbed. No matter where "the squeeze" is applied, the problem will inevitably reappear somewhere else. Although not as sophisticated as the analysis provided by Professor Schelling, the analogy is still a good one, and some recognition should be given to the fact that police officers in the field have had the opportunity to formulate such opinions after many years of attempting to enforce the criminal law.

In the context of SP bookmaking, McCoy has observed that during World War II, the Australian propensity to gamble was seen by governments as being deleterious to the general war effort.[12] The Commonwealth responded by introducing stringent controls on interstate racing broadcasts, Victoria gave its police extensive new powers under a revised betting Bill, South Australia reacted by banning all horse racing between 1942-43, and New South Wales acted by reducing the number of weekly race-meetings from four to one, making Saturdays the sole racing day.[13]

McCoy observes that despite such drastic restrictions, Sydney's SP networks did not appear to have been adversely affected in any way, punters simply responded by plunging their stake at the one weekly meeting. Although little studied elsewhere, it is doubtful that such regulation had any more success in any of the other States. It is even arguable that the World War II SP trade actually increased in size, notwithstanding tighter regulation, because of the demands of visiting troops for recreational amenity, because wartime wages were swollen with overtime, and as the result of there being a general lack of other commodities on which wages could be spent. Such factors meant that the amount of money available to be wagered in the punter's "weekly stake" may have actually increased. Put simply, the demand for the services of the SP bookie was increased.

The belief that wartime SP bookmakers prospered despite tough restriction is probably also supported by the fact that whilst ordinary citizens found it impossible to obtain new telephone connections as the result of wartime austerity, the SP bookmakers experienced little difficulty in obtaining multiple connections (McCoy 1980, p. 165).

McCoy believes that despite some war-time harassment, New South Wales SP bookmakers emerged from World War II stronger than ever before, having "expanded to unprecedented proportions" (McCoy 1980, p. 165). Police crackdowns aimed at the "traditional face" of SP - the bar room and barbershop SP bookie - only had the effect of enhancing the SP industry by driving the SP bookmaker increasingly towards reliance on the telephone, and thereby outside the jurisdiction of State police. In so doing, the efforts of law enforcement may have unwittingly assisted in driving the SP industry towards its greatest marketing advantage and shield from apprehension - the telephone. The virtual

12 At the time, it was estimated that nationally, SP bookmaking had an annual turnover of some £15 million.

13 Racing in Queensland was also curtailed, if only by the simple expedient that some of the State's principal racing venues disappeared under the tents and other amenities of the Allied troops.

wholesale move of the SP industry towards the telephone meant that no longer did the punter have physically to attend upon his SP bookmaker to be able to place his bet; now the entire transaction could be done quickly and conveniently over the telephone.

It has not only been the efforts of law enforcement that have assisted unlawful bookmaking. Assistance has been accidently provided by other policy decisions of government. The introduction of the TAB in every State was widely heralded as being both a valuable additional source of revenue, and the solution to the SP problem. When viewed in conjunction with the continued police crackdowns of the 1960s and beyond, the introduction of the State-run totalisator can perhaps be viewed as having unwittingly had an opposite effect to that intended. The introduction of the TAB only had the effect of forcing most of the remaining "old-style" bar-room SPs - those who relied on the little punter and who were most at risk of police detection - out of business, and thereby rationalised the number of SP operators and concentrated the remaining more lucrative business into the hands of fewer, more efficient operators.

Official action based upon ill-planned policy was therefore probably largely responsible for rationalising the illegal betting market, simultaneously eliminating the inefficient operators and sending the less lucrative customers to the TAB. The unlawful betting industry is now predominantly concentrated into the hands of larger, more efficient SP bookmakers, and caters for a reduced number of larger punters (McCoy 1980, p. 177).

McCoy points to the introduction of the New South Wales TAB in December of 1964, which was done in accordance with the recommendations of the Report of the Kinsella Royal Commission (*Royal Commission of Inquiry into Off-the-Course Betting in New South Wales* 1963, pp. 16-22, hereinafter referred to as the "Kinsella Royal Commission" 1963).

The Kinsella Royal Commission reported that at that time it was estimated that there were some 6000 SP bookmakers in New South Wales, with a total annual turnover of £275 million, and a clientele that comprised 28.7 per cent of the adult population. Accordingly, the Royal Commission advocated the establishment of a State-run totalisator as the most efficient means of simultaneously eliminating the illegal industry and recouping the drain on revenue that it represented. The introduction of heavy penalties to suppress illegal operators was also recommended as being highly desirable.

In trying to explain the failure of the new TABs in suppressing SP, McCoy believes that the TAB in New South Wales simply spread far too slowly to have any noticeable impact upon the SP trade. He notes that in the first six months of operation, the New South Wales TAB succeeded in opening only 34 shops still far short of the estimated 6000 SP bookmakers in New South Wales and that it was then a further 10 years before the TAB had a turnover that was approximately equivalent to the 1962 estimate for SP turnover made by the Kinsella Royal Commission (McCoy 1980, p. 182).

McCoy believes that in Sydney in particular, one unexpected result of the market restructuring that the introduction of the TAB and additional police action combined to represent for the SP industry, was to make SP bookmaking more attractive for organised professional criminals.[14] The new TAB meant that the market was largely confined to only the larger SP punters for whom tote betting held no attraction, and the increasing levels of police attention meant that the risks of exposure for those involved were increasingly great. Therefore, only the more sophisticated entrepreneurs would be prepared to continue to accept the risks (McCoy 1980, p. 182).

It is highly unlikely that the introduction of the State-run totalisator in New South Wales, or any other State for that matter, has had near the impact on the unlawful bookmaking industry that the Kinsella Royal Commission predicted. Such an assertion can be supported by some analysis of turnover figures for the SP industry.

In 1942, well before the introduction of State-run betting shops in any State, the Federal Government estimated that SP bookmaking had a national turnover of £15 million (McCoy 1980, p. 165; Daily Telegraph 25 Feb. 1942). If such an estimate is then "brought up to date" and extrapolated to take into account the combined effects of inflation and population growth, then the SP bookmaking industry should have a current turnover somewhere in the vicinity of $1096 million, if all other things had remained constant.[15]

Then, in theory, we should find that the introduction of the TAB in conjunction with more law enforcement has combined to have the effect that the figure for SP turnover has been kept somewhat below this figure. However, Costigan has estimated that the national SP turnover in 1984 had in fact swollen to $4 billion — a figure that is more than 400 per cent greater than it should be had the introduction of the TAB and the ongoing efforts of the police had the effect that was predicted by Judge Kinsella in 1962.

Today, every Australian State has an extensive network of TAB agencies that collectively span the country. The range and quality of services that are provided by modern TAB agencies via satellite and computer linkages, telephone betting and the extensive array of betting choices on offer, means that the TAB should today, at least in theory, be coming close to having the effect that the Kinsella Royal Commission predicted in 1962. As events have shown, this has not proven to be the case.

It has become evident to this Commission, that while the TAB has managed to attract the smaller recreational punters who in the past only bet SP because there was no alternative, the TAB has not yet managed to supplant the facility

---

14 Decreasing the total number of SP punters, and confining the market largely to those who were betting with larger stakes almost certainly reduced the number of bad debtors for the SP bookmakers and in all probability made debt collection easier.

15 That is to say: if the TAB had not been introduced, and the level of law enforcement against SP bookmakers had remained comparatively the same.

provided to larger and more serious punters, nor is it likely ever to achieve that result, given its present form and market orientation.

As the race-betting industry is currently structured, this Commission believes that the TAB tends predominantly to serve the needs of small time punters and the "uneducated gambler". Those who are either serious "students of form", or who have substantial sums of money to invest and are anxious to secure the best possible odds, are often likely to find little attraction in tote betting.[16] Punters of this calibre are essentially left with two options - either attend the races and bet legally with an on-course bookmaker or, if this should be inconvenient or they are pressed for time, or not anxious to attend a public race-track (for whatever reason), place the bet with an unlawful bookmaker.

Indeed, it could be said that the single greatest achievement of the TAB since its introduction has been to discover new legions of recreational punters, and to capture hitherto untapped markets - such as for example, that presented by the female population. The attractiveness of totalisator betting to recreational punters and the commitment of the TAB to this particular market is typified by the current marketing campaign of the Queensland TAB that concentrates on such matters as the sheer simplicity of TAB betting, FootyTAB, "mystery bets" and the introduction of new smoke-free "family orientated" office decor.

In this sense, it would appear that the betting service provided by the TAB acts more to complement rather than to replace the service that is currently offered by the unlawful industry. When the two are considered in conjunction, the two telephone betting services are probably really catering for the full spectrum of the punting market.

This belief is supported by information relayed to the Commission by police in New South Wales, who, having had the opportunity to monitor telephone calls received by a number of SP bookmakers on a variety of occasions, have noted that it is increasingly the practice of many SP bookmakers simply to refuse to accept smaller bets, advising instead that the callers take their bets to the TAB. This is apparently the case with many bets of up to approximately $20. Meanwhile, the average TAB telephone bet in Queensland is still less than $10.[17] Such information is probably indicative of the fact that SP bookmakers do not really regard the TAB as being any threat to their continued viability.

Looking then at the totality of racing gambling services that are available to punters, the only alternative offered to the type of punter who bets SP is presently provided by on-course bookmakers. As can be observed, on-course bookmakers also offer fixed-price odds and credit, and are therefore catering to essentially the same clientele. However, the on-course bookmakers are unable to offer punters the convenience of telephone access.

This factor may then provide a clue as to why such a large number of licensed bookmakers are either known or are suspected by Queensland police of "running

16 It should however, also be recognised that there are some professional totalisator punters.

17 In 1989, the average Queensland TAB telebet was $7.96.

a second book" and accepting bets unlawfully by telephone. This may also be the basis for the conclusion reached by several Queensland police experienced in SP investigation, that up to 60 per cent of all SP bets would find their way on-course if unlawful bookmaking could be hypothetically eradicated.

The Costigan Royal Commission (upon which Douglas Meagher Q.C. has presumably also based his observations) still represents the most extensive analysis of unlawful bookmaking that has been undertaken in Australia to date.

Any additional evidence that has been brought to light before any of the subsequent Royal Commissions, the Commission of Inquiry, various police investigations and legal proceedings that have touched upon the issue of unlawful bookmaking, has not yet managed to contradict or detract from the general thrust of observation made by Costigan and his Counsel in relation to the economic and social context in which SP bookmaking exist.

In this regard, the reasons for the demand for the services of SP bookmakers must be examined in order to understand fully the existence of the phenomenon.

Based on the research that the Commission has done, the Commission can conclude that a substantial minority of the Australian gambling community still chooses to bet with unlawful bookmakers because unlawful bookmakers are able to provide the type of service which those punters demand. These services are currently unavailable legally. Elements of the service that they demand encompass such features as follows:

* bets may be placed by telephone;

* bets may be placed on credit;

* SP bookmakers are often prepared to extend credit to punters who would otherwise be categorised as "credit risks" (as they are able to employ a range of debt enforcement techniques not available to the licensed bookmaker);

* discounts are often given on losing bets;

* bets can be placed at more desirable odds than are currently offered by the totalisator - either on-course or via the TAB;

* the SP will often accept bets on a wider range of contingencies than can currently be gambled on legally;

* some unlawful bookmakers are prepared to negotiate the odds for the wager on an individual bet basis;

* some SPs will even arrange for delivery of winnings; and

* there is no need to comply with the cash transaction reporting requirements of the Federal Government, and SP bookmakers will ask no questions about the legitimacy or source of the funds that are being wagered.

Of the above list of reasons, it should be noted that only the last such factor holds any peculiar or special attraction to law breakers. The other factors are equally appealing to both "criminal" and "non-criminal" punters.

Although some of these services are also provided legally by either on-course bookmakers or the TAB, there is a crucial distinction that must be drawn between the provision of these services by lawful enterprise and as provided by unlawful enterprise. The distinction is that neither the TAB nor licensed bookmakers are currently able to provide the complete range of services that are currently being provided by unlawful bookmakers.

More particularly in this regard, the following factors are especially relevant:

* licensed bookmakers although able to offer credit facilities, are unable to offer telephone convenience;

* the TAB, while able to offer telephone access, will not allow credit bets, and all such telephone bets must be against the debit of a TAB account;

* the TAB does not offer fixed odds betting;

* the range of non-racing contingencies that can be bet on legally in Queensland is currently fairly limited; and

* both the TAB and on-course bookmakers are required to complete cash transaction reports.

While the SP bookmaker continues to provide a standard of service that is more in keeping with that which is demanded by a certain class of punter and that is not able to be provided legally, it is most unlikely that legal gambling will ever be able to induce SP punters away from unlawful bookmakers.

While vigorous law enforcement campaigns by themselves may have some short term success, this Commission has reason to believe that such are the profits to be made in catering for this demand that, in the longer term, unless there is significant change to the environment in which they operate, unlawful bookmakers will simply devise a more sophisticated *modus operandi* to circumvent police enforcement efforts.

This belief is supported by the demonstrated net impact of police enforcement efforts in the States of Victoria and New South Wales. Both of these States have attempted large scale, high profile police action against SP bookmaking in the latter 1970s and early 1980s. Despite often spectacular short term success, in the longer term such efforts had two results. One was that the unlawful bookmakers would relocate to adjacent States where the penalties were less severe, but would

continue to field in the original State by telephone. The second was the creation of new and more sophisticated SP *modus operandi* that are increasingly difficult to detect and apprehend.

As a general aid to understanding the interrelationship between law enforcement efforts and the unlawful supply of a highly demanded commodity, it is perhaps useful to draw some comparison between SP bookmaking and the illegal supply of liquor in the United States during the era of prohibition. Such was the demand for this particular commodity, that outlawing it only had the effect of increasing the price that it could command in the market. The introduction of a legal proscription had no impact upon the demand for liquor. The only effect of proscription was to introduce an artificial constraint that made a hitherto legal industry illegal. Those who had been previously involved in the lawful supply of liquor prior to prohibition and who were no longer prepared to continue, and thereby break the law, left the industry. The market was thus left open for a new breed of less scrupulous entrepreneurs, who were prepared to place personal profit above public morality.[18]

As attempts to enforce the law became more stringent, the more ruthless the illegal entrepreneurs became and the greater was their preparedness to resort to violence and the corruption of public officials. All the while, it can be observed that the public's demand for liquor remained relatively constant. Ultimately, it was realised that not only was the law unpopular, but when given the consistently high level of consumer demand for the illegal product, that the law was also quite unenforceable.

Although it could never realistically be argued that demand for the types of services that SP bookmakers provide will ever match the level of consumer demand for alcohol, it must be recognised that the same basic principles do apply.

Historically, the services that unlawful bookmakers provided arose to cater for the betting needs of a public that had very restricted means of access to legal betting. Proscription of unlawful bookmaking did not have an effect upon the continued existence of the market demand for that service.

When TAB betting was subsequently introduced to try to absorb the client base of the unlawful bookmakers, it did not succeed in fully catering for the complete needs of the entire betting public. Meanwhile, the limited number of on-course bookmakers, whilst able to complement the facilities of the TAB, are handicapped in the sense that their accessibility is restricted to race-goers.

The unlawful bookmaking industry was then able to be sufficiently entrepreneurial and flexible to be able to respond to and accommodate the changes in the overall structure of the betting market that were brought about by

---

18 See: Cressey, D.R. 1969, *Theft of the Nation: The Structure and Operations of Organised Crime in America.*, Harper and Row, pp. 37-38; Schelling T.C., 1984, p. 158; Vold, G.B. & Bernard, T.J., 1986, *Theoretical Criminology*, 3rd edn. Oxford University Press, p. 328; Hammer R., 1989 *The Illustrated History of Organised Crime*, Running Press Book Publishers. The chapter entitled, "Chicago and the Prohibition Years", Woodiwiss, M. 1988 *Crime Crusades and Corruption: Prohibition - the United States 1900-1987*, Part 1 "Losing the War against Liquor 1920-1934; Pinter Publishers Ltd.

the introduction of the TAB. Today unlawful bookmaking has its own established market niche and, when considered in conjunction with the TAB and licensed bookmakers, helps to cater for the full spectrum of racing gamblers.

While the demand for unlawful betting would certainly be far more suppressable than would for example be the demand for alcohol, it is most unlikely that the illegal bookmaking industry could ever be completely eradicated by law enforcement alone. In the case of prohibition, ultimately the only effective solution to the presence of an organised, illegal bootlegging industry proved to be the removal of the legal proscription that gave rise to the illegal market in the first place. Removal of that artificially constructed legal constraint meant that the illegal liquor industry was replaced by its legal counterpart (Vold & Bernard 1986, p. 329). There is nothing to suggest that the same measure would not then have the same effect in the Australian racing gambling industry.

Given the fact that every Australian State already has a highly developed infrastructure of legal racing gambling, it would be a relatively simple thing to remove the artificial barriers[19] that are currently preventing licensed bookmakers and the TAB from providing the types of services that are being demanded by the betting public.

Such a step would have the simultaneous advantage of removing a lucrative industry from the control of a criminal element, thereby allowing lawful enterprise to re-capture the public demand currently being denied to it by unlawful bookmakers. In all probability this would then mean a significant increase in revenue for the government.

Increases to revenue receipts could be expected from both the TAB and from on-course bookmakers. If the issue of dividing up the current SP market is handled properly, there is no reason why one facet of lawful gambling should necessarily stand to gain at the undue expense of the other.

Summary of this Chapter

* SP bookmaking exists in order to cater for the desires of a significant minority of gamblers who wish to be able to bet in a manner that currently only unlawful bookmakers are able to cater for.

* Whilst some of these punters are criminals, the overwhelming majority are ordinary citizens.

* Despite repeated attempts at law enforcement by police in every State, SP bookmaking continues unabated. Police action does have some short term success, but in the longer term, only has the effect of making the market suppliers re-organise their service.

---

19 That is: the constraint imposed by the law upon the free operation of the interaction between consumer demand for particular betting types and methods, and the ability of lawful suppliers to supply that type of gambling amenity.

* The introduction of State-run totalisator betting shops has not had any real impact on the magnitude of the modern SP industry. When taken in conjunction with police enforcement, the introduction of the TAB had some initial impact in the period shortly after its introduction. This was to attract the smaller and more recreational punters away from the SP bookmaker. Despite this initial period of market readjustment, the TAB now co-exists with unlawful bookmakers, and these betting services cater for essentially incompatible clientele.

* On-course bookmakers essentially cater for the same class of clientele as the SP bookmakers - those punters who wish to have fixed price betting and credit. The ability of licensed on-course bookmakers adequately to cater for this market is severely restricted by their lack of accessibility. The advantages that allow SP bookmakers to cater for this market, while also provided by legal gambling, are split inconveniently for punters between the TAB and licensed bookmakers. While the TAB has telephone access, only bookmakers are currently able to offer both fixed odds and credit.

References

Daily Telegraph 1942.

Furstenberg, M.H. 1969, 'Violence and Organised Crime', *Crimes of Violence: A Staff Report to the National Commission on the Causes and Prevention of Violence*, Washington, D.C.

McCoy, A.W. 1980, *Drug Traffic: Narcotics and Organised Crime in Australia*, Harper and Row, New South Wales.

Meagher, D. 1983, 'The Business Practices of Organised Crime', Paper presented to the *53rd ANZAAS Congress*, Perth, Western Australia.

Morris, N. & Hawkins, G. 1970, *The Honest Politician's Guide to Crime Control*, University of Chicago Press, Chicago.

President's Commission on Law Enforcement and Administration of Justice 1967, *Task Force Report: Organised Crime*, Washington D.C.

Royal Commission of Inquiry into Off-the-Course Betting in New South Wales 1963, *Report*, (Commissioner: Judge Kinsella), Government Printer, Sydney.

Schelling T.C. 1984, *Choice and Consequence, Perspectives of an Errant Economist*, Harvard University Press, Massechusetts.

Vold, G.B. & Bernard T.J. 1986, *Theoretical Criminology*, 3rd edn., Oxford University Press, Melbourne.

CHAPTER SEVENTEEN

OPTIONS FOR QUEENSLAND

Introduction: Is there a need for change?

Before substantive changes to either the law or law enforcement methods can be made, grounds to justify such change must be made out. On the basis of the studies that it has undertaken over the last 12 months, the Commission is satisfied that such grounds do exist.

To summarise briefly, the aspects of concern in unlawful bookmaking that give rise to grounds for the community being able to call for some action to be taken would appear to be as follows:

* SP bookmakers pay no turnover tax or licensing fees. This represents a substantial denial of government revenue. Funds for the day to day administration of government, and for public works such as schools and hospitals, must accordingly be found elsewhere. This naturally entails some additional taxation burden for the community that would be rendered unnecessary if SP bookmakers also contributed;

* SP bookmakers do not pay their full share of income tax. It appears to be the consistent practice of unlawful bookmakers to significantly understate the real magnitude of their turnover for taxation purposes;

* the racing industry suffers as a direct result of SP bookmaking. Both the TAB and licensed bookmakers are denied substantial amounts of turnover, as it is siphoned away from legitimate gambling and channelled into unlawful bookmaking. Racing clubs suffer as the result of reduced race-meeting attendances, reduced on-course totalisator turnover, and as a result of reduced disbursements from TAB profits. Prize money available to owners of racing animals is thus less than what it could be. The amount of money generally available within the racing industry that could be paid as fees to trainers and jockeys is also consequentially diminished;

* the greater economy must also be seen to suffer as the result of money being siphoned into the black economy by unlawful bookmakers. If unlawful bookmaking did not exist, money currently being wagered unlawfully would be wagered or spent elsewhere. Although a substantial amount of the illegal profits of SP bookmakers will subsequently find its way back into the legitimate economy, they are being spent by criminals, and are assisting in providing them with ever increasing levels of comfort, and financial power;

* there are other more direct costs associated with unlawful bookmaking that go beyond the community being required to find further funds from other sources. These costs include those associated with enforcement of the law and encompass such matters as the need for additional specialist police resources and the significant legal costs associated with the prosecution of SP bookmakers. Significant amounts of time and resources must be devoted by police officers, prosecution staff, and the staff of various government departments to the ongoing SP bookmaking problem. Given the nexus between SP bookmaking and race-fixing, the racing industry is also required to spend significantly more money than it should have to on such issues as stable security and drug testing;

* unlawful bookmaking has connections with other forms of major and organised crime. Of particular concern in this regard are links between unlawful bookmaking and the illicit trade in narcotics. Given the amounts of money involved, unlawful bookmaking provides a readily accessible source of finance for other forms of crime. Access to such finance gives criminals significantly more power and ability than they would otherwise have. Some of those involved in SP bookmaking are also involved in other crimes;

* the complex linkages between SP bookmakers that are necessary in order to lay off bets give this illicit industry extensive national coverage. Because of the associations between SP bookmakers and other criminals, the SP network provides an ideal conduit for crime. Criminals who may otherwise have been regionally confined are given the opportunity to expand their activities and make contact with other criminals and crime opportunities in other States;

* the SP bookmaking industry has proven to be one of the principal sources of corruption of police and other public officials in several Australian States. This is not a new phenomenon, but one that has proven to be a consistent problem now for several decades;

* because of its unlawful nature, SP bookmakers are able to resort to either the threat or actual use of violence to ensure the prompt payment of debts. Equally, violence may be used to enforce the "code of silence" and, as SP bookmaking becomes increasingly profitable, violence will often be used to eliminate competition. There may be some basis upon which to believe that the increasing profitability of SP bookmaking will attract a more sophisticated and ruthless class of criminal entrepreneur;

* given the nexus that exists between SP bookmaking and race-fixing, it would appear that if SP bookmaking were to be eradicated then racing industry crime would in all probability decline and go from being a substantial and persistent problem to one that was infrequent and minor. The fact that unlawful bookmakers are able to jeopardize an industry as significant as the racing industry is in itself an issue of sufficient concern to warrant some immediate action being taken; and

* there are significant social problems involved with SP bookmaking. These include the difficulties created for welfare agencies and the greater community by the family dysfunction that tends to result from gambling addiction. Other social problems will be of a nature that is usually associated with the corruption of public officials and when a significant criminal element start to take over an industry.

Clearly several grounds for substantive change already exist. It remains only to be determined what range of measures should be adopted in order to address these issues.

Broadly, the available options for the future control of the current SP bookmaking industry lie somewhere within the range of alternatives set out below. Some indication of the Commission's assessment of the outcome of each strategy is also provided for consideration:

1. **No substantive legislative or administrative change**

   If there were to be no change in the law or to law enforcement strategy, the Commission has reason to believe that the result will be a progressive increase in SP bookmaking to the detriment of legal gambling, consolidated revenue, and the community as a whole.

   This trend appears to have already started. In the "climate of uncertainty" that has surrounded the future of SP law enforcement in the aftermath of the Commission of Inquiry, several significant SP operators are known to have scaled-up the size of their operations. Several others are known to have relocated to Queensland from interstate in order to capitalise on the opportunities that the current lack of a clear enforcement policy is creating. Perhaps significantly, a number of those who have increased the extent of their operations were named before the Commission of Inquiry.

   Criminal syndicates could conceivably continue to extend and expand their influence over SP bookmaking generally. Associated misconduct in the racing industry would be among factors adding to a decline of gambling turnover in the racing industry in favour of other forms of gambling. Such a shift would probably in large part be due to the withdrawal of community confidence in the integrity of the racing industry.

2. Legislative and administrative amendment to enhance enforcement measures

It has often been claimed that SP bookmaking has continued to prosper due to the present inability to sentence unlawful bookmakers to terms of imprisonment in Queensland.[1]

If the penalties that attach to convictions for unlawful bookmaking were significantly increased and default imprisonment re-introduced, the Commission believes that this would result in some decline in the incidence of SP bookmaking in Queensland. Such a decline would certainly benefit both the legal gambling industry and government consolidated revenue.

However, the SP industry also continues to thrive in other States despite those States already having default imprisonment and notwithstanding police efforts directed at its suppression.

While no risk of imprisonment in Queensland has certainly been one factor that continues to be conducive to unlawful bookmaking, it is certainly not the complete explanation for its continued existence. Nor could it be said that simply re-introducing default imprisonment will be the complete solution to the SP bookmaking problem.

Whilst giving the law more "coercive teeth" will, in all probability, result in some decline in SP bookmaking activity in Queensland, it is likely that some of this decline can be expected to be due to SP bookmakers simply shifting out of the jurisdiction and into other jurisdictions of lesser enforcement or lesser penalties.

Significantly, where SP bookmakers do "border hop" they usually retain contact with their existing clients by telephone. The problem will not therefore be removed but merely relocated. Equally, it must be remembered that the SP industry is lucrative and that a significant number of unlawful bookmakers have individual turnovers that each run into several millions of dollars per annum. Given the order of profit that can be made, it is most unlikely that the enactment of stiffer penalties will alone have any more effect than leading to a change in industry personality to one where it is primarily constituted by ruthless and violent criminal entrepreneurs who are prepared to accept the risks of harsh penalty.

Past experience in Victoria and New South Wales has indicated that, given determination and sufficient police resources, SP bookmaking can be suppressed (even spectacularly so) in the short term. In the medium to

---

1 This point was made several times in submissions received by the Commission on the issue of SP bookmaking. Several police officers interviewed in the course of this study have expressed this opinion and it has also been expressed in internal police departmental reports and memorandums viewed by officers of this Commission.

longer term, a variety of factors tend to affect the balance between illegal and legal gambling:

* with apparent success or the passage of time, police and law enforcement resources are usually diverted away from SP bookmaking;

* SP bookmakers discover and then exploit new legislative and administrative shortcomings (i.e.: they adopt a new *modus operandi*); and

* SP bookmakers may resort to corruption.

3. Extensions to the array of legal gambling options

The Commission has formed the view that SP bookmaking continues to exist despite efforts directed at its suppression and despite a wide diversity of lawful gambling options because it provides a service that a substantial minority of punters demand.

If the service that is currently provided by unlawful bookmakers were to be supplanted by some lawful alternative, what is currently a substantial illegal enterprise would in all probability quickly decline. Such a course of action would also result in a substantial benefit to both the legal industry and government consolidated revenue.

In this regard, it must be recognised that the crucial aspect is not merely to further expand the array of legal options available to gamblers but to replace the specific type of service that is currently offered only by SP bookmakers.

The TAB has informed the Commission that some attempts are already being made to increase the attractiveness of totalisator betting to punters. The TAB has stated that it is attempting to redress the problems faced with its products and presentation through a series of customer-driven initiatives. A new upgraded office decor is being installed; free access to telephone betting has been extended; new and less complex products are being introduced; advertising and promotion have been re-focused on the simplicity and excitement of totalisator betting; and sports betting has been launched. As a result, increases in TAB turnover are already being experienced.[2]

However, this Commission believes that the majority of any increase in TAB turnover that is attributed to such initiatives can probably be expected to come from increased betting by established TAB punters or from completely new custom, rather than from attracting established SP punters away from unlawful bookmakers.

---

2 TAB submission to Criminal Justice Commission on SP bookmaking 18 October 1990, Mr R.R. Douglas Q.C.

Recent experiences in other States where legal gambling options have been expanded (by such means as the introduction of FootyTAB and PubTAB) also appear to indicate that such a move will not lead to any significant reduction in the major form of SP bookmaking which is the acceptance of credit bets by telephone.

This Commission has identified the following as being the most significant aspects of SP bookmaking that are attractive to punters. Any major extension in available legal gambling should be directed towards replicating as far as possible these services:

* SP bookmakers offer telephone access;
* SP bookmakers offer fixed odds betting;
* SP bookmakers offer credit;
* SP bookmakers accept wagers on a diverse range of contingencies; and additionally
* SP bookmakers often offer a discount on losing bets.

The Approach that Should be Adopted

In the standard criminological text *Theoretical Criminology*, Vold & Bernard summarise the issue of "organised crime" and the types of activities it is involved in as follows:

> ". . . One basic fact stands out from this discussion, namely, that organized crime must be thought of as a natural growth of or as a developmental adjunct to our general system of private profit economy. Business, industry, and finance are all competitive enterprises within the area of legal operations. But there is also an area of genuine economic demand for commodities and services not permitted under our legal and social codes.
>
> Three questions can be asked about organized crime in the context of criminology theories. The first of these questions is: . . . Why do people act this way? At least with respect to the criminal associations that provide illegal goods and services, the explanation for the criminal behaviour appears to be basically the same as the explanation of the behaviour of any legitimate businessman: These criminals are making a profit by providing goods and services that are strongly desired by customers who are willing to pay for them. The second question . . . asks why these particular goods and services are illegal. The answer to that question requires an examination of the historical distribution of power among groups in society, and the moral sensibilities and economic interests of those groups. As with victimless crimes, the question of why these goods and services are defined as criminal appears to be more interesting for criminology than the question of why some people desire to obtain, and other people attempt to provide, these goods and services.
>
> The third question . . . concerns whether defining and punishing the behaviours as criminal has led to a decrease in their incidence. It appears that it has not. Defining these behaviours as criminal may actually contribute to many of the more harmful aspects associated with organised crime. The political graft and corruption necessary for organized

crime to flourish would be unnecessary if it were possible legally to provide these goods and services. Many of the more violent practices associated with organized crime appear to be extreme examples of the cut-throat competitive practices engaged in by legitimate businesses, where the excessive nature of these practices is derived from the fact that criminal businesses operate totally outside the rule of law" (Vold & Bernard 1979 pp. 351-353).

"In general, the violence associated with organized crime would be considerably reduced if the goods and services they deliver were legal instead of illegal.

Moreover, defining these goods and services as illegal actually contributes to the profits available from them. Most drugs, for example, are relatively inexpensive to produce, and the enormous profits they generate are possible only because drug use is illegal. Otherwise, legitimate competition would drive the price down and the profit margin would become much smaller. This means that organized criminals may not favour decriminalization of their operations, since they might then lose their base of operations. That, after all, is what happened when Prohibition was repealed. The criminal organizations that had been providing illegal alcohol were replaced by legitimate organizations that provided a better-quality product at a more reasonable price. Criminal organizations largely went out of the alcohol business and had to move into new markets, much as any other business would, in order to remain viable. In the meantime most of the violence that had been associated with alcohol production and sales simply disappeared.

Under the present arrangement it can be argued that organized criminals have a very attractive setup. They are marketing goods and services for which there are substantial demands. There are enormous profits available since these goods and services are defined as illegal. Political graft and corruption prevent the effective enforcement of the laws, which in effect means that organized criminals are free to market their products as long as they share some of their profits with law enforcement officials and politicians. And, finally, organized criminals are free to use the most violent methods to eliminate any competition that might arise from others who attempt to sell the same goods and services at a better price.

Punishing these behaviours as crimes has not seemed to decrease their incidence. These operations seem to be much more significantly affected by the economic facts of supply and demand, and the fads and foibles in consumer habits, than by legislation and attempts at formal control" (Vold & Bernard 1979, pp. 327-329).

Clearly, a "single issue strategy" response to unlawful bookmaking based upon an increase in law enforcement efforts will be rendered largely ineffective in the longer term. In the past, strategies aimed at the suppression of SP bookmaking have placed undue emphasis upon the ability of increased law enforcement efforts to solve the problem.

In its submission[3] to this Commission, the Queensland TAB has also recognised this fact when it made the following comment:

"Our current board supports the strong emphasis. . . on the inadequacy of the legislation available to prosecute illegal SP bookmakers but this needs to be accompanied by comments on the potential to reduce illegal off-course betting activities through positive and constructive initiatives. We do not believe that punitive legislation alone will successfully combat entrenched, insidious and persistent levels of SP activity in Queensland. . . Single

3 TAB submission on SP bookmaking to Criminal Justice Commission 18 October 1990 Mr R.R. Douglas Q.C.

issue strategies have little chance of success where there has been a long-standing demand for a particular service. We would prefer to see a series of actions taken to respond to the demand filled by SP bookmakers. This type of response should be targeted at legally meeting an established need rather than attempting to obliterate an activity which has traditionally enjoyed *de facto* acceptance by the community".[4]

The principal initiatives that are adopted in order to suppress SP bookmaking must be economic. The aim must be to attract the market share that SP bookmakers currently hold away from the unlawful operators by offering legal alternatives to those aspects of their service that attract punters in the first place.

The legal gambling options currently available to punters are rigid, inflexible and largely unappealing to those who bet SP. To this end, the legal gambling industry must become more flexible and responsive to market demand. It is probably reasonable to conclude that the community is either neutral towards the present off-course betting arrangements provided by the TAB, or alternatively, that they believe the TAB is not adequately servicing a legitimate social activity. Market research conducted by the TAB tends to support such a view.[5]

SP operators have a flexibility which allows them to tailor their products to match their customers' requirements - they offer credit, a personalised and convenient service, and a more acceptable bet form. Fluctuating totalisator odds are essentially unattractive to many large punters. The alternative may be for the introduction of either national win and place betting pools or fixed-odds betting by the TAB.

The TAB's Potential to Counter SP Bookmaking

The TAB believes that there are two significant areas of their own operation which could improve their capacity to compete with SP bookmakers:

1) a relaxation of legislation which has previously prohibited the Queensland TAB from trading in licensed areas (Pub TAB); and

2) further investigation of either fixed odds betting or national win and place betting pools.[6]

While TAB facilities in licensed premises will have some impact on the SP trade its potential should not be overstated. The introduction of PubTAB in other States has not been able to demonstrate any significant impact upon the continued viability of SP bookmakers. The predominant SP *modus operandi* in Queensland is now to accept bets by telephone and unlawful bookmaking in licensed premises is now really quite minimal in terms of the totality of the SP

4 ibid.
5 ibid.
6 ibid.

problem. PubTAB is only likely to impact upon the few remaining small-time SP bookmakers who still field from licensed premises. The net impact of PubTAB on SP bookmaking is therefore likely to prove to be negligible.

The introduction of fixed odds betting is, however likely to be substantially more effective in terms of drawing SP punters away from SP bookmakers. Fixed odds betting has been identified by this Commission's studies as being one of the most significant attractions that SP bookmakers are able to offer to punters. Whilst the TAB continues to offer only a *pari-mutuel* form of betting odds, it will not be able to present itself as an attractive alternative to wagering with SP bookmakers. As such, the introduction of fixed odds betting should be explored by the TAB as a matter of some urgency.

Despite the TAB having recognised that the introduction of fixed odds betting would have some impact upon the SP trade, the TAB has admitted that major obstacles still remain before the Queensland TAB could adequately present an alternative to the convenience and bet forms able to be offered by SP bookmakers.[7] Whilst the introduction of fixed TAB odds would mean that the TAB could begin to offer the dual advantages of telephone access and fixed betting prices, it is still unable to offer a favourable credit facility to punters.

