

Regulation of Bookmakers

Issues Paper

March 2008



Government of South Australia

Department of Treasury
and Finance

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Glossary

Act	<i>Authorised Betting Operations Act 2000</i>
Commissioner	Liquor and Gambling Commissioner
DTF	Department of Treasury and Finance
GRSA	Greyhound Racing South Australia
HRSA	Harness Racing South Australia
IGA	Independent Gambling Authority
Minister	Minister for Gambling
OLGC	Office of the Liquor and Gambling Commissioner
Regulations	<i>Authorised Betting Operations Regulations 2001</i>
SABL	South Australian Bookmakers' League
TRSA	Thoroughbred Racing South Australia

1 Introduction and Background

1.1 Introduction

The *Authorised Betting Operations Act 2000* (Act) and the *Authorised Betting Operations Regulations 2001* (Regulations) provide for the licensing and the regulation of the major betting operations, bookmakers and racing clubs.

Both the Liquor and Gambling Commissioner (Commissioner) and the Independent Gambling Authority (IGA) have regulatory powers under the Act.

With respect to bookmakers the Commissioner's main powers include the granting of licences and permits. The Commissioner is also responsible for the inspectorate function including powers of inquiry and the power to enter and inspect.

The IGA has the power to discipline bookmakers for breaches against the regulations as well as rule making power.

1.2 Background

On 30 July 2007 the South Australian Bookmakers' League (SABL) wrote to the Minister for Gambling regarding the regulatory arrangements for bookmakers. They requested that all regulatory responsibilities with the Office of the Liquor and Gambling Commissioner (OLGC) be transferred to the SABL.

The Minister for Gambling (Minister) met with the SABL on Monday 24 September 2007 and advised that the Department of Treasury and Finance's (DTF) Gambling Policy Section would prepare an issues paper for consultation with the SABL and the racing industry.

This issues paper aims to raise a number of questions to identify areas where administrative and regulatory burden could be reduced for the South Australian bookmaking industry in relation to the following regulatory functions:

- licensing;
- permits;
- rules;
- enforcement and compliance;
- unclaimed winnings; and
- betting information service.

Each section on the functions outlined above will be structured as follows:

- **Background** – an outline of the regulatory requirements for the particular function under the Act and the Regulations.
- **Discussion** – an exploration of the issues concerning the regulatory function under the Act and the Regulations including, where relevant, experience in other jurisdictions.
- **Issues** – a range of questions concerning the issues.

Guiding principles that will assist consideration of the issues associated with the regulation of bookmakers:

- regulatory consistency across all gambling activities;
- elimination of unnecessary duplication; and
- probity and responsible gambling.

1.3 Next Steps

The proposed next steps are:

- a six week consultation period with the bookmaking and racing industry on the issues paper from mid March 2008;
- drafting of any necessary amendments based on consultation;
- consultation on proposed amendments with all stakeholders for a further six week consultation period;
- introduction of amendments to the Act and debate in Parliament; and
- commencement of operation of amended Act.

Submissions that seek to address the questions contained in this issues paper should be sent by email or post by no later than Wednesday 30 April 2008 to:

- e-mail: gamblingpolicy@saugov.sa.gov.au
- post: Gambling Policy
Department of Treasury and Finance
GPO Box 1045
Adelaide SA 5001

It should be noted that submissions may be placed on the Department of Treasury and Finance website and/or quoted in subsequent policy and consultation papers.

Additional copies of the issues paper can be downloaded from:

<http://www.treasury.sa.gov.au/gamblingpolicy>

2 Licensing of Bookmakers

2.1 Background

The SABL letter of 30 July 2007 to the Minister requested the transfer of the licensing function from the Commissioner to the SABL.

Below are the regulatory requirements under the Act with regard to licensing.

With regard to the licensing function, Section 34 (1) in Part 3 Division 1 of the Act states:

- (1) *The licensing authority may grant the following classes of licences:*
 - (a) *a licence (an on-course totalisator betting licence) authorising a racing club to conduct on-course totalisator betting in conjunction with a race meeting held by the club, or at other times authorised by the Authority, on races held by the club or another licensed racing club (excluding races of a prescribed kind) and on other races that are approved contingencies;*
 - (b) *a licence (a bookmaker's licence) authorising a person to act as a bookmaker conducting fixed-odds betting on races held by licensed racing clubs (excluding races of a prescribed kind) and approved contingencies;*
 - (c) *a licence (an agent's licence) authorising a person to act as the agent of a licensed bookmaker;*
 - (d) *a licence (a betting shop licence) authorising a licensed bookmaker to conduct fixed-odds betting on races held by licensed racing clubs (excluding races of a prescribed kind) and approved contingencies at specified premises situated within the City of Port Pirie;*
 - (e) *a licence (a 24 hour sportsbetting licence) authorising a licensed bookmaker to conduct fixed-odds betting on approved contingencies (excluding races) by telephone on a 24 hour basis.*

