

Gambling Regulation Amendment (Bookmaking Related Registration Fees) Regulations 2010

Regulatory Impact Statement

October 2010

DEPARTMENT
OF JUSTICE

GAMBLING REGULATION AMENDMENT (BOOKMAKING RELATED REGISTRATION FEES) REGULATIONS 2010

Regulatory Impact Statement

This Regulatory Impact Statement (RIS) has been prepared in accordance with the requirements of the ***Subordinate Legislation Act 1994*** to facilitate public consultation with interested parties regarding the proposed ***Gambling Regulation Amendment (Bookmaking Related Registration Fees) Regulations 2010***. A copy of the proposed regulations is provided as an attachment to this RIS.

Public comments and submissions are invited on the proposed Regulations in response to information provided in this RIS. All submissions will be treated as public documents. Written comments and submissions should be forwarded no later than by **4 November 2010** to:

Mr Ross Kennedy
Executive Director, Gaming and Racing
Department of Justice
PO Box 18055
Collins St East
MELBOURNE VIC 8003

or by email: christopher.chng@justice.vic.gov.au

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Authorised by Ross Kennedy, Office of Gaming and Racing, 121 Exhibition Street, Melbourne 3000 Victoria Australia.

EXECUTIVE SUMMARY

From 1 January 2009 the Victorian Commission for Gambling Regulation (VCGR) assumed responsibility for the registration of bookmakers and their key employees. Previously, registration of bookmakers and their employees was administered by the Bookmakers and Bookmakers Clerks Registration Committee (BBCRC).

The Victorian Government has consistently supported bookmakers as an important part of the on-course experience for Victorian racegoers. Furthermore, in recognition of the historical structure of Victorian bookmakers as relatively small, sole trader operators, since the early 1990s there have been no Government fees associated with applications for bookmaking related registrations.

In May 2007 the Government reconvened its Bookmaking Reforms Working Party to consider a range of issues identified by the racing and bookmaking industries with a view to improving the competitiveness of the Victorian bookmaking profession.

Consistent with recommendations contained in the final report of the Working Party¹, the Government introduced the ***Racing and Gambling Legislation Amendment Bill 2008***, which was subsequently passed by the Parliament and received Royal Assent on 25 November 2008. The Act includes a number of key changes to bookmaker regulation, including to:

- enable a corporation to be registered as a bookmaker;
- introduce a new category of bookmaker registration ('key employees'), which replaces the previous requirement that all persons employed by a bookmaker be individually registered as a bookmaker's clerk; and
- transfer responsibility for the regulation and registration of bookmakers from the BBCRC to the VCGR effective from 1 January 2009.

Early in 2009, the VCGR wrote to the Department detailing the administrative costs that will be incurred by the VCGR in processing bookmaker and bookmaking related registration applications.

Consistent with the treatment of other categories of gambling service providers registered or licensed under the ***Gambling Regulation Act 2003*** (GRA), the VCGR proposed that the costs incurred as part of the application process for bookmaking and bookmaking related registrations be recovered on a full cost recovery basis via the imposition of application fees.

Following consideration of practicable options, the proposed Regulations continue the existing policy of zero fees to be applied to applications for bookmaker and bookmaking related registrations made by natural persons, while introducing a policy of full cost recovery for applications by corporations.

With regard to corporations, the imposition of fees on a full cost recovery basis is considered appropriate given the additional costs incurred in processing corporate applications, that the

¹ Bookmaking Reforms Working Party, Discussion Paper (October 2007).

majority of their business operations will be conducted via the telephone or internet rather than on a racecourse, and also considering the capacity of such organisations to pay.

The proposed Regulations will, therefore, prescribe the following application fees:

Fee for registration as a bookmaker

- (a) in the case of an applicant who is a corporation, 461.85 fee units (\$5,520).
- (b) in the case of an applicant who is a natural person, nil.

Fee for registration as a bookmaker's key employee is nil

Fee for replacement certificate of registration or identity card is 2.14 fee units (\$26).

Fee for renewal of registration as a bookmaker

- (a) in the case of an applicant who is a corporation, 237.81 fee units (\$2,843).
- (b) in the case of an applicant who is a natural person, nil.