The Role of the Licensed Bookmaker

The Commission's studies tend to suggest that if SP bookmaking were to be somehow totally eradicated, a majority of SP wagers would then be placed with on-course bookmakers.

The basis for such a belief is that SP punters want fixed odds betting and credit. Neither facility is presently available via the TAB, yet both are provided by on-course bookmakers. Virtually all bets presently placed with SP bookmakers are placed on a credit basis via the telephone.[8]

The obvious alternatives are for either the TAB (that has telephone access) to start offering credit (along with fixed odds), or alternatively, bookmakers being granted the right to field by telephone.

Given the sheer size and volume of the TAB telephone betting service,[9] the prospect of also introducing a credit facility appears to be a virtual impossibility and would represent a serious risk to TAB profitability. In this regard, the TAB acknowledged in its submission that it felt that "credit betting is not advanced as a realisable or desirable proposition" for the TAB.[10]

---

7 ibid.

8 Some punters do however, bet SP against the credit of their pool of winnings - which is perhaps roughly analogous to betting to the debit of a TAB credit account.

9 The Queensland TAB currently has approximately 52,000 telephone account holders (TAB Annual Report, 1990).

10 TAB submission, op. cit.

In the event, the best alternative would appear to be to allow licensed bookmakers to field by telephone. If licensed bookmakers were allowed to field by telephone, the "need" to bet SP experienced by many punters to obtain the service that they so clearly demand could be obviated. Two possibilities arise at this juncture. Either bookmakers on-course be allowed to accept bets by telephone, or alternatively, licensed bookmakers be allowed to increase their public accessibility by fielding away from race-tracks.

Both the Northern Territory and the United Kingdom have experience with a system of licensed betting shops run by private bookmakers away from race-tracks. It is not believed that this could be advanced as an attractive proposition for Queensland as their establishment would be in direct competition with a well established system of TAB agencies that already provide the State with an efficient, widespread, off-course betting amenity.

The issue of allowing licensed on-course bookmakers to field by telephone has been raised and hotly debated many times since the inception of the TAB. The proposal has always been rejected in the past for a number of reasons.[11] The predominating consideration has invariably been fear as to its likely impact upon TAB revenue.

In its submission to this Commission the TAB dealt with the issue of telephone betting by licensed bookmakers at some length. The TAB advanced the following arguments in opposition to such a move:

* the option of legalised telephone bookmaking has some serious shortcomings which flow across State borders and will threaten the viability of an efficient revenue and universal TAB telephone betting service which is used extensively by country, aged, infirm and interstate punters; and

* bets placed through the TAB's centralised and universal telephone betting service are taxed as a single transmission. The efficiency and integrity of this system compares favourably with the prospect of an arrangement which will need to rely on numerous bookmakers who pay less in turnover taxes and make no direct financial contribution to the racing industry.

Furthermore, the TAB would be opposed to the introduction of a licensed telephone bookmaking service either on or off-course on the grounds that:

* big-value telephone TAB punters (whom the TAB is most likely to lose) subsidise the cost of providing free telephone betting to small punters;

* it may significantly impact on government revenue;

* it may present difficulties in policing and enforcement;

---

11 The proposal was most recently rejected by the Conference of State Racing Ministers, held in Perth in February of this Year.

* it may be seen as being contrary to world-wide trends toward government control, ownership and organisation of betting facilities; and

* it fails to recognize the increased interest by off-course gamblers in the exotic bet types offered by totalisator pools.[12]

The other side of this debate is perhaps typified by the submission that the Commission received from the Paddock Bookmakers Association.[13] In that submission the following points were made in relation to proposed telephone betting by licensed bookmakers:

* a person who prefers SP betting does not find the TAB to be a desirable or realistic alternative because of the availability of fixed odds betting with SP operators and the ready availability of credit with SP operators. Therefore (the Association believes) the financial cost to the TAB is small in contrast to the cost to on-course bookmakers and the Commissioner of Stamp Duties which is great;

* the only course of action which (in the opinion of the Association) will genuinely threaten to eradicate SP betting is the introduction of telephone betting with licensed on-course bookmakers. This would not be a potential threat to TAB turnover as the average bet on the TAB is under $10 whereas the proposed minimum telephone bet would be much higher;

* to the best knowledge of the Association, the average citizen has to search for an SP operator. It is common knowledge (in the opinion of the Association) that certain punters who are regarded as "non-educated" can get set for unlimited amounts. The availability of definite quarter odds for the first place portion of an each-way bet is a further attraction to the SP punter. This was highlighted by one Fitzgerald Inquiry witness. If this witness had placed his bet with the TAB he would be forced to accept significantly lower odds. Consequently, he bet SP. However, had he the choice to bet legally on the phone with a licensed on-course bookmaker he would (in all probability) not have bet SP; and

* the detection, conviction and jailing of SP operators will serve as a limitation and deterrent. However, the provision of a legal and accessible alternative to SP betting remains the greatest threat. On-course telephone betting with licensed bookmakers is (perceived by the association as being) the best alternative.[14]

This Commission's research has indicated that, given the inability of the TAB to offer a system of credit, the provision of telephone betting with on-course bookmakers should be seriously explored.

---

12 TAB submission, op. cit.

13 Submission to Criminal Justice Commission on SP bookmaking from the Paddock Bookmakers Association 24 October 1990. (Prepared in consultation with the Queensland Bookmakers Association).

14 ibid.

The Commission believes that the arguments that have traditionally been advanced in opposition to bookmaker telephone betting can be largely overcome. In this regard, the following points are made for consideration:

* Fears about the impact of telephone betting with bookmakers upon government revenue have generally been premised upon an assumption that bookmakers will continue to pay turnover tax at the same nominal rate (presently one per cent). Given the significant increases in turnover that on-course bookmakers are likely to experience, there is no reason why turnover tax should not also be increased, nor why bookmakers could not also make some direct financial contribution to the racing industry to reflect the turnover windfall that bookmakers are likely to experience, and thereby preserve government revenue.

* Fears about the impact upon TAB turnover have largely been based upon an assumption that telephone betting with bookmakers would be introduced with "all other factors remaining constant". If bookmakers were given telephone access and nothing else were changed, then the likely impact upon the TAB would perhaps be more significant. However, if the TAB were simultaneously to introduce either national pools or fixed-price betting, then the impact of telephone betting with bookmakers upon the TAB should be minimal. In any event, this Commission's studies tend to indicate that SP bookmaking is more deleterious to bookmakers than it is to the TAB.[15] Such measures introduced in combination could have the effect of enhancing the service provided by the entire spectrum of the legal gambling market, and thus enhance the profitability of both licensed bookmakers and the TAB.

* The belief that the TAB should be recouping the money currently bet with SP bookmakers' is unnecessarily centralist. Punters should be allowed the freedom to choose whether they wish to bet with a bookmaker or alternatively with the State-run TAB. Similarly, the rights of on-course bookmakers to earn a living should not be denied to them by a policy designed to minimise competition for the TAB.

* There needs to be some recognition that the role of on-course bookmakers is an important one. It is quite arguable that on-course bookmakers have an important cultural and historical role within the Australian community. Bookmakers fielding at racing carnivals provide one of the prime attractions for race-goers. As such, their presence (or otherwise) at race-meetings will have an important determinant effect upon attendances and the overall viability of the racing industry. Policy decisions made by government that impact upon the future viability of bookmaking should take such factors into account.

---

15 Information contained in the TAB's submission that is said to have been provided by the New South Wales TAB, lends support for such a view and indicates that SP bookmakers in New South Wales are actually benefiting the TAB. This occurs in the sense that they are increasingly less prepared to accept small bets, and are telling punters to take their smaller bets to the TAB. New South Wales TAB turnover is thought to have actually increased somewhere between 8.1 and 14 per cent accordingly.

* This Commission's studies tend to support the view that if licensed bookmaking becomes unprofitable and continues to demise, then the way would be left open for a substantial enhancement of the role of the SP bookmaker.

Many of the arguments against on-course bookmakers being granted the right to field by telephone have been based upon suspicions about the integrity of bookmakers and the difficulties that would surround the supervision of such a system. Some of these arguments are not without foundation. However, it is probable that such difficulties could be overcome with the right combination of legislation and appropriate technology.

The Commission believes that the integrity of a computer telephone betting system could be ensured if appropriate measures were taken. Such appropriate measures are envisaged to include:

* the number of telephones that each on-course bookmaker is allowed to operate should be strictly limited;

* the entire system should be made to be tamperproof and be purchased, owned and maintained by an appropriate government instrumentality who then lease the equipment to bookmakers;

* all bets received should be automatically recorded by computer. The recording of bets must include the date and exact time of each bet; and

* in order to minimise any perceived threat to TAB operations, a minimum value bet should be introduced for bookmaker telephone betting.

Objections to the introduction of telephone betting with licensed bookmakers have often been based upon the view that it would be difficult to ensure that bookmakers record all bets. Such risk should be adequately safeguarded against by the proposed automatic recording of all bets.

Other arguments against the introduction of telephone betting include the fact that it is impossible to preclude the possibility that bookmakers may adopt some "code" for the receipt of bets in order substantially to understate the magnitude of the bet. For example, recording "10" instead of "10,000". Problems of this nature already occur and necessitate the presence of betting inspectors at race-tracks. It is not envisaged that this problem will become greater if the electronic recording of bets is introduced. Electronic recording will, at the very least, have the likely effect of providing greater deterrence to this industry practice.

While it is probably impossible to completely remove the scope for this type of dishonesty, it can be minimised. In addition to recording the transmission of bets, this can be achieved by increasing the presence of betting inspectors and giving them extensive new supervisory powers. Simultaneously, stringent

vetting of all current and future holders of bookmakers licences will be required. In addition, conviction for any offence under the *Racing and Betting Act* should become grounds for the automatic disqualification from the right to hold a Queensland bookmaker's licence.

As a further deterrent, licensed bookmakers convicted of any betting offence should also be subjected to the mechanism for default stamp duty assessment discussed elsewhere in this report.

The prospect of having to pay a substantial stamp duty penalty, when coupled with the prospect of also losing the right to field (and thereby their means of income), should provide a substantial disincentive to bookmakers who may be tempted to abuse the privilege of being allowed to field by telephone.

The Commission feels that the following advantages will flow from strictly supervised telephone betting by on-course bookmakers:

* a substantial amount of money that is currently bet unlawfully will now be able to be wagered legally. In so doing, a substantial criminal enterprise will be minimised;

* bookmakers' turnover will substantially increase which could then justify the levying of higher levels of turnover tax; and

* computer recording of all bets will minimise the possibility of money laundering and could be done in such a way that CTRA reporting is also automatic. Given the poor compliance rate of Queensland bookmakers with the reporting requirements of the *Cash Transaction Reports Act 1988 (Cwth)*,[16] such a measure may be warranted.

Legislative Reform

Although this Commission has seen fit to recommend that the principal strategy that should be adopted to deal with unlawful bookmaking should be economic, it has also recognised that single issue strategies are not the complete answer.

Given the significant levels of persistent and insidious criminality found in association with unlawful bookmaking, substantive changes to the law should also be considered.

Although expanding the parameters for the operation of both licensed bookmakers and the TAB will assist in denying SP bookmakers a market share, it must be recognised that there will always be those who will try to circumvent regulation in an attempt to maximise personal financial gain.

For these reasons, the Commission recommends that the following reforms be introduced to the law of Queensland.

16 Submission of the Cash Transaction Reports Agency to the Criminal Justice Commission on SP bookmaking 22 January 1991.

Upon conviction for the offence of unlawful bookmaking

The magnitude of fines presently provided by section 218 of the Queensland *Racing and Betting Act* is among the most substantial in the country. However, the civil process for recovery of such fines provided by section 218A is essentially inoperable. This point was clearly made in the *obiter* comments of Connolly J. in 1985, in *R v Chadwick* ((1985), 1 Qd R 320 at 324):

> "In a sense, as the learned District Court judge observed, the amount of the fine is largely academic. There is no provision for imprisonment in default of payment. The Attorney-General is empowered to obtain judgement with a view to the taking of proceedings (including proceedings in bankruptcy) to recover the amount of the judgement. The applicant would appear to be, to say the least, an unpromising subject for execution and the probability of his being made bankrupt may be regarded as negligible. See section 82(3) of the *Bankruptcy Act* (Cth). The fact that judgement is entered in a Court of competent jurisdiction would not prevent a Court exercising jurisdiction in bankruptcy going behind the judgement and identifying it as founded upon a fine imposed in respect of an offence and thus not provable in bankruptcy".

The inability of the Crown to effect its legislative intent is compounded by the fact that section 218 also preserves a right for a sentencing judge to impose a lesser penalty than the minimum, and there is no provision for default imprisonment.

Accordingly, the Commission recommends that section 218A be repealed in its entirety. The mechanism triggered upon non-payment of fines should be default imprisonment. The magnitude of the existing fines in section 218 should remain unchanged.

Although some judicial discretion should be retained in the case of a first offence, in recognition of the fact that there is still some small-time SP bookmaking, in all other cases the discretion to impose a lesser penalty should be removed. The discretion to impose a lesser penalty than the prescribed maximum in the case of a first offence should still be accompanied by an absolute minimum substantial enough to provide a significant deterrent. Given the evidence that has come to light of major SP bookmakers using elderly and seemingly destitute pensioners as "front men" to suffer prosecution, such judicial discretion should be exercisable only upon complete satisfaction that the convicted person is not part of some larger criminal organisation.

Discretion of this type is exercisable in Victoria if the court is satisfied that the amount of bets held is not greater than $500. The enactment of such a "prescribed maximum ledger" in Queensland would mean it would become relatively simple to make the determination that the SP activity in question was relatively minor. However, a "prescribed maximum ledger" for a lesser penalty in the case of a first offence may, in itself, create some difficulties. There is some evidence to suggest that the introduction of a prescribed maximum ledger could simply create an incentive for SP bookmakers to reorganise their *modus operandi* so that the front men never hold a ledger greater than the prescribed maximum and that, upon conviction, the front man is simply "retired" and another "clean-skin" is recruited to stand in the firing line. Meanwhile, the SP

bookmaker continues to receive relayed betting details from the front men at another, less detectable location which could conceivably even be interstate.[17]

For these types of considerations it may be advisable to avoid the use of a prescribed maximum ledger in the case of a first offence and simply allow the sentencing judge to exercise the discretion to impose a lesser penalty after considering all the circumstances that surround the case.

In all cases, default imprisonment should apply as the natural consequence of failure to pay the prescribed fine. The Commission envisages that both fines and default imprisonment will be applied on the basis of an incremental range of sentence depending on the magnitude of the unlawful operation that has lead to conviction. This would work somewhat similarly to the following:

Upon conviction for a <u>first</u> offence:

> Fine of $15,000 - $20,000 or less than this range of amounts (but not less than $3,000), at the discretion of the court.
>
> Default imprisonment of three to six months depending on the circumstances of the case.

Upon conviction for a <u>second</u> offence:

> Fine of not less than $20,000 and not more than $30,000. Default imprisonment 12 - 18 months depending on the circumstances of the case.

Upon conviction for a <u>third or subsequent</u> offence.

> A fine of not less than $30,000 and not more than $50,000, and imprisonment for three to five years, depending on the circumstances of the case.

When it is considered that a significant number of those with existing convictions for unlawful bookmaking in Queensland have failed to pay their fines, and when that fact is taken in conjunction with the fact that several of Queensland's largest presently operating SP bookmakers have numerous convictions for unlawful bookmaking yet continue to hold the law in contempt, serious consideration should also be given to making the proposed legislation retrospective to July 1981 (when default imprisonment was removed).

Section 217 Possession of instruments of betting

This section needs to be expanded so that "instrument of betting" includes any instrument used in conjunction with the acceptance of bets upon any betting contingency, and not only betting that occurs on horse races, trotting races or greyhound races.

---

17 The modus operandi of the Victorian/New South Wales bookmaker 066 is perhaps demonstrative of such a tendency.

The Definition of Bookmaker

The *Racing and Betting Act* needs to be amended so that the acceptance of a single bet is deemed to be sufficient for purposes of "acting as a bookmaker" and "carrying on the business of bookmaking".

The Concept of "Using"

Difficulties have been encountered in establishing that premises have been opened, kept, or used for unlawful bookmaking in cases where that is not the predominant use that is made of those premises.

A provision should be included in the *Racing and Betting Act* that provides a definition of "use" that does not require the unlawful use to be the predominating or essential use that is made of those premises. In this regard, some guidance may be found in section 70(1)(a) of the *Victorian Lotteries, Gaming and Betting Act (1966).*

In addition, when given the past difficulties that have been encountered in securing convictions against owners or occupiers who are alleged to "suffer" their premises for the purpose of unlawful bookmaking, it would be appropriate if the amending legislation were to also include a specific definition of "suffer".

The meaning of the verb "suffer" is peculiarly susceptible to its context. It may have an active or a passive signification; it may be used transitively or intransitively; and it may range from "permit" down to simply "failing to prevent" . . . it may also mean "sustain" or "undergo" (*Raffey v Bert* (1867), LR3 Eq 759). In Queensland, in the context where the verb to "suffer" is used to mean "permit" the courts have held that it will usually involve some element of volition (*Brown v Julius, ex parte Julius* (1959), Qd R 385) which, arguably, must then involve some positive exercise of will. Clearly the concept is vague and at best ill-defined. This does little to create certainty for the prospects of securing unlawful bookmaking charges against owners or occupiers who have, against any objective standard, breached the law.

Accordingly, the concept of "suffer" should be defined to an objective standard. Under such a definition, any owner or occupier who could reasonably be expected to have known that his premises were suffered to be used for an unlawful purpose could then be convicted.

Betting on Licensed Premises Section 221

Adequate penalties are provided for use against the licensees of licensed premises found to be offering their premises to be used for the purposes of betting. However, the Commission has become aware of instances where the mechanism that allows for forfeiture of a liquor licence provided by subsections (3) - (7) of section 221 are able to be avoided by assigning the licence - in many cases to the licensee's spouse.

Section 221 should therefore be amended in some way so that convicted persons are also denied the ability to retain effective control of licensed premises.

Declared Gaming House Provisions for Queensland

Declared Gaming House provisions have been used to good effect in New South Wales against premises used for both the purposes of unlawful gaming and SP bookmaking.

Such provisions are particularly useful in the sense that they create a real economic incentive - particularly upon landlords - to ensure that premises are not used for unlawful purposes. Some similar provisions should be provided for Queensland.

A Stamp Duty Recovery Mechanism

A provision similar to section 128A of the *Victorian Stamps Act* should be introduced in Queensland. SP bookmaking is at first instance a revenue crime and its greatest victim is consolidated revenue. As a form of restitution, those who are convicted of unlawful bookmaking should be required to repay the turnover tax that they have sought to evade by fielding unlawfully. Default stamp duty should be assessed in addition to any punitive fine that is imposed.

The prospect of being assessed for a substantial amount of default stamp duty should also provide a significant additional deterrent to SP bookmakers. The mechanism provided in the Victorian provision whereby the convicted SP bookmaker is allowed to negotiate the amount of assessed stamp duty is also useful in the sense that it will encourage unlawful bookmakers to keep better fielding records and thus facilitate police efforts to obtain convictions in the first place.

Offences by Licensed Bookmakers

Various penalties are provided in the *Racing and Betting Act* for offences by bookmakers. Given the associations between licensed bookmakers and unlawful bookmaking, their activities need to be more closely monitored.

In its submission to the Department of Tourism Sport and Racing Green Paper on the development of the racing industry in Queensland,[18] the Commission recommended that all licence holders within the racing industry (including bookmakers) should be subjected to strict vetting. A recommendation was also made that those convicted of serious racing industry offences, such as unlawful bookmaking, should be disqualified absolutely from holding an industry licence. The Commission now reiterates those comments.

Presently, under the provisions of the *Racing and Betting Act* (section 160), the Committee of a club that has control of a racing venue has a discretion to remove or prohibit those it reasonably suspects of unlawful bookmaking.

The Commission recommends that such a mechanism should not be discretionary, but should be automatically applied in all cases to those who are convicted of unlawful bookmaking. Conviction for unlawful bookmaking should therefore operate as an automatic "warning off" from all racing venues.

Those bookmakers apprehended fielding in contravention of their bookmaking licence should also be subject to the default stamp duty mechanism outlined above.

The Need to Criminalise SP Betting

The futility of proscribing only the supply of unlawful betting services has been well canvassed elsewhere in this report. Although a proper expansion of lawful betting amenity should render it largely unnecessary for punters to need to have recourse to SP bookmakers, there may still be those that choose to bet unlawfully. Providing legal gambling is expanded adequately (in keeping with the recommendations of this report) it would be reasonable to conclude that those who continue to bet unlawfully have something to hide and are worthy targets of the criminal law.

Currently, section 222 of the *Racing and Betting Act* contains a prohibition on public betting (what is often termed "street betting" in other jurisdictions). This provision no longer reflects the reality of unlawful bookmaking in the sense that little SP bookmaking occurs publicly. The wording of this provision should be amended so that the prohibition simply applies to those that bet unlawfully. Those that choose to bet unlawfully not only deny government consolidated revenue substantial receipts, but also enhance the black economy that is then

18 A submission by the Criminal Justice Commission to the Division of Racing, Department of Tourism, Sport and Racing, in response to a Green Paper entitled - The Development of the Racing Industry, January 1991.

available to finance other serious forms of crime. Specific penalties should therefore be provided for this offence to reflect the seriousness with which it should be regarded.

Confiscation of the Proceeds of Crime

SP bookmaking is a lucrative enterprise that results in substantial amounts of non-taxable income for its perpetrators. Given the difficulties that possession of large amounts of illicitly obtained cash income create, the majority of SP bookmakers divest their cash quickly into assets. Real estate, motor vehicles, gemstones, bullion and luxury boats then represent the fruits of their unlawful endeavour. Confiscation of such illegally acquired wealth and comfort should become *de rigeuer* for law enforcement agencies and should include assets that are divested by subterfuge so as to give the true owners the appearance of being asset-less. When it becomes common knowledge that convicted SP bookmakers will be subjected to fines, default stamp duty assessments and forfeiture of their assets, it is most likely that many will think twice before fielding unlawfully.

The legislative mechanism for forfeiture of the proceeds of crime needs to be carefully considered. Past experience with unlawful bookmakers has indicated that they often engage skilled professional advice in order to circumvent the legislative intent.

Forfeiture provisions are best organised along similar lines to the provisions of the Commonwealth *Bankruptcy Act*. The bankruptcy provisions allow the Official Receiver in Bankruptcy to recover assets disbursed by the bankrupt at any time prior to bankruptcy if they were so disposed with the intent to defraud creditors. In the case of unlawful bookmaking, the fraud is not upon creditors but is committed upon the greater community. Therefore, it would be appropriate if "forfeiture audits" were allowed to operate in a similar fashion to "bankruptcy audits" and were not restricted as to how far into the past they may probe.

If such an audit should divulge disparities between apparent income and assets (that includes assets, which, upon application of some objective standard appear to benefit the convicted bookmaker), the onus should shift to that convicted person to prove that such asset is not the proceeds of crime.

Forfeiture provisions could, in addition, be applied to those who bet unlawfully with SP bookmakers.

Proscription of Pricing Services

Having regard to the reference that is made earlier in this report to the *Telecommunications (Interception) Act*, it is highly doubtful that efforts directed at the suppression of SP bookmaking will be any more that partially effective until the Commonwealth is persuaded to make the amendments recommended to this legislation.

In all other Australian States it is illegal to operate a pricing service. Currently in Queensland, to operate a pricing service does not constitute an offence, yet somewhat inconsistently, the operation of a pricing service usually entails unlawfully relaying information from racing venues. In order to remove this inconsistency, and in order to make Queensland law more consistent with that of the other States, it would be appropriate if the operation of pricing services was also proscribed in Queensland. Given the significant importance of pricing services to SP bookmakers and given that one pricing service in Brisbane facilitates most of the major SP bookmakers nationally, it would be highly appropriate if the sanctions of that proscription were sufficient to reflect these facts.

Automatic reference of unlawful bookmaking convictions to the Federal Commissioner for Taxation

It is the frequent and persistent practice of virtually all SP bookmakers to avoid their taxation obligations under the Commonwealth *Income Tax Assessment Act*. Accordingly, upon conviction for an unlawful bookmaking offence, notification of that conviction and its particulars should be forwarded to the Federal Commissioner for Taxation. This requirement should be specifically embodied within the *Racing and Betting Act*.

The prospect of a convicted unlawful bookmaker being assessed for a substantial amount of evaded taxation and the additional penalties that attach to such tax evasion will only provide further disincentive to law breakers.

The Commonwealth Telecommunications (Interceptions) Act

Elsewhere in this report reference is made to the difficulties that the Commonwealth *Telecommunications (Interceptions) Act* is creating for law enforcement efforts in every Australian State, and particularly for investigations into the activities of unlawful bookmakers.

It remains highly doubtful that efforts directed at the suppression of SP bookmaking will be any more than partially effective until the Commonwealth is persuaded to close the loopholes in its telecommunications legislation.

To this end, it is strongly recommended that the Premier and Attorney-General, in concert with both the Police and the Racing Ministers should, as a matter of urgency consult with their counterparts in the other States, and then collectively make representations to the Commonwealth Minister for Transport and Communications and the Commonwealth Attorney-General to have the *Telecommunications (Interception) Act* amended.

Law Enforcement

On 7 September 1990, the Commission wrote to the Commissioner of the Queensland Police Service requesting information regarding current police enforcement policy with respect to the provisions of the *Racing and Betting Act.* This request was made particularly in light of the regionalisation of the Queensland Police Service that has recently occurred in compliance with the recommendations of the Report of the Commission of Inquiry.

In a response given under the hand of the Deputy Commissioner (Operations) the police service has informed that:

> "Under the new police structure, policing of licensing and gaming offences (including SP Bookmaking) is primarily a regional responsibility. The matter of what priority SP betting will be accorded is a decision for each Regional Commander. Intelligence received and emerging trends shall be the function of the Commander, Task Force".[19]

The Commission has reason to believe that law enforcement efforts directed at the suppression of SP bookmaking that are directed from a local or regional level will be largely ineffective. The Commission bases its conclusion upon the following considerations.

SP bookmaking is not regionally or locally confined. The predominating *modus operandi* of unlawful bookmakers is to utilise the telecommunications network, with the result that they offer their unlawful service to punters all over the country. The use of "call line diversion" and, increasingly, mobile telephones, has given SP bookmakers a degree of mobility that does not then correspond with attempts to police it at a localised level. The parameters of this unlawful activity continue to expand, therefore enforcement efforts should expand with it and should not be "compartmentalised" in this way.

Given the increasing movement of SP bookmakers between States, there is also a clear need to be able to liaise and co-ordinate police operations jointly between various State law enforcement agencies. Again such considerations weigh against the prospects of success for regional policing of SP bookmaking.

Under the regionalised policing structure the decision to initiate crime operations against any given field of criminal endeavour are principally the responsibility of the Regional Commander. Increasingly, community policing is being adopted as the philosophy behind policing policy. Regional priorities are

---

19 Letter from Deputy Commissioner (Operations) R.C. Kirkpatrick to Criminal Justice Commission, dated 8 October 1990.

consequently to have their basis in local community demands and needs. The demands that a local community place upon their police establishment will largely have their basis in local perceptions about various crime issues. In the particular case of SP bookmaking, the commonly held perceptions about the degree of criminality inherent in the activity is low. As has been discussed in earlier chapters of this report, community attitudes to SP bookmaking are largely based upon a cultural mythology that has romanticised the role of the SP bookmaker to the extent that community perceptions do not correspond with reality. Accordingly, the policing priority that will be given to SP bookmaking in the regions can be expected to be correspondingly low.

There are other more practical difficulties that relate to attempts to enforce SP bookmaking on a local or regional level. Law enforcement in this area requires a considerable degree of expertise which may not be widely available in the regions. Mounting police operations against SP bookmakers often requires a large amount of undercover and police surveillance work - both of which may be difficult to organise at a local level.

It appears that the decision to make the enforcement of the law against SP bookmakers a local and regional responsibility may have been based upon misplaced perceptions about the mode of operation of SP bookmakers - that it is "small time" and conducted principally in hotels and other licensed premises.

Even if this were true, it would create great difficulties for police - particularly in smaller towns - for enforcement. In the case of the few remaining "small time" SP bookmakers who do operate from hotels and licensed premises, they may be well-known and well-liked local identities. In smaller communities they may even mix socially with the police. In such circumstances, enforcing the law becomes an unenviable task for local police and, given the popular attitudes towards SP, may even result in considerable local anger directed at the police.

Such local disharmony could be largely avoided if a relatively anonymous police Task Force group were to arrive unannounced from Brisbane, enforce the law, and then leave again as quickly as they arrived.

When all such factors are considered, it becomes clear that there is an emerging need to establish some centralised police group responsible for the policing of unlawful bookmaking.

Although one significant submission that the Commission received suggested that the responsibility for policing SP bookmaking should become the exclusive responsibility of the Criminal Justice Commission,[20] the Commission believes that SP bookmaking and its associated crimes should specifically be policed by the Queensland Police Service and not the Commission.

20 Submission from the Queensland Harness Racing Board on the issue of SP Bookmaking dated 29 October 1990.

It will be important that the proposed unit establish a close working relationship with intelligence analysts who will then become specifically responsible for identifying linkages between SP bookmaking and racing industry crimes; relaying other crime intelligence to the relevant units of the Queensland Police Service; and for identifying any emerging criminal trends.

The unit must be adequately resourced so as to allow for effective police investigations. This will include sufficient administrative support and assistance from police surveillance teams.

Given the importance of the telecommunications system to unlawful bookmakers, full time assistance from Telecom investigators is highly necessary and should be requested as a matter of priority.

The establishment of a specialised unit will necessarily involve some reorganisation within the Police Service. The Commission does not envisage that the need for a unit specifically targeting SP bookmaking and the racing industry will be permanent. Once the group has "cleaned up" the industry, the unit can be deployed to other identified problem areas needing a relatively intensive resource application to a specific project.

Given the clear nexus between police corruption and SP bookmakers in the past, it is reasonable to conclude that the prospect of establishing a specialised SP bookmaking police unit will cause some community concern. For this reason, the operation of such a unit should be closely monitored by a designated senior officer on a regular basis.

If it is decided to establish a specialised unit, the Commission would be willing to assist the Queensland Police Service to develop a suitable structure.

The Role of the Criminal Justice Commission

The Commission is satisfied that adequate structures now exist to ensure that the types of problems with police corruption that were encountered in the past will not re-emerge.

To this end the following recommendations are made:

* All police and civilian staff of the proposed Racing and Betting specialised unit should be subjected to independent integrity vetting by the Criminal Justice Commission. The integrity of such individuals should be re-evaluated by the Criminal Justice Commission at least annually.

* The operational strategy for this unit should be established after close liaison between the Queensland Police Service and the Criminal Justice Commission. These strategies should be subject to regular review.

* Given the level of community concern about police units of this nature, once the guidelines for operation of this task group have been established they should be publicly announced.

* Given the range of economic measures that the Commission has proposed for the suppression of unlawful bookmaking it is envisaged that the significance of SP bookmaking as a major crime problem will decline. In that event, the need for a Racing and Betting specialised unit will, it is hoped, be finite. Therefore, the Criminal Justice Commission should review the continuing need for such an arrangement on an annual basis.

Deficiencies in Criminal Intelligence

The Commission's studies of the SP bookmaking industry in Queensland have necessitated extensive recourse to the available body of criminal intelligence information held by the police on SP bookmaking. Throughout this study deficiencies have been identified in this intelligence data and it remains the fact that there is still little useful criminal intelligence data on the SP bookmaking industry. What intelligence is available is more tactical than strategic. More particularly, the Commission's studies indicate that police operations in this field are hampered by the lack of a complete appreciation of the economic aspects of this unlawful enterprise.

To assist the enforcement efforts of the police, the Queensland Police Service and the Criminal Justice Commission should, as a matter of priority, start a complete strategic profile of the unlawful bookmaking industry that focuses upon its specific economic elements. Such a strategic profile should become the basis of a complete unlawful bookmaking intelligence data base for future use in law enforcement.

Police Training

Although it is the belief of this Commission that the need for a committed police unit will in all probability be finite, there is still a need to retain a core of police expertise in the investigation of unlawful bookmaking and related racing industry offences. The need to ensure that expertise is not lost will be particularly felt should it be necessary to reconstitute the Racing and Betting specialised unit at some time in the future.

Expertise in this field of investigation is not easily acquired. It comes only after years of experience and requires an intimate understanding of the peculiar mores of the racing industry and its attendant *milieu*. It should be recognised from the onset, that once this expertise is acquired, it would be highly inadvisable to then let it either diminish over time, or be re-allocated in such a manner that it cannot be readily called upon in the future.

Presently, the Queensland Police Service does have a handful of officers with developed expertise in this field. To safeguard that body of knowledge, it needs to be broadly disseminated. This will require an ongoing, adequately structured

in-service training program. Training is required not only in the Task Force, but also in the regional commands where the understanding of unlawful bookmaking is largely inadequate. Regional command training must be directed primarily towards ensuring that police in the regions are equipped with adequate knowledge of SP bookmaking so as to know when assistance from the Task Force Group should be requested.

Upon cessation of the Racing and Betting specialised unit, care must be taken to ensure that its key staff are placed in positions within the Police Service structure where they may be called upon at short notice, either to respond to isolated outbreaks of unlawful bookmaking, or to provide instructional training and advice to other officers.

The Need for a Co-ordinated National Scheme

Efforts directed at the suppression of SP bookmaking have been a feature of Australian law enforcement for decades. Notwithstanding some short term successes, it remains the case that those efforts have been largely unsuccessful. This could perhaps be viewed as being the combined result of both the community's demonstrated willingness to persist with SP gambling and as the result of a lack of co-ordination between the various State law enforcement agencies.

The difficulty remains that law enforcement in Australia is predominantly organised and directed from a State level, and is consequently driven by a variety of political considerations that naturally vary on a State by State basis. In particular, the degree of opprobrium attached to SP bookmaking has been highly variable, both over the years and between the different States.

SP bookmakers have clearly demonstrated that they have little regard for jurisdictional boundaries nor concern for the subtleties of State politics that affect the level of resources committed to their eradication. If anything, it can be observed that SP bookmakers are able to use the existing inconsistencies between the various States' laws and law enforcement efforts to their own best advantage. Commissioner Fitzgerald Q.C., in summarising these difficulties, merely mirrors the sentiments that were expressed by Costigan Q.C. (1984, vol. 4) half a decade before:

> "A campaign against SP bookmaking will only be made truly effective by co-operative legislation involving the States and the Commonwealth Government. Otherwise it will be defeated by the fragmentation of jurisdictions under the federal system" (Fitzgerald Report 1989, p. 195).

Increasingly, we find ourselves in a world that is less and less affected by the geographic isolation that had a great impact upon the formulation of the Australian system of federalism. Nowhere is this change perhaps more clearly felt than in the realm of law. In the past, the preservation of a State's right to legislate was considered necessary to give proper reflection to that State's place within the Commonwealth. Today, however, this will often lead to frustrating

inconsistencies and uncertainty in the conduct of business and other affairs that transgress State boundaries. Law enforcement efforts directed at the suppression of SP bookmaking provide a prime example of such difficulty.

To the extent that inconsistencies between the laws of the various States governing SP bookmaking continue, difficulties with SP bookmaking will also continue to be encountered somewhere. Given the far-reaching ability of the telephone and the facility it affords the SP bookmaker, it is most likely that after some States have reformed their SP bookmaking laws the *locus conveniens* for SP bookmaking will simply become those States of least enforcement.

To this end, all the Australian States should be urged to standardise the regime of criminal law that is used to counter SP bookmaking. This could perhaps be undertaken in a similar manner to the process that has recently been adopted to standardise companies and securities legislation.

Equally, the recommendations and comments that this Commission has seen fit to make about needing to expand the array of legal gambling alternatives are also of similar application to the other Australian States.

It is therefore recommended that, as part of the overall reform process, the Queensland Government should also endeavour to initiate the development of a national strategy to deal with SP bookmaking.

Provision of Social Services for Compulsive Gamblers

It is essential that any planned introduction of an increased range of gambling options be accompanied by adequate planning for the provision of an effective range of services so that compulsive gamblers are able to obtain assistance.