With regard to the licensing authority, Section 3 of the Act states:

licensing authority means—

- (a) *in relation to an on-course totalisator betting licence—the Authority;*
- (b) *in relation to any other licence under Part 3 Division 1—the Commissioner;*

With regard to the term of a licence, Section 35 of the Act states:

- (1) *A licence granted under this Part will, subject to this Act, have effect for a period specified in the licence and may be renewed from time to time in accordance with the regulations.*
- (2) *The Minister may give the Authority binding directions about the term of an on-course totalisator betting licence.*

With regard to the conditions of a licence, Section 36 of the Act states:

- (1) *The licensing authority may, on granting or renewing a licence under this Part, attach conditions to the licence.*
- (2) *The licensing authority may, by written notice to the person granted a licence under this Part, vary or revoke a condition attached to the licence or attach a further condition.*

- (3) *An on-course totalisator betting licence must have attached to it conditions fixing the maximum proportion of money invested in totalisator betting that may be retained by the licensee.*
- (4) *The Minister may give the Authority binding directions about conditions to be attached to a licence under subsection (3).*
- (5) *The Minister may give the Commissioner binding directions about a condition to be attached to a 24 hour sportsbetting licence under subsection (1) or (2) preventing betting operations being conducted under that licence on a specified day.*

With regard to the application for the grant or renewal, or variation of condition, of a licence, Section 37 of the Act states:

- (1) *An application for the grant or renewal, or variation of a condition, of a licence under this Part—*
 - (a) *must be made to the licensing authority in the form required by the licensing authority; and*
 - (b) *must be supported by the information required by the licensing authority verified, if the licensing authority so requires, by statutory declaration; and*
 - (c) *must be accompanied by the fee fixed by regulation.*
- (2) *However, the licensing authority cannot require an applicant for renewal of a licence, or a member of the applicant's family, to provide or to submit to the taking of finger prints or palm prints or to provide or consent to the release of his or her criminal record (if any) if the applicant is a person to whom subclause (1), (2) or (3), as the case may be, of Schedule 1 clause 3 applies.*

With regard to the determination of an application for a bookmaker's licence, Section 38 of the Act states:

- (1) *The licensing authority must not grant or renew a licence under this Part unless satisfied—*
 - (a) *that the applicant is a suitable person to hold the licence; and*
 - (b) *in the case of an on-course totalisator betting licence—as to the adequacy of the standards of probity that will apply to races held by the racing club.*
- (2) *In assessing the suitability of a person, the licensing authority may have regard to—*
 - (a) *the person's financial background and resources; and*
 - (b) *the person's reputation; and*
 - (c) *the character, reputation, and financial background of the person's close associates; and*
 - (d) *any representations made by the Minister; and*
 - (e) *any other matters the licensing authority thinks fit.*

2.2 Discussion

The foundation of the commercial gambling sector in South Australia is strong independent regulation. The licensing of commercial gambling providers is a centrepiece of that independent regulation.

The power to grant, vary and renew commercial gambling licences, including bookmakers, is either with the OLGC or IGA.

With respect to the licensing function under the Act, the Commissioner has the power to licence bookmakers (S. 34 (1)(b)), determine the period of the licence (S. 35 (1)) and attach conditions to a licence (S. 36 (1)).

The Commissioner also has the power to determine the form of the application for a bookmaker's licence (S. 37 (1)). The Commissioner must in assessing the suitability of a person to hold a bookmaker's licence have regard to a range of items (S. 38 (2)).

In New South Wales, Victoria and Queensland, the respective racing control bodies have the power to licence bookmakers but bookmakers in each of those jurisdictions are required to have compliance approval from the relevant Government controlling authority.

Racing NSW is established by the *Thoroughbred Racing Act 1996 (NSW)*. The *Thoroughbred Racing Act 1996 (NSW)* details membership (s. 6), functions (s. 13) and powers (s. 14). The *Thoroughbred Racing Act 1996 (NSW)* states under section 5 that Racing NSW is independent of Government and does not represent the Crown and is not subject to direction or control by or on behalf of the Government.

Racing Victoria Limited is a company certified by the Minister under section 3A (1) of the *Racing Act 1958 (Victoria)*. Racing Victoria Limited is registered as a public company limited by guarantee under the *Corporations Act 2001 (Commonwealth)*.

The SABL is an incorporated association under the *Associations Incorporation Act 1985*.

2.3 Issues

Providing the power to license bookmakers to the industry would be a significant departure from the regulation of commercial gambling in South Australia. It is not the Government's intention to transfer the licensing of bookmakers from Government to the industry.

Section 37 and section 38 provides the Commissioner with the power to determine the form and the information required to determine suitability of an applicant.

It is noted that the Act does not explicitly address criminal intelligence in the way the *Gaming Machine Act 1992* does.

Consideration is being given to making the Act consistent with the *Gaming Machine Act 1992* with respect to criminal intelligence. Specifically inclusion of sections like section 20 and section 12 of the *Gaming Machine Act 1992* into the Act.