Fee for renewal of registration as a bookmaker's key employee is nil.

The VCGR has proposed that bookmaker and key employee registrations be renewed every five years.

The proposed fees are consistent with the existing Government policy that no fees should apply to a bookmaker who is a natural person (aside from the requirement to obtain a police check from the Victoria Police at an approximate cost of \$32.00 and a small, proposed fee associated with replacement of a registration certificate). As corporations have not previously been permitted to be registered as bookmakers (other than proprietary corporations on a strictly limited basis) no policy precedent exists for the imposition of fees for this category of registration applicant.

The practicable options for setting these fees are considered to be:

- full cost recovery for all bookmaking related registrations;
- continuing the current policy of fee free bookmaking related registrations;
- partial cost recovery for all bookmaking related registrations; and/or
- tiered fee structure establishing differential fees for separate classes of applicants.

In summary, the proposed fee structures will continue the Government's commitment to on-course, sole trader bookmakers while off-setting the additional costs of administration of applications from corporations wishing to become registered as Victorian bookmakers.

A multi-criteria analysis was undertaken to assess the available options including a consideration of the financial, economic, social and environmental implications for the groups of society that will be impacted by the Proposed Regulations. Of the four options available, Option D (introducing a tiered fee recovery structure) yielded the highest positive

weighted score, and provided the strongest endorsement of the Government's long-standing commitment to support the sustainability of Victoria's bookmakers and ensure they retain a valuable race-day presence on Victorian racecourses.

The result of the balanced scorecard assessment is provided in the table below.

		OPTIONS							
		Option A Zero Recovery		Option B Full Recovery		Option C Partial Recovery		Option D Tiered	
Criteria	Weighting (%)	Assigned Score	Weighted Score	Assigned Score	Weighted Score	Assigned Score	Weighted Score	Assigned Score	Weighted Score
Impact on long-term viability of bookmaking progression	55	0	0	-4	-2.2	-2	-1.1	0	0
Cost-recovery matches production costs	45	0	0	+5	+2.25	+1	+0.45	+5	+0.225
Total			0		0.05		-0.65		+0.225

Under Option D, with fees at a level approaching full cost recovery for corporations while zero or nominal fees applied to registration applications made by a natural person, the VCGR has estimated the total cost of the registration process per annum to be \$260,998, to be offset by an estimated total fee recovery revenue of \$22,542 per annum. It is recognised that there will be a shortfall of \$238,456 per annum under this option.

(continued overpage)

Estimate of annual costs foregone under Option D (tiered fee structure)

Application type	Estimated Number (1)	Cost to government per applicant (\$) (2)	Total cost to government (1) x (2)	Prescribed Fee (\$) (3)	Recovered costs (1) x (3)	Estimated Unrecovered Costs per annum (\$) (1) x (2 – 3)
Bookmaker registration (Sole Trader)	8*	2,200	17,600	0	0	17,600
Bookmaker registration (Corporate)	2*	5,520	11,040	5,520	11,040	0
Bookmaker Renewal (Sole Trader)	160	1,076	172,160	0	0	172,160
Bookmaker Renewal (Corporate)	4	2,843	11,372	2,843	11,372	0
Key Employee	28	162	4,536	0	0	4,536
Key Employee (Renewal)	384	115	44,160	0	0	44,160
Replace ID / Certificate	5	26	130	26	130	0
TOTAL	591*		260,998		22,542	238,456

Implementation measures are expected to be minimal. It is anticipated that the VCGR will amend its application forms so as to stipulate that applicants must pay the proposed fees at the time an applicant submits their application to be registered as a bookmaker or bookmaker's key employee.

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1 INTRODUCTION

1.1 OVERVIEW

In May 2007 the Government reconvened its Bookmaking Reforms Working Party to consider a range of policy amendments aimed at improving the competitiveness of the Victorian bookmaking profession.