To this end the following recommendations are made by this Commission:

* It become the responsibility of the relevant division within the Department of Health, in conjunction with the Racing Industry, to conduct a community awareness and education program on how to recognise individuals that may be the victims of pathological gambling, and where assistance may be sought.

* That the relevant division within the Department of Health undertake studies necessary to determine what additional resources, infrastructure, capital and professional counselling staff will be required adequately to cope with increases in the number of people suffering from pathological gambling.

* That the Department of Health liaise with other church and community welfare groups that currently provide support and counselling to pathological gamblers, and then take on responsibility for co-ordinating the provision of such assistance on a State-wide basis.

* As it is the TAB, licensed bookmakers, on-course totalizators and the racing clubs that have the most to gain from the suppression (or eradication) of unlawful bookmaking, they must recognise that they have a social responsibility to the greater community to rectify any problems that can be attributed to increased legal racing gambling introduced to assist in the suppression of unlawful bookmaking.

Accordingly, this Commission recommends that a proportion of the cost of providing adequate services for the treating of pathological gambling should be met by the racing industry. This should be done as a "first charge" levy against turnover.

References

Vold, G.B. and Bernard, T.J. 1979, *Theoretical Criminology*, 2nd edn., Oxford University Press, New York.

Royal Commission on the Activities of the Federated Ship Painters and Dockers Union 1984, vol. 4, *Final Report*, (Chairman: F. Costigan Q.C.), Commonwealth Government Printer, Canberra.

Commission of Inquiry Pursuant to Orders in Council 1989, *Report* (Chairman: G.E. Fitzgerald Q.C.), Government Printer, Brisbane.

APPENDICES

APPENDIX A

QUEENSLAND LEGISLATION

The provisions of Queensland law that relate to the suppression and control of unlawful bookmaking are to be found principally in the *Racing and Betting Act*. Additionally, statutory provisions that have some application to the control of unlawful bookmaking are found in the *Criminal Code*.

The *Racing and Betting Act* in its current form, is lengthy and somewhat convoluted having been the subject of numerous amendments in recent years.

To the extent that this Act is applicable to unlawful bookmaking, it is in need of substantial revision. Several years of unsuccessful application of the provisions of the *Racing and Betting Act* to instances of unlawful bookmaking, coupled with the knowledge that this unlawful industry has continued to go from strength to strength, is sufficient to indicate that the *Racing and Betting Act* in its present form, is not suitable for the control of unlawful bookmaking.

While it would be a relatively simple thing to amend singular, ineffective provisions, it is this very process that has largely been the cause of past and present difficulties presented by this Act. If this process contains any lesson, "it may be found in the reflection that an attempt to weld into a consistent instrument old statutes passed at varying dates and interpreted by a stream of judicial decisions, and to clothe the product in the neat garb of a modern draftsman's phrasing leads to worse obscurity, inconsistencies and misgivings than the *disjecta membra* so brought together originally contained" (*Bond v Foran* (1934), 52 CLR, 364 at 369).

Clearly then, an overhaul of the *Racing and Betting Act* should be approached in a comprehensive manner.

Those sections of the Act that pertain to SP bookmaking are reproduced in an Appendix to this report. Those sections of particular relevance, and those that have created the greatest difficulties for police charged with the suppression of SP bookmaking, will be dealt with below on an individual basis.

The Unlawful Bookmaking Offence Provisions of the Racing and Betting Act

There are three offence provisions of principal importance in the *Racing and Betting Act*; they are sections 214, 216 and 217.

Sections 218 and 218A, discussed infra, prescribed the penalties for contravention of each of sections 214, 216 and 217.

Section 214 on Unlawful Bookmaking provides:

A person shall not carry on bookmaking or act as a bookmaker at a place other than -

(a) a racing venue where, on a day when and at a time of day at which –

(i) a meeting is lawfully held or is deemed to be lawfully held under this Act;

(ii) betting with bookmakers is lawful or is deemed to be lawful under this Act; or

(b) an athletic ground where, on a day when and at a time of day at which an athletic meeting at which bookmaking is permitted under this Act is lawfully held.

Section 214 does not create difficulties in itself, but difficulties are created due to the common law definitions attributed to "carrying on bookmaking" and "acting as a bookmaker". The difficulties of interpreting section 214 are compounded by the provisions dealing with penalties for contravention of section 214, namely sections 218 and 218A. These two provisions are discussed later.

Section 216 refers to the Prohibition of opening, keeping or using a common betting house provides inter alia:

(1) A person shall not–

(a) open, keep or use;

(b) permit or suffer a place of which he is the occupier to be opened, kept or used as; or

(c) in any way assist in conducting the business of,

a common betting house.

It is immaterial, in relation to an offence defined in subparagraph (b), whether the occupier was or was not present at the time the offence was committed.

(2) A person–

(a) being the occupier;

(b) acting for or on behalf of the occupier; or

(c) in any way assisting in conducting the business,

of a common betting house, shall not receive directly or indirectly money or other property--

(d) as a deposit on a bet on condition of paying or giving; or

(e) as or for the consideration for any assurance, undertaking, promise or agreement, express or implied, to pay or give thereafter,

money or other property on the happening of a sporting contingency in Queensland or elsewhere.

(3) A person shall not give an acknowledgement on the receipt of money or other property, received in the manner and for a purpose specified in subsection (2), purporting or intended to entitle the bearer or any other person to receive money or other property on the happening of a sporting contingency in Queensland or elsewhere.

Whether or not a place constitutes a common betting house, is determined by reference to section 215. Section 215 (1) simply lists a series of purposes with respect to, or in connection with which a place shall not be used, and then provides that a place that is opened, kept or used wholly or partly for one of the purposes specified, is, for the purposes of the *Racing and Betting Act* a "Common Betting House".

This section basically outlines different methods for the receipt of illegal bets.

Section 215 on common betting house states as follows:

(1) A place shall not be opened, kept or used wholly or partly for, with respect to or in connexion with any of the following purposes–

(a) betting by the occupier thereof with another person whether–

(i) in person;

(ii) by messenger or agent;

(iii) by post, telephone of telegraph;

(iv) by or through–

(A) any mechanical, electrical, electronic or any other equipment or device or any service provided by or with the aid of any such equipment or device;

(B) any form or means of data transmission;

(C) any form or means of telemetry;

(D) any form or frequency of radio transmission;

(E) any film, microfilm or any other photographic or holographic equipment, service or process;

(F) any tape, cassette, disc or other audio or visual recording or replaying device of equipment;

(G) any telex, facsimile or other telecommunication equipment or service;

(H) any form of television communication;

(I) any form or means of electromagnetic radiation; or

(J) any combination of any of the abovementioned means of communications; or

(v) in any other manner;

(b) the receipt of money or other property by or on behalf of the occupier thereof as or for the consideration for--

(i) any assurance, undertaking, promise or agreement, express or implied, to pay or give thereafter;

(ii) securing the paying or giving by some other person of,

money or other property in relation to or on a sporting contingency in Queensland or elsewhere; or

(c) the payment or settlement of a bet made in relation to or on a sporting contingency in Queensland or elsewhere.

At the end of section 215 (1) it is provided that:

> "A place that is opened, kept or used wholly or partly for a purpose specified in this subsection (above) is for the purposes of this Act a 'common betting house'".

The Definition of Bookmaker and Bookmaking

Before a person can be charged under section 214 of the *Racing and Betting Act* with unlawful bookmaking,[1] that person must essentially, first fall within criteria that establish that a person has "acted as a bookmaker", and has "carried on the business of bookmaking".

The Macquarie Dictionary definition of bookmaker is - "a professional betting man who accepts the bets of others as on horses in racing".

The *Shorter Oxford Dictionary* provides a meaning of bookmaker as being - "a professional betting man".

"Bookmaker" is defined in section 5 of the *Racing and Betting Act* as follows:

> "Bookmaker means a person who carries on the business of bookmaking or who acts as a bookmaker or turf commission agent or who gains or endeavours to gain his livelihood wholly or partly by betting".

"Bookmaking" is defined in section 5 as follows:

> "Bookmaking means the business of receiving or negotiating bets and includes the settlement of bets".

---

1 See the discussion of the offence provisions later in this chapter.

The definition of bookmaker in section 5 makes three instances clear. Firstly, a person who carries on the business of bookmaking, secondly, a person who acts as a bookmaker or turf commission agent, thirdly a person who gains or endeavours to gain his livelihood wholly or partly by betting.

Case law dealing with what activities constitute those of a "bookmaker" has established that the crux of the matter is the carrying on of business.[2]

The essential feature is betting being treated as a business, as opposed to an activity that can be categorised as being of a casual, occasional or recreational nature.

Business according to Halsbury is - "a wider term than 'trade', and not synonymous with it, and means almost anything which is an occupation as distinguished from a pleasure. However, the term must be construed according to its context" (*Halsbury's Laws* 1984, vol. 47, para. 2).

In the case of *Smith v Anderson* ((1880) 15 Ch D247 at 258), Jessel MR held that - "when a person habitually does a thing which is capable of producing a profit, for the purpose of producing a profit, he is carrying on a business".

The Court of Appeal considered the meaning of the expression "business" four years later, in the case of *Rolls v Miller* ((1884) 27 Ch D71 at 88, CA per Lindley, L.J.) Lord Lindley remarked that "the word business . . . means almost anything which is an occupation, as distinguished from a pleasure - anything which is an occupation or duty which requires attention is a business".

In the same case, Lord Esher, Master of the Rolls said - "whether one or two transactions make a business depends on the circumstances of the case. I take the test to be this: if an isolated transaction, which if repeated, would be a transaction in business, is proved to be undertaken with the intent that it should be the first of several transactions, that is, with the intent of carrying on a business, then it is a first transaction in an existing business. The business exists from the time of the commencement of that transaction with the intent that it should be one of a series" (Re Griffin, *ex parte* Board of Trade (1890), 60 LJQB 238 at 237, per Lord Esher, M.R.).

"Carrying on business" exists where there is a joint relation of persons for the common purpose of performing a succession of acts, and not where the relation exists for a purpose which is to be completed by the performance of one act" (*Halsbury's Laws* 1984, vol. 7, para. 20).

The expression "carrying on" therefore implies a repetition of acts, and excludes the case of an association formed for doing one particular act which is never to be repeated. Therefore in order to establish that a person is a bookmaker under the

2 It follows that the essential element of all "bookmakers" activity is the carrying on of business as a bookmaker.

current racing and betting legislation, it is necessary to prove that the accused person has performed a succession of receiving, negotiating or settling of bets and has done so as a business.

Because the "continuity element" must be so proved in all charges of either unlawful bookmaking or such offences that entail the business of conducting a common betting house, unlawful bookmakers frequently move the location of their operation in order to minimise the chances of police detection. To date, unlawful bookmakers have been highly successful in this regard.

Adoption of mobile telephones as a standard *modus operandi*, and the mobility afforded to the SP bookmaker by the use of the mobilenet network, has made it even more difficult for police to establish the degree of continuity at a place needed in order to obtain a judicial determination that the "carry on the business" element of unlawful bookmaking has been proved.

Surveillance may indicate that a suspect is attending at various different locations on various race days. However, this in itself will only provide an unprovable suspicion that the suspect is conducting an unlawful bookmaking business.

It is usually the case that those who are charged with unlawful bookmaking offences will not admit to illegal activities on previous occasions. Material relating to those other occasions (such as betting sheets and settling records), which could be used as evidence, are usually destroyed by the suspect as soon as possible after the date of unlawful bookmaking activity to which they relate.

Police have even relayed anecdotal material to this Commission of SP betting clerks writing their betting ledgers on sheets of rice-paper, and having buckets of water on the floor between their feet in which to dissolve their betting sheets, should the police raid the premises where they are operating. Modern equivalent instances of this type of destruction of incriminating materials include: using lap-top computers which have been pre-programmed for immediate data erasure; and encoding telephones so that they may be either diverted or disconnected at the press of a button. In such a case, police will raid premises, only to find a group of people sitting in front of a bank of telephones, with racing form guides and listening to the races on the radio. Such behaviour while appearing to be most suspicious, will usually not be sufficient to establish an unlawful bookmaking offence.[3]

In the result, the only evidence that is generally available and upon which the police and the Crown can launch a prosecution, is evidence that relates only to the day of the accused's apprehension.

---

3 See the discussion of evidentiary provisions contained later in this briefing.

Because of the practical difficulties that surround the use of police undercover agents to place bets with unlawful bookmakers, this often means that prosecutions against SP bookmakers must be based upon singular or at best a handful of bets which will, generally, be insufficient to establish the elements of an offence of unlawful bookmaking.

Evidence that would tend to substantiate a continuity of illegal enterprise sufficient to show the accused has in fact "carried on the business" could be obtained by monitoring telephone use. However, the *Telecommunications (Interception) Act* inhibits the nature of information that may be lawfully gathered and, further inhibits the information that although lawfully obtained, can be subsequently given in evidence before a court.

The phrase "acts as a bookmaker" came to be considered in a Queensland decision in the case of *Sidey v Schull* ((1978) Qd R at 290 *ex parte Sidey*). In that case, the accused was charged with acting as a bookmaker, contrary to section 106 of the *Racing and Betting Act 1954-1977*. Dunn J., giving the judgement of the court, referred to the phrase as meaning: "conducting a betting business - large or small".

In the case of *Fingleton v Lowen* ((1979), 20 SASR at 312), the accused Lowen had been charged with acting as a bookmaker contrary to the relevant South Australian statute. Zelling J., at page 314 said:

> "A bookmaker was one who made up a book on all the horses in a given race adjusting the odds and the volume of money taken on a particular horse so, if his calculations were correct at the end of the race, no matter what horse won, the book would show a profit to the bookmaker".

In *Powell v Kempton Park Race Course Company Ltd*, ((1899) AC at 143) the court was concerned as to whether an uncovered enclosure adjacent to a race course was a place open to, kept or used for purposes prohibited by the *Betting Act 1853*. Lord James of Hereford when considering what it was to be acting as a bookmaker, said at page 195:

> "Those who back horses are, for the most part, members of the general public; those with whom horses are backed, that is those who lay the odds against different horses, are known as bookmakers and no doubt attend at all race meetings with the primary object of carrying on their business of betting".

In the New Zealand case of *Weston v Cummings* ((1916) NZLR at 460), Chapman J. in an appeal from a decision by a Stipendiary Magistrate had to consider the phrase acts as a bookmaker, and whether the defendants activities came within the meaning of that phrase. His Honour reviewed the evidence laid before the Stipendiary Magistrate, and concluded that a number of facts and circumstances were significant in determining that the appellant had in fact acted as a bookmaker.

The circumstances included that the appellant, when he made a bet, made an entry into a book, that a stranger asked the appellant for so much on each of named horses, and this was agreed to at once, which indicated that he assumed he was dealing with a person who treated betting as a matter of business and who acted as one who did; the manner of asking for the bets was not the form in which friends make proposals for casual bets or in which a stranger approaches another man, even if he wants to bet with him; the fact that the bettor was able to make two distinct bets in one transaction gave it an air of business; and, there was also a conversation where the appellant indicated that he was not paying out that day.

The meaning of the words "who acts as a bookmaker" as used in section 214 of the *Racing and Betting Act* were recently considered in the District Court by His Honour Judge Dodds in the case of *Crown v Gerard Vincent Aspinall* unreported decision, 27 and 28 November 1989 (*Racing and Betting Act*, section 214).

In that case it was alleged that the accused who was also a licensed bookmaker, had taken unlawful bets from a police agent on two New South Wales Rugby League football matches, at a hotel of which he was the licensee. A subsequent search of the accused's residence resulted in the location of lengthy ledgers, that tended to substantiate that he had in fact taken numerous unlawful bets on rugby league and other sporting contingencies, over an extended period of time and that he was involved in substantial amounts of unlawful betting.

Counsel for the Defence argued strongly against the admissibility of these ledgers, on the basis that they did not relate in any way to the only two bets that a police undercover agent had been able to place with the accused in the hotel. The trial judge concurred with this submission, with the result that the Crown case could only proceed on the basis of the two bets that the Accused had with a police undercover agent.

The central issue in this case then became the characterisation of those two bets, and whether they were of such a nature that they could categorise the accused as having "acted as bookmaker" and hence whether the accused had acted as a person who carries on business as a bookmaker. His Honour the trial judge recognised the difficulties encountered by police in obtaining evidence in unlawful bookmaking cases when he said that:

> "In cases involving illegal betting, it is difficult to gather evidence for successful prosecution. Illegal betting is generally conducted in a clandestine manner, particularly if it is understood such activities are likely to be investigated and prosecuted. Operators do not shout the odds or otherwise obviously advertise what they are doing. They are careful. It is necessary investigations take place undercover and undercover investigators work to allay suspicion" (*R v Aspinall* 1989, unreported, p. 6).

Despite the trial judge's recognition of this fact, he was unable to hold that two bets could be sufficient to prove that the Accused had in fact carried on the business of unlawful bookmaking. Two bets were not enough to establish the degree of continuity required before it could be said that the Accused had carried on a business.

Whilst "carrying on of a business" remains an element of unlawful bookmaking type offences in Queensland, it is most likely that police will continue to encounter great difficulty in establishing charges against unlawful bookmakers.

Unlawful bookmakers tend to be circumspect in their dealings with strangers. As such, it can take many months for police undercover agents to sufficiently work their way into the confidence of unlawful bookmakers, so as to bet with them. In the particular case instanced above, it took two police undercover agents nearly twelve weeks to be accepted and trusted sufficiently to be able to place bets with the accused.

An amendment of the definition of bookmaking and bookmaker in section 5 of the Act, as well as the wording of sections 214, 215, and 216 to the extent that the present wording of those sections suggests that "carrying on of business" forms part of some of the offences contained therein, would rectify this difficulty.

In practical effect, this would entail amendment of the concept of unlawful bookmaking and what it means to be an unlawful bookmaker, to include the acceptance of a singular bet or bets on a singular occasion.

Difficulties Created by the Words "Use" and "Place"

In the current Queensland Act, a definition of the word "place" has been provided. No such definition has been enacted for the word "use", the established common law definition is therefore applicable.

The meaning that is to be attributed to the word "use" in the context of unlawful betting type offences when occurring at a particular place has been judicially considered in a series of English and Australian cases.[4] Use has been interpreted in such a way that it is insufficient that unlawful betting has occurred at a place. Instead, for a place to be able to be said to have been "used" for unlawful betting, the use of that place must have been of such a manner as to entail a localisation of that place as the place where the bookmakers business is carried on. This usually entails an appropriation or exercise of dominion or control of the place by the bookmaker (*Bond v Foran* (1934), 52 CLR 364).

In that case, the High Court considered an unlawful gaming section in the South *Australian Lotteries and Gaming Act 1917-1930*. Although the High Court's analysis related specifically to the legislative provisions of another State, they are similar to the Queensland provisions, in particular, section 215 and 216. Section 63 of the South Australian *Lotteries and Gaming Act 1917-1930* provided that:

> "No house, office, room, or place shall be opened, kept, or used for the purpose of . . . unlawful gaming".

4 *Powell v Kempton Park Racecourse Co.* (1899) A.C. 143; *Brown v Patch* (1899) I.Q.B.; *Prior v Sherwood* (1905-1906) 3 CLR 1054; *Bond v Foran* (1934) 52 CLR 364.

In a comprehensive judgement, Dixon J. observed that the phrase under consideration by the court provided "two words of very indefinite meaning ... 'place' and 'used'" (*Bond v Foran* (1934), 52 CLR 364 at 375).

In his interpretation of the term 'use', Dixon J. cited with approval the earlier English decision of *Powell v Kepton Park Race Course Co.* ((1899), AC 143). Dixon J. adopted a passage in the judgement of Channel J. in the English case of *Brown v Patch* ((1899) 1 QB at 898-900) as being "perhaps the clearest exposition of the effect of this part of the enactment" (*Bond v Foran* (1934), 52 CLR 364 at 376). Both of these English decisions dealt with a similar phrase in the English *Betting Act 1853*. Channel J. said:

> "There is no difficulty in understanding what is the law and what is the interpretation of the statute, but there is considerable difficulty in applying it in particular cases. The statute seems clearly to be directed against betting places, not against betting persons. Clearly also, it does not forbid persons using a place by going there and meeting and betting with each other. Nor does it forbid keeping a place where persons may meet and bet with each other. Nor does it forbid carrying on the business of betting with any one who will bet with you. But it does forbid carrying on the business of keeping an office or place to which persons may come and bet with you. The judgements in the case in the House of Lords clearly show that that is the matter to be considered. The important question is not so much, what is a place? but, what is the character of the user of it? and although the words used are 'house, office, room, or other place' and it is clear that, according to the ordinary rule, 'place' must be something *ejusdem generis* with 'house, office, room', yet the analogy is with respect to the way the place is used rather than with respect to the way in which it is constructed ... If a man ... uses certain apparatus with his name on it, and a statement of the odds he is prepared to lay, that apparatus may be used only to indicate his identity, and that he is willing to bet with anybody who will bet with him. If the apparatus is used for those purposes only, it does not in any way localise his business of betting, or bring him within the provisions of the Act. But if it be used to indicate the place at which there is a man to be found who will bet with anyone who will come and bet with him there, then that apparatus becomes an extremely important and valuable matter to consider. In each case the facts must be looked at to see whether the bamboo stage, or the umbrella, or whatever it is the man has got, is being used by him merely to indicate that he is prepared to bet with anybody who will bet with him, or whether he is using it to indicate that there is a place at which the business of betting is carried on by him, and to which, therefore, people can go for the purpose of betting with him ... The question, after all, is a question of fact in each case -- whether you come to the conclusion that there has been a user of a place, analogous to the user of a place like a betting office, at which the person who keeps or uses that place is prepared to bet with people who come there and bet with him".

Essentially then, it could be said that in adopting the above passage, Dixon J. determined that the "use" made of the place must be tantamount to the use of that place or premises for the purposes of a business. It is the character of the usage that is important in establishing that a place is being used for unlawful bookmaking. It is not enough that SP bookmaking is carried on at a place, but rather the use of that place for unlawful bookmaking must be sufficient so as to characterize that place. The Court concluded in *Bond v Foran* that since the

premises in question had not become the location of the bookmakers business there had been no "use" of the premises for unlawful gaming within the meaning of the act.[5]

In the High Court decision in *Prior v Sherwood* ((1906) 3 CLR 1054) the court considered the construction that should be given to the expression "place used for betting" in the *Games, Wagers and Betting Houses Act 1902* (NSW). In that case, Griffith C.J. made reference to the leading decision of Lord Halsbury L.C., in *Powell v Kempton Park Racecourse* ((1899) AC 143) where Lord Halsbury indicated that the provision (referring to an equivalent section in an English enactment), was intended to deal with "the case of persons who are in control and occupation of the place that is assumed to be the betting establishment. The conduct of the business, whether as master or servant, is the thing that is made unlawful, and the business is that of a betting house or place to which people can resort for the purposes of betting, not with each other, but with the betting establishment". In construing the word use Griffith C.J. had this to say:

> "It is not the repeated and the designed, as distinguished from the casual or infrequent, use which the employment of that word imports here, but the character of the use as a use by some person having the dominion or control over the place, and conducting the business of a betting establishment with the persons resorting thereto" (*Powell v Kempton Park Racecourse* (1899), AC 143 at 160).

Griffith C.J. then concluded that there must be a business conducted, and "there must be some owner, occupier, manager, keeper, or some other person who, if these designations do not apply to him, must nevertheless be some other person who is analogous to and is of the same genus as the owner, keeper, or occupier, who bets or is willing to bet with the persons who resort to his house, room, or other place" (*Prior v Sherwood* (1906), at 1067).

In the *Kempton Park* case, the alleged illegal betting did not take place in a house or a room, but rather somewhere within the Tattersalls enclosure. It therefore became necessary to determine what effect was to be given to the words "other place", and how far these words could be held to apply to the Tattersalls enclosure. Lord James of Hereford, observed that in relation to the words "other place", it could to some extent be open space, but in so stating his Honour indicated that:

> "There must be a defined area so marked out that it can be found and recognized as 'the place' where the business is carried on and wherein the bettor can be found" (*Powell v Kempton Park Racecourse* (1899), AC 143 at 193).

---

5 "The character of the use . . . (must be such so as to be) . . . a use by some person having dominion or control over the place and conducting the business of a betting establishment with the persons resorting thereto", McTiernan, J., p. 381.

While James L.J., considered that the Tattersalls enclosure at Kempton Park Racecourse might very well constitute a place for the purposes of the definition, he felt moved to confirm that irrespective of his preparedness to find the existence of a place:

> "The main question in this case has still to be solved, namely, was the inclosure opened, kept, or used, for the purpose of . . . conducting the business . . . of, betting with persons resorting thereto?" (*Powell v Kempton Park Racecourse* (1898), AC 143 at 194).

Clearly "use" when being construed in relation to unlawful betting offences has acquired the meaning attributed to it by the High Court in *Bond v Foran.*

In the current Queensland legislation, the definition of "place" in the interpretation section provides that: "place" includes . . . "any land". Whilst the phrase "any land" should be construed *ejusdem generis* with the other more specific definitions provided for "place" in the definition, it should also be read subject to geographical limitations envisaged by James L.J., in *Kempton Park Racecourse* and cited with approval by Griffith C.J. in *Prior v Sherwood.* That is to say, that while a "place" for purposes of an unlawful bookmaking charge can include "any land", it would still need to be an area of land that is capable of being defined and recognised as a place where the business of unlawful bookmaking is being conducted as an exclusive occupation (*Prior v Sherwood* (1906), at 1070).

Where an office or motel room is appropriated a bookmaking business purpose, little difficulty should arise evidentially in establishing that the person being the occupier thereof is keeping or using a place as a common betting house.

However, as Dixon J. observed in Bond's case:

> "But where the SP Bookmaker does his betting in a place of common or public resort such as a hotel bar the test will not so easily be satisfied" (*Bond v Foran* (1934), at 377).

Dixon J. went on to draw the distinction between a SP bookmaker who merely engaged in his bookmaking activities whilst at the same time patronising a bar room and an SP bookmaker who had in fact used a particular portion of the bar room or the bar room in its entirety for the purpose of his SP bookmaking activities.

While his purpose will be to conduct unlawful bookmaking, his connection with the bar room will be no greater than that of any other bone fide hotel patron, (*Bond v Foran* (1934)) and it is most unlikely that it could be said that the bar has been appropriated for the purposes of being used for the the business of unlawful bookmaking.

It follows that by reason of the courts interpretation of "use" it is not generally possible that a licensee could be successfully prosecuted for keeping a common betting house if an SP bookmaker were to operate in the licensee's hotel, without the prior knowledge or consent of the licensee.[6] Equally, the SP bookmaker could not be charged with keeping a common betting house.

Generally it would only be where a SP bookmaker habitually operates from the same bar with the knowledge or consent of the licensee that a prosecution will be successful.[7]

Liability of Occupiers

Perhaps one of the most anomalous aspects of the *Racing and Betting Act* is the fact that there is currently no general provision making it an offence for a person to permit a 'place' to be used to facilitate unlawful betting.

Legislative provisions dealing with the liability of place occupiers or controllers have evolved into the present sections 215 and 216 of the *Racing and Betting Act*. Section 215 defines a common betting house and provides that a place shall not be opened, kept or used wholly or partly in respect of various purposes.

In sections 215 (1)(a), 215 (1)(b) and 215 (1)(c) three categories of purpose are specified. The first and second categories deal with the situation where the occupier of a place is actively involved in the unlawful betting activities to one degree or another. Only the third category defines a common betting house by reference to a purpose that does not involve some form of active participation on the part of the occupier.

So far as is relevant, section 215 (1)(c) reads as follows:

> "A place shall not be opened, kept or used wholly or partly for, with respect to or in connection with any of the following purposes -
>
> (c) A payment or settlement of a debt made in relation to or of a sporting contingency in Queensland or elsewhere.
>
> A place that is opened, kept or used wholly or partly for a purpose specified . . . is for the purposes of this Act a 'Common Betting House'".

Section 216 (1) provides:

> "(1) A person shall not:
>
> (a) open, keep or use;

---

6 See also the statutory defence provided to this circumstance by section 221 (2) of the *Racing and Betting Act*.

7 See *Belton v Busby* (1899); 2 QB 380. That fact may be decisive against him, "because it serves to make his presence there attributable to a special title to treat the room as his place of business".

(b) permit or suffer a place of which he is the occupier to be open, kept or used as; or

(c) in any way assist in conducting the business of a Common Betting House".

If one therefore reads sections 215 and 216 in conjunction, it becomes evident that an occupier who is not actively participating in unlawful betting may, with impunity, permit or suffer his place to be used for unlawful betting activity providing no payment or settlement of bets occurs upon his place. It is suggested that this situation is quite anomalous.

The research undertaken by this Commission tends to indicate that SP bookmakers make extensive use of mobile telephone services and front men and will often neither make nor receive direct calls to or from their mobile phone, but instead all calls will go via a diverter which will be located at some convenient place. Additionally, it is common practice for SP bookmakers to receive information indirectly.

That is, they will have persons who use their homes to receive information and then relay that information to the SP bookmaker and visa versa. Clearly the concept of an offence involving the opening, keeping, using, permitting or suffering of a place to be used as a common betting house no longer accords with the modern realities of SP bookmaking practice.

It is suggested that the better alternative would be for a clear offence that simply proscribes a person from in any way permitting, suffering or allowing any place under that persons control to be used to facilitate unlawful bookmaking.

It is further suggested that such an offence should arise whether or not it can be proved that such persons were actually aware wholly or partly of the unlawful bookmaking activities which they have facilitated.

It is eminently sensible that no penalty should befall the hapless owner, or occupier of premises who is unaware of it usage as premises for purposes of unlawful bookmaking. However, it is suggested that criminal responsibility should still attach to those, who, while unaware of the criminal activities which they facilitate, are unaware because they have deliberately closed their eyes to what would be patently obvious to any other person in their circumstances.

The Penalty Provisions

3. Section 218 of the *Racing and Betting Act* provides the penalty for unlawful bookmaking offences, and the enforcement mechanism is contained in section 218A. The two sections really need to be read conjointly as they relate to certain offence sections of the Act namely:

(a) section 214 (Unlawful Bookmaking);

(b) section 216 (Keeping, Using a Common Betting House); and

(c) section 217 (Possession of Instruments of Betting).

Sections 218 and 218A were installed in the *Racing and Betting Act* as the applicable penalty and enforcement provisions by legislative amendment in 1981. These two sections in particular, have been well recognised by law enforcement officials as being the central cause of most of the difficulty in punishing unlawful bookmakers, and in deterring further SP activity in Queensland.

The historical evolution of the legislation that proscribes unlawful bookmaking offences was explored at some length in the Commission of Inquiry,[8] in order to try to unearth the apparent rationale behind the introduction of this ineffective scheme of punishment. In the following paragraphs this report shall attempt in small part to traverse that investigation, in order to gain a better appreciation of the difficulties that these two sections (in particular), have created for subsequent law enforcement efforts against unlawful bookmakers.

In his report, Commissioner Fitzgerald Q.C. levelled trenchant criticism at these sections and alluded to the fact that the lack of any real coercive effect in the Queensland *Racing and Betting Act* has been one fundamental reason that SP bookmaking activity in Queensland has been allowed to become so rampant. In this regard, Commissioner Fitzgerald Q.C. had the following to say in relation to the penalty provisions provided by sections 218 and 218A:

> "Machinations in the legislative purpose with respect to SP bookmaking since 1980, particularly in and through 1981-83, have resulted in the erection of a facade while demolishing the worth of the prescription. The essential problem is not the prescription of offences. The problem is the lack of real coercion because of inability properly to punish.
>
> The apparently severe penalties prescribed, fines of not less than $15,000 for the first offence, $20,000 the second, and $30,000 the third and following are of little terror to organized bookmakers who well know the order of profit to be made and, skilfully advised, have little difficulty in organizing their affairs so as to avoid the brunt of any such penalties.
>
> There is, however, not much brunt to be borne. Any success in the collection of penalties depends upon a bookmaker still having assets in his own right.
>
> Bureaucratic delay further reduces effectiveness. The procedure is criminal prosecution, certification of non-payment of the fine in due course by the trial judge, followed by entry of judgement by the Attorney-General in a civil court.
>
> Although that process sounds easy enough to perform promptly after conviction (and it should be), the reality is that, as demonstrated before this Inquiry, inordinate bureaucratic delay and the inefficient and ineffectual pursuit of the civil execution process effectively neuter the effectiveness of the above process.
>
> The effect of high fines is further diluted by the residual discretion given to the trial judge, who can impose a penalty less than the prescribed minimum. There are good reasons of justice and commonsense why such a discretion should be conferred, but its use alongside the theoretically extremely high fines is a good illustration of the defects of the present system" (Fitzgerald Report 1989, p.194).[9]

---

8 Examination of R. A. Marxson by Drummond Q.C. and Cross-examination by Callinan Q.C. Before the Deputy Commissioner Patsy Wolff Q.C. 20 July 1988. Transcript. pp. 13146-13152.

9 Examination of R.A. Marxson by Drummond Q.C. and Cross-examination by Callinan Q.C. Before the Deputy Commissioner Patsy Wolff Q.C., 20 July 1988. Transcript, pp. 13146-13152.

Section 218 on Prosecution and penalty for unlawful bookmaking, opening, keeping or using common betting house provides as follows:

(1) A person who contravenes section 214, 216 or 217 commits an offence against this Act, which is a misdemeanour, and, subject to subsections (3) and (5) and section 237 (4), is liable--

(a) for a first offence, to a penalty not less than $15,000 and not more than $20,000;

(b) for a second offence, whether against the same or another provision of those sections or any of them, to a penalty not less than $20,000 and not more than $30,000;

(c) for a third or subsequent offence, whether against the same or another provision of those sections or any of them, to a penalty not less than $30,000 and not more than $50,000.

(2) Notwithstanding any other provision of law or any rule of law or practice a person who, having been arraigned before a court of competent jurisdiction (whether consequent upon his committal for trial or otherwise), has pleaded not guilty shall be tried by a Judge of that court sitting alone.

(3) If a Judge before whom a person has been convicted of an offence referred to in subsection (1) is satisfied that in the particular case there are special circumstance that make it just so to do, he may impose a penalty less than the minimum penalty prescribed by subsection (1) for that offence.

(4) A person charged with an offence against any provision of section 214, 216 or 217 may upon his trial be convicted of any offence against any other provision of the section that he is alleged by the charge to have contravened that is established by the evidence in lieu of the offence with which he is charged.

(5) Where within a period of 12 months different persons commit offences against a provision of section 214, 216 or 217, whether the same provision or different provisions, in respect of the same place, then–

(a) the person who commits, the second of such offences shall be deemed to have committed a second offence and shall be liable to the penalty prescribed by paragraph (b) of subsection (1); and

(b) the person who commits the third or subsequent such offence shall be deemed to have committed a third or subsequent offence and shall be liable to the penalty prescribed by paragraph (c) of subsection (1).

As can be seen, section 218 provides for severe monetary penalties in respect of the proscribed offences, however there is no provision for an alternative penalty in the form of a term of imprisonment in default of payment of the fine.

Instead of providing for the more usual period of default imprisonment, unpaid fines issued under section 218 must be recovered via the procedure in section 218A. That provides that an unpaid fine for an unlawful bookmaking conviction must be pursued by the Crown as if it were a civil debt.

Section 218A on Recovery of penalties imposed under section 218 provides as follows:

(1) Where an order for the payment of a penalty or costs is made against an offender against section 214, 216 or 217 an order that, upon default in payment of the same, the offender should be imprisoned or the same should be recovered by levy and distress shall not be made, but the following provisions of this section shall apply in relation to the recovery of the same.

(2) Where an order referred to in subsection (1) is made the Judge making the order or the Chairman of District Courts shall, if the penalty is not paid within the time allowed by the Judge for payment of the penalty or costs on the expiration of that time or, if no time is allowed for payment, then immediately, furnish to the Attorney-General a certificate in the prescribed form, setting forth--

(a) the amount of the penalty or costs;

(b) the full name and place of residence or business of the person on whom the penalty or costs has or have been imposed;

(c) the reason for the penalty or costs.

(3) Upon receipt of the certificate specified in subsection (2), the Attorney-General shall cause final judgement in the prescribed form to be entered in a court of competent jurisdiction for the amount of the penalty or costs and costs of entering judgement.