Section 20 of the *Gaming Machine Act 1992* states:

- (1) *The Commissioner must give the Commissioner of Police a copy of each application for a licence.*
- (2) *As soon as reasonably practicable following receipt of an application under subsection (1), the Commissioner of Police—*
 - (a) *must make available to the Commissioner information about criminal convictions; and*
 - (b) *may make available to the Commissioner other information to which the Commissioner of Police has access, relevant to whether the application should be granted.*

relevant to whether the application should be granted.

With regard to the provision of criminal intelligence by the Commissioner of Police, section 12 of the *Gaming Machine Act 1992* states:

- (1) *No information provided by the Commissioner of Police to the Authority or the Commissioner may be disclosed to any person (except the Minister, a court or a person to whom the Commissioner of Police authorises its disclosure) if the information is classified by the Commissioner of Police as criminal intelligence.*
- (2) *If the Commissioner—*
 - (a) *refuses an application for a licence, consent or approval, or takes or proposes to take disciplinary action against a licensee, or revokes or proposes to revoke an approval; and*
 - (b) *the decision to do so is made because of information that is classified by the Commissioner of Police as criminal intelligence,*

the Commissioner is not required to provide any grounds or reasons for the decision other than that to grant the application would be contrary to the public interest, or that it would be contrary to the public interest if the licensee were to continue to be licensed, or that it would be contrary to the public interest if the approval were to continue in force.
- (3) *In any proceedings under this Act, the Commissioner—*
 - (a) *must, on the application of the Commissioner of Police, take steps to maintain the confidentiality of information classified by the Commissioner of Police as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and*
 - (b) *may take evidence consisting of or relating to information classified by the Commissioner of Police as criminal intelligence by way of affidavit of a police officer of or above the rank of superintendent.*
- (4) *If the Commissioner of Police lodges an objection to an application under this Act because of information that is classified by the Commissioner of Police as criminal intelligence—*
 - (a) *the Commissioner of Police is not required to serve a copy of the notice of objection on the applicant; and*
 - (b) *the Commissioner must, at least 7 days before the day appointed for the hearing of the application, advise the applicant in writing that the Commissioner of Police has objected to the application on the ground that to grant the application would be contrary to the public interest.*
- (5) *The Commissioner of Police may not delegate the function of classifying information as criminal intelligence for the purposes of this Act except to a Deputy Commissioner or Assistant Commissioner of Police.*

In regard to making the Act consistent with the *Gaming Machine Act 1992* with respect to criminal intelligence, the following question arises:

Is it appropriate to make the Act consistent with the Gaming Machine Act 1992 in relation to criminal intelligence?

The Commissioner does not have the power to revoke a bookmaker's licence under the Act, as this power is with the IGA as the disciplinary body. As a consequence, the Commissioner deems it necessary to issue licences for a 12-month period so that changing circumstances can be addressed.

The financial statement information required by the Commissioner under section 37 (1)(b) is currently required to be produced by bookmakers each year.

In regard to the Commissioner's power to determine the form of an application for the grant or renewal of a bookmaker's licence and the information required in the assessment of the suitability of an applicant, the following questions arise:

Does the licensing process create undue administrative burden, please provide examples?

Are there any other matters relating to licensing that could be changed to reduce administrative burden?

3 Permits

3.1 Background

The SABL letter of 30 July 2007 to the Minister requested the transfer of the permit system from the Commissioner to the SABL.

Below are the regulatory requirements under the Act with regard to the permit system.

With regard to the granting of permits, section 55 of the Act states:

- (1) *Subject to this section, the Commissioner may grant a permit authorising an individual licensed bookmaker or a group of licensed bookmakers to accept bets made on a specified day and at a specified place.*
- (2) *The Commissioner must not grant permits to accept bets on a day and within a racecourse unless—*
 - (a) *a licensed racing club is authorised to conduct on-course totalisator betting within that racecourse on that day; and*
 - (b) *the racing club has been consulted by the Commissioner about the granting of the permits.*
- (3) *The Commissioner must not grant permits in respect of betting on a day and at a place other than a racecourse or licensed betting shop unless the person or body that occupies or has control of that place on that day has been consulted by the Commissioner about the granting of the permits.*
- (4) *The Minister may give the Commissioner binding directions about the granting of permits in respect of betting referred to in subsection (3).*
- (5) *The Commissioner must not grant a permit to a group of bookmakers unless—*
 - (a) *the bookmakers have entered into an agreement with each other that—*
 - (i) *provides for sharing the bets accepted under the permit; and*
 - (ii) *provides for the shares in which the members of the group will be liable for amounts payable under Part 3 in respect of those bets; and*
 - (iii) *provides for the shares in which the members of the group will be liable for the amount won on those bets; and*
 - (iv) *authorises a person (whether a member of the group or some other person approved by the Commissioner) to accept bets on behalf of the group; and*
 - (v) *includes such other terms as the Commissioner requires; and*
 - (b) *the Commissioner has approved the agreement.*
- (6) *Each member of a group of bookmakers to whom the Commissioner has granted a permit is liable for amounts payable under Part 3 in respect of the bets accepted under the permit but the aggregate of amounts recovered from two or more members of the group must not exceed the total amount payable.*
- (7) *The Commissioner may issue guidelines (not inconsistent with this section) setting out the circumstances in which permits will be issued or refused.*

With regard to permits authorising telephone bets, section 56 of the Act states:

A permit may, if it so specifies, authorise a bookmaker to accept bets made by telephone or other electronic means.