A judgement entered pursuant to this subsection is for all purposes a judgement of the court in which it has been entered.

(4) An appeal does not lie in respect of a judgement entered pursuant to subsection (3).

(5) The registrar of a court to whom a certificate referred to in subsection (2) is duly produced for registration shall, upon payment of the appropriate fee, register the certificate in the court and, upon such registration, the certificate shall be a record of the court in which it is registered and the order to which it refers shall be deemed to be a judgement of that court obtained by the Crown as plaintiff against the offender as defendant for the payment to the Crown of money comprising–

(a) the amount of the penalty or costs;

(b) costs of registration of such certificate in such court,

to the intent that like proceedings (including proceedings in bankruptcy) may be taken to recover the amount of the judgement as if the judgement had been made by such court in favour of the Crown.

The Recent History of the Penalty Provisions

Prior to amendment of the *Racing and Betting Act* in 1981, Queensland had provisions that provided for substantial periods of default imprisonment for non-payment of fines for SP bookmaking.

Originally, the *Racing and Betting Act 1954* was the Act used in the control and suppression of unlawful bookmakers. Section 106 of that Act made it an offence to act as a bookmaker, and section 108 made it an offence to keep or use a common betting house. The penalties for these particular offences as at 1975, were contained in section 109, where provision was made for various penalties:

(a) for a first offence, a penalty not exceeding $3,000 or imprisonment for a term of not more than two months;

(b) for a second offence, to a penalty not exceeding $6,000 or imprisonment for a term of not more than six months; and

(c) for a third or subsequent offence, to imprisonment to a term of not more than two years.

It is interesting to note, that the 1954 Act (as amended) provided for quite severe financial penalties (when considered in values relative to the time) and additionally, for mandatory imprisonment upon a third or subsequent conviction. These penalties came into force in 1975, and were operative until the repeal of the 1954 Act by the *Racing and Betting Act* of 1980.

The *Racing and Betting Act 1980* was assented to on 6 June 1980. Section 214 made it an offence to carry on or act as a bookmaker, section 216 made it an offence to open, keep or use a common betting house, and section 217 made it an offence to have in possession instruments of betting. The penalties for the prescribed offences were provided in section 218.

In 1980, the penalties provided under section 218 were:

(a) for a first offence a penalty of $10,000 or imprisonment for twelve months;

(b) for a second offence to a penalty of $20,000 or imprisonment for two years;

(c) for a third or subsequent offence to a penalty of $50,000 or imprisonment for three years or *both* that penalty and imprisonment.

As well as upgrading the quantum of the penalty (presumably to account for the effects of inflation over time), the legislative intent behind the Act is clear. The periods of imprisonment in default of payment of fines were substantially increased, and the option for a sentencing judge to give a fine less than the prescribed amount was removed. It could then be said, that at this stage in the evolution of laws to curtail unlawful bookmaking, that Queensland had a substantial battery of enforceable penalties.

The *Racing and Betting (Amendment) Act 1981* repealed section 218 and then inserting a new penalty section in its place, as well as creating section 218A and 218B. This Act and the 1980 Act were both proclaimed to commence on 1 July 1981. Further amendments in 1982 repealed section 218 and a new section was inserted (which contained the same penalties). Section 218B was repealed in its entirety.

This brief account then represents all of the current legislative changes to these two particular sections. The substantive provisions of sections 218 and 218A have remained unchanged since that date.

To summarize briefly the history of legislative change outlined above, the penalties for illegal bookmaking offences in Queensland have been twice increased firstly in 1975, and then again in 1980. The 1980 Act was not proclaimed until 1 July 1981, when at the same time the 1981 Act had the effect of simultaneously repealing the 1980 version of the penalties for SP bookmaking, and replacing it with a section that did not contain a default imprisonment clause. The substantial penalties created by the 1980 Act never came into effect.

The 1982 Act, although not changing the substantive aspects of the penalty created in 1981, repealed and then replaced section 218 with the same penalty. Therefore, it can be said that section 218 in its present form, was created by the *Amendment Act* of 1981.

Although the current section 218 was introduced in 1982, convictions for SP bookmaking have not attracted a term of imprisonment since 1 July 1981.

In order to try to ascertain the legislative rationale behind the curious removal of default imprisonment provisions for SP bookmaking, which we now know (with the benefit of hindsight) to have been entirely illogical, extensive inquiry was made by officers of the Fitzgerald Commission of Inquiry.

It cannot be said that a complete explanation was ever found. However, a reading of the relevant sections of the Commission of Inquiry transcript, in conjunction with documents exhibited before the Commission at that time, indicates that around the time of the changes to the law, a Cabinet Decision was made that there be "certain changes to the *Racing and Betting Act*".[10]

This decision is recorded as having been made in response to a submission made to Cabinet in relation to amending certain particulars contained in *the Racing and Betting Act 1980* (and Regulations).[11]

In that submission, a recommendation was given that the maximum fine for a first offence be increased from $10,000 to $15,000 and the period of imprisonment be increased from twelve to eighteen months. The submission further recommended that the penalty for a second or subsequent offence be increased from $20,000 to $50,000, that the period of imprisonment be increased from two to three years, and that the period of imprisonment be given either in the alternative, or in addition to a fine. It was also recommended that any reference to a third or subsequent offence be dropped.

---

10 Recorded by Cabinet Minute Decision No. 34549 on 24 February 1981 at Brisbane. In response to materials presented in Submission No. 30846.

11 Annexed at the end of the chapter.

The minute recording the decision that Cabinet made in response to this submission, indicates that Cabinet decided that:

> "approval be given for the preparation of a bill to amend the *Racing and Betting Act 1980* as proposed in the submission except that:
>
> (b) No provision be made for a minimum fine in relation to unlawful bookmaking".[12]

What was intended by the alteration indicated by the exception provided in the minute is unclear. The provisions that existed at that time for unlawful bookmaking did not actually provide for a minimum fine, but rather, the fines then applicable to unlawful bookmaking, were expressed in terms of a maximum for first, second, third or subsequent conviction.

Traditionally, the Parliamentary Counsel has had primary responsibility for preparing draft legislation giving effect to departmental proposals. In the course of that activity, the nature and wisdom of those proposals is often discussed, and advice provided to the department in question by the Counsel. This was certainly the case in relation to these draft sections, as the uncertainty created by the Cabinet edict was later the subject of correspondence between the Director of Local Government, and the Parliamentary Counsel who was in the process of drafting the new legislation.

In a letter dated 10 March 1981, the Director of Local Government indicated to the Parliamentary Counsel that - with respect to Cabinet having been recorded as having decided that no provision be made for a minimum fine in relation to unlawful bookmaking, "I have been informed that this record does not fully reflect the decision taken by Cabinet".[13] The Director of Local Government then went on to say that he understood that the real intent of Cabinet was to leave the existing provisions in relation to unlawful betting, and that the penalties were to remain unaltered. The Director-General then requested that the Parliamentary Counsel refrain from preparing any amendment to section 218 whatsoever.

If it is assumed that whoever informed the Director of Local Government as to what was the true effect of the Cabinet resolution, had in fact formed a correct interpretation of Cabinet's intent in relation to changes to SP bookmaking penalties, it could then be said that it was intended that default imprisonment for SP bookmaking was to remain.[14]

This was not however the end of the matter when it came to trying to guess what Cabinet had intended. In a letter dated 26 March 1981, written under the hand of the Parliamentary Counsel and addressed to the Director of Local Government,[15]

---

12 Annexed at the end of the chapter.

13 Annexed at the end of the chapter.

14 It must be remembered that an assumption has been made that Parliaments true intention is reflected in the letter sent by the Director of Local Government to the Parliamentary Counsel on 10 March 1981.

15 Annexed at the end of the chapter.

the Parliamentary Counsel indicated that he had considerable difficulty in drafting the required legislation, and that he was not at all confident that the end result could be said to reflect what had been intended at the outset.

The difficulty encountered in drafting the new section was created by a further document generated by a Joint Parties Meeting on 25 March 1981. This note apparently had the effect of overruling the previous Cabinet decision in relation to penalties for unlawful bookmaking, and substituting a new set of instructions for the Parliamentary Counsel. This resolution required that the penalties for unlawful bookmaking be increased, but the default imprisonment clauses be removed. Further, this instruction required the provision of a range of fines, but such range was to be "without prejudice to the Courts right to impose such lesser penalty as seems just in the circumstances of a particular case".[16]

In his letter of 26 March, the Parliamentary Counsel was careful to point out the great difficulty that he had encountered in attempting to draft a section that would meet the requirements of this resolution and that the instruction from the Joint Parties Meeting was at its best, somewhat "cryptic". The Parliamentary Counsel then alluded to the inherent difficulties in the draft section that were really the unavoidable result of his being required to give effect to this resolution.

In particular, the Parliamentary Counsel identified that the provision of any minimum fine alongside the preservation of a power in the court to impose a lesser penalty would mean that "it was a forlorn hope that, in the absence of true minimum penalties, the courts will impose penalties approximating those suggested in the legislation". As a result of the reservations that the Parliamentary Counsel held about the proposals for section 218, it was suggested that, in the circumstances, it would be highly advisable for the Director of Local Government to bring these matters to the attention of the Minister for Local Government, so that he "should satisfy himself that what the amending Bill provides is what was intended".[17]

In his report, Commissioner Fitzgerald Q.C. noted that the independence of the Parliamentary Counsel is one of the most important safeguards that are an integral aspect of the Westminster system, and that "counsel obviously should not tailor advice to political expediency or fail to point out errors in principle or obligation in any proposed course" (Fitzgerald Report 1989, p. 140).

Given the fact that at this time, the Office of the Parliamentary Counsel was attached to the Premier's Department, and not to the Attorney-General's department as in other States, and that the office was not established as an independent entity by statute as is the case in the Commonwealth, the Parliamentary Counsel should be admired for attempting to allude to the inherent difficulties presented by the draft sections.

---

16 Instructions from joint parties meeting 25 March 1991. Annexed at the end of the chapter.

17 Supra.

Whether this matter was ever brought to the attention of the Minister for Local Government, Main Roads and Police, the Honourable Russell J. Hinze, remains unanswered. It is known however, that the drafts of sections 218 and 218A about which the Parliamentary Counsel had expressed his reservations, as well as the other unlawful bookmaking sections, were later included as part of a Bill that was read by the Minister before the Legislative Assembly for a second time, and then passed into law. These amendments were proclaimed and came into effect on 1 July 1981 (*Hansard* 1981, p. 564).

In his speech introducing the legislation, the Minister for Local Government Main Roads and Police, made no reference to the fact that the effect of this amendment would be to remove terms of imprisonment for SP bookmaking:

> "Honourable members will be aware of my attitude towards unlawful or so-called SP betting. What concerns me most of all is the adverse effect these unlawful operations have had on our racing industry in the past, and what further suppression and indignity they will inflict in the future if they are allowed to continue unchecked.
>
> I am told the annual betting turnover handled by these shady operators in Queensland exceeds $200m. If this money was properly channelled through our TAB system an additional $20m or more would be available to the TAB in gross earnings. In fact, I believe that about $17m of this would represent net profit which, when distributed to clubs or otherwise invested in the racing industry, would result in the rapid development of the quality of racing in the State. This is not mere heresay. These are cold, hard projections based on facts.
>
> This potential additional net profit for the TAB must be seen in its proper perspective to be fully appreciated. The net profit of the TAB for the 1979-80 financial year was less than $5.8m. A notional increment of some $17m profit from unlawful betting sources would result in an increase in the percentage return to the racing industry of almost 300 per cent. In other words, the racing industry could receive returns from the TAB almost four times as large as it presently receives. The benefits which would flow from a financial stimulus of this magnitude need no elaboration.
>
> As a responsible member of this Parliament, I am concerned also by the loss of Government revenue which the continued existence of unlawful bookmakers will bring about. If the turnover estimates I have mentioned are correct, the Queensland Government is presently being deprived of about $10m in annual income. It is sobering to reflect on the range of projects and services which could be financed with an additional $10m each year. Hospitals, schools, welfare services, road-words and the Police Force are some areas which could be improved for the benefit of all Queenslanders if this additional revenue were available to the Government.
>
> There is one further point I would like to make in relation to the question of unlawful betting. The Government has been unequivocal in its policy of upholding and enforcing the laws of this State. the law relating to betting is quite clear and those who break that law in the future will do so at their peril. As evidence of my concern and my intention in this matter, this Bill contains provisions which will increase the fines which a District Court may impose on persons convicted of unlawful betting offences. Although a court will enjoy certain discretionary powers, the Bill provides the following basic penalties:
>
> (i) For a first offence, a fine between $15,000 and $20,000;
> (ii) For a second offence, a fine of between $20,000 and $30,000; and
> (iii) For a third or subsequent offence, a fine of between $30,000 and $50,000.

> I view this matter with such concern that I have provided in this Bill that unlawful betting charges will be heard in a court of no less jurisdiction than a District Court. This not only reflects the seriousness of the offences but also respects the rights of the persons charged. I believe that the prospect of incurring a substantial monetary penalty will prove to be sufficient deterrent for those who are presently flouting the betting laws of this State" (*Hansard* 1981, p. 565).

Since the enactment of these sections it has become apparent that subsequent enforcement action taken by police against unlawful bookmakers is having little deterrent effect. Enforcement is causing some inconvenience to SP bookmakers, in that they are usually forced to cease operations for the day of the police raid, and they are then forced to devise a new *modus operandi*, or to obtain new premises to operate from in the future. The raided SP operator is further inconvenienced by the subsequent court appearance, which results in the SP operator incurring a conviction and a large monetary fine. However, without the coercive effect of default imprisonment, these fines are effectively unenforceable. As proof of this fact, it has come to the attention of this Commission that in the two year period between January 1988 and January 1990 a total of 80 persons were charged with SP bookmaking offences under the provisions of the *Racing and Betting Act*. A total of $483,000 in fines were levied under section 218. Of this amount only $4,000 was paid, leaving an amount of $479,000 outstanding as at 10 January 1990. In the result, it could be stated Queensland has only token convictions for SP bookmaking.

Although civil proceedings for recovery of the levied fines are provided by section 218A, they too are unenforceable. This is due primarily to the fact that it has become standard practice for SP bookmakers to have (on professional advice) no recoverable assets. Some operators have resorted to placing title to their assets in either their wife's or next of kin's name. In this way, unlawful bookmakers can retain effective title and control of the proceeds of their crime, yet still not be seen to have recoverable assets against which the fines could be offset in bankruptcy proceedings. In any event, even where convicted SP bookmakers have not taken the simple precaution of divesting title to their assets, the recovery mechanism envisaged by section 218A is not one that would realistically be open to the Crown. Section 82 (3) of the *Commonwealth Bankruptcy Act*, provides that the fact that judgement has been entered in a Court of competent jurisdiction would not prevent a Court exercising jurisdiction in bankruptcy going behind the judgement and identifying it as founded upon a fine imposed in respect of an offence, and thus not provable in bankruptcy.[18]

Section 217 Possession of instruments of betting.

Section 217 of the *Racing and Betting Act* has both desirable aspects and deficiencies. Commissioner Costigan Q.C. in his report (Costigan Report 1984, vol. 4, p. 90) made reference to section 217 of the Queensland Act and

---

18 See the *Commonwealth Bankruptcy Act* section 82 (3), and the obiter comments of Connoly J., in *R v Chadwick* (1985) 1 Qd R 320 at 324.

recommended a section of similar effect be provided in the Victorian Act. The principle difficulty then inherent in the Victorian legislation was that the Act did not allow apprehension of SP bookmakers while in the process of settling. Costigan Q.C. (1984, vol. 4, p. 90) noted:

> "In Queensland the corresponding legislation provides an offence of 'possession of instruments of betting'. Pursuant to it, SP's travelling to and from their place of business may be apprehended and convicted of possession - even though not 'caught in the act'. I recommend the inclusion of such a provision in the Victorian law. It would mean that SP's who reside in Victoria but cross the border to operate on weekends or other days could be apprehended in Victoria en-route and charged. The definition of 'instruments of betting' needs to be wide rather than narrow. It would certainly include settlement sheets".

It is interesting to note that the legislation subsequently enacted in Victoria to give effect to Costigan Q.C.'s recommendations in relation to possession of instruments of betting was then used as the model by New South Wales when that State re-drafted its "possession of suspected unlawful betting aid" provisions. It was obvious that, at least in some quarters, section 217 of the Queensland Act was thought to be reasonably effective.

However, it has lately become the case that this once adequate provision is now deficient, as it only prohibits possession of "an instrument of betting not authorised by or under this Act in respect of a horse race, trotting race or greyhound race" (*Racing and Betting Act*, section 217). This fact was seemingly not lost on either Victoria or New South Wales, as their "instrument of betting" provisions are not restricted in this way.

In this regard, this section no longer reflects the reality of SP bookmaking practice. In this era, SP bookmakers do not simply confine their illegal activities to horse and greyhound racing, and will usually take bets on any sporting contingency. Such a fact can be verified by a number of police raids that have been conducted against known SP bookmakers in recent times. These raids have lead to the discovery of betting and settling ledgers that relate to a variety of "sporting contingencies" such as Rugby League, Rugby Union, Australian Rules Football, the Wimbledon Tennis Championships, Sheffield Shield and Test Cricket, as well as other sports.

Given the ability of (licensed) bookmakers in the United Kingdom to field on virtually any contingency, including the results of impending elections, or the name to be given to a newborn member of the Royal Family, there is nothing to suggest that unlawful bookmakers in Australia will confine themselves only to sporting contingencies.

As section 217 of the Act is currently confined to possession of any instrument that relates only to horse and greyhound betting, possession of ledgers relating to other sports or any other contingency does not constitute an offence. There is evidence to suggest to this Commission that a substantial proportion of unlawful bookmaking activity relates to sporting betting, particularly on the Sydney Rugby League competition. While such unlawful bookmakers can be charged under section 214, they are unable to be charged under section 217. This means that

apprehended unlawful bookmakers caught fielding on racing will be subject to additional charges, while those that unlawfully field in the equally lucrative field of sports betting cannot be charged under section 217.

It would therefore be appropriate for section 217 to be expanded to include the possession of any instrument that relates to the acceptance of bets on any contingency. This would then more properly reflect the modern fact of SP bookmaking and would be likely to act as an added deterrent to future unlawful bookmakers.

Licensed Bookmakers Involved in Unlawful Bookmaking Activities

There is evidence to suggest to this Commission that many licensed bookmakers are both involved in and supportive of the unlawful bookmaking industry. Under the provisions of the present legislation, there is simply no statutory restriction that can be used to prevent the licensing of a person as a bookmaker should that person have a conviction for unlawful bookmaking.

In the past, the only form of control that has been imposed upon persons who have been convicted under aforementioned sections is that some of the principal racing clubs and controlling bodies responsible for licensing of bookmakers have as a general practice declined to allow the convicted bookmaker to field again as a legal bookmaker, unless the fine has been paid. This informal system of control is simply not sufficient and can be easily circumvented by unscrupulous operators who can always move their legal fielding activities into the jurisdiction of another, less vigilant controlling body. The current practice also does not lend itself to effective deterrence of illegal activity and indeed, the mere fact that people with convictions for serious offences such as unlawful bookmaking, can apply or continue to hold bookmakers licences makes a mockery of the current system of racing industry licensing in this State.

Registered bookmakers that do engage in illegality are well aware of the measure of profit to be obtained from some "additional" unlawful bookmaking. In all probability many of them are only retaining their fielding licences in order to provide a "legitimate cover" for the unlawful bookmaking that makes up a substantial or perhaps even predominant part of their enterprise.

The *Racing and Betting Act* must be amended so as to prohibit the licensing of any person who has been previously convicted, or who is subsequently convicted under sections 214, 216 or 217. It would be highly desirable if convictions for an offence under the *Racing and Betting Act* as well as for other serious indictable offences should be grounds for an absolute disqualification of an applicant from ever holding a racing industry licence.

Section 219 Resorting to common betting house prohibited.

This section creates a penalty for those people who "resort to" common betting houses. It is envisaged that this section could be utilised against those that are found in premises at the same time as charges are laid against those that "open keep or use a common betting house" under the provisions of section 216. Convictions for personally resorting to a common betting house are unlikely as the usual practise is for SP punters to place their bets by telephone.

Although provision is made in subsection (2) of section 219 that resorting to a common betting house includes communicating with that premises by telephone, in practice it proves to be very difficult to lay charges against those that resort to a common betting house by telephone. At present, the only way that police can lay charges against those persons who telephone bet with an SP bookmaker, is to raid the premises of unlawful operation and then physically take over the job of receiving bets. Most SP bookmakers know their clientele personally, and little needs to be communicated over the phone to confirm identity. SP punters frequently identify themselves only by their first names or initials. As such, it is very difficult for police to obtain sufficient evidence over the telephone to enable them to charge people with "resorting" under the provisions of section 219.

There is no real need to alter the provisions of section 219, as the types of difficulties outlined above are not the result of the wording of the provision and would continue notwithstanding legislative change. Note should be made of the fact that section 219 provides for terms of imprisonment as an alternative to pecuniary fines.

Section 219 provides:

(1) A person shall not, without reasonable excuse the proof of which shall be upon him, resort to or be found in or entering or leaving a common betting house.

(2) In this section "resort to" includes apply whether by the agency of another person, letter, telegram, telephone or other means of correspondence or communication and whether directly or indirectly.

Penalty: For a first offence, $500 or imprisonment for 1 month;

for a second offence, whether for the same or another offence against this section, $1,000 or imprisonment for 5 months;

for a third or subsequent offence whether for the same or another offence against this section, $2,000 or imprisonment for 12 months.

Section 220 Prohibition of advertising of common betting house.

This section is really self explanatory and needs no further explanation.

(1) A person shall not--

(a) send, exhibit, print or publish, or cause to be sent, exhibited, printed or published; or

(b) permit to be exhibited or published in, on or about any place of which he is the occupier,

any placard, handbill, card, writing, sign, advertisement or other matter whereby it is made to appear that a place is opened, kept or used, wholly or partly for the purpose of exhibiting lists for betting that could induce a person to resort to a place wholly or partly for the purpose of betting.

(2) A person–

(a) being the occupier of a common betting house;

(b) for or on behalf of the occupier of, or other person concerned in the business of, a common betting house,

shall not invite a person to resort thereto wholly or partly for the purpose of betting.

In this subsection the term "resort to" has the meaning assigned to it by section 219.

Penalty: $5,000 or imprisonment for 2 years or both that penalty and imprisonment.

(3) A person shall not send, exhibit, print or publish, or cause to be sent, exhibited, printed or published, any letter, circular, telegram, placard, handbill, card, writing, sign, advertisement or other matter-

(a) whereby it is made to appear that a person in Queensland or elsewhere will, on application, give information or advice for the purpose of or with respect to a bet on a sporting contingency in Queensland or elsewhere or will make on behalf of any other person such bet;

(b) whereby a person is induced to apply to or at a place, or to any person, with a view to obtaining information or advice for the purpose of a bet or with respect to a sporting contingency in Queensland or elsewhere;

(c) inviting, expressly or by implication, a person to make or take a share in or in connexion with a bet; or

(d) whereby a person is induced to apply to or at a place or to a person with a view to obtaining information or advice on any system or other method or means by which he may make a selection of a runner for the purpose of a bet on a sporting contingency in Queensland or elsewhere.

Penalty: $5,000 or imprisonment for 2 years or both that penalty and imprisonment.

Section 221 Betting on licensed premises.

Those parts of section 221, that are relevant to a discussion of unlawful bookmaking when it occurs on or in licensed premises are reproduced below.

(1) A person who holds a licence of any description under and within the meaning of the *Liquor Act 1912-1979* shall not permit or suffer the place in respect of which that licence is in force to be used for the purpose of betting.

Penalty: For a first offence, $5,000 or imprisonment for 6 months;

for a second offence, $10,000 or imprisonment for 12 months;

for a third or subsequent offence, $20,000 or imprisonment for 2 years.

Little needs to be said about section 221, save that it is directed at licensee's within the definition in the *Liquor Act*. The difficulties that could arise with this provision relate to the word "use" as that term has come to be defined in terms of the expression used for the purpose of betting as discussed earlier. Police have instanced at least one case where proceedings under this provision have failed for avoidable reasons. Police have instanced the recent case of at least one Queensland hotel that has been frequently used for the purposes of unlawful bookmaking. After the apprehension of a number of people for SP offences at that place it became apparent that use of the hotel was with the full knowledge and support of the publican. For this reason it was determined that it would be appropriate to revoke the licence holder's right to be a licensee. Police initiated the process contained in subsection (3) - (7) of section 221, where it is provided that:

(3) The Commissioner of Police shall report to the Minister in writing particulars of every conviction of a person in relation to a place in respect of which a licence of any description issued under the *Liquor Act 1912-1979* is in force for a third or subsequent offence against–

(a) subsection (1);

(b) section 214, 216, 217 or 222; or

(c) subparagraph (c) of paragraph (viii) of subsection (1) of section 4 of the *Vagrants, Gaming and Other Offences Act 1931-1978*.

(4) The Minister, upon receipt of a report specified in subsection (3), may furnish to the Licensing Commission particulars of the convictions the subject of the report.

(5) The Licensing Commission shall thereupon call upon the person in respect of whom the report was made to show cause why the licence specified in subsection (3) of which he is the holder should not be suspended.

(6) The Licensing Commission where--

(a) the person so called upon fails to show sufficient cause; or

(b) it is of the opinion for any other reason that the licence should be suspended,

shall suspend the licence of which he is the holder for a period not exceeding in any case 2 years.

A suspension pursuant to this subsection shall, during the period thereof, operate as a cancellation of the licence the subject of the suspension for all purposes of the *Liquor Act 1912-1979* and without right to compensation in the holder thereof or any other person.

(7) This section applies notwithstanding sections 7, 23 and 24 of the *Criminal Code* or any other Act, rule, law or practice.

Before this process could be instigated the licensee assigned his licence in the hotel to his wife. In so doing he was able to retain effective control over the licence to that hotel. Consideration should be given to instituting some change in the legislative purpose so as to prevent this type of avoidance of the intended penalty.

Adequate defence provisions are provided in subsection 2 of section 221 where it is provided:

It is a defence to a charge of an offence against this section brought against a person specified in subsection (1) if he proves that–

(a) he has issued proper instructions and used all reasonable means to secure observance of this Act;

(b) the offence in question was committed without his knowledge; and

(c) he could not, by the exercise of reasonable diligence, have prevented the commission of the offence.

Some note should be made of the magnitude of both the fines and the default imprisonment periods provided for convictions under this provision. The fact that default imprisonment is provided in this section but not in relation to the more important unlawful bookmaking provisions contained in sections 214, 216 and 217 is simply indicative of the serious shortcomings contained in the current provisions of the *Racing and Betting Act*.

Section 222 Prohibition of betting in public place.

A person shall not–

(a) by himself or an agent bet in a public place;

(b) frequent, loiter in, use or be present in a public place wholly or partly for the purpose of betting; or

(c) placard, post up or exhibit, or assist in placarding, posting up or exhibiting in, on or about a public place any information, notice or list, directly or materially relating to betting.

The penalty applicable to this offence is not contained in the provision but is instead contained in section 236 of the Act.

Section 236 Offences generally and penalty

(1) A person who contravenes or fails to comply with a provision of this Act commits an offence against this Act.

(2) A person who--

(a) fails to do that which he is directed or required to do;

(b) does that which he is forbidden to do,

by a person acting under the authority of this Act commits an offence against this Act.

(3) Save where a specific penalty is otherwise prescribed, a person who commits an offence against this Act is liable--

(a) in the case of a first offence, to a penalty of $1,000 or imprisonment for 6 months or both that penalty and imprisonment;

(b) in the case of a second or subsequent offence, to a penalty of $2,000 or imprisonment for 12 months or both that penalty and imprisonment.

(4) A body corporate that commits an offence against this Act that is punishable by--

(a) imprisonment only; or

(b) a penalty or imprisonment or both,

is liable to a penalty of $2,000 or, if the offence is punishable by an increased penalty, to a penalty of $4,000.

(5) Notwithstanding this Act or any other Act, where a person is convicted of an offence against this Act, the penalty to which he is liable is in addition to a forfeiture under this Act.

Section 222 is also of some application with respect to a licensee of licensed premises being required to "show cause" as to why his licence should not be removed under the provisions of section 221 (3).

Application of the Vagrants, Gaming and Other Offences Act to Unlawful Bookmaking

Although there are currently provisions in relation to "betting in a public place" contained in the *Vagrants, Gaming and Other Offences Act* (1931), section 4(vii) their intended application appears to be confined to incidences of betting where that betting is either in relation to an unlawful game or is betting other than on horse or greyhound racing.

Section 4 (1)(vii) of the *Vagrants, Gaming and Other Offences Act* provides that:

> "(1) Any person who -
>
> ...
>
> (viii) Plays or bets at any unlawful game, or plays or bets in any street, road, highway or other place at or with any table or instrument of gaming at any game or pretend game;
>
> shall be deemed a vagrant, and shall be liable to a penalty of $100 or to imprisonment for six months".

"Unlawful Game" is further dealt with in section 19 of the *Vagrants, Gaming and Other Offences Act* and the definition of "Unlawful Game" is provided in section 2.

Although the definition of "instrument of gaming" in section 2 of the *Vagrants, Gaming and Other Offences Act* is expressed as instruments used in relation to betting or gaming "other than betting on horse racing", and would therefore seem to be intended to be limited to instances of public gaming, the exclusion contained in the definition would appear not to encompass "instrument of betting" used in relation to bookmaking on contingencies other than horse racing. Such a construction is supported by the fact that the prohibition on possession of an "instrument of betting" contained in the *Racing and Betting Act* refers only to instruments used in relation to betting upon horse, trotting and greyhound racing.

As previously noted, unlawful bookmakers frequently accept bets on sporting contingencies other than horse races. It is conceivable then, that an unlawful bookmaker apprehended in the street for accepting football bets or the like, and although unable to be charged with possession of an instrument of betting under the *Racing and Betting Act*, could be liable for an offence under the *Vagrants, Gaming and Other Offences Act*.

The fact that the *Racing and Betting Act* is in need of substantial and comprehensive review is unquestionable. At the same time related legislation such as the *Vagrants, Gaming and Other Offences Act* is also in need of review. Generally, there needs to be some determination made as to the degree of seriousness that the Government is willing to attach to the criminality inherent in SP bookmaking.

Whether the *Vagrants, Gaming and Other Offences Act* is applicable to aspects of unlawful bookmaking, as indicated above, is currently somewhat unclear. The law, it is suggested, would benefit greatly from a consolidation of the provisions that relate to unlawful bookmaking under one statute.

Further the application of what are broadly vagrancy offences to incidences of unlawful bookmaking is somewhat artificial and inconsistent with the degree of criminality involved in unlawful bookmaking as identified by this Commission

Given the seriousness of unlawful bookmaking and related offences, and its potential linkage with other more serious offences, there are good policy grounds for the removal of all remaining aspects of unlawful bookmaking and its related offences from the ambit of the *Vagrants, Gaming and Other Offences Act.*

The Commission believes that offences that relate to unlawful bookmaking should be contained completely and exclusively within the *Racing and Betting Act.*

This could be achieved by firstly making an amendment to the "instrument of betting" provision contained in section 217 of the *Racing and Betting Act* so that it is also inclusive of instruments that relate to betting on contingencies other than the outcome of horse and greyhound races; and secondly, by modification of the definition of "instruments of gaming" and the definition of unlawful gaming in the *Vagrants, Gaming and Other Offences Act,* to completely and expressly exclude the possibility for its application to the more serious offences under the *Racing and Betting Act.*

This would then have the effect of confining the *Vagrants, Gaming and Other Offences Act* to incidences of gaming, particularly to those offences that are often referred to as "ethnic games". More serious instances of gaming could then still be dealt with under the *Criminal Code.* The applicable offence sections for unlawful street betting would then more clearly become sections 214 and 217 of the *Racing and Betting Act* for unlawful bookmakers, and section 222 of the *Racing and Betting Act* for punters.

Section 22 of the *Vagrants, Gaming and Other Offences Act* would also have to be modified. At present that section creates an offence by licensees of licensed premises who permit their premises, "to be used for the purpose of betting or wagering on any future event or contingency, by whatever means such betting or wagering is conducted or carried on". Insofar as section 22 is virtually identical to that contained in section 221 of the *Racing and Betting Act* there is unnecessary duality in this regard.

It is suggested that section 22 of the *Vagrants, Gaming Other Offences Act* be repealed in its entirety and that section 221 of the *Racing and Betting Act* be amended as may be necessary so as to cover the field in this area.

Application of the Criminal Code to Unlawful Bookmaking

There are provisions in the Queensland *Criminal Code* that relate to both unlawful gaming and unlawful betting. Section 233 of the code provides that it is an offence to open, keep or use a common betting house. The offence is described as being a misdemeanour, and carries a penalty of three years imprisonment if dealt with on indictment. The matter may be dealt with summarily, and, should it result in a summary conviction a maximum fine of two thousand dollars and one years imprisonment applies.

Additionally, subsection two of section 233, provides for an offence of knowingly or willingly permitting others to open keep or use premises as a common betting house. The penalty is stated to be one years imprisonment and a two thousand dollar fine upon summary conviction.

Section 233 Betting houses

(1) Any house, room, or place, which is used for any of the purposes following, that is to say -

(1) For the purpose of bets being made therein between persons resorting to the place and -

(a) the owner, occupier, or keeper of the place, or any person using the place; or

(b) any person procured or employed by or acting for or on behalf of any such owner, occupier, or keeper, or person using the place; or

(c) any person having the care or management, or in any manner conducting the business, of the place; or

(2) For the purpose of any money or other property being paid or received therein by or on behalf of any such owner, occupier, or keeper, or person using the place, as or for the consideration -

(d) for an assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or other property on any event or contingency of or relating to any horse race, or other race, fight, game, sport or exercise; or

(e) for securing the paying or giving by some other person of any money or other property on any such event or contingency;

is called a common betting house.

Any person who opens, keeps, or uses, a common betting house is guilty of a misdemeanour, and is liable to imprisonment for three years.

Or he may be summarily convicted before two justices, in which case he is liable to imprisonment for one year, and to a fine of two thousand dollars.

(2) Any person who, being the owner or occupier of any house, room, or place, knowingly and wilfully permits it to be opened, kept, or used, as a common betting house by another person, or who has the use or management, or assists in conducting the business, of a common betting house, is guilty of an offence, and is liable on summary conviction to imprisonment for one year, and to a fine to two thousand dollars.[19]

It should be noted that section 233 of the code makes clear provision for both fines and periods of imprisonment. This section can be used as an alternative to section 216 of the *Racing and Betting Act*. The fact that this section has not been repealed tends to suggest that it is still intended to apply notwithstanding the

19 Section 233 am Act 11 of 1961 section 4; Act 88 of 1988 section 5 and Sch II.

similar provisions contained in section 216. In many respects the two sections are nearly identical. For example, the construction that is to be given to "place" and "used" in section 233 of the code, is the same as that given to section 216 by *Prior v Sherwood* and *Bond v Foran*. An analysis of the large amount of case law that is applicable to section 233 of the *Criminal Code* is sufficient to confirm that the two sections have the same effect.

It has been held that the term "place" in section 233, bears the same meaning as that provided in the *Suppression of Gambling Act 1895* (*Bookless v Buck* [1922] St R Qd 88; [1922] QWN 17; (1922), 16 QJPR 67). Section 4 of that Act provided that unless the context otherwise indicates, the term "place" means any house, office, room, tent, resort, or other place in or out of an enclosed building, vessel, or premises, whether upon land or water, whether private property or otherwise. Accordingly, a specific area of land would be capable of being a place. This definition and its application is similar to that provided by section 5 of the *Racing and Betting Act*.

A "place" on unoccupied land near a racecourse upon which an easel and blackboard had been set up for the purpose of writing the names of the horses in each race was held to be a place for the purposes of section 233 in the case of *R v Lannon* ([1903] St R Qd 315). As in section 216 of the *Racing and Betting Act*, it was a question of fact on the evidence presented to the court as to whether there was sufficient localisation of the betting business to constitute a place. In this regard see also for example *R v Fisher* ((1913) 9 Cr App R 164). In *Sullivan v Hearn* ((1940) 42 WALR 50), Wolff J. held that the terms "using" and "resorting" both pointed to the element of localisation, and his Honour quashed a conviction for using a common betting house on the ground that there was no evidence that the defendant was using a definite place for making bets as the statute required. In that case, the evidence was that the accused was using a motor vehicle in a public street, and that there were a number of men congregated around it. In *Russell v Gorst* ((1935) 38 WALR 69), the appellant had been convicted of using certain premises as a common betting house on evidence that a police agent made a bet with him in a billiard saloon at the rear of a tobacconist's shop. On a search warrant obtained a few minutes later, the appellant and the room were searched but no betting material was found. On appeal, Dwyer J. quashed the conviction, on the ground that there was not sufficient evidence of a right or assumption of special use of the particular premises by the appellant, nor was there evidence of a user as distinct from an isolated act of betting, or of such other facts that would lead to an inference from which the conclusion could be drawn that the premises were intended to be used for betting and had probably been so used. Evidence that bets were made with the defendant by only one person who resorted to the place in question will usually not be sufficient to support a conviction (*Mackay v Kontos; ex parte Mackay* [1951] Se R Qd 37). To constitute an offence committed under this section by members of a club betting *inter se*, it has been held that the betting must be frequent and designed and not casual or infrequent (*R v Boardman* (1905) WALR 313).

Whether the accused can be classified as a user is a question of fact. However, it will not be necessary to show that the defendant had the permission of the owner, or the occupier or keeper of the place.[20]

Section 235 of the code provides a definition of keeper that is similar to the definition of keep provided in the *Racing and Betting Act*. The definition of keeper in section 235 of the code provides that:

> "Any person who appears, acts, or behaves, as master or mistress, or as the person having the care and management of any such house, room set of rooms or place as mentioned . . . in section 233 . . . is to be taken as the keeper thereof, whether he is or is not the real keeper".

In the case of *Smith v Walker* ((1936), 30 QJPR 118), the accused was charged under section 233 and it was held that there was sufficient evidence that he had used a place as a common betting house when bets were taken and telephoned to him at another place. Also, in a series of cases it has been established that in order to prove that a place is in fact used for betting, evidence is admissible that when police officers were at the place, a number of telephone calls were received from persons wanting to bet.[21]

These cases provide a clear exposition of what is also the current *modus operandi* for SP bookmakers, and as such demonstrate that section 233 could have been used in recent times to circumvent the problems created by the *Racing and Betting Act*.

As the above analysis indicates, section 233 of the code and section 216 of the *Racing and Betting Act* tend to replicate one another, the only real practical difference being that a conviction secured under the provisions of section 216 will, in all practical effect, be only a token conviction.

Inquiries made by officers of this Commission with staff of the Director of Prosecutions Office indicate prosecutions have been commenced under section 233 of the *Criminal Code* in the post-Fitzgerald period. Prior to the commencement of the Fitzgerald Commission of Inquiry, police did not attempt to lay charges against people who opened, kept or used common betting houses under the provisions of the *Criminal Code*. This appears to be the result of a "General Instruction to all police officers in the State of Queensland", issued under the authority of the Commissioner of Police in April of 1983.[22]

That general instruction is contained in an amendment to the Queensland Police Manual, which was the manual of first recourse for all Queensland police officers when seeking a clarification of their powers and duties. General

---

20 See *Jennings v Soote* (1938) 55 WN (NSW) 198. See also *R v Deaville* [1903] 1 KB 468. As to the sufficiency of evidence of user, see *Ryan v Farrow* (1938) 55 WN (New South Wales) 74; *Harken v Ruthven* (1945) 47 WALR 34.

21 See *Marshall v Watt*, Struthers and County [1953] Tas SR 1, following the decisions in *Davidson v Quirke* [1923] NZLR 546; *Quirke v Davidson* [1923] NZLR 552; *Lenthall v Mitchell* [1933] SASR 232; *Marsson v O'Sullivan* [1951] SASR 244, and *McGregor v Stokes* [1952] VLR 565.

22 Amendment No. 504. Revision of General Instructions 5.28-5.50 on 6 April 1983.

Instruction 5.28(b) sets out the offence contained in section 233 (1) of the *Criminal Code*, and states that the offence is a "misdemeanour", but then General Instruction 5.28 goes on to expressly state that:

> "Proceedings in relation to offences involving common betting houses should, in general, however, be based on the relevant provisions of the *Racing and Betting Act*".

Such a stipulation contained in the General Instructions from the Commissioner of Police, applies to all Queensland police officers as an express order from the highest officer in an organisation that was (and still is), heavily dependant upon rigid adherence to a hierarchical chain of command.[23]

It could be said that if the Crown were anxious to secure a large fine it would proceed under section 216 but it should not be confident that the fine imposed will ever be paid. On the other hand, if the Crown were anxious to at least impose some penalty (although the fine is substantially smaller), it would be better to proceed under section 233 of the *Criminal Code*. The fact that there are currently two sections of virtually identical effect is anomalous.

If the Commission's recommendations concerning the penalty provisions in the *Racing and Betting Act* are followed, it is suggested that section 233 of the *Criminal Code* be repealed.

Once again it is suggested that there should be a consolidation of the laws concerning unlawful bookmaking so that they can be found in one piece of legislation only, namely the *Racing and Betting Act*.

Section 256 Evidentiary provisions of the Racing and Betting Act

There are a number of provisions contained in the subsections of section 256 of the *Racing and Betting Act* that provide assistance in the prosecution of offences under that Act. Those that relate particularly to unlawful bookmaking offences are reproduced below. It should be noted that the practical effect of these provisions is the reversal of the onus of proof on some matters in unlawful bookmaking prosecutions. Similar provisions are found in the legislation of every Australian State, and really represent a legislative recognition of the inherent difficulties that exist for securing convictions against SP bookmakers.

256 (i) where—

> (i) any member of the police force, officer or other person is wilfully prevented from or delayed or otherwise howsoever obstructed in entering or, as the case may be, re-entering a place that he is authorized by or under this Act to enter or re-enter;

---

23 See for example the comments of the Police Commissioner in the preface to the third edition of the manual where it was said, "It is the desire of the Department to maintain this manual as the main source of instructions and procedures . . . it is incumbent on all members of the force to studiously utilise the Queensland Policeman's Manual . . .".

(ii) it is found that an external or internal door of, or means of access to, a place that any member of the police force, officer or other person is authorized by or under this Act to enter or re-enter is concealed or secured by any bolt, bar, chain or other means or contrivance;

(iii) any means or contrivance is used for the purpose of preventing or obstructing or of giving an alarm in case of the entry or re-entry into a place or part thereof by a member of the police force, officer or other person authorized by or under this Act to enter or re-enter that place or part;

(iv) it is found that a place is fitted or provided with any computer, machine, device, recorder, telephone, blackboard, instrument of betting or other means or contrivance used, apparently used or capable of being used in carrying on or in connexion with betting or capable of use for betting or for concealing, damaging, defacing, destroying, disposing of, erasing, obliterating or removing any instrument of betting,

it shall be evidence and, in the absence of evidence to the contrary, conclusive evidence that the place is a common betting house and that a person found therein is using it as a common betting house in contravention of this Act;

(j) it shall be sufficient evidence, until the contrary is proved, in support of an allegation--

(i) in a complaint that a place is a common betting house, to prove that a bet was made or settled with or paid to a person in or on that place;

(ii) that a person is acting as a bookmaker at a place in contravention of this Act, to prove that any bet was made or settled with or paid to any person in or on that place;

In a proceeding for the purposes of this Act--

(k) an allegation or averment in a complaint that--

(i) at any material time--

(A) a place was a public place;

(B) a particular person was the occupier of a place specified in the complaint; or

(C) ***

shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of that allegation or averment;

(l) proof that a place is opened, kept or used wholly or partly for a purpose specified in section 215 shall be evidence and, in the absence of evidence to the contrary, conclusive evidence that the place in question is so opened, kept or used with the permission of the occupier thereof;

(m) proof that there is installed in or on a place alleged to be opened, kept or used wholly or partly as a common betting house a telephone instrument the number of which does not appear in the telephone directory current at the material time shall be evidence and, in the absence of evidence to the contrary, conclusive evidence that the place in question is opened, kept or used as a common betting house;

(n) the onus of proving that–

(i) gaming or betting instruments, money documents or other things seized under this Act;

(ii) copies of or extracts from books, tickets, vouchers, papers or other writings made or taken under this Act,

and used as evidence in that proceeding do not relate to or are not connected with an act or omission that constitutes the offence in question shall be on the defendant.

References

Halsbury's Laws of England 1984, vol. 47, Butterworths, London.

Commission of Inquiry Pursuant to Orders in Council 1989, *Report*, (Chairman: G. E. Fitzgerald Q.C.), Government Printer, Brisbane.

Queensland Parliament 1981, *Hansard*.

Commission of Inquiry on the Activities of the Federated Ship Painters and Dockers Union, 1984, *Final Report*, vol. 4, (Chairman: Costigan Q.C.), Government Printer, Canberra.

APPENDIX B

THE NEW SOUTH WALES GAMING AND BETTING ACT

The substantive law of New South Wales as it pertains to unlawful gambling, is contained in the *New South Wales Gaming and Betting Act*. The provisions of this Act that have been provided for the suppression of unlawful bookmaking are, in many respects, substantially better than those contained in the equivalent Queensland statute.

However, that is not to say that the New South Wales legislation has always been an ideal tool. Indeed, it is probably true to say that unsuitable and ineffective legislation has been one of several recurrent themes throughout the history of law enforcement against SP bookmakers in Australia, and in this regard, New South Wales is no exception.

Given the (in some respects) chequered history of this statute, it is probably true to state that it has only been since the introduction of the 1989 amendments, that the New South Wales Act has been sufficiently reformed so as to be legislation from which Queensland could seek material guidance.

In the latter half of the 1980s New South Wales recognised that there were a number of aspects of the *Gaming and Betting Act* that were quite inadequate in terms of responding to the technological advances that have heralded a new SP *modus operandi*. The most recent round of legislative amendments in New South Wales have now gone a long way towards rectifying this situation.

The immediate contrast that can be drawn between the recent history of legislative reform in Queensland and that in New South Wales is that- although police in both States who have been charged with the suppression of unlawful bookmaking, have been generally quick to recognise legislative deficiencies, New South Wales police have been far more successful in obtaining a response to their requests for legislative change. Unlike their New South Wales counterparts, Queensland police responsible for SP enforcement have for the most part, had their requests met by either stony silence or equivocation.

The second point that immediately becomes of interest is that while the Queensland Act has been the subject of considerable criticism in recent times for its failure to provide default imprisonment for SP bookmaking, this was also the case in New South Wales until comparatively recently. New South Wales has in the past had terms of imprisonment for SP bookmaking, but these were removed in 1979 during the premiership of Neville Wran.

Whatever the rationale for the removal of the default imprisonment option in 1979, it is now a matter that is probably primarily of historic interest. Yet, it is still a useful exercise to trace through the legislative debate that ensued at the time in order to obtain a complete understanding of the reasons behind the decision to remove default imprisonment.

McCoy has observed that conservative governments in New South Wales have historically tended to favour the interests of the Racing Clubs, while Labor Governments have championed the right of the ordinary working man to have a bet, with the consequent risk this has posed for Labor Governments of being accused of being soft on SP bookmaking (McCoy 1980, pp. 40-41).

McCoy's theory appears to be validated in the Parliamentary debate that ensued in September 1979, over the proposed amendment that would withdraw default imprisonment from the *Gaming and Betting Act*. A social policy thread in favour of the "decriminalisation" of SP betting ran through the speeches of some Labor Ministers during the debate on the proposed Bill.

The matter was first introduced before the New South Wales Legislative Assembly on 13 September 1979. The Wran Governments' stated rationale for the removal of default imprisonment was provided by the Minister responsible for introducing the Bill, the Honourable W.F. Crabtree M.P., during his second reading speech:

> "The Government considers that the monetary penalties for starting price betting and similar offences should be increased. At the same time specific penalties for second and subsequent offences should be omitted, though such penalties apply at present to street-betting. However, because of procedural difficulties that arise in preferring second-offence charges, they have proved to be largely ineffective. Similarly, in cases of mandatory penalties of imprisonment for offences of street-betting, it has shown that courts tend to suspend sentences and give a bond. The Bill, therefore, proposes the omission of the provisions for mandatory imprisonment for those offences" (*Hansard* 1989, p. 1062).

Although the stated reason for removal of the imprisonment Clauses were said to be their ineffectiveness, the Premier had gone on public record on earlier occasions, voicing his approval for legal SP betting. The true reasons for the removal of default imprisonment were probably then indicated in the comments that were made before the Legislative Council by the Honourable J.R. Hallam, Minister Assisting the Premier in the Upper House in his second reading speech when he said:

> "The significant thing is that the amendment will omit imprisonment with or without hard labour, so that what the Government has done in relation to the *Gaming and Betting Act* is to decriminalize the offence. This is a major social reform. However, the government wished to set the fine at a level that would be sufficient deterrent to bring about a reduction in SP betting" (*Hansard* 1979, p. 2065).

Mr McDonald, Deputy Leader of the opposition responding to the Ministers second reading speech in the Lower House, criticised the attitude of the government to SP bookmaking , and particularly that of the Premier Mr Wran whom he accused of having a "close and abiding interest in gambling" (*Hansard* 1979).

He then made reference to the apparent reluctance on the part of the Premier, as Minister responsible for police, to inform the House as to the success rate of the police force in suppressing SP bookmakers, and referred to comments of the Premier made the previous April, where he had said:

> "It is well nigh impossible to suppress SP betting . . . as eradication which has been attempted by various governments, police forces and Commissioners of police, will remain but partially effective" (*Hansard* 1979, p. 1066).

At the time, the opposition were making concerted attacks on the Premier Wran as the Minister responsible for police, over revelations of high level Police corruption, and organised crime involvement in SP bookmaking. This attack culminated in their moving a motion of censure on the Premier for having allegedly mislead the house in relation to a crime intelligence unit report regarding the SP bookmaking activities of one George David Freeman (*Hansard* 1979).

The Deputy Leader of the Opposition then referred to a question that had been asked of the Premier by the then leader of the Country Party some time before, on 2 March 1978, which read in part:

> "Are the continued operations of illegal starting-price bookmakers in New South Wales depriving the Totalizator Agency Board of many millions of dollars of income"? (*Hansard* 1979, p. 1069).

The Premier's answer, in part, was:

> "With regard to the loss of revenue . . . it is absurd for him to pose a question on premises that are demonstrably false and mischievous in the extreme" (*Hansard* 1979, p. 1069).

McDonald then continued:

> "I propose to show how demonstrably correct the Leader of the Country Party was when he asked that question. In order to take off the heat, the Premier, in a classic ploy to confuse the issue, decided that he would have to do the 'Wran' thing - that is to promise something. On 6th March the Premier promised - and this is how it was reported in the press:
>
> Legalized starting-price bookmaking was inevitable and SP bookies could be operating under Government control by next year, the Premier said yesterday. The Premier said that starting-price bookmakers and the Totalizator Agency Board would both be operating in the near future".

The 7 March 1978, issue of the *Daily Telegraph* reports the Premier as saying:

> "I can see SP betting and the TAB operating in harmony. This is inevitable. There should be a mixture of TAB and SP betting under Government control".

The Opposition although supportive of increased fines, were clear in expressing their attitude toward SP bookmaking and the removal of the default imprisonment Clauses in particular:

McDonald:

> "The penal proposals are a different matter. These ought to remain as a judicial option. In March last the Leader of the Opposition said that the proposal to amend the penal provisions of this Act was a backward step. Quite rightly, he said that organized crime was involved in starting-price betting and a fine of $1,000 meant nothing to the syndicates. A few days after the Leader of the Opposition made that statement the *Sun* published a report that Judge Boulter had quashed sentences of goal terms. The Minister for Lands and Minister for Services referred to this previously when he said there have been few actual gaolings".

Crabtree:

> "There has been none under the *Gaming and Betting Act*".

McDonald:

> "That is not support for the argument against giving judges an option to impose a gaol sentence in special circumstances, particularly for syndicates. The link between narcotics and illegal gambling is recognized by the Opposition at least . . . The suggested link between narcotics and illegal gambling is not without foundation. There is growing evidence of links between all areas of Australian organized crime. The government should be warned of the considerable risk in treating a single component like starting price bookmaking in isolation from narcotics and drugs" (*Hansard* 1979, p. 1073).

The Bill was duly passed and received the Royal Assent on 15 November 1979. To summarise, it would seem that the Wran Labor Government removed default imprisonment for SP bookmaking as a form of defacto legalisation of the practice. Had it not been for the acrimonious debate that ensued in the House at the time in relation to the stepping down of Police Commissioner Merv Wood, and revelations of the extent of organised crime involvement in all forms of unlawful gambling in New South Wales, it is likely that the Wran Labor government (given the nature of public statements that were attributed to it at the time), would have taken the matter further and perhaps even fully legalised SP bookmaking.

It was not again until 1989, after a change of Government, and at the urging of the New South Wales Gaming Squad, that the position was altered with default imprisonment being reintroduced.

In a report prepared by members of the Police Gaming Squad suggesting legislative amendments, the observation was made that the absence of default imprisonment was making New South Wales a haven for Victorian SP bookmaker's who were being driven north of the Murray River in fear of being subjected to further SP convictions that would result in their automatic imprisonment. The comment was made in that report that:

> "Consistently offenders in interstate and border towns use NSW for their operations, as the laws are more lenient. An example is 066 of Yarrawonga, Victoria, who repeatedly uses NSW as his base of operation. His reason for doing so is to avoid imprisonment. He has only to be arrested and convicted once more in Victoria to be gaoled. Operating in NSW and paying fines only upon conviction is not a deterrent to operators. The lack of penal provisions in Queensland has recently received adverse comment in the Fitzgerald Inquiry".[1]

The Gaming Squad observed that the existing New South Wales Act lacked consistency:

> "The *Gaming and Betting Act* provides penal provision for persons conducting or playing unlawful games and it appears inconsistent that there are no such provisions for SP operators who quite often have very large turnovers of money".[2]

The Gaming Squad suggested that it would be appropriate in order to impress upon transgressors of the Act (particularly the larger network operators), that SP operations would not be tolerated, if penal provisions were included for all offences under the Act.

Default imprisonment was subsequently reintroduced in 1989, receiving its assent on 20 April. In the second reading speech of the Minister responsible for the introduction of the Bill, the comment was made in relation to the proposed reintroduction of imprisonment for SP betting that; "a further major deterrent to illegal gaming will be provided through the inclusion of options for sentences of imprisonment as an alternative, or in addition, to monetary penalties for betting offences" (*Hansard* 1989).

Interestingly, the Labor members who entered into debate on the Bill, maintained their attitude in relation to the degree of criminality involved in SP bookmaking. Mr Cleary, member for Coogee commented that:

> "As a resident of New South Wales, I find it difficult to accept that someone can be sent to gaol for committing an offence that has been going on in this state for years" (*Hansard* 1989, p. 5946).

Those sections of the New South Wales *Gaming and Betting Act* of which some analysis will be of assistance in studying unlawful bookmaking in Queensland, are reproduced below. Analysis will, for the most part be undertaken on a

---

1 Suggested Amendments to the *Gaming and Betting Act 1912*, Internal Report, to Commander, Gaming Section, Drug Enforcement Agency, New South Wales Police Service.

2 ibid.

comparative basis. Additionally, where it would be of some assistance, commentary to explain the apparent rational behind some of the more recent amendments of this Act is also included.

Perhaps the most appropriate starting point in an analysis of the New South Wales legislation, is the very last section of the *Gaming and Betting Act*. Section 60 of that Act provides that proceedings for offences against this Act are to be dealt with summarily for a first offence, and then upon indictment for a second or subsequent offence. Section 60 provides as follows:

> **Proceedings for Offences**
>
> 60. (1) Except where otherwise expressly provided, proceedings for an offence against this Act shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone or by any two justices.
>
> (2) A second or subsequent offence against section 5 (1), 15C, 21, 23, 29A, 30, 30A (or section 29A, 30 or 30A as applied by section 34) or 44 (1) shall be prosecuted on indictment, and not otherwise.

The Offences of Street Betting and Betting on Sporting Grounds

Historically, street betting has been significant in New South Wales. In the era before the introduction of the off-course totalizator, street betting amongst working men was both common, and of great concern to the New South Wales Government. This fact can be evidenced in the legislation, where specific offences both for fielding unlawfully in the streets, and for punters placing bets in the streets have been created.

Street betting has been provided alongside an offence of "Betting on Sports Grounds", (New South Wales *Racing and Betting Act*, section 7) an offence said to be constituted by "betting or wagering on any ground, not being a licensed race-course, on which any sports are being held". "Ground" has been defined broadly so as to mean:

> "Land, including any buildings thereon, and any room to which persons are admitted either at all times or only at certain times, whether on payment of an entrance fee or charge or otherwise, for the purpose of taking part in or of witnessing any sports" (New South Wales *Gaming and Betting Act*, section 3).

"Street Betting" is said to be an offence of betting upon any sports, "Betting on Sports Grounds" is also an offence of betting on any sport, but the offence must be conducted on grounds, rather than in the streets, and it would appear to be the legislative intent that this section be confined to circumstances where a sporting match or event is being held at that ground at the time.

Equally, this section would appear to be intended to be of use against punters and not bookmakers, notwithstanding that both punters and bookmakers can be said to "bet or wager". Under the provisions of this section, if a game of Rugby League were to be held at a sporting ground, and those who were in attendance were to wager amongst themselves, they could be charged under the provisions of section 7. Meanwhile, if an unlawful bookmaker were to also field on the same match on the street outside that sporting ground, that bookmaker could be charged under the provisions of section 5 with conducting unlawful street betting. If the bookmaker fielding in the street were to stray into the sporting ground so as to obtain better access to the punting spectators, he could still apparently be charged under the provisions of section 5, notwithstanding the fact that he is now fielding unlawfully on a sporting ground. This is possible due to the definition that has been given to "street" under the New South Wales Act, which has been defined so as to include:

> (1) any enclosed or unenclosed land;
>
> (1A) ***
>
> (2) a thoroughfare and a highway, road, lane, footway, or passage, whether a thoroughfare or not, on any public or private land.

Although technically the bookmaker would be unlawfully fielding on a sporting ground in breach of the provisions of section 7, it is more likely for New South Wales police to elect to bring a charge under the street betting provision, as a substantially greater penalty exists under that section than does under the betting on sporting grounds provisions of section 7.[3]

Aside from recognising the historical context in which these two provisions have evolved, there would appear to be no justification for their continued co-existence. When it is borne in mind that the use of mobile telephones has meant that the place where unlawful bookmakers choose to locate their operation is now largely immaterial, sections 5 and 7 are creating an artificial distinction. The legislative purpose behind the New South Wales *Gaming and Betting Act* might better be served, by the fusion of these sections so that no distinction is drawn between street betting and betting on sports grounds.

---

3 New South Wales Gaming Squad police have confirmed that this would be the preferred charge in this situation - in addition the comments of the Minister contained in *Hansard* in relation to the most recent amendments to the definition of street confirm the primacy of this charge over others.

The sections provide as follows:

Street Betting

5. (1) Every person who frequents, uses, or is in any street for the purpose of any money or valuable thing being received by or promised to such person or on his behalf -

(a) as or for the consideration for any assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any sports; or

(b) as or for the consideration for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency as aforesaid; and

every bookmaker who, either by himself or by means of any agent, clerk, or servant makes any bet in or on any street, and every such agent, clerk, or servant who so makes any bet shall be liable for the first offence to a penalty not exceeding 100 penalty units[4] or imprisonment for 12 months and for a second or subsequent offence to a penalty not exceeding 500 penalty units or imprisonment for a term not exceeding two years.

(2) ***

(3) Where a member of the police force arrests any such person, bookmaker, agent, clerk or servant for an offence against this section -

(a) that member of the police force may seize -

(i) any money or valuable thing; and

(ii) any list, card or other document or thing,

which that member of the police force suspects or believes was used in or otherwise connected with the commission of the offence; and

(b) upon conviction, any money, valuable thing, list, card document or thing so seized shall, unless the court is satisfied that there are no reasonable grounds for that suspicion or belief, be forfeited to Her Majesty.

(4) A person betting in any street with -

(a) a person frequenting, using or in any street for the purpose mentioned in subsection (1); or

(b) a bookmaker or bookmaker's agent, clerk or servant,

shall be liable to a penalty not exceeding 10 penalty units or imprisonment for a term not exceeding six months, and shall be deemed not to be aiding, abetting, counselling or procuring the commission of an offence against subsection (1).

---

4 One penalty unit is currently worth $100 in New South Wales.

Betting on Sports Grounds

7. (1) Betting or wagering is prohibited -

(a) on any ground, except a licensed race-course, on which any sports are being held; and

(b) on a licensed race-course on which any sports other than horse-races, pony-races, harness racing or greyhound-racing are being held; and

(c) on a licensed race-course on which a barrier trial meeting, harness racing trial meeting or greyhound trial meeting is being held; and

(d) except as provided by subsection (2), on a licensed race-course on any day after sunset.

(2) ***

(3) A person who engages in betting or wagering prohibited by this section is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 12 months.

(4) ***

The Definition of Street

In 1989 amendments (*Gaming and Betting Act Amendment Act 1989*) to the New South Wales Act, the definition of "street" was amended so as to include registered clubs and like premises. This amendment was made on the recommendation of New South Wales Gaming Squad police who had experienced difficulties in apprehending SP bookmakers operating from registered clubs. As the Act stood prior to amendment, an offender betting in a club could not be convicted under the street betting provisions, as registered clubs were not included in the definition of street.

On initial appearances the form of this Act indicates that unlawful betting in registered clubs should be prosecuted via the provisions of section 42.[5] However, New South Wales Police have experienced equivalent difficulties in relation to this section as those experienced by Queensland police in relation to section 216 of the Queensland Act. The difficulty with attempting to charge offenders under section 42 for unlawful betting in registered clubs, is that use of the club premises must be shown, and New South Wales Courts have held that mere casual use is not sufficient (*Grigor v Gunn* (1941) 58 New South Wales Weekly Notes, p. 195). As has proven to be the difficulty in Queensland, the High Court cases of *Prior v Sherwood* (1906), and *Bond v Foran* (1934) have constrained prosecutions,

5 See section 42: 'Using and Keeping betting-houses forbidden'.

having determined that it must first be shown that not only did the person charged carry on the business of betting with others, but also that he carried on the business of keeping or using "a place" within the meaning of the Act, to which persons might resort, who wish to bet with him.

Gaming Squad police have found that it is particularly difficult to show that a registered club is a place kept or used by a person as a betting house.

Use usually refers to use of equipment, such as telephones etc, on the registered club premises for the purposes of unlawful betting. Such items are under the control of the management of the club, and are without doubt, predominantly used for the purposes of the club, which means it is most unlikely for police to be able to secure a conviction under this section.

In past cases, New South Wales Police have been able to detect club staff who are using club telephones for betting. In other cases, the Gaming Squad have detected instances where the staff were not involved, but patrons were betting regularly and openly on the premises. In some instances, public telephones inside the premises were being used.

Given the uncertainty that judicial interpretation of the word "use" has created for ever securing a betting house charge for this type of unlawful betting, the Gaming Squad instead proposed that changes be made to the definition of street. Presumably police were of the opinion that the Street Betting option for prosecution was less fraught with these types of evidentiary difficulties. The difficulties in securing prosecutions for using premises for betting were recognised by the Minister when introducing the legislation containing the new definition of street in order to circumvent the problem:

> "A further amendment aimed at SP bookmaking involves a change to the definition of 'street'. Starting price bookmaking is prohibited under section 5 of the Act, which makes it an offence to bet in or on any street. The present cumbersome definition of 'street' includes hotels, but does not include registered clubs. Though there are other provisions in the Act - sections 42 to 46 in particular - dealing with the use of places for betting, the courts have held that more than mere casual use of the premisses must be shown, and, further, that not only did the person concerned carry on the business of betting with others, but that he carried on the business of keeping or using a 'place' within the meaning of the Act. The inclusion of registered clubs in the definition of "street" for the purposes of the offence of street betting, will assist in prosecuting club personnel or patrons who may be involved in SP betting on the premises and using club telephones, or public telephones on the premises, for illegal betting" (*Hansard* 1989, p. 5610).

The definition of street was subsequently amended to read:

> "'Street' does not include any house other than a house situated on premises in respect of which licence is held under the *Liquor Act 1982* or the *Billiards and Bagatelle Act 1902* or in respect of which an approval is in force under Division 4BA of Part II of the *Local Government Act 1919*, or situated on the premises of a club registered under the *Registered Clubs Act 1976*".

Possession of Instruments of Betting

A series of amendments to the New South Wales Act in 1985, had the effect of substantially increasing the penalties for SP bookmaking in New South Wales. While it is generally conceded within New South Wales police circles that the increased penalties are an effective deterrent to the more open unlawful bookmaker who works from hotels and street corners, as well as the smaller telephone fielders (those with ledgers of perhaps one or two thousand dollars only), the increased penalties were considered to provide little additional deterrence to the larger operators who fully utilise technology to prevent detection.

Like their licensed counterparts, all unlawful bookmakers must at some stage settle winning bets with successful punters. New South Wales police correctly identified that the act of settling is perhaps the most easily recognised (and thus detectable), aspect of any unlawful bookmaking operation. Equally, this fact was identified by Commissioner Fitzgerald Q.C. when he made the observation that:

> "One (SP bookmaker) had operated in a (Queensland) provincial centre for 13 years and had settled with his clients at the same hotel at the same time on the same day of each week for 11 years" (Fitzgerald Report 1989, p. 72).[6]

Settling forms a significant part of any SP bookmakers operation. Large sums of money must be exchanged either on race day, or on some day subsequent to the day of fielding. While punters betting on credit are often happy to deal with the SP only by telephone while they are on a losing streak, human nature makes it usual for punters to wish to be paid virtually immediately if they should "get up". Settling then, usually represents a weak point in any SP operation, as even the most covert of SP operations must "break cover" in some way in order to settle with winning clients.

Although an integral aspect of unlawful bookmaking, and perhaps representing one of the best opportunities for police apprehension, settling was not an element of any unlawful bookmaking offence in New South Wales until the inclusion of Division 4A in the *Gaming and Betting Act* in 1989.

Until this time, there was simply no legislation in New South Wales that enabled persons to be charged in relation to possession of instruments of betting. New South Wales police made a recommendation that an amendment be introduced to the *Gaming and Betting Act* so as to create an offence of possession of instruments of betting, that would include possession of instruments on non race days. The definition and offence of "Possession of instruments of betting" recommended for inclusion by New South Wales Gaming Squad Police, came from the Victorian Lotteries *Gaming and Betting Act* (1966, section 3).

---

6 Examination of R. A. Marxson by Drummond Q.C. and Cross-examination by Callinan Q.C. Before the Deputy Commissioner Patsy Wolff Q.C., 20 July 88. Transcript. pp. 13146-13152, p. 72.

Although the provisions that were ultimately included by the *Gaming and Betting (Amendment) Act 1989* to provide for an offence of possession of instruments of betting is not the mirror-image of the suggested Victorian provision, they do have substantially the same effect.

In the amending Act, a new division providing for possession of suspicious articles was created. (see the annexure) This should be compared to the provisions of sections 217 of the *Queensland Racing and Betting Act*. Particular note should be made of section 15D as inserted. This section has overcome the difficulty that was created by section 357E of the New South Wales *Crimes Act*, which required some suspicion that something was stolen or unlawfully obtained before a vehicle or vessel could be stopped, searched or detained. In the circumstances, it was quite impossible for police to apprehend individuals unlawfully betting from cars or vessels.

The New South Wales Common Betting House Provisions

In New South Wales, the equivalent of section 215 of the Queensland *Racing and Betting Act* is found in section 42. That provision provides as follows:

> **Using and keeping betting houses forbidden**
>
> 42. (1) No place shall be opened, kept, or used for the purpose of the owner, occupier, or keeper thereof, or any person using the same, or any person procured or employed by or acting for or on behalf of such owner, occupier, or keeper, or person using the same, or of any person having the care or management or in any manner conducting the business thereof, betting with persons resorting thereto.
>
> In this subsection "resorting thereto" includes applying by the agency of another person by letter, by telegram, by telephone, or by any other means of correspondence or communication.
>
> (2) No place shall be opened, kept, or used at any time for the purpose of any money or valuable thing being received by or on behalf of the owner, occupier, or keeper, or any other person whosoever, as or for the consideration for -
>
> (a) any assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any horse-race, or other race, fight, game, sport, or exercise; or
>
> (b) securing the paying or giving by some other person of any money or valuable thing on any such event or contingency.
>
> (3) Every place opened, kept, or used for any of the purposes mentioned in this section is hereby declared to be a common nuisance.

The scheme of the New South Wales Act is that a person who is found in, or opens, keeps or uses a place for a purpose mentioned in section 42 is subject to penalty. This penalty is provided by section 44 (reproduced later below). Note should also be made of the fact that the New South Wales legislation also provides for a penalty for those found to be in a suspected betting house. Although little used by New South Wales Police, this offence is a useful additional power that could be used against unlawful bookmaking. It also represents a different approach to that taken in Queensland as there is no such offence as being in a suspected betting house in Queensland.

In order to prove the existence of suspected betting houses, the evidential provisions of section 44B (reproduced below) apply. These are of similar effect to those contained in the subparagraphs of subsection (i) of section 256 of the Queensland Act. The difference between the situation under the provisions of the New South Wales Act, and that under the provisions of the Queensland Act is that upon the reception of evidence under sections 256(i) (i),(ii),(iii) or (iv) unless the contrary is proved, that evidence will be conclusive that "the place is a common betting house and the person found therein is using it as a common betting house" (*Racing and Betting Act* (Qld), section 256 (i))

In New South Wales, similar evidence adduced under the provisions of section 44B can be evidence to support the fact that either the place is a Betting House, or alternatively to support an allegation that the place is a suspected betting house. Clearly a distinction has been drawn in New South Wales between a person being in a Betting House and being in a suspected Betting House. This distinction is borne out by the lesser penalty that is applicable to the latter, the fact that this offence may only be dealt with summarily, and that no attempt was made to increase the penalty under this section when other penalty provisions where amended in 1989.

Suspected betting houses

43A. (1) A person found in any place that may be reasonably suspected of having been, or of having been about to be, on the day on which that person is found therein, kept or used for any of the purposes mentioned in section 42 shall, upon conviction before a stipendiary magistrate, be liable to a penalty not exceeding $100.[7]

(2) An offender under the provisions of subsection (1) shall not be convicted if he gives such an account of the place in which he was found, and of his presence therein, as satisfies the stipendiary magistrate before whom he stands charged that the offender could not have reasonably suspected that place of having been, or of being, or of being about to be, on the day on which he was found therein, kept or used for any of the purposes mentioned in section 42.

7 Although most New South Wales offences are expressed in terms of the modern penalty unit, this section is still referred to in terms of dollars.

Penalty for keeping or being in betting house

Section 44 of the New South Wales Act creates one of the penalties that applies to opening, keeping or using a common betting house. It is the equivalent of the penalty provision in section 218 of the Queensland Act. Unlike the Queensland section it provides for default imprisonment. The fines applied in New South Wales are similar to those in Queensland, being $10,000 for a first offence, and $50,000 for a second or subsequent offence, however, the relative magnitude of these fines should not be considered without also appreciating the complete coercive effect of the law in New South Wales, which is provided by this section in conjunction with others that are usually applied simultaneously.

> 44. (1) Whosoever opens, keeps, or uses any place for any of the purposes mentioned in section 42, or knowingly and wilfully permits the same to be opened, kept, or used by any other person for any of such purposes, or has the care or management of or in any manner assist in conducting the business of any such place opened, kept, or used for any of such purposes, shall be liable for a first offence to a penalty not exceeding 100 penalty units or imprisonment for 12 months and for a second or subsequent offence to a penalty not exceeding 500 penalty units or imprisonment for a term not exceeding two years.
>
> (2) Every person found in such place without lawful excuse shall be liable to a penalty not exceeding 10 penalty units or imprisonment for a term not exceeding six months.

Forfeiture or destruction of money and articles seized

> 44A. Where an offender under section 43A or 44 is convicted, any money and securities for money that were seized in the place in respect of which the offender is convicted may, in the case of an offender under section 43A, and shall, in the case of an offender under section 44, be adjudged to be forfeited, all lists, cards and other documents or things relating to racing or betting that were so seized shall be adjudged to be destroyed, and any other article so seized may be adjudged to be forfeited or destroyed.