With regard to conditions of permits, section 57 of the Act states:

- (1) *The Commissioner may, on granting a permit, attach conditions to the permit.*
- (1a) *Without limiting the generality of subsection (1), the conditions may restrict the period during the day for which the permit authorises the acceptance of bets.*
- (2) *The Commissioner may, by written notice to the holder of a permit, vary or revoke a condition attached to the permit or attach a further condition.*
- (3) *The Minister may give the Commissioner binding directions about conditions to be attached to a permit.*

With regard to the revoking of permits, section 58 of the Act states:

The Commissioner may, by written notice to the holder of the permit, revoke a permit under this Division.

With regard to a permit authorisation extending to an agent of a bookmaker, section 59 of the Act states:

A permit under this Division authorising a licensed bookmaker to accept bets also authorises a person holding an agent's licence to accept bets as the agent of the licensed bookmaker.

With regard to a review of a Commissioner's decision under the Act, section 77 of the Act states:

- (1) *Subject to this Act, a person aggrieved by a decision of the Commissioner under this Act (including a decision made by the Commissioner as a delegate of the Authority) may, within 30 days after receiving notice of the decision, apply to the Authority for a review of the decision.*
- (2) *A **decision** includes (for example) refusal to issue a permit.*
- (3) *On an application under this section, the Authority may confirm, vary, revoke or reverse the decision under review.*

With regard to the finality of Authority's decision under the Act, section 78 of the Act states:

- (1) *A decision of the Authority under this Act is final and without appeal subject however to the following qualifications:*
 - (a) *an appeal lies to the Supreme Court against a decision to take disciplinary action against a licensee; and*
 - (b) *an appeal lies to the Supreme Court against an order made under section 18(4); and*
 - (c) *an appeal lies, with the permission of the Supreme Court, against a decision of the Authority on a question of law.*
- (2) *The Supreme Court may, on an appeal—*
 - (a) *affirm the decision appealed against;*
 - (b) *rescind the decision and substitute a decision that the Court considers appropriate;*
 - (c) *remit matters to the Authority for consideration or further consideration in accordance with any directions or recommendations of the Court;*
 - (d) *make incidental and ancillary orders.*
- (3) *An appeal must be commenced, or the application for permission to appeal made, within one month after the decision to which the appeal relates or a longer period allowed by the Supreme Court.*

3.2 Discussion

The power to grant permits is with the Commissioner (s. 55). The permit system essentially controls where and when a bookmaker can operate. A permit may also authorise a bookmaker to accept bets made by telephone or other electronic means (s. 56). The Act also provides the Commissioner with the power to attach conditions to a permit (s. 57) and revoke permits (s. 58).

In Queensland and New South Wales there is no permit system. After a licence is issued bookmakers can approach a racing club for the right to attend that club's race meetings. The racing club makes the decision and is not obligated to allow the bookmaker to field.

In Victoria, it is the racing controlling authorities (i.e. Racing Victoria, Harness Racing Victoria or Greyhound Racing Victoria) that provides the approval for bookmakers to field.

In these jurisdictions the gambling regulator is not responsible for what is essentially a commercial decision. It can be argued that permits are not required for consumer protection or to ensure the integrity of racing and wagering.

If the legislative permit system were abolished in South Australia the current appeal process to the IGA would no longer be available. It would not be appropriate for a Government regulator to continue in a commercial dispute resolution role.

Permits that authorise a bookmaker to accept bets made by telephone or other electronic means, if the permit system is transferred or abolished, would be converted to licence conditions determined by OLGC.

3.3 Issues

While the SABL proposed a transfer of responsibility of the legislated permit system from OLGC to SABL, it is possible to establish a regulatory system without permits and leave it to the racing industry to determine, on a commercial basis, which bookmakers provide bookmaker services at particular venues. As noted in the previous section, this occurs in other jurisdictions.

In regard to the matter about the power to grant, vary, revoke and attach conditions to permits, the following questions arise:

Is a permit system in legislation required?

If so, what advantages in terms of consumer protection and probity does it offer?

In the event that the legislative system of permits is abolished, the industry would need to consider alternative commercial arrangements, including dispute resolution. In relation to this, the following question arises:

What commercial arrangements relating to the approval of bookmakers to field are appropriate for the racing industry?