The evidentiary provisions that relate to proof that a place is a betting house or suspected betting house is conveniently placed alongside the penalty provisions in the New South Wales Act:

Evidence of place being a betting house or suspected betting house

> 44B. (1) This section applies to and in respect of a place that a member of the police force is, under this Part, authorised to enter, where -
>
> (a) any member of the police force so authorised is wilfully prevented from, or is obstructed or delayed in, entering the place;
>
> (b) any external or internal door of, or means of access to, the place is found to be fitted or provided with any bolt, bar, chain or any means or contrivance for the purpose of preventing, delaying or obstructing the entry into the place of any member of the police force so authorised, or for giving an alarm in case of such entry; or

(c) the place is found to be fitted or provided with any means or contrivance for unlawful betting.

(2) Evidence that, at or about a specified time or times on a specified day, this section applied to or in respect of a specified place shall, until the contrary is made to appear, be evidence -

(a) for the purposes of section 43, that the specified place was, at or about the specified time or times on the specified day, kept or used for a purpose mentioned in section 42;

(b) for the purposes of section 43A, that the specified place may be reasonably suspected of having been, or of having been about to be, on the specified day, kept or used for a purpose mentioned in section 42; and

(c) for the purposes of section 44, that the specified place was, at or about the specified time or times on the specified day, kept or used for a purpose mentioned in section 42, and that persons found therein at or about the specified time or times on the specified day were in the specified place without lawful excuse.

An additional penalty provision is provided by section 45 of the Act where a penalty is created for owners or occupiers of a place opened, kept or used as a betting house receiving money. Convictions under section 45 would seem to arise in situations where a conviction will also be able to be secured under section 44. This fact can be confirmed if the two sections are compared. Section 45 is specifically directed at owners or occupiers whereas section 44 is directed more generally at whosoever. As such, it would appear that section 45 is intended to be an additional penalty specifically for owners and occupiers. The fact that section 45 is apparently intended as a penalty in addition to that contained in section 44, probably explains why the penalty under section 45 is relatively minor. The section provides as follows:

Penalty for receiving money as deposit & c. on a bet

45. Whosoever being the owner or occupier of any place opened, kept, or used for any of the purposes mentioned in section 42, or a person acting for him or on his behalf, or as his manager or assistant -

(a) receives, directly or indirectly, any money or valuable thing -

(i) as a deposit on any bet on condition of paying any sum of money or valuable thing on the happening of any event or contingency of or relating to a horse-race or other race, or fight, game, sport, or exercise; or

(ii) as or for the consideration for any assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or valuable thing on any such event or contingency; or

(b) gives any acknowledgment, note, security, or draft on the receipt of any money or valuable thing paid or given as aforesaid, purporting or intended to entitle the bearer or any other person to receive any money or valuable thing on the happening of any such event or contingency,

shall be liable to a penalty not exceeding 10 penalty units or imprisonment for a term not exceeding six months.

Other sections in the New South Wales Act that some reference should be had to include:

Recovery of money paid over as deposit on a bet &c.

48. (1) Any money or valuable thing received by any person mentioned in section 45 as a deposit on any bet, or as or for the consideration for any such assurance, undertaking, promise, or agreement, as is in the said section referred to, shall be deemed to have been received to the use of the person from whom it was received.

(2) Such money or valuable thing, or the value thereof, may be recovered accordingly with costs in any court of competent jurisdiction.

(3) Nothing in this Part contained shall extend to any person receiving or holding any money or valuable thing by way of stakes or deposit to be paid to the winner of any race or lawful sport, game, or exercise, or to the owner of any horse or greyhound engaged in any race.

The effect of section 48 is that any moneys or valuable thing seized in an SP raid that have been used in conjunction with unlawful betting can be forfeited to the crown. These are equivalent to the provisions of section 242 of the Queensland Act.

Procedure where complainant does not appear &c.

49. If any person who has laid any complaint or information in respect of any offence against this Part does not appear at the hearing of the summons, or any adjournment thereof, or in the opinion of the justices adjudicating has otherwise neglected to proceed upon or prosecute the complaint or information with due diligence, the justices adjudicating may authorise any other person to proceed upon such summons instead of the person to whom the same was granted, or if they think fit dismiss the summons already granted and authorise any person to take out a fresh summons in respect of the offence charged in such information or complaint in like manner as if the previous summons had not been granted.

Arrest of offender about to abscond

50. Any justice may, upon its being made to appear to his satisfaction by the oath of the complainant or other credible person that any person charged with the commission of any offence under this Part is about to depart immediately from New South Wales, and will thereby probably evade punishment, issue his warrant for the apprehension of the person so charged for the purpose of his being brought before himself or some other justice to be dealt with according to law.

The New South Wales Declared Gaming House Provisions

One aspect of the New South Wales legislation that is very effective and much utilised by New South Wales authorities against unlawful bookmakers, are the Declared gaming house provisions of the *Gaming and Betting Act*. The effect of these provisions essentially being, that once a place is designated as being a "Declared Gaming House" then it may be closed virtually at the whim of the court.

Application of gaming house provisions to betting houses

The declared gaming house provisions contained in the *New South Wales Gaming and Betting Act* are made applicable to premises used as unlawful betting houses by section 43. That section states:

> 43. For the purposes of sections 26 and 27 and Division 3 of Part IIA a place kept or used for any of the purposes mentioned in section 42 shall be deemed to be a place used as a gaming house.[8]

Eviction of occupier of gaming house

Section 26 as a starting point, allows an owner of premises to expeditiously evict an occupier of those premises, under the authority of this Act, if that owner has reason to suspect that the place is being used as a betting house.

> 26. (1) If an owner of a place has reasonable grounds to suspect that the place is used as a gaming house, the owner may serve a notice to quit on the occupier.
>
> (2) Service of a notice to quit determines, as from the tenth day after the date of service, the tenancy of the occupier as if that tenancy had expired by effluxion of time.
>
> (3) On the determination of the tenancy, the owner may, without any authority other than this Act, take legal proceedings to evict, and may evict, the occupier.
>
> (4) A notice to quit shall be served -
>
> (a) on the occupier personally; or
>
> (b) if the occupier cannot be found, by posting a copy of the notice on some conspicuous part of the place.

8 As amended by the *Gaming and Betting (Amendment) Act 1987*, No. 200.

Cancellation of notice to quit

The presentation of notice to quit persuant to section 26, has the effect that the occupier then has 10 days to seek to have that notice overturned. This necessitates the occupier firstly proving to the satisfaction of the court that he has not used the premises for unlawful purposes. This is effectively then, a reversed onus of proof.

> 27. (1) A notice to quit under section 26 (1) may, on application made by the occupier, be cancelled by the Supreme Court, or the District Court, subject to such terms as the Court thinks fit, on proof that the occupier has not at any time knowingly allowed the place to be used as a gaming house.
>
> (2) A copy of the application shall be served on the owner at least 2 days before the hearing of the application and on being so served operates, until the determination of the application, as a stay of any proceedings commenced under section 26 (3).
>
> (3) If a senior police officer has caused notice to be served on the occupier of the place that the place is used as a gaming house, the occupier shall, for the purposes of this section, be deemed to know that the place is so used.

In the event that the initiative to close down premises used for unlawful betting is not taken by the owner (if for example the owner is unaware, acquiesces or is actively involved in the illegality), then the police are able to proceed under the provisions of Division 3 of part IIA, and have that place declared a common gaming house. This division was made applicable to betting houses by an amendment introduced to section 43 by the *Gaming and Betting (Amendment) Act 1987.*

Discussions with New South Wales Police indicate that the provisions of this division have been used against SP bookmaking with good effect, since division 3 was widened to include betting offences in 1989.

The practical effect of the division 3 will be explained below. The whole division can be found at the end of this appendix. It is believed that some provisions of similar effect be considered in any redrafted or new Queensland Legislation, that is provided for the suppression of unlawful bookmaking.

Under the provisions contained in section 28, should the police suspect that a place is being used for unlawful bookmaking, they can seek to file an affidavit with the Gaming Tribunal, stating that a senior police officer believes that the place is a common betting house and setting out the grounds for that belief.

Once the police have filed such an affidavit, the Gaming Tribunal has five days in which to determine whether or not it will make an interim declaration that the place is a declared gaming house (*Gaming and Betting Act 1987*, section 28 (2)). In the event that an interim declaration is made, a senior police officer is then required to cause notice of the making of the interim declaration to be

served upon the owner or occupier of the declared gaming house. If personal service cannot be effected promptly, then the police officer may instead cause a copy of the notice to be fixed on or near the entrance of the premises (*Gaming and Betting Act 1987*, section 28A (1)).

Once such a notice is affixed to the premises, it becomes an offence under the Act for a person to deface, destroy, attempt to cover, or remove such a notice. The prescribed penalty for doing so is five penalty units ($500) or imprisonment for six months (section 28A (2)).

It would appear to be the intent of the statute that the interim declaration cover the entire building. This is evinced by the fact that section 28A (5) provides that if there are different owners or occupiers of the various different parts of a declared gaming house, the subject of an interim declaration, the section provides it is not necessary for notice to be given to a person who is the owner or occupier of only the part of that gaming house. In effect, the notice of an interim declaration is made to be applicable to the entire premises.

Under section 29, it becomes the responsibility of the Gaming Tribunal to cause notice of any declaration to be lodged with the office of the Registrar-General. The Registrar-General is then required to recording upon the register of titles the making (or recission) of any such interim declaration (section 29 (2)(b)). In effect, section 29 provides that the declaration of a place as being a declared gaming house acts as an incumberance on the title to that property, and all further transactions and conveyances made in relation to title in that real property are made subject to the effect of the declaration of that place as being a gaming house.

After notice is made that a place or premises is an interim declared gaming house, section 29A makes it an offence for a person to be found in or on or entering or leaving the declared gaming house. Should a person be found upon such premises, the police force may enter the premises without warrant and arrest that person. The penalty that is provided for being in a house or place that is the subject of an interim declaration is: for a first offence - 50 penalty units ($5,000) or imprisonment for six months. For a second or subsequent offence - not less than 50 penalty units ($5,000) and not more than 100 penalty units ($10,000), or imprisonment for 12 months.

Section 30 provides that it is an offence by the owner if, after service of a notice made in accordance with section 28A (1), the declared gaming house is continued to be used as a gaming house. Unless the owner can provide evidence to prove that reasonable steps have been taken to evict the occupier that owner will be in breach of this section. The penalty upon conviction under this section is:

For a first offence 100 penalty units ($10,000) or imprisonment for 12 months.

For a second or subsequent offence; a penalty of not less than 100 penalty units ($10,000) and not more than 500 penalty units ($50,000) or imprisonment for two years.

Section 30A makes it an offence for the occupier of a declared gaming house to continue using the premises for that purpose, if the occupier has been served with a notice made in accordance with section 28A (1) that the place is the subject to an interim declaration. The penalty is the same as that for an owner under section 30.

Once an interim declaration has been made, the police are given substantial powers - a member of the police force may, without warrant:

(a) enter the declared gaming house;

(b) pass through, from, over, or along any other land or building for the purposes for entering the declared gaming house;

(c) for any of the purposes of this section break, open doors, windows or partitions and do such other acts as maybe necessary; and

(d) seize any means, contrivances or instruments of gaming, money and securities for money in a declared gaming house.

Under the provisions of this section, all money and securities for money which are seized shall be subject to forfeit to the crown. Additionally the Commissioner of Police may direct that all means, contrivances or instruments of gaming that are seized under this section be destroyed. These provisions are similar to those given to police officers in Queensland under the *Racing and Betting Act.*

Applications for rescission of interim declaration

The procedure intended under the Act is as follows; when an interim declaration is made, a date is set by which time the Gaming Tribunal must review the interim declaration.

If an owner or occupier has an intention to fight the interim declaration, he must give notice of that intention to the tribunal not less than 14 days before the date that is fixed for the review hearing. It is provided in section 32 that in the event that the owner or occupier does not contest the interim declaration, the interim declaration will become a full declaration at the date fixed for the hearing, and alternatively, if an application is made but the applicant is unsuccessful then the Tribunal shall make a declaration that the property the subject of an interim declaration is a gaming house.

Under the provisions section 32 (2), a declaration that the place is a gaming house remains in force unless and until revoked under section 34A by the Gaming Tribunal. Section 34A essentially provides that a place that is declared to be a gaming house will remain so until either the owner or occupier (or

alternatively a senior police officer), applies to the Gaming Tribunal for the recission of the declaration. Such an applicant must first be able to satisfy the Gaming Tribunal that:

(a) the place is no longer used as a gaming house; and

(b) in the case of an application by the owner or occupier that the place is intended to be used for a lawful purpose.

This provision is important in that it casts a positive duty upon an owner or occupier to ensure that his premises are used for lawful purposes in the future. Should the Gaming Tribunal determine that it should rescind the declaration, such a recission can be subject to such conditions as to the use of the premises as the Tribunal thinks fit. It is expressly provided in the Act that such conditions can include the giving of securities or an undertaking that the place will not again be used as a gaming house. Clearly the contravention of such an undertaking will have grave ramifications for those who are in breach.

The most important consequence of having a place declared as a gaming house can be seen in section 33 of the Act. If a place that was formally the subject of an interim declaration, is subsequently declared to be a gaming house. the use of that place for the purposes of any business is prohibited. This prohibition is absolute unless, or except to the extent that the Tribunal determines that it would be unjust or unreasonable for the prohibition to apply. Section 33 (2) provides that a person shall not contravene a prohibition under the section, the penalty being 10 penalty units for each day ($1,000) that the breach continues, or imprisonment for 12 months.

Essentially the prohibition provided in section 33 would mean that if, for example an upstairs room in a premises was being used by an SP bookmaker for the purposes of relaying telephone bets, and other rooms in that building where used for offices or home units, and the ground floor contained a number of shops, the entire building could be closed.

Such a provision would create a substantial disincentive on the part of a lessor to allow premises to be used for unlawful bookmaking.

Division 3 (Part IIA) Declared Gaming Houses

Interim declaration of a place as a gaming house

28. (1) A senior police officer may file with the Gaming Tribunal an affidavit which states that the officer believes a place is a gaming house and which sets out the grounds for that belief.

(2) The Gaming Tribunal shall, not later than five days after the affidavit is filed, make an interim declaration that the place is reasonably suspected of being a gaming house or determine not to make such an interim declaration.

(3) In determining whether or not to make an interim declaration, the Gaming Tribunal may have regard to:

(a) any external or internal observations of the place;

(b) the external or internal construction of the place;

(c) the alleged repute of persons observed entering, leaving or within the place or in the near vicinity of the place;

(d) the existence of any of the matters referred to in section 37 (1);

(e) any sums of money or securities for money observed or found within the place; and

(f) any other matters the Gaming Tribunal considers relevant.

(4) If the Gaming Tribunal makes an interim declaration, it shall fix a date (which is not less than one month after the date on which the interim declaration is made) for the purpose of hearing any application for rescission of the interim declaration.[9]

Notice of making of interim declaration

28A. (1) A senior police officer shall cause notice of the making of the interim declaration and of the date fixed for the purpose of hearing any application for its rescission to be served on the owner or occupier of the declared gaming house the subject of the interim declaration -

(a) personally; or

(b) if personal service cannot be effected promptly, by causing a copy of the notice to be fixed to or near the entrance to the declared gaming house.

(2) A person shall not deface, destroy, cover or remove a copy of a notice fixed under this section.

Penalty: five penalty units or imprisonment for six months.

(3) Subsection (2) does not prevent the replacement, by a member of the police force, of a notice fixed under this section with a notice under section 33A.

(4) A senior police officer shall cause notice of the making of an interim declaration and of the date fixed for the purpose of hearing any application for its rescission to be published -

(a) on two days in a newspaper circulating in the neighbourhood of the place the subject of the interim declaration; and

(b) in the Gazette.

---

9 See section 26 *Gaming and Betting Act* New South Wales. As amended by the *Gaming Act (Amendment) Act 1987*, Act No. 200.

(5) If there are different owners or occupiers of different parts of a declared gaming house the subject of an interim declaration, this section does not require notice to be given to a person who is the owner or occupier only of a part of the gaming house referred to in paragraph (c) or (d) of the definition of "gaming house" in section 3 (1).

Recordings by the Registrar-General

29. (1) The Gaming Tribunal shall cause notice of the making or rescission of an interim declaration under section 28 and of the making or rescission of a declaration under section 32 to be lodged in the office of the Registrar-General.

(2) If the notice -

(a) describes the land which is or was affected by the interim declaration or declaration in a manner enabling the land to be identified; and

(b) in the case of land under the provisions of the *Real Property Act 1900*, specifies the reference to the folio of the Register kept under that Act, or the registered dealing under that Act, that evidences the title to that land,

The Registrar-General shall, on lodgement of the notice -

(c) in the case of land under the provisions of the *Real Property Act 1900* - make such recordings in the Register in respect of the making or rescission of the interim declaration or declaration as the Registrar-General considers appropriate; or

(d) in any other case - cause the notice to be registered in the General Register of Deeds kept under Division 1 of Part XXIII of the *Conveyancing Act 1919*.

(3) For the purposes of Division 1 of Part XXIII of the *Conveyancing Act 1919*, a notice registered under subsection (2)(d) shall be deemed to be a registration copy of an instrument duly registered under that Division.

Person found in declared gaming house

29A. (1) If, after publication in accordance with section 28A (4) of a notice of the making of an interim declaration and during the time that the interim declaration is in force, a person is found in, or on, or entering, or leaving the declared gaming house the subject of the interim declaration, a member of the police force may, without warrant, arrest the person and take the person before a Magistrate.

(2) A person arrested under subsection (1), unless the person proves that he or she was in, or on, or entering the declared gaming house for a lawful purpose, contravenes this subsection.

Penalty: For a first offence - 50 penalty units or imprisonment for six months. For a second or subsequent offence - not less than 50 penalty units and not more than 100 penalty units, or imprisonment for 12 months.

(3) The form of information for an offence against subsection (2) may be in Form A or B in the Third Schedule.

Declared gaming house - offence by owner

30. If, after service on an owner in accordance with section 28A (1) of a notice of the making of an interim declaration and during the time that the interim declaration is in force, the declared gaming house the subject of the interim declaration is used as a gaming house, the owner, unless the owner proves that he or she has taken all reasonable steps to evict the occupier from the declared gaming house, contravenes this section.

Penalty: For a first offence - 100 penalty units or imprisonment for 12 months. For a second or subsequent offence - not less than 100 penalty units and not more than 500 penalty units, or imprisonment for two years.

Declared gaming house - offence by occupier

30A. If, after service on an occupier in accordance with section 28A (1) of a notice of the making of an interim declaration and during the time that the interim declaration is in force, the declared gaming house the subject of the interim declaration is used as a gaming house, the occupier contravenes this section.

Penalty: For a first offence - 100 penalty units or imprisonment for 12 months. For a second or subsequent offence - not less than 100 penalty units and not more than 500 penalty units, or imprisonment for two years.

Declared gaming house - entry by police

31. (1) While an interim declaration is in force, a member of the police force may, without warrant -

(a) enter the declared gaming house the subject of the interim declaration;

(b) pass through, from, over, or along any other land or building for the purpose of entering in pursuance of paragraph (a);

(c) for any of the purposes of this section, break open doors, windows or partitions and do such other acts as may be necessary; and

(d) seize any means, contrivances or instruments of gaming, money and securities for money in the declared gaming house.

(2) All money and securities for money seized under this section shall be forfeited to the Crown.

(3) The Commission of Police may direct that all means, contrivances or instruments of gaming seized under this section be destroyed.

Application for rescission of interim declaration

31A. (1) The owner or occupier of a declared gaming house the subject of an interim declaration may, not less than 14 days before the date fixed under section 28 (4) in respect of an interim declaration, give notice to the Gaming Tribunal of intention to apply for rescission of the interim declaration.

(2) The person making the application shall give notice of the application to a senior police officer not less than seven days before the date fixed under section 28 (4).

Declaration of place as a gaming house or rescission of interim declaration

32. (1) If -

(a) no application for the rescission of an interim declaration is duly made; or

(b) an application is duly made but the applicant is unable to satisfy the Gaming Tribunal that the interim declaration should be rescinded,

the Gaming Tribunal shall make a declaration that the place the subject of the interim declaration is a gaming house.

(2) A declaration that a place is a gaming house remains in force until rescinded under section 34A by the Gaming Tribunal.

(3) If –

(a) an application for the rescission of an interim declaration is duly made; and

(b) the applicant is able to satisfy the Gaming Tribunal that the place the subject of the interim declaration was not a gaming house at the date of the affidavit the filing of which led to the making of the interim declaration,

the Gaming Tribunal shall rescind the interim declaration.

(4) A rescission of an interim declaration may be subject to such conditions, including the giving of security an undertakings to ensure that the place will not be used as a gaming house, as the Gaming Tribunal thinks fit.

(5) A rescission of an interim declaration has effect from the date of the Gaming Tribunal's determination or such other date as the Gaming Tribunal may specify.

Submissions as to use of declared gaming house

32A. At the time when the Gaming Tribunal is considering whether to make a declaration that a place the subject of an interim declaration is a gaming house or on application made at any time after a declaration is made, a person who, in the opinion of the Gaming Tribunal, has a sufficient interest in the place is entitled to make submissions to the Gaming Tribunal on the Question of whether the use of the place for the purposes of any business should be prohibited.

Restriction on use of declared gaming house

33. (1) If a place the subject of an interim declaration is declared to be a gaming house, the use of the place for the purposes of any business is prohibited unless, or except to the extent that, the Gaming Tribunal, on the making of the declaration or on a subsequent application, determines that it would be unjust or unreasonable for the prohibition to apply.

(2) A person shall not contravene a prohibition under this section.

Penalty (subsection (2)): 10 penalty units for each day on which the offence is committed or imprisonment for 12 months.

Notice of making of declaration or rescission of interim declaration

33A. (1) If the owner or occupier of a declared gaming house the subject of a declaration did not appear, or was not represented, before the Gaming Tribunal on the making of the declaration, a senior police officer shall cause notice of the making of the declaration to be served on the owner or occupier–

(a) personally; or

(b) if personal service cannot be effected promptly, by causing a copy of the notice to be fixed to or near the entrance to the declared gaming house.

(2) A person shall not deface, destroy, cover or remove a copy of a notice fixed under this section.

Penalty: five penalty units or imprisonment for six months.

(3) A senior police officer shall cause notice of the making of a declaration or the rescission of an interim declaration to be published–

(a) on two days in a newspaper circulating in the neighbourhood of the place the subject of the declaration or interim declaration; and

(b) in the Gazette.

(4) If there are different owners or occupiers of different parts of a gaming house, this section does not require notice to be given to a person who is the owner or occupier only of a part of the gaming house referred to in paragraph (c) or (d) of the definition of "gaming house" in section 3 (1)

Further effects of declaration of place as a gaming house

34 (1) Sections 29A, 30, 30A and 31 apply in respect of a declared gaming house the subject of a declaration in the same way as they apply in respect of a gaming house the subject of an interim declaration.

(2) In the application of those sections, a reference in them to the service or publication, in accordance with section 28A (1) or 28A (4), of a notice of the making of an interim declaration shall be construed as a reference to the service or publication, in accordance with section 33A (1) or 33A (3), of the making of a declaration.

Rescission of declaration

34A (1) The owner or occupier of a place the subject of a declaration or a senior police officer may apply to the Gaming Tribunal for the rescission of the declaration.

(2) An owner or occupier who makes an application shall give notice of the application to a senior police officer not less than seven days before the application is heard.

(3) If the applicant is able to satisfy the Gaming Tribunal –

(a) that the place is no longer a gaming house; and

(b) in the case of an application by the owner or occupier – that the place is or is intended to be used for a lawful purpose,

The Gaming Tribunal shall rescind the declaration

(4) A rescission of a declaration may be subject to such conditions, including the giving of security and undertakings to ensure that the place will not again be used as a gaming house, as the Gaming Tribunal thinks fit.

(5) A rescission of a declaration has effect from the date of the Gaming Tribunal's determination or such other date as the Gaming Tribunal may specify.

35 A senior police officer shall cause notice of the rescission of a declaration to be published--

(a) on two days in a newspaper circulating in the neighbourhood of the place the subject of the declaration; and

(b) in the Gazette.

Evidence of publication of notices etc

35A (1) In any proceedings under this Act, the production of a copy of a newspaper containing a notice under section 28A or the making of an interim declaration or the rescission of an interim declaration or a notice under section 35 of the rescission of a declaration is evidence that the notice was duly published in the newspaper on the date appearing on the newspaper.

(2) In any proceedings under this Act, the production of a copy of the Gazette containing a notice referred to in subsection (1) is evidence that the interim declaration, declaration or rescission was duly made.

Unnecessary to prove that a person was playing for money etc

36. It shall not be necessary, in proceedings under this Part against a person found playing an unlawful game, to prove that that person was playing that game for any money, wager or stake.

Evidence of place used as a gaming house

37. (1) This section applies to and in respect of a place that a member of the police force is authorised to enter under this Part, where—

(a) a member of the police force so authorised is wilfully prevented from, or is obstructed or delayed in, entering or re-entering that place or any part of that place;

(b) an external or internal door of, or means of access to, that place is found to be fitted with a bolt, bar, chain, or any means or contrivance for the purpose of preventing, delaying or obstructing the entry or re-entry into that place of a member of the police force so authorised, or for giving an alarm in case of such entry or re-entry;

(b1) a person at or near the place has a device which is capable of being used to give an alarm to a person within the place;

(c) that place is found to be fitted or provided with any means of or contrivance for playing at or betting on an unlawful game or with any means of or contrivance for concealing, removing or destroying any instruments of gaming; or

(d) there is found in that place or in the possession of a person in that place any instruments of gaming used in playing at or betting on an unlawful game.

(2) Evidence that, at or about a specified time or times on a specified day, this section applied to or in respect of a specified place shall, until the contrary is made to appear, be evidence—

(a) for the purposes of this Part, that the specified place was, at or about the specified time or times of the specified day, used as a gaming house;

(b) for the purposes of this Part, that persons found in the specified place at or about the specified day were playing an unlawful game, whether or not any play took place in the presence of a member of the police force authorised to enter under this Part; and

(c) for the purposes of section 24, that a person in the specified place at or about the specified time or times of the specified day was in the specified place without lawful excuse.

Obstructing member of the police force

37A. Where a member of the police force is authorised under this Part to enter a place, a person shall not--

(a) wilfully prevent the member of the police force from entering or re-entering that place or any part of that place;

(b) wilfully obstruct or delay the member of the police force from entering or re-entering that place or any part of that place; or

(c) give an alarm or cause an alarm to be given for the purpose of--

(i) notifying another person of the presence of the member of the police force; or

(ii) obstructing or delaying the member of the police force from entering or re-entering that place or any part of that place.

38. A person concerned in any unlawful gaming who is examined as a witness by or before a stipendiary magistrate or two justices in any proceedings for an offence under this Part relating to that unlawful gaming, shall, if he receives from that stipendiary magistrate or those justices a certificate in writing to the effect that he has made true and faithful discovery to the best of his knowledge of all things as to which he has been examined, be freed from all criminal prosecutions, forfeitures, punishments and disabilities to which he may have become liable for anything done before his examination in respect of that unlawful gaming.

Division 4A - Suspicious articles

Definition

15B. In this Division –

"unlawful betting aid" means any article of a kind prescribed for the purposes of this Division, and any money, that is used –

(a) for, or in aid of, unlawful betting or wagering; or

(b) for the purposes of a transaction dependent on unlawful betting or wagering,

whether or not, in the case of an article, it is ordinarily used for some other purpose.

Possession of suspected unlawful betting aid

15C. (1) If an article or money may reasonably be suspected of being an unlawful betting aid, a person in possession of the article or money is guilty of an offence.

Maximum penalty –

(a) for a first offence - 100 penalty units or imprisonment for 12 months; and

(b) for a second or subsequent offence - 500 penalty units or imprisonment for two years.

(2) It is a defence to a prosecution for an offence under this section if the court is satisfied that the defendant had no reasonable grounds for suspecting that the article or money referred to in the charge was an unlawful betting aid.

Police may stop and search persons and vehicles

15D. A member of the police force may stop, search and detain -

(a) a person whom the member reasonably suspects of having or conveying an unlawful betting aid; or

(b) a vehicle or vessel in which the member reasonably suspects there is an unlawful betting aid.

References

McCoy, A.W. 1980, *Drug Traffic: Narcotics and Organised Crime in Australia*, Harper and Row, New South Wales.

New South Wales Legislative Assembly 1989, *Hansard*.

New South Wales Lower House 1979, *Hansard*.

Commission of Inquiry Pursuant to Orders in Council 1989, *Report*, (Chairman: G. E. Fitzgerald Q.C.), Government Printer, Brisbane.

APPENDIX C

SP BOOKMAKING: VICTORIAN LEGISLATION

The *Lotteries, Gaming and Betting Act 1966* is the relevant statute used in the suppression and control of SP bookmaking in Victoria. This Act was last reprinted as at 15 June, 1988. Although there have been some further recent amendments to the Act by virtue of the *Magistrates Court (Consequential Amendments) Act 1989*, these amendments have not affected the law in a substantive manner.

The scheme of the Victorian Act is relatively similar to that of New South Wales, other than the fact that unlawful bookmaking offences in Victoria are only able to be prosecuted summarily. Victorian police have reported[1] that the Legislation is fairly trouble free, having been put under the microscope by Costigan Q.C. comparatively recently. However, the legislation has presented one problem for the Police in Victoria. That problem is created by the fact that the police are unable to apply for telephone tap warrants under the relevant Victorian listening devices legislation for summary offences. Victorian police have also reported that they encounter similar difficulties to Queensland police in apprehending SP bookmakers as the result of the deficiencies in Federal telecommunications legislation that have already been canvassed.

Section 17 of the Victorian Act provides for an offence of keeping places for purposes of betting:

> **No place to be kept for purposes of betting**
>
> 17. (1) No house or place shall be opened kept or used for any of the following purposes:
>
> (a) For the purpose of the owner occupier or keeper thereof or any person using the same or any person procured or employed by or acting for or on behalf of such owner having the care or management or in any manner conducting the business thereof, betting with any persons whosoever in person or by messenger agent post telegraph telephone or otherwise;
>
> (b) For the purpose of any money or valuable thing being received by or on behalf of the owner occupier or keeper thereof or any person as aforesaid -
>
> as or for the consideration for any undertaking to pay or give thereafter any money or valuable thing on any sporting contingency; or
>
> as or for the consideration for securing the paying or giving by some other person of any money or valuable thing on any such contingency; or

1 Submission received from Victorian Police, 31 January 1991.

(2) Every house or place opened kept or used for the purposes aforesaid or any of them is hereby declared to be a common nuisance and contrary to law.

The Act provides a definition of house or place:

> "house or place includes house, office, shop, room, premises, vessel, vehicle or place" (*Lotteries Gaming and Betting Act 1966*, section 3).

Common law definitions of "place" are still applicable, as what constitutes a "place" has not been specifically determined by this definition. In this sense, a degree of localisation will need to be found before a Court could be able to find that a place is in fact a place for the purposes of the Act. Common law interpretation of what will be sufficient to be a place will also need to be construed *ejusdem generis* with the other more specific definitions provided. Note should be made of the common thread in all of the legislation thus far surveyed in this regard.

Although none of the unlawful bookmaking offences contain a public place element, a definition of public place is also provided, and will be of some assistance.

"Public place" includes and applies to:

(a) any public highway road street bridge footway footpath court alley passage or thoroughfare notwithstanding that it may be formed on private property;

(b) any park garden reserve or other place of public recreation or resort;

(c) any railway station platform or carriage;

(d) any wharf pier or jetty;

(e) any passenger ship or boat plying for hire;

(f) any public vehicle plying for hire;

(g) any church or chapel open to the public or any other building where divine service is being publicly held;

(h) any State school or the land or premises in connexion therewith;

(i) any public hall theatre or room while members of the public are in attendance at, or are assembling for or departing from, a public entertainment or meeting therein;

(j) any market;

(k) any auction room or mart or place while a sale by auction is there proceeding;

(l) any licensed premises or authorised premises within the meaning of the *Liquor Control Act* 1987;

(m) any race-course cricket ground football ground or other such place while members of the public are present or are permitted to have access thereto whether with or without payment for admission;

(n) any place of public resort;

(o) any open place to which the public whether upon or without payment for admittance have or are permitted to have access; or

(p) any public place within the meaning of the words "public place" whether by virtue of this Act or otherwise (*Lotteries Gaming and Betting Act 1966*).

Section 17 makes it an offence to keep premises for any of the listed purposes. The principle listed purpose is betting with any persons. For the purposes of the Act, bet is defined as:

"Bet" includes wager and "betting" includes wagering and "the betting" includes the betting odds (*Lotteries, Gaming and Betting Act 1966*).

Section 17 (2) then goes on to provide that every house or place which is opened, kept or used for the purposes indicated, is declared to be a common nuisance and contrary to law. Section 18 then provides the penalty for an owner or occupier of such a betting house.

Penalty on owner or occupier of betting house

18. (1) Any person who–

(a) opens, keeps or uses a house or place for the purposes in section 17 mentioned or any of them;

(b) being the owner or occupier of any house or place, knowingly and wilfully permits the house or place to be opened kept or used by any other person for the purposes aforesaid or any of them; or

(c) has the care or management of or in any manner assists in conducting the business of any house or place opened kept or used for the purposes aforesaid or any of them - is guilty of an offence.

Penalty:

(a) if it is the defendant's first relevant offence and the Court is satisfied that, at the time of the offence, the value of all bets held by the person receiving the bets was less than $500 – 50 penalty units; and

(b) in any other case–

(i) for a first relevant offence - not less than 50 penalty units nor more than 100 penalty units or imprisonment for 3 months;

(ii) for a second relevant offence - not less than 100 penalty units nor more than 200 penalty units or imprisonment for 6 months; and

(iii) for a third or subsequent relevant offence - not less than 200 penalty units nor more than 1000 penalty units or imprisonment for 2 years or both.

(1A) In subsection (1) "relevant offence" means an offence against subsection (1) or section 23 (1).

(2) In any information under this Division and in all orders convictions warrants and other proceedings following therein a house or place opened kept or used for the purposes aforesaid or any of them may be described generally as a "betting house" or "place for betting" and wherever necessary the purposes aforesaid or any of them may be described general as "purposes of betting" and no objection shall be taken to any such description on the ground of duplicity or otherwise and at the hearing of any such information evidence may be given with reference to all or some or any of such purposes.

(3) A person found committing an offence against subsection (1) who, on apprehension by a member of the police force, does not comply with a request to supply his or her name and address is guilty of an offence.

Penalty: 2 penalty units.

(4) A person who bets with a person who is in a house or place which is kept or used for a purpose mentioned in section 17–

(a) is not, for that reason, aiding and abetting the commission of an offence against subsection (1); and

(b) is guilty of an offence against this subsection.

Penalty: 5 penalty units.

The penalties for this offence are as follows:

If it is the defendants first offence, and the court is satisfied that the value of all bets held was less than $500: 50 penalty units; and in any other case:

(i) for a first relevant offence not less than 50 penalty units nor more than 100 penalty units or imprisonment for three months;

(ii) for a second relevant offence not less than 100 penalty units nor more than 250 penalty units or imprisonment for six months; and

(iii) for a third or subsequent relevant offence not less than 250 penalty units nor more than 1000 penalty units or imprisonment for two years or both.

In the context of these penalties, the relevant offence is said to be an offence against either section 18 (1) or section 23 (1).

Note should be made of the fact that the Victorian legislation is careful to draw a distinction between "minor SP" (where the value of bets held is less than $500) and circumstances where the betting is more substantial.

Division 2 of the Victorian Act provides for offences of street-betting. section 23 is the relevant penalty provision. The penalties for street-betting are as follows:

> If it is the defendants first relevant offence and the court is satisfied that the value of all bets was less than $500: 50 penalty units; and in any other case:
>
> (i) for a first relevant offence not less than 50 penalty units nor more than 100 penalty units or imprisonment for three months;
>
> (ii) for a second offence not less than 100 penalty units nor more than 250 penalty units or imprisonment for six months; and
>
> (iii) for a third or subsequent offence not less than 250 penalty units nor more than 1,000 penalty units or imprisonment for two years or both.

Penalty on betting in street etc

23. (1) Any person who--

(a) frequents or uses or is in or on any street for the purpose of any money or valuable thing being received by or promised to such person or any other person on his behalf-

as or for the consideration for any undertaking to pay or give thereafter any money or valuable thing on any sporting contingency; or

as or for the consideration for securing the paying or giving by some other person of any money or valuable thing on any such contingency; or

(b) being a bookmaker, either himself or by means of any agent clerk or servant bets with any person in or on any street,; or

(c) being such agent clerk or servant, makes any such bet--

is guilty of an offence.

Penalty:

(a) if it is the defendant's first relevant offence and the Court is satisfied that, at the time of the offence, the value of all bets held by the person receiving the bets was less than $500 - 50 penalty units; and

(b) in any other case--

(i) for a first relevant offence - not less than 50 penalty units nor more than 100 penalty units or to imprisonment for 3 months;

(ii) for a second relevant offence - not less than 100 penalty units nor more than 250 penalty units or imprisonment for 6 months; and

(iii) for a third subsequent relevant offence - not less than 250 penalty units nor more than 1000 penalty units or imprisonment for 2 years or both.

(2) In subsection (1) "relevant offence" means an offence against subsection (1) or section 18 (1).

(3) Any person found committing an offence against subsection (1), who upon apprehension by a member of the police force, on demand refuses to give his name and address or gives a false name and address shall be liable to a penalty of not more than 2 penalty units in addition to any other penalty he may have incurred under this section.

(4) A person betting in any street with a person frequently or using that street for any purpose referred to in paragraph (a) of subsection (1) or with a bookmaker or his agent clerk or servant in the commission of an offence against subsection (1) but shall be guilty of an offence against this Act.

The noteworthy aspect of section 23 is the fact that default imprisonment is provided for first and second offences, and upon a third or subsequent offence, Magistrates are given a discretion to both fine and imprison.

An additional penalty is provided by section 23 (3). If a person who is found to be committing an offence against this section fails to provide his name and address or should give and false name and address to a police officer, he shall be liable to a penalty of two penalty units in addition to any other penalty incurred under this provision.

Subsection 4 provides an offence of people being in the street for purposes of betting with a bookmaker or a bookmaker's agent or clerk. The penalty for this offence is five penalty units. Thus an appropriate penalty is provided not only for acting as an unlawful bookmaker, but also for utilising their services.

A definition of street is provided for the purposes of this definition by section 25. That definition is as follows:

"Street" includes and applies to every road street thoroughfare highway land footway or footpath on any public or private property, and also extends and applies to any enclosed or unenclosed land or premises but does not include any house or part thereof used as a private dwelling or any place where a person may lawfully bet pursuant to the provisions of this or any other Act for the time being in force.

"Thoroughfare" includes and applies to any passage through in or upon any land house building or premises along which the public pass from one street as defined in this section to another street as so defined whether by the permission or sufferance of the owner or occupier thereof or otherwise and whether such passage is or is not at all times open or available to the public.

Application of Declared Common Gaming House Provisions to Instances of Unlawful Bookmaking

As is the case in New South Wales, particular specific provisions apply in Victoria to enable police to take appropriate action in regard to declared common gaming houses. For example, any magistrate may, upon information being laid before him on oath, stating that there is reason to suspect that a house or place is kept or used as a common gaming house, issue a special warrant authorizing and directing police to enter or re-enter using any force that is necessary to arrest, search and bring before a magistrate persons found therein, or entering or leaving the same; to search all parts of the house and to seize and bring before any magistrate all instruments of gaming, and all money or securities for money found therein.

As is the case with the equivalent New South Wales provisions, division 7 of the Victorian Act, which applies to common gaming houses is made applicable to common betting houses. This is possible due to the definition of common gaming house provided in section 43 of the Act. Section 43 provides:

> "In addition to every house or place which at common law is a common gaming house or place ...
>
> (c) every house or place opened, kept or used for the purposes mentioned in section 17 or any of them;
>
> ... shall for the purposes of this act be deemed and taken to be and to be used as a common gaming house or place notwithstanding that the house or place may be only for the use of subscribers or of member or shareholders of any particular club or company or may not be opened to all persons desiring of using that house or place".

The application of declared gaming house provisions to betting houses is essentially the same in Victoria as it is in New South Wales. As sufficient explanation of the application of common gaming house provisions, and the effect of a Court declaration that a place is a common gaming house, is contained in the chapter that discusses the provisions of the law of New South Wales, these issues will not be re-traversed here.

As such, and in order to avoid prolixity, what follows is only a brief synopsis of the operation of the Victorian provisions which should be sufficient for the purposes of this report.

Section 43 provides for a house or place to be a deemed, common gaming house, and section 44 then provides a penalty for being the keeper of a gaming house. This is essentially the same as the case in New South Wales.

The keeper or any other person having the care or management of a common gaming house, and also every other person who acts in any manner in its conduct, shall be liable for a first offence to a penalty of not more than 15 penalty units or to imprisonment for a term of not more than three months; for a second

offence, to a penalty of not more than 25 penalty units or imprisonment for a term of not more than six months; and for any subsequent offence, to imprisonment for a term of not more than twelve months.

Section 46 of the Act provides it is an offence to prevent police from entering pursuant to a warrant issued under section 45. The penalty is 25 units or imprisonment for six months. In addition, section 47 provides that such obstruction shall be evidence that the house or place is so used, and that persons found therein are unlawfully so using it.

Section 48 provides for a penalty for permitting premises to be used for, or as access to a common gaming house. Section 48 provides that any owner, or occupier, (or agents for the same) that permit, allow or suffer the house or place to be used as a common gaming house, or as a means of access or exit or escape shall be guilty of an offence, unless it can be shown to the court that the owner, occupier or agent was ignorant of the fact and there are no reasonable grounds upon which they could suspect such use. The penalty for this offence is provided by the general penalty provision in section 74.

Section 49 gives an owner the power to evict an occupier of a house with is being used as a common gaming house. Again this section operates on a similar basis to the provisions of the New South Wales Act. That is, if the owner has reasonable grounds to suspect that his premises are being used as a common gaming house, he may serve upon the occupier a notice to quit. The Victorian Act allows only three days from the date of service of such a notice until the tenancy is said to have expired by effusion of time.

Notice to quit pursuant to section 49, may be cancelled and relief may be granted by the Supreme Court under the provisions of section 50. Relief may be granted by the Supreme Court subject to such terms as the court thinks fit, upon the application of the occupier. Such an applicant will be required to provide proof that they have not at any time:

(a) used or allowed or permitted or suffered the house or place to be used as a common gaming house or place; or

(b) used or allowed or permitted or suffered the house or place to be used as a means of access to or of exit or escape from any house or place used as a common gaming house or place (*Lotteries Gaming and Betting Act 1966*, section 50 (1)(a) and (b)).

Under section 51 of the Victorian *Lotteries, Gaming and Betting Act*, a declaration can be made that a house is a common gaming house. Under the provisions of section 51 (1)(a) an officer of police can depone by affidavit that he has a reasonable belief that a place is used as a common gaming house etc. The Supreme Court may then declare that such house or place is a common gaming house and such declaration shall be in force until rescinded (*Lotteries Gaming and Betting Act 1966*, section 51 (1)(b)). Such a declaration may be rescinded by

the Supreme Court, but subject to such terms, conditions, limitations and restrictions (including the giving of security to ensure that the house or place will not again be used as a common gaming house) as the court thinks fit.

Under the provisions of section 52, if a declaration is made by the Supreme Court that a place is a common gaming house, that declaration is to be published to the Government Gazette. Thereon, a copy of the Government Gazette containing such notice shall be evidence that the declaration has been duly made. Additionally, notice of the declaration is to be given under the provision of section 53, in the following manner:

(a) an officer of police shall cause notice to be published on two days in a newspaper circulating in the neighbourhood of the house or place;

(b) the office shall cause notice of the declaration to be served on the owner, agent, mortgagee or occupier of the house. If service cannot be effected promptly, notice may be served by causing a copy thereof to be affixed at or near to the entrance to the house.

(c) the officer shall in any event cause a copy of the declaration to be posted upon the premises so as to be visible and legible to any persons entering the premises.

Section 53 (3) then provides it is an offence to cover, remove, deface or destroy a copy of such a notice when posted on the premises. That penalty is said to be not more than 25 penalty units, or imprisonment for six months.

Additionally if such a declaration has been made, section 54 provides that any person found in, entering or leaving the declared common gaming house that, may be arrested without warrant. Further, under subsection 2, that person shall be guilty of an offence unless he can prove he was in ignorance that the place had been declared. Significantly greater specific penalties are provided by section 55 in the case of persons who have been convicted of either a felony or an indictable misdemeanour who are found in the declared premises. Section 55 provides for a penalty of 60 penalty units or imprisonment for a term of not less than fourteen days nor more than twelve months if such convicted persons are found to be frequenting a declared gaming house.

The most significant provision in relation to the consequences of a declaration are contained in section 56 of the Act, where it is provided that no business, trade, profession or calling whatsoever shall be carried on exercised or conducted by or on behalf of any person in any house or place with respect to which such a declaration is in force.

Section 57 of the Act provides that it is an offence for an owner of a house if the house is used in contravention of this part:

> 57. If after service on an owner in pursuance of this Act of notice of the making of a declaration with respect to a house or place that the house or place is a common gaming house or place and during the time that the declaration is in force the house or place is used as a common gaming house or place or as a means of access to or of exit or escape from a common gaming house or place such owner shall, unless he proves that he has taken all reasonable steps to evict the occupier therefrom, be guilty of an offence.

An offence on the part of occupiers is also created by section 58:

> 58. If after service on an occupier in pursuance of this Part of notice of the making of a declaration with respect to a house or place that the house or place is a common gaming house or place and during the time that such declaration is in force the house or place is used as a common gaming house or place or as a means of access to or of exit or escape from a common gaming house or place such occupier shall, unless he proves that he has taken reasonable steps to prevent such use, be guilty of an offence.

No specific penalty is provided in these sections for use of premises for any purposes whatsoever by owners or occupiers in breach of the Supreme Court Declaration. It must be assumed that the general penalties provided by sections 74 and 75 of the Act are then applicable. Alternatively, proceedings for contempt of Court may be available. This situation should be compared with the specific and significant penalties applicable in the case of a breach under the provisions of the New South Wales Act.

Persons found in gaming house

> 65. Every person who is at any time found in a common gaming house or place or house or place used as a common gaming house or place (whether entered under a warrant or not) without lawful excuse the proof of which shall lie on such person shall be liable to penalty of not more than 1 penalty unit.

Acting as keeper of gaming houses etc.

> 69. Every person who appears acts or behaves as master or mistress or as the person having the care government or management of any house or place opened kept or used in contravention of this Act or as a common gaming house shall for the purposes of this Act or any other Act or law relating thereto be deemed to be the occupier thereof or the keeper thereof (as the case requires) whether he is or is not the real owner occupier or keeper thereof.

Evidentiary Aids - The Victorian *Prima Facie* Provisions

Particular note should be had of the *prima facie* provisions contained in section 70 of the Victorian Act. These should be compared with those contained in section 256 of the Queensland *Racing and Betting Act* that are provided for use in relation to SP bookmaking offences. Subsection (a) of section 70 is of particular interest to Queensland, in the sense that in order to prove use of premises as a betting house it establishes that a singular use of the house or place will be sufficient. The provision of a similar provision in Queensland would remove many of the evidential obstacles that currently make it difficult to secure convictions in Queensland.

(1) for the purposes of this Act–

(a) it shall not be necessary in proving a house or place to be a betting house or place to prove that the house or place was used for a particular purpose on more than one occasion;

(b) a building or any part thereof shall be deemed, until the contrary is proved, not to be used as a private dwelling;

(c) land or premises (whether enclosed or unenclosed) shall be deemed, until the contrary is proved, no to be a place where a person may lawfully be;

(d) the keeping of a bank in any house or place apparently for the purposes of an unlawful game shall be *prima facie* evidence that the house or place is a common gaming house or place;

(e) the –

(i) finding of instruments of gaming in any house or place or about the person of anyone found therein; or

(ii) receipt of telephone calls or other communications in any house or place--

in circumstances which raise the reasonable inference that the house or place is used for a purpose described in section 17 (1) shall be *prima facie* evidence that the house or place is used as a common gaming house or place and that the persons found therein were playing at an unlawful game;

(f) the finding of any person playing at a game in any house or place alleged to be opened kept or used in contravention of any of the provisions of this Act shall be *prima facie* evidence that such person was playing for money wager or stake;

(g) the paying giving or receiving of money or other valuable thing in circumstances which appear to the court before which any person is charged with an offence against this Act to raise a reasonable suspicion that such money or thing was paid given or received in contravention of this Act shall be *prima facie* evidence that the money or thing was paid given or received in contravention of this Act;

(h) the finding of any instruments of gaming or lists books cards papers documents of things relating to racing or betting or gaming in any house or place or about the person of those found therein or thereon or entering or leaving the same in circumstances which appear to the court to raise a reasonable suspicion that the purposes and provisions of this Act have been contravened shall be *prima facie* evidence that such house or place is and is used as a common gaming house or place.

(2) Upon any proceedings for an offence against this Act the production of a certificate purporting to be signed by the secretary of a racing club in any State or Territory or the Commonwealth that the club conducted a race-meeting in that State or Territory on any day specified therein and that any specified horse was entered for or competed at any particular time in any particular race at such race-meeting shall be *prima facie* evidence of the facts state therein. Upon any proceedings for an offence against this Act the

(3) Upon any proceedings for an offence against this Act the production of a certificate purporting to be signed by the promoter of any sport or game in any State or Territory of the Commonwealth or by any person having the management or control thereof that any such sport or game was played or conducted in that State or Territory on a day specified in such certificate and that any specified person or team of persons was entered for or completed in any such sport or game or in any event therein shall be *prima facie* evidence of the facts stated therein.

Forfeiture of instruments of gaming

Section 73 of the Victorian Act provides for an equivalent to section 242 of the Queensland Act. The Victorian provision gives the Magistrates court a wide discretion to forfeit instruments of gaming. Queensland and Victorian provisions are equivalent other than in the case of an acquittal. Upon an acquittal Queensland courts are only able to order the forfeiture of the actual instruments of betting and not money. Victoria includes the forfeiture of monies even in the case of an acquittal. Section 73 provides as follows:

73. All instrument of gaming and all money and securities for money lawfully seized under the provisions of any Act relating to lotteries betting gaming or totalizators or found in the possession or control of a person found committing an offence against any such Act may in the discretion of the court be forfeited to Her Majesty the Queen by order of any magistrates' court.

Although section 73 of the Victorian Act provides for forfeiture of instruments of gaming, and the Act provides separate definitions of both instruments of gaming and instruments of betting it would appear that it is equally applicable to forfeiture of instruments of betting. This is because section 73 provides that all instrument of gaming and all money and securities for money lawfully seized under the provisions of any Act relating to any lotteries, betting, gaming, or totalizators; or found in the possession or control of a person found to be committing an offence against any such Act, may in the discretion of the court be forfeited. Victorian police have confirmed that this provision is in fact used in this manner.

Punishment of offences

74. Any person who contravenes any of the provisions of this Act or of any regulations made pursuant to this Act whether on his own or any other person's behalf shall whether so enacted in any such provision or not be guilty of an offence against this Act, and if no punishment is in this Act expressly provided for any such offence, such person shall be liable:

(a) for a first offence to a penalty of not less than 1 penalty unit nor more than 15 penalty units, or to imprisonment for a term of not less than seven days nor more than three months; and

(b) for a second offence to a penalty of not less than 5 penalty units nor more than 25 penalty units, or to imprisonment for a term of not less than one month and not more than six months; and

(c) for any subsequent offence to imprisonment for a term of not less than three nor more than twelve months.

The Need for an Effective Stamp Duty Recovery Mechanism

Irrespective of the degree to which legal racing gambling is expanded, there will always be an element amongst bookmakers who are prepared to step outside the parameters established for lawful operation, and thereby derive profits of an order not available to honest bookmakers.

Costigan Q.C. in his final report while making recommendations in relation to the framing of laws aimed at the suppression of illegal SP bookmakers in Victoria, noted that certain immutable facts must be borne in mind.

One of those factors was- that in the conduct of any unlawful bookmaking operation, massive amounts of State turnover tax are evaded at the expense of government consolidated revenue and thus the community. Douglas Meagher Q.C., reiterated the point when he said the following about the market advantages enjoyed by the SP over other bookmakers:

> "The profitability of his operation arises out of his capacity to give better service to the punter. He is able to give the better service (partly) because . . . he avoids payment of tax at all levels. He does not pay bookmaker's tax and although I have often heard it suggested to the contrary, he does not pay his full measure of income tax either. . . . Thus his profit is larger, and this allows greater competitive 'edge'" (Meagher Q.C. 1983, p. 34).

The fact that massive amounts of money were being denied to Victorian consolidated revenue by SP bookmakers, and the fact that freedom from the tax obligations of normal lawful operation presents one of the greatest incentives to SP bookmakers was well recognised by Costigan Q.C.

This recognition lead to Costigan Q.C. making the recommendation that SP bookmakers should be subjected to the imposition of some tax in addition to their criminal prosecution. Costigan Q.C. believed that such a measure was

likely to create the greatest possible disincentive for convicted SP bookmakers ever reopening their ledgers.

Costigan Q.C. advised that the appropriate course of action was for the imposition of tax to follow conviction, upon an application to the court. Given the likely reaction of people charged where these consequences are likely to ensue - namely they will attempt to disburse their assets - Costigan Q.C. felt that it would also be necessary to have some provision of law enabling an application to be made for their known property to be frozen immediately upon their arrest or as soon thereafter as possible. Costigan Q.C. suggested Mareva Injunctions or the like, but with an appropriate statutory base.

The form of tax that Costigan Q.C. envisaged as being imposed was one which would be the equivalent to the turnover tax applicable to the State from which the SP has derived his clients.

In this regard Costigan Q.C. noted that many of the larger Victorian SP's were conducting their operations over the border in New South Wales, in order to take advantage of that State's lack of default imprisonment for unlawful betting offences. Costigan Q.C. suggested that it should then follow that the law should provide for situations where persons normally resident in Victoria who accept wagers either within or without Victoria, but in whole or part from other Victorian residents, should be liable to the imposition of turnover tax, irrespective of whether the bookmaker is entitled to lawfully operate in that other State as a bookmaker. This recommendation was made to take into account the Victorian SP's operating north of the Murray river in New South Wales, but with a predominantly resident-Victorian client base. This recommendation was based on astute observation, in that it recognised the realities of the prevailing SP *modus operandi*.

Costigan Q.C. (1984, vol. 4, pp. 994-995) went on to discuss the practical difficulties likely to be encountered in the enforcement of such a tax in the following terms:

> "As the apprehension of an SP bookmaker is likely to produce records only for the day of operation on which he is caught, the law should provide for the use of such records to permit an assessment to be made of his turnover for that day which shall then be the 'basic daily turnover' for that person. It will, of course, only be notional. Thereafter, the law should provide for there to be a *prima facie* presumption that the person has conducted a book with a similar turnover on each day on which race meetings have occurred in say Victoria and New South Wales for the proceeding twelve months. If some more precise presumption needs to be specified, it may be accepted, as a rule of thumb, for example that there are one hundred major metropolitan week-end and mid-week meetings during the year. Some such presumption would enable a computation to be made of the total turnover for the SP but limited to, in the first instance, a period of twelve months. On this turnover, the tax would be calculated at the highest rate applicable for metropolitan meetings; the resulting figure then being the amount of tax immediately payable.
>
> There will be quite difficult problems in making those calculations. Firstly, it is not uncommon for a SP bookmaker to destroy his records as the door is being hammered down. This, after all, is the purpose of the 'Cockatoo'. If it is confidently expected by those police officers experienced in the field that it is unlikely that sufficient records will be produced to enable any proper presumptions and assessments to apply then consideration should be

given to fixing in advance a 'set' assessment. A calculation would be made on the basis of the average turnovers of registered bookmakers operating in the State during the previous twelve months; that figure could then be allocated to the SP operator. If, for example, the average turnover tax paid by registered bookmakers was $100,000, then an assessment for that amount would immediately issue upon the convicted SP bookmaker.

The presumed figure - calculated in accordance with the proposals in one of the previous two paragraphs, should be capable of rebuttal by either the State or the bookmaker. In the case of the State, upon a conviction being recorded the law enforcement agency should be entitled to access to all bank accounts and accounting records of the convicted person. If by an examination of those records it is established that the person has been conducting a book for a period longer than twelve months - and without payment of turnover tax - then a higher assessment for a longer period up to, say, ten years may be imposed. Similarly, if the records reveal that the turnover was higher for the past 12 months than that calculated by either of the methods referred to above, then the higher turnover may supplant the presumed figure. On the other hand the bookmaker may adduce evidence that his turnover was less. However, oral evidence given by him as to the correct figure should be accepted as rebutting the *prima facie* presumption only if it is corroborated by other evidence in material particulars. Similarly, the person convicted may adduce evidence by which it is established that he acted only as the agent for some other person. In this event, upon this other person paying the assessed turnover tax, the convicted person's liability shall accordingly decrease".

In accordance with the recommendations of Commissioner Costigan Q.C., the Victorian Legislature enacted an amendment to the Victorian *Stamps Act*, when section 128A was inserted in 1986.

The section essentially provides that stamp duties are to be levied upon convicted SP bookmakers at the same rate as is applied to legitimate metropolitan bookmakers, upon a notional 12 month period prior to the date of conviction. In the absence of clear evidence as to the amount of actual illegal turnover, the Comptroller of stamps is entitled to input a notional figure for turnover - based upon the average turnover of rails bookmakers at Flemington in the last preceding year.

Convicted SP bookmakers then have the opportunity to enter negotiations with the Comptroller of Stamps, to prove that their actual turnover was less than that notionally imputed and, that accordingly they should be taxed at a lesser rate. Equally, the usual appeal procedures by way of Administrative Appeals Tribunal review; or to the Supreme Court of Victoria are said to apply.

It was also the expressed desire of the Minister who introduced the Bill to the Victorian Legislative Assembly that the provision of such a process whereby the convicted SP is given the opportunity to prove he had a smaller turnover than that notionally calculated, would encourage SP bookmakers to keep more complete records, which would then also facilitate their detection and apprehension (*Hansard* 1985, p. 1877).

Section 128A of the Victorian *Stamps Act* provides as follows:

> Stamp duty on illegal bookmaking
>
> 128A. (1) In this section--
>
> "Appropriate officer" means--
>
> (a) in the case of the Supreme Court - the Prothonotary;
>
> (b) in the case of the County Court - the Registrar; and
>
> (c) in the case of a magistrates' court - the clerk of courts.
>
> "Illegal bookmaking" means an offence against section 10 or 22 of the Lotteries *Gaming and Betting Act 1966*.
>
> (2) If a person is found guilty of illegal bookmaking, the appropriate officer of the court must send the prescribed information in the prescribed form to the Comptroller of Stamps.
>
> (3) After receiving information sent under subsection (2), the Comptroller of Stamps must cause an assessment to be made of the amount which, in the Comptrollers' judgement, is the person's stamp duty liability.
>
> (4) The stamp duty liability of a person found guilty of illegal bookmaking is--
>
> (a) if the person establishes to the Comptroller's satisfaction the aggregate of the bets received by the person during the year preceding the date of the offence -- 2.25 per cent of that amount; or
>
> (b) if the person does not establish to the Comptroller's satisfaction the things mentioned in paragraph (a) -- 2.25 per cent of the aggregate of the bets received by race-course bookmakers who operated on the rails at the Flemington race-course during the whole of the year preceding the date of the offence divided by the number of such bookmakers who operated during the whole of that year.
>
> (5) For the purposes of this Act, an assessment under this section shall be deemed to be an assessment under section 33 (1).

Discussions held by officers of this Commission with members of the Victorian Police Licensing, Gaming and Vice Squad indicate that since the introduction of this provision to the *Stamps Act*, Victorian authorities have utilised it to full effect. Upon conviction, proceedings under the *Stamps Act* against the convicted bookmakers follow as a matter of course.

Police officers in that State have informed this Commission that when the annual turnover of Flemington Rails Bookmakers is calculated and averaged, the convicted SP bookmaker is then liable to a stamp duty assessment in the vicinity of $90,000-120,000. Such a sum is assessed in addition to the fine imposed upon their conviction. Victorian police believe this has (as Costigan Q.C. predicted), resulted in a drastic effect on the continued viability of SP bookmaking in the State of Victoria.

References

Commission of Inquiry on the Activities of the Federated Ship Painters and Dockers Union, 1984, *Final Report*, vol. 4, (Chairman: Costigan Q.C.), Government Printer, Canberra.

Meagher, D. 1983, 'The Business Practices of Organised Crime, Paper presented to the *53rd ANZAAS Congress*, Perth, Western Australia.

Victorian Legislative Assembly 1985, *Hansard*.

APPENDIX D

PROFORMA LETTER TO RACE CLUBS
(30 August, 1990)

Dear ,

RE: CONSULTATION AND INPUT - SP BOOKMAKING STUDY

The Criminal Justice Commission is currently conducting an investigation into illegal starting-price bookmaking, and other associated illegal activities. The aim of this study is to review current legislation and law enforcement efforts, and concurrently, to determine whether changes to the nature of the bookmaking industry could to some degree eradicate SP.

Without wishing to pre-empt our research efforts in any way, one possibility is that an expanded form of TAB and bookmaker betting could be part of a parcel of measures that we ultimately recommend in order to help control SP.

In order to ensure that our study has a high degree of input from those involved with the racing industry, we have determined that it is desirable to seek the consultation of the various racing clubs in Queensland. Such consultation is particularly aimed at gauging the attitudes of the clubs to SP, and how the problem should be tackled.

To this end, you are invited to make written submissions to the Criminal Justice Commission should you see fit, on the following aspects of starting-price bookmaking:

* The incidence (reported or otherwise) of SP activity at your race-meetings.

* Your estimation of any resultant financial cost to your race club (loss of club levy etc).

* The degree to which punters prefer to place bets with SP operators at your meets, and if so, your perceptions as to why.

* Perceptions of attitudes amongst race goers to SP bookmaking.

* Your own official attitude to SP bookmaking.

* In light of your attitude to SP, what type of response to SP activity should be adopted by police? ie: total eradication, periodic clamp-downs, no use of police resources, etc.

* Do you believe that SP should remain as an illegal activity? Should all legal control on unlicensed bookmaking be lifted, or should stricter licensing be introduced?

* Do you feel that the availability of a greater range of services through both on-course bookmakers and the TAB would have a significant effect on SP activity? What is your general attitude to the expansion of legal betting?

* What do you believe would be the best course of action to take in relation to SP bookmaking?

The above list is intended as a general guide only of the range of issues that we seek to elicit your attitudes towards. Please feel free to comment on any or all of these matters, as well as any other aspect of SP bookmaking that is of concern to you.

The information so received, will only be used for the purposes of our research in the preparation of reports on possible future law reform.

This information will be compared with a detailed survey on public attitudes to betting, as well as submissions from bookmakers, the TAB, various community groups, and the police.

Should you wish to participate in this study, your comments and views will be gratefully received, and included in our final report.

It is hoped that a report on this matter will be completed within the next few months, so it will be necessary to receive submissions from you by no later than **Wednesday 31 October**, in order to allow us sufficient time to incorporate your comments.

Yours sincerely,

SIR MAX BINGHAM Q.C.
CHAIRMAN

APPENDIX E

RESPONDENTS TO THE ISSUES PAPER

List of Race Clubs, other groups and bodies that responded either to the proforma or to issues raised in the issues paper, "SP Bookmaking and Other Aspects of Criminal Activity in the Racing Industry".

List of Race Clubs that responded:

- Albion Park Harness Racing Club Limited;
- Atherton Turf Club;
- Bell Race Club;
- Cairns Jockey Club;
- Capalaba Greyhound Racing Club;
- Einasleigh Race Club;
- Gold Coast Turf Club;
- Herbert River Jockey Club;
- Innisfail Turf Club;
- Longreach Jockey Club;
- Mackay & District Greyhound Racing Club;
- Mount Garnet Amateur Turf Club;
- North Queensland Amateur Turf Club;
- North Queensland Racing Association;
- Parklands Greyhound Racing Club Inc.;
- Queensland Turf Club;
- Ridgelands Race Club Inc.;
- Rockhampton Greyhound Racing Club;
- Rockhampton Harness Racing Club;
- Roma District Amateur Race Club;
- Roma Turf Club;
- The Queensland Harness Racing Board;
- Toowoomba Turf Club;
- Townsville Greyhound Racing Club Inc.;
- Townsville Turf Club.

Total: 25

List of other groups, bodies and persons who responded:

- The Totalisator Administration Board of Queensland;
- Mr R.J. Masson;
- Mr C.F.S.S. Corner;
- K.R. Smith;
- Mr Douglas Blackmur - Head, School of Human Resource Management and Labour Relations, QUT;
- 'Angus';
- Clarke & Kann Solicitors: Mr Everingham;
- Office of Racing & Gaming;
- Queensland Racehorse Trainer's Association;
- Department of Tourism, Sport & Racing - Division of Racing;
- Paddock Bookmakers Association;
- Cash Transactions Reports Agency;
- Gamblers Anonymous (Name and address withheld).

Total: 13

APPENDIX F

ANALYSIS OF THE SUBMISSIONS

POINTS RAISED	NO. OF SUBMISSIONS THAT RAISED IT
Unaware of SP activity	13
SP betting could result from lack of access to bookmakers on Southern races, and inability to conduct Phantom races on these days	1
SP betting could result from lack of access to principle TAB outlets	2
SP activity results in loss of revenue through turnstiles, turnover etc and is detrimental to all Racing Codes	2
Heavy fines and penalties should remain	3
Licensing doesn't appear to be the answer as TAB agencies give enough coverage	1
Phone betting on course would also create off-course problems	2
Licensing off-course bookmakers would create financial losses for clubs	1
Should have non-publication of all starting prices	1
SP should be eradicated	7
On-course bookmakers should be allowed to receive phone bets	2
Race clubs could establish a special phone room with a listed set of numbers, if an SP operator phoned in to lay off bets then it could be traced	2
Bookmakers could advertise, clients receive an approved number and could use the above service by quoting their number	1
Stewards and betting supervisors strictly police SP betting	1
It is believed that SP punters do not see their actions as morally wrong	1

Stricter penalties should be introduced and enforced, for SP bookmakers & punters	6
Should be blitz on hotel SP operators and co-operation from Telecom	1
Proposals of stripping clubs of turnover tax would make the matter of SP irrelevant	1
Punters find SP more attractive due to availability of credit, ease of transaction, privacy and better odds	5
If SP is eradicated totalisator betting facilities should be upgraded, and credit cards introduced	2
SP bookmakers could cause licensed bookmakers to leave the industry due to poor holdings	1
New system of legal betting would encourage legal betting	2
Increased TAB services could detract attendances at race meetings	2
Stamp Duties office and Justice Department have taken little action when SP betting activities have been reported	1
SP betting is a parasite on the Racing Industry	1
Enforces other than the Police should become more active in policing of SP	1
Stricter Licensing should be introduced	2
Licensed bookmakers should have greater opportunities to compete with TAB through a greater range of services offered to on-course punters	3
Present law and enforcement is inadequate; punitive legislation will not combat SP	5
SP activity is not a victimless crime as it deprives Government of revenue	2
TAB is not meeting the market's needs	1
System of taxing telephone betting service compares favourably with arrangement relying on many bookmakers who generally pay less turnover taxes and make no direct financial contribution to industry	1
Oppose licensed phone bookmaking service on or off course	3

Hotel licences should be withdrawn if SP activity there	1
Bookmakers convicted of association with illegal activities de-licensed	1
Acceptance of a single illegal bet be sufficient to bring charges for illegal SP activities	1
Introduce penalties by a fine recovered by a criminal and not civil process	1
Default clauses should be enshrined in legislation ensuring penalties are met	4
Imprisonment for contempt where SP operators refuse to name business associates	2
PubTAB is a deterrent to illegal SP bookmaking	2
Bookmakers are essential to club operations and attendances	1
Off-course SP system needs to be controlled to give punters a safe and efficient service as well as benefit clubs and Government- recommend only licensed on-course bookmakers be allowed to do this	1
All bets should be monitored to assist with the gathering of turnover tax and establishment of any other controls	1
Off-course SP bookmaking should not be legalized	2
Bookmakers should take up sports betting now legalized in Queensland. It is believed that providing legal avenues at least reduces the "necessity" for punters to place SP bets	2
50 per cent of race-goers support SP bookmaking as they do not support the Government making profits from bookmaking	1
SP should be eradicated or legalized and made to pay their dues	1
Greater range of betting services would not significantly reduce SP activities	1
Greater range of betting services would significantly reduce SP activities	5

Government could recoup revenue lost through the elimination of turnover tax by increasing totalisator tax by .5 per cent, it would also make tax collection more efficient and it would make licensed operators more viable and more competitive to SP operators	1
The Commission could consider the re-sentencing of those found guilty but who have been inadequately sentenced	1
Federal Government needs to address Commonwealth legislation preventing Police from monitoring suspicious phone use	2
A prices fluctuation service should be controlled or supervised by a Government Authority	1
Broadcasting betting fluctuations would be useful to potential TAB investors, thus enhancing TAB turnover. This service could be provided by the TAB or if it eventuates the QRIA	1
Legalise off-course bookmakers, selling licences at auctions to suitably pre-qualified people. In relation to the above statement: Betting outside of the TAB or licensed off-course bookmakers should remain illegal; Licensed off-course bookmakers will be the best police of the system; It will add revenue and popularity to the Racing Industry; Systems could be devised to minimise off-course bookmakings defrauding the revenue.	1 1 1 1 1
Allegations of SP activity largely unsubstantiated	1
Public see SP bookmaking as victimless crime	2
No regular links between organised crime and SP bookmaking established	2
Attempts to impose an independent supervisor authority would be resisted by the clubs as being undue Government interference	1
Police and the Racing Gaming and Liquor Commission consider any person with prior Gaming offence convictions should not be licensed	2
Any legislation in regards to licensing should require the applicant to be a fit and proper person of good character and repute	1

Minimal instances of SP betting	2
No evidence of any link between racing offences and SP betting	1
There is merit for an independent authority employing the stewards and handicappers to ensure there is no potential for a conflict of interest	1
The licensing of industry participants should be placed with controlling authorities	1
Legalised bookmakers have always been prone to undertake SP betting operations outside of their legal bookmaking	1
All legalised bookmakers in a North Qld town were engaged in SP betting, and paying for Police protection, police raids on SP bookmakers were only a front	1
All paraphernalia seized in an SP raid should be destroyed	1
A study of the racing industry Commissioned by the Minister for Tourism, Sport & Racing found the need to establish a single body to professionally manage Qld's racing industry. It is proposed that the Racing & Betting Act be repealed and a new Bill drafted to facilitate reforms	1
Public is generally unaware of links between SP betting and Organised Crime, and of the large amount of revenue lost to the racing industry - seen to be a victimless crime	1
There is no evidence of links between SP betting & race fixing or organised crime	1
Need to demarcate roles of Stewards and police officers in relation to racing matters and SP	1
Little rationale for the monitoring of SP bookmaking to remain withe the Division of Racing	1
Racing Industry should not be responsible for the costs of its law enforcement, it should rest with the agency charged with that role - the Police Department. Its reasonable for the industry to pay for services such as checking of licence applicants	1
There is a degree of SP activity in Townsville Cairns and Mackay also	 3 1

Unlikely that run of the mill punters will be interested in SP betting	2
Police Department should endeavour to eradicate or at least reduce SP betting	1
There is a known SP bookmaker operating in Toowoomba	1
Any form of legalized SP betting should be conducted by the TAB in conjunction with TAB operations	1
Believes that SP bookmaking is not as widespread in Harness Racing as in Thoroughbred	1
The front men for SP bookmakers are generally the ones prosecuted	1
Stronger law enforcement involving a selected squad of police officers under the control of the CJC, answerable only to the Commission Chairman	1
Continuation of the rules which revokes the licence of any person convicted of illegal betting activities	1
Education programme to be undertaken jointly by the Government, TAB & racing Industry regarding the illegality of SP operators	1
Stronger policing of the transmission of bookmakers' betting prices	1
Licensed bookmakers should be able to take off-course bets by the phone if it reduces the impact of SP	1
Bookmakers and other licensed persons should be vetted so that criminal records or activities can be checked, this should be compulsory	1

APPENDIX G

PROFORMA LETTER TO THE COMMISSIONERS OF POLICE

Proforma letter sent to the Commissioners of Police in the States of Australia - 13th December 1990

Dear Commissioner

The Criminal Justice Commission is currently undertaking a study of SP Bookmaking and associated illegal activities in Queensland with the view to making recommendations on law enforcement strategies and possible legislative change.