If the permit system is abolished, then an alternative legislative approach to permits for a bookmaker to accept bets made by telephone or other electronic means (including the internet) (s. 56) would need to be established in the Act. On this matter the following question arises:

If the permit system is replaced with a licence condition authority for telephone and internet bookmaking, what criteria should apply to the granting of that authority?

4 Rules

4.1 Background

The Act provides the IGA with the power to make rules relating to the operations of bookmakers and specifically rules regarding security.

With regard to the rules relating to bookmakers, section 62 of the Act states:

- (1) *The Authority may make rules—*
 - (a) *regulating the betting operations of licensed bookmakers; and*
 - (b) *requiring an applicant for a bookmaker's licence to give security for compliance with this Act and any conditions attached to the licence; and*
 - (c) *providing for the keeping of records by licensed bookmakers, the inspection of such records and the furnishing of returns by licensed bookmakers; and*
 - (d) *prohibiting or restricting advertising by licensed bookmakers; and*
 - (e) *dealing with any other matters contemplated by this Division or necessary or expedient for the purposes of this Division; and*
 - (f) *prescribing penalties not exceeding \$5 000 for breach of a rule.*
- (2) *The rules may provide that a matter or thing in respect of which rules may be made is to be determined according to the discretion of—*
 - (a) *the Authority; or*
 - (b) *the Commissioner; or*
 - (c) *a race steward; or*
 - (d) *a person of a prescribed class.*

4.2 Discussion

The scope of the rules are extensive, but they are considered necessary for consumer protection and to ensure the integrity of wagering.

The New South Wales and Victorian Governments do not make detailed rules for the operation of bookmakers.

One particular area of the rules that has been raised as an issue is the security arrangements, in particular, whether it is appropriate for OLG to be responsible for its administration. South Australia is one of the few jurisdictions where bookmakers continue to be required to lodge security with the Government.

In Victoria, Queensland and New South Wales, bookmaker's security is lodged and administered by the industry. Specifically the Victorian Bookmaker's Association, the Queensland Bookmaker's Association and the New South Wales Bookmaker's Cooperative Limited.

4.3 Issues

The issue with the rule making powers under s. 62 is their scope and in particular the Government administration of the security requirements. It is the intention to retain the IGA as the rule maker.

On the matter regarding the scope of the Independent Gambling Authority's rule making powers the following questions arise:

Is the scope of the Independent Gambling Authority's rule making powers appropriate? If not please provide examples?

Are there any particular rules that cause undue administrative burden?

Are there any rules that could be revoked because they are no longer required?

Should the system of security be administered at all or should it be administered by the industry or continue to be administered by OLG?

If security is to be administered by the industry what are the key parameters of an industry scheme?

5 Enforcement and Compliance

5.1 Background

Part 5 of the Act provides the enforcement powers. This includes the powers to obtain information, enter and inspect and to appoint inspectors. The Commissioner is responsible to the IGA for this function.

With regard to the responsibility of the Commissioner under the enforcement function, section 63 of the Act states:

The Commissioner is responsible to the Authority to ensure that the operations of each licensed business are subject to constant scrutiny.

With regard to the power to obtain information, section 64 of the Act states:

It is a condition of a licence that the licensee must, on the written request of the Authority or the Commissioner, provide information that the Authority or the Commissioner requires for the administration or enforcement of this Act.

With regard to the appointment of inspectors, section 65 of the Act states:

- (1) *There will be such number of inspectors as are necessary for the proper administration of this Act.*
- (2) *An inspector is a Public Service employee.*
- (3) *The Commissioner must provide each inspector with a certificate of identity and an inspector must, at the request of a person in relation to whom the inspector has exercised, or intends to exercise, powers under this Act, produce that certificate.*

With regard to the power to enter and inspect, section 66 of the Act states:

- (1) *Subject to this section, an authorised officer may—*
 - (a) *enter or, where necessary, break into any place, using only such force as is reasonably necessary for the purpose;*
 - (b) *inspect or search the place or anything in the place;*
 - (c) *require any person in the place to—*
 - (i) *produce any equipment or other items, or any books, papers or documents, that are in the person's custody or control;*
 - (ii) *answer any questions put by the authorised officer;*
 - (d) *inspect any books, papers or documents produced to him or her and retain them for so long as is reasonably necessary for the purpose of copying or taking extracts from any of them;*
 - (e) *if the authorised officer suspects on reasonable grounds that an offence has been committed, seize and retain anything that he or she believes affords evidence of the offence;*
 - (f) *give such directions as are reasonably necessary for, or as are incidental to, the effective exercise of the officer's powers under this section.*
- (2) *An authorised officer may only exercise powers under subsection (1) in relation to a place—*
 - (a) *at any time when operations of a kind authorised under this Act are being conducted in the place; or*