As part of our study we would like to consider information on law enforcement efforts and current police perceptions of the incidence of illegal SP gaming in the various States and Territories of Australia. This information will serve to allow us to make more informed comment when we come to consider appropriate recommendations for Queensland.

To this end we are sending to each of the State and Territory Police Forces a copy of an Issues Paper prepared by this Commission to facilitate general public discussion in Queensland on SP bookmaking. We ask you to comment as you see fit on the issues raised by the discussion paper.

In addition, we would ask you to comment on the following particular issues as they relate to your State/Territory:

1. The perceived incidence of SP gaming.

2. Perceived community attitudes towards SP gaming and SP bookmakers.

3. Perceived problems with the enforcement of current legislation.

4. Perceived advantages or good points of current legislation.

5. The perceived general modus operandi of SP operators in your State.

6. Whether there exists in your State a specialised task force which looks at, among other things, SP gaming law enforcement.

7. If so, the size of such task force and some indication of the resources this task force devotes to SP law enforcement.

8. Perceived links between SP offences and organised crime.

9. Perceived links between SP offences and other Racing offences (eg. race fixing).

10. A racing task force which operated in the area of SP law enforcement in your State was recently disbanded. What was the history of this task force? How many police did it employ? What proportion of their resources were devoted to SP law enforcement? What were the reasons for the demobilisation of this task force?
(South Australia and Northern Territory Police Only)

In order to meet our project guidelines, we would ask that you furnish us with your response by 17 January, 1991.

Your assistance will be greatly appreciated.

Yours sincerely

SIR MAX BINGHAM Q.C.
Chairman

APPENDIX H

RESPONSES OF POLICE FORCES

Précis of Police Force responses.

AUSTRALIAN FEDERAL POLICE ENFORCEMENT AND SP BOOKMAKING

* There is no specialised permanent task force responsible for SP bookmaking in the ACT. Currently there is a two member team responsible for all gaming and vice investigations as part of a special "project". This "project" has been in operation for three months and its continuation will be reviewed in another three months.

* The Federal Police are aware that SP bookmakers operate in the ACT, though it is hard to estimate the turnover of money punted through this medium. Due to the proximity to NSW it is a simple matter for SP bookmakers and their employees to shift from one jurisdiction to another and back again on a number of occasions during one day.

* While there is no confirmed links between SP bookmakers and organised crime figures, there is however evidence that local SP bookmakers have access to betting fluctuations and most probably laying off facilities, as do SP bookmakers in other States.

* The general public rarely complain about the activities of SP bookmakers, the few complaints are usually anonymous and it is suspected that they come from disgruntled spouses, business partners, relatives, heavy gamblers or losing gamblers. In the last 12 months there has not been an instance where this information has provided the Police with any intelligence which would assist in the identification of those involved, the location of their operations or means to penetrate those operations.

* Legislation relating to SP bookmaking in the ACT is based on the antiquated but functional legislation of NSW. There exists a problem with the requirement for police to obtain special warrants from a magistrate, especially with SP bookmakers who shift premises regularly. Although the present penalties should act as an adequate deterrent to SP bookmakers, the fact that the maximum penalties are rarely enforced does not actively deter SP bookmakers.

* The cellular phone provides greater protection against detection for the SP bookmaker, as it enables them to change betting locations and jurisdictions with ease, and if need be, conduct their operations on a completely mobile basis.

NORTHERN TERRITORY POLICE ENFORCEMENT AND SP BOOKMAKING

* The Northern Territory Police do not have an independent body to monitor its racing industry. It is felt that because of the size of the industry and the fact that they appear to be adequately performing their functions that such a body would be viewed by the industry as undue government interference.

* Although allegations of SP activity in the NT have risen at different times, however they have been largely unsubstantiated. Police are aware of the possibility of links between organised crime and SP bookmaking, however enquiries have not established any regular links.

* The legislation that covers the racing industry, SP bookmaking and related offences is the Racing and Betting Act and the Unlawful Betting Act. Neither Act has been tested in court, so no deficiencies have yet become apparent.

SOUTH AUSTRALIAN POLICE ENFORCEMENT AND SP BOOKMAKING

* Until 1988 South Australia vice, gaming and licensing had been policed by a central controlling body in Adelaide. On 1 January 1989, the responsibility moved from the highly centralised Adelaide base to the decentralised Regional general duties and detective police. A Crime Task Force was created, whose responsibility is to target organised crime. Intelligence cells within the Bureau of Criminal Intelligence were formed to specifically collect, collate and analyse information relating to vice, gaming and licensing offences, and to disseminate this information, vice, gaming and licensing squads were abolished. A central investigative core has been retained for the investigation and identification of serious vice, gaming and licensing matters which have a nexus with organised crime.

* SA police argue that the present strategy reduces the potential for police corruption as all police are required to actively police vice, gaming and licensing offences rather than placing this enforcement in the hands of a selected group.

* In September to November 1990 an intelligence gathering exercise regarding the level of unlawful gaming especially SP Bookmaking was established. This operation resolved with the need to establish a Task Force dedicated to pursue breaches of the Gaming Law. In November 1990 Operation 'Incite' was set up with a projected completion date of 22 May, 1991. The majority of resources are directed towards the pursuit of SP operators in hotels and other locations. As a result of this two of the principal nominated SP Bookmakers have been arrested.

* There has been no detection of associated organised crime with SP operators in SA. Nor have there been deliberate race fixing/doping that can be linked with SP bookmaking activities.

* The SA Police suggest that one of the reasons why it is difficult to detect and receive information regarding SP activities is because the general public is not directly a victim of such activities and therefore do not generally provide the Police with information.

* There appears to be no different form of SP operations in SA than that in other States in that typical operators use phones or hotels, employing another person or syndicate to collect or records bets. Telephone operators move around using friendly telephone subscribers on an alternating basis or using Telecom technology. The use of telephone bets gives the SP bookmaker an advantage over the licensed bookmaker who is unable to accept such bets. This situation is to change in SA.

- The introduction of legal betting facilities in South Australian Hotels has in the eyes of the SA Police led to the demise of SP activity in this sphere. However they do admit that it is difficult to determine the number of SP operators who take telephone bets.

- The SA Police see the strength of their legislation to lie in its severity of penalties, powers under the gaming warrants (section 71), presumptions regarding occupancy of gaming houses, *prima facie* allegation and evidence, reasonable suspicion to establish a *prima facie* case and confiscation of profits legislation allowing the Crown to confiscate the proceeds of SP bookmaking.

* Intelligence received at Hobart BCI office relates mainly to the smaller SP Bookmaking operations.

* These operations mainly take place in licensed premises usually with the consent of the management. Smaller SP operators usually conduct their business from hotels, accepting bets on a wide range of sports.

* Transactions take place between selected persons which are usually known to the bookmaker.

* Small operators can be detected by undercover Police however, difficulty may be experienced due to the smaller operators not accepting bets from, or in the presence of unknown persons.

* Sky Channel and TAB facilities are usually available and SP activities are worked in conjunction with the TAB (bookmakers sometimes compete with the odds on the TAB or offset bets to the TAB).

* Where the Sky Channel is supplied and there are no TAB facilities, SP operations are likely.

* People involved in illegal SP activities have close links with the Racing Industry. Many are current or ex-bookmakers or have been employees of Bookmakers.

* In this State persons alleged to be involved in "Race Fixing" are believed to be SP Bookmakers or are known to SP Bookmakers.

* The Criminal element in this State are very closely associated with the Racing Industry. Well known criminals are regular visitors to racing venues and are associates of Owners, Trainers and Jockeys. Criminals are also known to be owners or part owners of race horses.

* Little information about larger SP Bookmakers who operate Statewide and are believed to have links interstate. However, Gaming Police believe that the larger operations are both smaller and less in number when compared with mainland counterparts. The larger SP Bookmakers have direct contact with larger SP bookmakers in mainland States.

* Even though many of the smaller SP operators have contacts with larger operators, constant detection of the smaller operators seem to have little effect upon larger operators.

* Larger SP Bookmakers operate mainly from the North and North West. Activities are based at a private residence or business. Some may store the details of activities on expensive and secured home computer systems which helps eliminate detection by Police. The SP operator is able to lock the computer system, or remove and hide the data storage device. The use of a computer system also removes the use of extensive written material recording details of transactions, which assists Police in securing convictions.

* Of the larger SP Bookmakers apprehended, there were two who could turn over approximately $1 million per year. At the time of apprehension both were turning over between $20,000 and $25,000 per week. Both were believed to be unrelated and went to Victoria after their apprehension.

* Use of Telecom facilities are very important, especially that of mobile telephones. Commonwealth legislation prevents the recording and admission in evidence obtained through surveillance of Telecom networks.

* Organised criminals seem to have more resources than the Police who are trying to apprehend them.

* A problem encountered by Police is Amendment 73 of 1979 to the *Racing and Gaming Act 1952*. This amendment to section 99A allows a person to collect any number of bets from other persons, and place these with a Registered Bookmaker on a totalizator. In the case of a bookmaker the bets must be placed directly in person. In the case of a totalizator the bets can be placed directly or by telephone. Offenders have used this defence, stating that all bets received were placed on a private telephone TAB account. Disproving this in Court can be difficult.

* As Tasmania is an island State with a small population, its isolation assists in two areas: (i) the small population assists in information being forwarded more freely to the police, and (ii) there is not the large amounts of money available through criminal activities as there is in mainland States.

* SP Bookmaking is seen by the average person as a victimless crime and it is perceived that SP Bookmakers offer a service which evades taxation (most people aren't in favour of the tax system anyway) and nothing more. Even people who have little interest in racing or SP are reluctant to pass information.

* The average person makes no connection between an SP Bookmaker and any criminal activities which he may be involved in which allows SP Bookmaking to be a cover for other criminal activities.

* As SP Bookmaking activities are seen as victimless crimes, Courts seem to hand down light penalties to those convicted of gaming offences.

* Section 98 (relates to SP Bookmaking) provides for a penalty of $20,000 or six months imprisonment or both for a first offence. For a third or subsequent offence the maximum penalty is up to $50,000 or two years imprisonment or both. Believe that the penalties are severe enough to act as a deterrent, provided they are enforced.

* The powers outlined in the Act are sufficient to combat any illegal gaming activities occurring in Tasmania.

* The most efficient method of minimizing SP bookmaking operations is by constant target policing of the recognised or suspect large SP Bookmakers. Many of the smaller operators would cease to function on the same scale without the financial support of the larger operators.

* To properly target and convict the large operators, legislation will have to be initiated to allow the monitoring of the telecommunications networks to obtain necessary information and evidence.

* In Tasmania there is no specialised Task Force which looks at SP operations on a permanent basis. The Gaming Division in each of the three geographical locations is responsible for detecting and suppressing any incidents of SP Bookmaking. Statewide there are seven full time officers. All three Gaming Divisions answer to the Divisional Criminal Investigation Branch Inspector. In the event of any Police operation to detect SP Bookmaking, each District will liaise with each other to maximize manpower and resources. Each officer would spend 25 per cent of his overall time on SP Bookmaking.

* There is no evidence to suggest that organised crime is directly related to, or controlling any form of SP offences however, known criminals are often associated with SP Bookmakers.

* There is little known links between SP offences and other Racing offences however, information has indicated that conspiracies have occurred between syndicates to fix a race in order to place large bets with Registered Bookmakers and TAB. Syndicates involve large punters, jockeys and trainers. If SP Bookmakers were to be involved in this type of activity, it is suggested that "runners" would be used to place bets with Registered Bookmakers.

* In the 1980s Victoria had an operation coded Zebra Task Force. Most of Victorias SP offenders were detected in the 1980s by this Force. The Zebra Task Force made a number of amendments to the Lotteries, Gaming & Betting Act. It is felt that these amendments have prevented a number of obstacles that may have been a barrier to successful prosecutions. The size of the fines are felt to adequately deter SP bookmakers from continuing operations, and the Victorian Police have no problems with the prosecution of offenders under current legislation.

* However a problem with legislation lies in the Telecommunications (Interception) Act, in that the Police are unable to use the warrant facilities of this legislation to obtain details of telephone calls from particular offenders. The mobility of SP bookmakers has been enhanced through the use of cellular phones. This in turn creates more problems for investigation and detection by the police force.

* Victoria's investigation of SP bookmaking is currently undertaken by the Licensing, Gaming & Vice Task Group. From August 1988 to January 1990 the investigation of SP was carried out by seconded personnel from other sections of the Police Force, their operations were then transferred to the Licensing, Gaming & Vice Task Group. By incorporating this Group with LG & V personnel it allows more direct access to other facilities such as trained surveillance crew, specialist equipment, additional personnel for larger raids, additional vehicles, computer dedicated to intelligence or known/suspect SP operators, and ready access to LG & VTG intelligence records.

* It is considered that trained undercover operatives are of most importance. Most of their targets are surveillance conscious and they adopt anti-surveillance techniques.

* Investigations have shown that certain SP operators provide funding for drug purchases; have regular contact with known drug traffickers; and false entries are made in the books of some SP operators to allow criminals to launder monies for a fee of 10 per cent. It has also been revealed that there are SP operators involved in race fixing/doping and other associated activities.

* Not all SP bookmakers restrict themselves to horse racing. There is also coverage of other sporting contingencies. It has also been discovered that registered bookmakers are running well organised SP operations through other persons. As well, links between some registered bookmakers and SP operators have been confirmed. One particular respected registered bookmaker was setting odds for a well organised place card racket that had been operating for approximately five years.

* A number of registered bookmakers stated they consider SP operators as a thing of the past and are more concerned about the TAB activities and its affect on their income. The general public feel that they pose no threat to the community, it appears that they have no concept of the monies SP bookmakers can make tax free, and that some are used to launder monies illegally obtained. Those SPs who operate in hotels, especially where lower socio-economic classes frequent, often see SP bookmakers as part of their culture.

* As a result of the Australasian Crime Conference in Brisbane 1989, the Western Australian Police Force recognised that an effective liaison with the racing industry was necessary in the light of policing problems associated with SP bookmaking.

* In November 1989 the CIB Racing Squad was formed. This Squad has the responsibility for investigating criminal activity within the three codes of racing in Western Australia. Since its formation the Racing Squad has revealed a network of known criminals, trainers, jockeys and professional punters that have some form of contact with known or suspected SP bookmakers in the Eastern States.

* Although there exists nothing other than rumours that organised SP activity operates in WA, the WA Police feel that like the rest of Australia there exists a potential for the infiltration of the SP bookmaker and the organisation and finance of associated activities of race rigging/doping in their State. Police suggest that race fixing is a prime activity for SP bookmakers to become involved in because in order to make large profits from it betting transactions must not be subject to scrutinisation.

* The general mode of SP operations that have been found in WA appears to occur in areas where TAB facilities are not available and are generally restricted to single unconnected operations.

* It is felt that although the betting facilities provided by the TAB limits the demand for SP bookmakers in the State, that there are still those who bet interstate with SP bookmakers in order to receive better odds. Police suggest that the same reasoning can be applied to Registered Bookmakers who lay off with SP Bookmakers to minimise the risks where large bets are involved.

* The penalty in WA under the *Totalisator Agency Board Act* for a conviction for SP betting is as follows: for a first offence, a fine not less than five thousand dollars nor exceeding ten thousand dollars or imprisonment for three months; for a second offence, imprisonment for not less than three months nor more than six months; for a third or any subsequent offence, imprisonment for not less than six months nor more than twelve months.

APPENDIX I

PRECIS OF MAJOR SUBMISSIONS

THE QUEENSLAND TURF CLUB
DATED 31/10/90

* No incidence of illegal SP activity at this club. There are currently 44 registered bookmakers on course which is sufficient to serve patron's needs. Not aware of any problems in regard to illegal SP bookmakers operating on course in the area.

* Questions 2 and 3 are not applicable.

* A considerable number of punters place bets with illegal SP operators prior to attending a meeting however, these would be some of the larger punters and its unlikely that the run of the mill punters would be interested in this activity.

* Club is vehemently opposed to illegal SP betting - SP bookmakers pay no turnover tax, probably very little income tax and make no contribution to the racing industry.

* For many years this Club has made numerous approaches to State Governments to try to eradicate or at least stem the activities of SP bookmakers. The amendment to the *Racing and Betting Act* which introduced large fines which cannot be collected in lieu of compulsory prison terms for second and subsequent offences has seen this illegal activity flourish.

* Every endeavour should be made by the Police Department to eradicate or at least reduce SP betting activity to a minimum.

* This Club and probably every racing club in Australia would be opposed to the introduction of legalised off course SP betting.

* Feel that Queensland has one of the most efficient and comprehensive off course betting systems in Australia and probably the World. All racing clubs throughout Australia are opposed to any form of on course phone-in bookmaking as this would have a dramatic affect on the viability of smaller clubs and would result in a severe downturn in T.A.B. turnover and consequent profits for distribution to Clubs.

* As a point of interest, after several leading SP operators had been named in evidence at the Fitzgerald Inquiry, these operators became regular patrons at race meetings. Immediately upon the inquiry's conclusion they ceased attending race meetings and have not been seen since.

* Also during this period, the turnover with both totalisator and bookmakers on course showed a substantial increase.

****

THE TOTALISATOR ADMINISTRATION BOARD OF QUEENSLAND DATED 18/10/90

* Board supports the strong emphasis on the inadequacy of the legislation available to prosecute illegal SP bookmakers but this needs to be accompanied by comments on the potential to reduce illegal off-course betting activities through positive and constructive initiatives.

* Do not believe that punitive legislative alone will successfully combat entrenched, insidious and persistent levels of SP activity in Queensland.

* Single issue strategies have little chance of success where there has been a long-standing demand for a particular service. Board prefers to see a series of actions taken to respond to the demand filled by SP bookmakers - should target at legally meeting an established need rather than attempting to obliterate an activity which has traditionally enjoyed de facto acceptance by the community.

* Illegal activities normally emerge where there is a vacuum for a particular service; flourish where it receives tacit public consent and grows when it is perceived the participants in the crime take no victims.

* SP bookmaking is not a victimless crime - the Government is deprived of revenue it is entitled to; it denies the community the beneficial effects of gaming and reduces the overall revenue of the Government and racing industry. There is a clear analogy between illegal off-course SP bookmaking and tax fraud.

* It is reasonable to conclude that the community is either neutral toward the current off-course betting arrangements provided by the TAB or they believe the TAB is not adequately servicing a legitimate social activity.

* Market research conducted for the TAB supports the view that we are not meeting the demands of those who have a preference for SP betting and the betting environment provided by the TAB is unattractive, inflexible and impersonal.

* The TAB is redressing the problem faced with its products and presentation through a series of customer-driven initiatives. A new upgraded office decor is being installed; free access to telephone betting has been extended; new and less complex products are being introduced; advertising and promotion has been re-focused on the simplicity and excitement of totalisator betting, and sports betting has been launched.

* Major obstacles remain before the Queensland TAB can adequately present an alternative to SP bookmakers - convenience and bet forms.

* SP operators enjoy a flexibility which allows them to tailor their products to match their customers' requirements - offer credit, a personalised and convenient service, and a more acceptable bet form.

* Credit betting is not advanced as a realisable or desirable proposition however is one which can be addressed e.g. the impact of pubTAB on hotel S.P. activities.

* Experience in New South Wales indicates that SP bookmakers are shifting their attention away from small-value punters. Small bets do not warrant collection by SP operators who are increasingly forced to rely on sophisticated telephone networks and the credit-worthiness of customers. New South Wales TAB turnover has risen by between 8.1 per cent and 14.0 per cent accordingly.

* SP bookmaking has many advantages: betting forms; offers fixed odds instead of fluctuating totalisator odds and its attractive for large bettors. The alternative is for the introduction of either national pools or fixed odds betting by TABs.

* The option of legalised telephone bookmaking has some serious shortcomings which flow across State borders and will threaten the viability of an efficient revenue and universal TAB telephone betting service which is used extensively by country, aged, infirm and interstate punters.

* Bets placed through the TAB's centralised and universal telephone betting service are taxed as a single transmission. The efficiency and integrity of this system compares favourably with the prospect of an arrangement which will need to rely on numerous bookmakers who pay less in turnover taxes and make no direct financial contribution to the racing industry.

* Oppose a licensed telephone bookmaking service either on or off-course on these grounds:

    - it will significantly impact on Government revenue;

    - presents difficulties in policing and enforcement;

    - its contrary to world-wide trends toward Government control, ownership and organisation of betting facilities;

    - fails to recognize the increased interest by off-course gamblers in the exotic bet types offered by totalisator pools.

* Options to match the demands of punters who use off-course bookmakers is not enough. Effective and workable punitive remedies are also required in order to ensure that the Government and racing industry gain efficient access to the revenue.

* The Board made these recommendations to the Fitzgerald Inquiry:

  - increased fines;

  - heavy penalties for those guilty of placing bets with illegal bookmakers;

  - hotel licences be withdrawn when SP betting is available there;

  - bookmakers convicted of being associated with illegal activities be de-licensed;

  - acceptance of a single illegal bet be sufficient reason to bring charges;

  - introduction of penalties by way of a fine recovered by criminal and not civil processes;

  - imprisonment be introduced as an option for non-payment of fines within a defined period;

  - imprisonment for contempt be an option where SP operators will not name those for whom the business is being conducted.

LOSS OF REVENUE

* State revenue declines by $65,000 for each $1 million bet through off-course SP operators. The racing industry is denied access to $39,000 for each $1 million.

* Nobody knows the total volume of SP activities. Licensing Branch Police estimate that it would exceed $200 million annually or about 20 per cent of TAB turnover. TAB turnover has increased between eight per cent and 16 per cent in areas where SP activity has been disrupted. Turnover gradually falls back to normal levels after 12 weeks.

SERIOUS PUBLIC CONCERN

* Any activity which generates a source of illegal money leads to other illegal activities and exposes law enforcement agencies to corruption.

* Off-course SP bookmakers do not appear to carry their share of the tax load or make any direct contribution to the industry they use as a vehicle for personal gain.

TAB'S POTENTIAL TO COUNTER SP OPERATIONS

* There are two significant areas of our operations which improve our capacity to compete with SP bookmakers:

  (1) A relaxation of legislation which prohibits the Queensland TAB from trading in licensed areas; and

  (2) Further investigation of either fixed odds betting or national win and place betting pools.

ADEQUACY OF POLICE RESOURCE ALLOCATION

* Insufficient staff, lack of continuity, inadequate surveillance equipment, indifferent support from legislators and flawed laws work against the prosecution and reduction of SP.

ADEQUACY OF LEGISLATION

* A lack of commitment to the prosecution of SP activity is a reflection of inadequate legislation.

THE CAPACITY OF REGULATED GAMBLING TO REDUCE SP ACTIVITY

* The combined effect of PubTAB on small value SP activities in NSW suggests there are alternatives enabling the Government to improve the capacity of Qld TAB to reduce illegal bookmaking. However, legalised telephone bookmaking is seen as unworkable and inefficient.

****

DEPARTMENT OF TOURISM, SPORT & RACING DIVISION OF RACING (Brisbane)
SUBMISSION MADE BY DR. R. L. MASON (Director)
Dated 1/11/90

* Division of Racing is primarily responsible for advice to the Minister on policy and administrative matters as well as a range of operational functions including regulations, rules, appointments to statutory authorities, race meeting dates, racing venue and liaison with industry authorities.

* SP bookmaking role is limited to only instructing Crown Law to proceed with legal action to recover fines awarded to offenders convicted under section 18 of *Racing and Betting Act 1980-1990*. This takes up about 20 per cent of a clerk's work.

* For the three and a half year period ending 30 June 1990, 38 cases of SP bookmaking were referred by Crown Law. Of these, four have paid the debt in full, 19 are subject to further monitoring and 11 are considered virtually untenable for debt retrieval.

* Agree that section 218 and section 218A of the *Racing and Betting Act 1980-1990* are seriously flawed regarding containing the offence and ensuring that offenders are punished.

* Little rationale for the monitoring of SP bookmaking to remain with the Division of Racing. Firstly, it is a criminal offence therefore other more appropriate agencies would have access to data on the whereabouts and circumstances of the offenders. Secondly, all funds received from payments are channelled to the Police Department and Consolidated Revenue. Thirdly, it is inefficient for considerable correspondence to be exchanged between the Division of Racing and Crown Law in pursuing payment of fines. This is particularly so since there is no expertise in "debt retrieval strategies" within the Division of Racing which can be usefully drawn on in instructing Crown Law.

* Believe there is a well established need to clearly demarcate the roles of stewards and police officers in relation to racing matters. Role of stewards is to ensure that the rules are racing are being adhered to and that a "level playing field" is ensured. This entails an active monitoring role in relation to pre-race, race, and post-race activities to ensure compliance with rules; investigation of any irregularities; and awarding of penalties to offenders.

  Believe it is the sole responsibility of the Police Force to investigate and pursue to the point of charge any alleged criminal offences which pertains to or includes racing.

* There is considerable support for a substantially upgraded commitment to industry training. Envisage that definitive position descriptions will be one of the first steps to "professionalize" the area and this will assist in clarifying the boundaries between steward and police responsibilities.

* The costs associated with operating a steward service must be absorbed by the racing industry as is the case. Believe that where a criminal offence is suspected, law enforcement lies with the Police. There is a trend to instil a "user pays" principle into public sector accounting practices however, it would be difficult and cumbersome to dissect a crime which had elements of prostitution, money laundering, illegal drug peddling, SP bookmaking etc, and then apportion an amount of law enforcement cost to be picked up by the racing industry.

* Not convinced that there is any reason to "penalize" any sport which is targeted by a criminal element as a vehicle for generating illegal revenues by making it responsible for the costs of law enforcement.

* Law enforcement responsibility and costs for criminal offences should rest with the agency charged with that role, namely the Police Department. Believe it is reasonable for the racing industry to pay for services such as checking of criminal backgrounds of licence applicants.

Note: **These views represent those of the Director of the Division of Racing and not that of the Department or Minister.**

****

* A person who prefers SP betting does not find the TAB to be a desirable or realistic alternative because of the availability of fixed odds betting with SP operators and the ready availability of credit with SP operators.

* Therefore we believe the financial cost to TAB agents is small in contrast to the cost to on-course bookmakers and the Commissioner of Stamp Duties which is great.

* The only course of action which will genuinely threaten to totally eradicate SP betting is the introduction of telephone betting with licensed on-course bookmakers. This would not be a potential threat to TAB turnover as the average bet on the TAB is under $10 whereas the proposed minimum telephone bet would be much higher.

* To the best of knowledge the average citizen has to search for an SP operator. Its common knowledge that certain punters who are regarded as "non-educated" can get set for unlimited amounts. The availability of definite 1/4 odds for the fist place portion of an each-way bet is a further attraction to the SP punter. This was highlighted by a Fitzgerald Inquiry witness. If this witness betted on the TAB he would be forced to accept significantly lower odds consequently, he betted SP However, had he the choice to bet legally on the phone with a licensed on-course bookmaker he would not have betted SP

* Association's attitude to SP betting is one of abhorrence and total opposition as they affect the profitability of licensed operations. They are parasitic upon us and the racing industry, generating revenue only for themselves. The possibilities for links with organised crime further reinforces the urgent need for a legal alternative to SP betting.

* SP should remain an illegal activity and stiffer penalties enforced. The fine system whereby the convicted can pay the fine off at literally "a dollar down and a dollar per week" should be abolished. Jail sentences are the most effective deterrent and more funds should be available for greater police surveillance.

* The detection, conviction and jailing of SP operators will serve as a limitation and deterrent however, the provision of a legal and accessible alternative to SP betting remains the greatest threat. On-course telephone betting with licensed bookmakers IS that alternative.

Note: **Submission completed in consultation with the Queensland Bookmakers Association.**

* * * * * * * * * *

NORTH QUEENSLAND RACING ASSOCIATION (Hermit Park)
SUBMITTED BY MR W J MOSS (Secretary/Administration)
DATED 31/10/90

* There is no SP activity at race meetings conducted under the control of the Association. Believe there is some SP activity in Townsville, Cairns and Mackay.

* Believes there is some loss in monetary terms to Race Clubs but extent is unknown.

* No SP activity on race-courses in this area but if a punter elects to place a bet off course with an SP operator he does so in order to obtain credit not available with the T.A.B.

* Regarding perception of attitudes amongst racegoers to SP bookmaking, its believed the average punter would tolerate SP operators as they are anti-establishment.

* Association's official attitude to SP bookmaking is one of total eradication of illegal activities.

* Believe that a greater range of services through legal bookmaking outlets may reduce the incidence of SP bookmaking, e.g. provision of credit facilities.

* Believe the best course of action to take to eradicate SP bookmaking would be a close relationship with Telecom Australia regarding the issuing of multiple telephone installations and greater police surveillance.

* The Official Bookmakers Price Fluctuation Service provided by the National Bookmakers Price Fluctuation Service is transmitted to Clubs by computer link and represents the official Bookmaker's prices as advised by the various race clubs. Eldee Pty Ltd also provide a fluctuation service but the origins of the company and their services are unknown.

* * * * * * * * * * *

THE QUEENSLAND HARNESS RACING BOARD (Albion)
SUBMITTED BY MR J E HICKS (Secretary)
DATED 29/10/90
(Submission includes Albion Park Racing Club Ltd)

* Board is concerned with the reported level of illegal SP bookmaking in Queensland but does not believe it is as wide-spread in Harness Racing as it is in Thoroughbred Racing.

* No reports of illegal activities on Harness Racing made to this Board for many years, nor has any such evidence been gathered through any of its own or Stewards' investigations.

* Difficult to predict the amount of turnover on illegal betting but as ascertained from Fitzgerald Inquiry, approximately $200 million may be invested annually on illegal activities.

* The effect of illegal activities is important because the racing industry relies on revenue from betting taxes and there is also a loss of State revenue to consider.

* It seems that illegal betting flourishing because of the failure of the police force to apprehend offenders; the courts to sufficiently punish them because of inadequate legislation and the amount of evidence necessary to prosecute successfully.

* The community perceives that SP betting is a harmless activity and therefore, until penalties are imposed on <u>all</u> those engaged in illegal betting (operators and punters) these activities will flourish.

* Another problem appears to be that those people being prosecuted (e.g. pensioners from whom heavy fines can't be collected) are only "front men" for the real operators who then find another person.

IN RELATION TO ISSUES RAISED IN CJC LETTER:

* Not aware of any SP activities in relation to any of the race meetings conducted by Harness Racing Clubs. There was a recent case at Rocklea involving the transmission of prices on galloping meetings which was uncovered by Board Stewards however a conviction was not obtained.

* Even with the limited information available the financial cost to any Club would be minimal.

* No evidence of illegal activity and it would be difficult to discover mainly due to lack of manpower and problems with finding evidence.

* No Harness Racing Club has conducted any survey into attitudes amongst their race goers in respect to SP activity.

* The Harness Racing Industry strongly opposes SP bookmaking and supports its eradication through significant fines or jail sentences.

* The Industry supports total eradication by the strongest possible means using police resources.

* Industry has no knowledge of attempted race fixing by SP operators.

* The Board and the Committees of those Clubs that have responded to the Commission's study believe that availability of a greater range of betting services through on-course bookmakers and totalisator and the TAB would have a significant effect on SP activity, e.g. PubTAB.

* The Harness Racing Industry supports the total elimination of SP bookmaking and recommends the introduction of much stronger measures to combat this such as:

  (i) Stronger law enforcement campaign involving a specially selected squad of qualified police officers under the control of the CJC and answerable only to the Commission Chairman;

  (ii) Introduction of stronger penalties including terms of imprisonment for operators and fines for those who place illegal bets;

  (iii) Imprisonment for non payment of fines within a specified period;

  (iv) Continuation of the Rules which revokes the licence of any person convicted of illegal betting activities;

  (v) Prison terms for contempt of court for any illegal operator not willing to name the person for whom the business is being operated;

  (vi) Education programme to be undertaken jointly by the Government, TAB and Racing Industry regarding the illegality of SP operations and possible consequences;

  (vii) Stronger policing of the transmission of bookmakers' betting prices including terms such as "close to each-way odds", "half each-way odds" and "well into the red" through radio stations covering race meetings.

****

QUEENSLAND RACEHORSE TRAINERS' ASSOCIATION
DATED 16/10/90

* Association is opposed to SP bookmaking and supports efforts by the government and calls by the principal clubs to eradicate it and agrees it should remain illegal.

* Main reason for this attitude is that the prize money and other financial support for the racing industry depends mainly upon a percentage of the gambling dollar waged on horse racing and money placed with SP bookmakers is not subject to this impost.

* Believe the pros and cons of licensed bookmakers being permitted to take bets off course and by the telephone should be investigated. If feasible this would have to reduce the impact of SP.

* * * * * * * * * * *

Published Reports of the Criminal Justice Commission

Date of Issue	Title	Availability	Price
May 1990	Reforms in Laws Relating to Homosexuality – an Information Paper	In stock as at time of printing of this report	$ 7.80
May 1990	Report on Gaming Machine Concerns and Regulations	In stock as at time of printing of this report	$12.40
Sept 1990	Criminal Justice Commission Queensland Annual Report 1989–1990	Out of Print	–
Nov 1990	SP Bookmaking and Other Aspects of Criminal Activity in the Racing Industry – an Issues Paper	In stock as at time of printing this report	No charge
March 1991	Review of Prostitution – Related Laws in Queensland – an Information and Issues Paper	In stock as at time of printing this report	No charge
March 1991	The Jury System in Criminal Trials in Queensland – an Issues Paper	In stock as at time of printing this report	No charge
April 1991	Submission on Monitoring of the Functions of the Criminal Justice Commission	Out of print	–
May 1991	Report on the Investigation into the Complaints of James Gerrard Soorley against the Brisbane City Council	Out of print	–
July 1991	Report on a Public Inquiry into Certain Allegations against Employees of the Queensland Prison Service and its Successor, the Queensland Corrective Services Commission	In stock as at time of printing of this report	$12.00

Date of Issue	Title	Availability	Price
July 1991	Complaints against Local Government Authorities in Queensland – Six Case Studies	Out of Print	–
July 1991	Report on the Investigation into the Complaint of Mr T R Cooper, MLA, Leader of the Opposition against the Hon T M Mackenroth, MLA, Minister for Police and Emergency Services	In stock as at time of printing of this report	$12.00
August 1991	Crime and Justice in Queensland	In stock as at time of printing of this report	$15.00
Sept 1991	Regulating Morality? An inquiry into Prostitution in Queensland	In stock as at time of printing of this report	$20.00
Sept 1991	Police Powers – an Issues Paper	In stock as at time of printing of this report	No charge
Sept 1991	Criminal Justice Commission Annual Report 1990/91	In stock as at time of printing of this report	No charge
Nov 1991	Report on a Public Inquiry into Payments made by Land Developers to Aldermen and Candidates for Election to the Council of the City of Gold Coast	In stock as at time of printing of this report	$15.00
Nov 1991	Report on an Inquiry into Allegations of Police Misconduct at Inala in November 1990	In stock as at time of printing of this report	$12.00

Date of Issue	Title	Availability	Price
Dec 1991	Report on an Investigation into Possible Misuse of Parliamentary Travel Entitlements by Members of the 1986–1989 Queensland Legislative Assembly	Out of print	–
March 1992	Report on an Inquiry into Allegations made by Terrance Michael Mackenroth MLA the Former Minister for Police and Emergency Services; and Associated Matters	In stock as at time of printing of this report	$12.00
March 1992	Youth, Crime and Justice in Queensland – An Information and Issues Paper	In stock as at time of printing of this report	No charge
April 1992	Crime Victims Survey – Queensland 1991 *A joint Publication produced by Government Statistician's Office, Queensland and the Criminal Justice Commission*	In stock as at time of printing of this report	$15.00
June 1992	Forensic Science Services Register	In stock as at time of printing of this report	$10.00
Sept 1992	Criminal Justice Commission Annual Report 1991/1992	In stock as at time of printing of this report	No charge

Further copies of this report or previous reports are available at 557 Coronation Drive, Toowong or by sending payment C/O Criminal Justice Commission to PO Box 137, Brisbane Albert Street, 4002. Telephone enquiries should be directed to (07) 360 6060 or 008 773 342.

This list does not include confidential reports and advices to Government or similar.