- (b) *at any time when there are reasonable grounds to suspect that an offence has been, is being or is about to be committed in the place or that evidence of such an offence is likely to be found in the place; or*
 - (c) *at any reasonable time when the exercise of the powers is required for the purposes of the administration or enforcement of this Act.*
- (3) *An authorised officer may only exercise powers under subsection (1)(a) in relation to a place in which there are not any operations of a kind authorised under this Act being conducted on the authority of a warrant issued by a magistrate.*
- (4) *A magistrate cannot issue a warrant under subsection (3) unless satisfied, on information given on oath—*
 - (a) *that there are reasonable grounds for suspecting that an offence has been, is being or is about to be committed; and*
 - (b) *that the warrant is reasonably required in the circumstances.*
- (5) *An authorised officer may, in exercising powers under this section, be accompanied by such assistants as are reasonably necessary for the purpose.*
- (6) *Subject to subsection (7), a person who—*
 - (a) *without reasonable excuse, hinders or obstructs an authorised officer in the exercise of powers under this section; or*
 - (b) *fails to answer a question put by an authorised officer to the best of his or her knowledge, information or belief; or*
 - (c) *fails to comply with any other lawful requirement or direction of an authorised officer; or*
 - (d) *uses abusive, threatening or insulting language to an authorised officer or a person assisting an authorised officer; or*
 - (e) *falsely represents, by word or conduct, that he or she is an authorised officer, is guilty of an offence.*

Maximum penalty: \$20 000.

- (7) *A person is not required to answer a question, or to produce books, papers or documents, under this section if—*
 - (a) *the answer to the question or the contents of the books, papers or documents would tend to incriminate the person of an offence; or*
 - (b) *answering the question or producing the books, papers or documents would result in a breach of legal professional privilege.*
- (8) *In this section—*

offence *means an offence against this Act or any other offence arising out of or committed in connection with the conduct of betting operations of a kind authorised by this Act.*

Part 6, Division 1 of the Act provides the power to the IGA to ensure compliance with the Act. Under the Act all disciplinary powers are with the IGA.

With regard to statutory default, section 67 of the Act states:

- (1) *A statutory default occurs if—*
 - (a) *a licensee contravenes or fails to comply with a provision of this Act or a condition of the licence; or*

- (b) *an event occurs, or circumstances come to light, that show a licensee or a close associate of a licensee to be an unsuitable person; or*
 - (c) *operations under a licence are improperly conducted or discontinued; or*
 - (d) *a licensee becomes liable to disciplinary action under this Act on some other basis.*
- (2) *For the purposes of subsection (1), operations under an on-course totalisator betting licence include the races held by the racing club that holds the licence.*

With regard to the effect of criminal proceedings, section 68 of the Act states:

- (1) *The Authority may exercise its powers under this Part in relation to a statutory default whether or not criminal proceedings have been, or are to be, taken for the default and even though a penalty may have been already imposed for the default.*
- (2) *However—*
- (a) *if the licensee expiates a statutory default under this Part, no further action may be taken for that default; and*
 - (b) *the Authority must, in imposing a fine, take into account any fine that has already been imposed in criminal proceedings.*

With regard to compliance notices, section 69 of the Act states:

- (1) *If a statutory default occurs, the Authority may give written notice to the licensee (a **compliance notice**) specifying the default and requiring the licensee to take specified action, within a period specified in the notice, to remedy the default or to ensure against repetition of the default.*
- (2) *If the licensee fails to take the specified action within the time allowed in the notice, the licensee is guilty of an offence.*

Maximum penalty:

In the case of the holder of the major betting operations licence—\$100 000.

In any other case—\$20 000.

With regard to expiation notices, section 70 of the Act states:

- (1) *If a statutory default occurs, the Authority may give written notice to the licensee (an **expiation notice**) specifying the default and informing the licensee that disciplinary action may be avoided by payment of a specified sum not exceeding—*
- (a) *in the case of the holder of the major betting operations licence—\$10 000;*
 - (b) *in any other case—\$1 000, within a period specified in the notice.*
- (2) *If the specified amount is paid in accordance with the notice, no disciplinary action may be taken under this Act for the default nor may criminal proceedings be taken for the default.*

With regard to injunctive remedies, section 71 of the Act states:

- (1) *If a statutory default occurs or there are reasonable grounds to suspect that a statutory default may occur or be attempted, the Supreme Court may, on application by the Minister or the Authority, grant an injunction to prevent the statutory default or to prevent recurrence of the statutory default.*
- (2) *The injunction may be granted on terms the Court considers appropriate.*
- (3) *An injunction may be granted under this section whether or not—*
- (a) *there has been some previous statutory default of the same or a similar nature; or*
 - (b) *there is imminent danger of substantial damage to any person.*

- (4) *No undertaking as to damages can be required of the Minister or the Authority in proceedings under this section.*

With regard to disciplinary action, section 72 of the Act states:

- (1) *If a statutory default occurs, the Authority may give written notice to the licensee—*
- (a) *specifying the default; and*
 - (b) *requiring the licensee to show cause, within a period specified in the notice (which must be at least 14 days), why disciplinary action should not be taken against the licensee.*
- (2) *The Authority must allow the licensee a reasonable opportunity to make submissions orally or in writing to the Authority.*
- (3) *After considering the submissions (if any) made by the licensee, the Authority may, by order, take disciplinary action in one or more of the following ways:*
- (a) *the Authority may censure the licensee;*
 - (b) *the Authority may impose a fine on the licensee not exceeding—*
 - (i) *in the case of the holder of the major betting operations licence— \$100 000;*
 - (ii) *in any other case—\$20 000;*
 - (c) *the Authority may vary the conditions of the licence (irrespective, in the case of the major betting operations licence, of any provision of the approved licensing agreement excluding or limiting the power of variation of the conditions of the licence);*
 - (d) *the Authority may give written directions to the licensee as to the winding up of betting operations under the licence;*
 - (e) *the Authority may suspend the licence for a specified or unlimited period;*
 - (f) *the Authority may cancel the licence.*
- (4) *Disciplinary action takes effect on the date of service of the order on the licensee or on a later date specified in the order.*
- (5) *If the Authority suspends the licence, the Authority may, at any time, terminate the suspension.*
- (6) *A fine imposed under this section may be recovered as a debt due to the State.*
- (7) *A person who fails to comply with a direction given under this section is guilty of an offence.*

Maximum penalty:

In the case of the holder of the major betting operations licence—\$100 000.

In any other case—\$20 000.

With regard to alternative remedy, section 73 of the Act states:

The Authority may, instead of taking disciplinary action, issue a compliance notice.

5.2 Discussion

The Act provides the Commissioner with the powers to enter and inspect and to appoint inspectors but disciplinary powers to the IGA. This is not unusual. This segregation exists for other licensees under the Act and under the *Casino Act 1997*.

The Commissioners powers of inquiry and the power to enter and inspect are a necessity for consumer protection and to ensure the integrity of wagering.

What is unusual is that the Commissioner has the power to licence bookmakers under the Act while the IGA has the disciplinary powers.

Unlike other commercial gambling regulatory frameworks in South Australia, where the disciplinary and licensing functions are retained by one regulator, bookmakers face an environment where these functions are split between the two regulators. Revocation and suspension of a licence can be considered a form of disciplinary action.

The problem faced at the moment is that the licensing function and the disciplinary action function are separated. It needs to be acknowledged that the licensing function and disciplinary function are the two sides of the same coin. That is a positive action of licensing requires the same consideration as the negative action of revocation or some other form of disciplinary action. To separate the functions will result in a duplication of two regulatory agencies.

5.3 Issues

The two-regulator model was a recommendation of the Productivity Commission's *1999 Inquiry Report into Australia's Gambling Industries*. The Productivity Commission described a range of functions in its "blueprint for gambling regulation." Those functions are:

- policy development
- control
- enforcement
- adjudication
- program administration

It is acknowledged that the Productivity Commission model would have these the licensing and disciplinary function together in what it would be described as the control function, or in South Australia's institutional structure, the Independent Gambling Authority.

The Government, however, has previously taken the policy decision that the licensing authority for bookmakers (and for that matter electronic gaming machines) be located with OLGC. Given this, it is also appropriate that disciplinary action, including suspension and revocation of licences, also be the responsibility of OLGC for the reasons outlined in the previous section.

On this matter the following questions arise:

Would a transfer of the disciplinary function for bookmakers from the IGA to the Commissioner reduce administrative and regulatory burden for bookmakers?

Would a transfer of the disciplinary function for bookmakers from the IGA to the Commissioner impact on consumer protection and the integrity of racing and wagering?

6 Unclaimed Winnings

6.1 Background

The SABL letter of 30 July 2007 to the Minister requested that the SABL and bookmakers have the responsibility for managing unclaimed dividends.

With regard to the responsibility of the collection of unclaimed dividends, regulation 12 states:

- (1) *A licensed bookmaker must, not later than 3.00 p.m. on each Thursday, pay to the Treasurer to be credited to the Consolidated Account the amount of any unclaimed winnings on bets the outcome of which was determined during the 7 days commencing at the beginning of the Thursday 2 weeks before.*
- (2) *If a payment has been made under subregulation (1) in respect of unclaimed winnings on a bet, the Treasurer may pay the amount of the winnings from the Consolidated Account (which is appropriated to the necessary extent) to the licensed bookmaker with whom the bet was made or the person entitled to be paid the winnings if—*
 - (a) *in the case of payment to the licensed bookmaker—the Treasurer is satisfied that the bookmaker has, since the payment to the Treasurer in respect of the bet, paid the amount of the winnings to the person entitled to be paid the winnings on the bet; and*
 - (b) *in the case of payment to the person entitled to be paid the winnings—the Treasurer is satisfied that the person is so entitled and has not made a claim to the licensed bookmaker for payment of the winnings or has made such a claim but payment has been refused; and*
 - (c) *in any case—*
 - (i) *the Treasurer has not made payment of the amount of the winnings to any other person; and*
 - (ii) *the Treasurer is satisfied that no other person has a valid claim to be paid the winnings.*
- (3) *In this regulation—*
licensed bookmaker *includes a person who was formerly a licensed bookmaker.*

6.2 Discussion

Under the Regulations licensed bookmakers are required to pay unclaimed winnings to the Treasurer on a weekly basis.

The Treasurer can return the payment if it is subsequently claimed. The amounts of unclaimed winnings totalled around \$25,000 in 2005-06 but this has increased substantially since then. It is approximately \$50,000 for the first 6 months of this financial year following an increase in compliance.

Regulation 12 differs from the arrangements that apply to SA TAB. Under the Act, the Duty Agreement may require SA TAB to pay all or some of the unclaimed winnings to the Treasurer. The Duty Agreement, however, does not contain such a provision.

The Government does not support the retention of unclaimed winnings by the SABL or bookmakers. The arrangement with the SA TAB, which arose from the sale process, can be considered an exception to the general rule that unclaimed monies owed by an organisation should be transferred to the Treasury of the jurisdiction the organisation is operating in after a reasonable period. This is a consumer protection measure.

6.3 Issues

While the Government does not support the retention of unclaimed winnings by the SABL or bookmakers, the Department of Treasury and Finance is considering changing the frequency of the payment of unclaimed winnings to the Treasurer from weekly to a less frequent basis. This may assist in reducing the administrative burden for bookmakers.

On this matter the following question arises:

Would a change in the frequency of the payment of unclaimed winnings to the Treasurer from weekly to a less frequent basis assist in reducing the administrative and regulatory burden for bookmakers?

7 Betting Information Service

7.1 Background

Section 61 of the Act prohibits the communication of certain information as to racing or betting to a person who is outside the racecourse unless approved by the Commissioner.

Section 61 of the Act states:

- (1) *Subject to this section, a person must not communicate for fee or reward to any other person information or advice as to the probable result of a race or approved contingency in relation to which a bookmaker is authorised by permit to accept bets.*
Maximum penalty: \$20 000.
- (2) *Subsection (1) does not apply to information or advice published in a newspaper or broadcast by radio or television.*
- (3) *Except with the approval of the Commissioner, a person who is, or was, within a racecourse or other place during a period when bookmakers are, or were, accepting bets on races or approved contingencies must not, before the end of that period, communicate (whether or not for fee or reward) to a person who is outside the racecourse or other place information or advice as to the betting with bookmakers at that racecourse or place.*
Maximum penalty: \$20 000.
- (4) *The Commissioner may, on granting an approval for the purposes of subsection (3), attach conditions to the approval.*
- (5) *The Commissioner may, by written notice to the holder of an approval under this section—*
 - (a) *vary or revoke a condition attached to the approval or attach a further condition;*
 - (b) *revoke the approval.*
- (6) *In this section—*
communicate *means to communicate by any either directly or indirectly, and includes to cause to be communicated.*

7.2 Discussion

The provision of on-course wagering information in the betting ring involves the receipt and transmission of odds between racecourses to ensure bookmakers (and punters) are informed of the odds being offered in other locations. This is a national system which protects wagering providers by ensuring information on changing prices is quickly disseminated.

The Act also protects the prices on offer by bookmakers as it prevents a punter outside a racecourse from receiving and then comparing bookmaker prices with the TAB.

The Commissioner's approval is for the conduct of the betting information service. The service was transferred to the three racing controlling authorities, Thoroughbred Racing South Australia (TRSA), Harness Racing South Australia (HRSA) and Greyhound Racing South Australia (GRSA).

The service was transferred to the three racing controlling authorities because the provision of the service was not considered a core function of the Government, as it was not a regulatory matter.

The SABL has been contracted by the three racing controlling authorities to deliver the service on their behalf.

7.3 Issues

As the responsibility for the conduct of the service is with the three racing controlling authorities and not the Commissioner, the three racing controlling authorities could be responsible for the approval for the communication of information that is covered by section 61.

On this matter the following question arises:

Would a transfer of responsibility for the approval for the communication of certain information as to racing or betting from the Commissioner to the three racing controlling authorities assist in reducing the administrative and regulatory burden for bookmakers?

8 Next Steps

The proposed next steps are:

- a six week consultation period with the bookmaking and racing industry on the issues paper from mid March 2008;
- drafting of any necessary amendments based on consultation;
- consultation on proposed amendments with all stakeholders for a further six week consultation period;
- introduction of amendments to the Act and debate in Parliament; and
- commencement of operation of amended Act.

Submissions that seek to address the questions contained in this issues paper should be sent by email or post by no later than Wednesday 30 April 2008 to:

- e-mail: gamblingpolicy@saugov.sa.gov.au
- post: Gambling Policy
Department of Treasury and Finance
GPO Box 1045
Adelaide SA 5001

It should be noted that submissions may be placed on the Department of Treasury and Finance website and/or quoted in subsequent policy and consultation papers.

Additional copies of the issues paper can be downloaded from:

<http://www.treasury.sa.gov.au/gamblingpolicy>