Following consideration of recommendations contained in the final report of the Working Party², the Government introduced the ***Racing and Gambling Legislation Amendment Act 2008***, which received Royal Assent on 25 November 2008. The Act includes a number of key changes to the regulatory environment for Victorian bookmakers, including to:

- enable a corporation to be registered as a bookmaker;
- introduce a new category of bookmaker registration ('key employees'), which replaces the previous requirement that all persons employed by a bookmaker be individually registered as a bookmaker's clerk; and
- transfer responsibility for the regulation and registration of bookmakers from the Bookmakers and Bookmakers' Clerks Registration Committee (BBCRC) to the Victorian Commission for Gambling Regulation (VCGR) effective from 1 January 2009.

The Government remains committed to a regulatory environment that supports the continuation of bookmakers as an important part of the on-course experience for Victorian racegoers. For sole trader bookmakers, the Government has determined, with the exception of the costs associated with replacement of a registration and identity card, to maintain the existing policy settings with respect to application fees for bookmaking registrations.

In the case of corporations, the Government has determined that the cost of assessing an application for registration as a bookmaker should be fully recovered. The key differences between the classes of bookmakers are that additional costs are incurred in processing applications from corporations, that the majority of business operations by corporate bookmakers are conducted via the telephone or internet, and considering the capacity of such organisations to pay.

The proposed Regulations are also consistent with the principles contained within the Government's *Cost Recovery Guidelines*³.

² Bookmaking Reforms Working Party, Discussion Paper (October 2007).

³ Department of Treasury and Finance, *Cost Recovery Guidelines* (May 2010).

1.2 THE REGULATORY PROPOSAL

The Government is proposing to make the *Gambling Regulation Amendment (Bookmaking Related Registration Fees) Regulations 2010* (hereafter the Proposed Regulations) thereby amending the *Gambling Regulation Regulations 2005* to prescribe certain fees to accompany applications for registration as a bookmaker, or as a bookmaker's key employee for the purposes of the *Gambling Regulation Act 2003*. A copy of the Proposed Regulations is attached at **Appendix 1**.

The Proposed Regulations will prescribe fees that the VCGR will charge for administering certain bookmaker and bookmaking related registrations. In order to recover the costs associated with processing such applications, the Proposed Regulations must be enacted in a form that is consistent with:

- the principles set out in the *Cost Recovery Guidelines* which establish the Government's framework for ensuring that cost recovery arrangements in Victoria are transparent, efficient, effective and consistent with legislative requirements and government policy; and
- the Government's policy objectives for the racing industry, including the current policy commitment to support the ongoing viability of Victorian bookmakers and ensure that they remain a valuable presence on Victorian racetracks.

1.3 THE ROLE OF THE REGULATORY IMPACT STATEMENT

Section 10 of the *Subordinate Legislation Act 1994* requires that a Regulatory Impact Statement be prepared in respect of new or remade regulatory proposals to ensure that the costs of the proposed regulations are outweighed by the benefits and that the regulatory proposal is superior to alternative approaches. Exemptions to this requirement may apply if it is shown that the proposed rule is not likely to impose 'an appreciable economic or social burden on a sector of the public'.

The Minister for Racing has determined that the fees prescribed by the Proposed Regulations constitute an appreciable economic burden on entities intending to register as a bookmaker or bookmaker's key employee, and that none of the exemptions from the requirement to prepare a Regulatory Impact Statement under the *Subordinate Legislation Act 1994* apply in this instance.

Accordingly, this Regulatory Impact Statement formally assesses the Proposed Regulations against the requirements of the *Subordinate Legislation Act 1994* and the *Victorian Guide to Regulation* published by the Department of Treasury and Finance in April 2007.

1.4 SUBMISSIONS

The purpose of inviting submissions addressing the Proposed Regulations is to ensure that all interested parties are treated impartially and have the same opportunity to participate in this process. It will also ensure that interested parties have equal access to relevant information and advice.

The Office of Gaming and Racing will only consider submissions relating to the Proposed Regulations. The Office of Gaming and Racing will not consider any part of submissions that seek to revisit decisions already announced by the Government.

Submissions must be received by the Office of Gaming and Racing by **4 November 2010**. Late submissions will not be accepted in any circumstances.

All submissions can be sent to the Office of Gaming and Racing by softcopy to christopher.chng@justice.vic.gov.au, or by hardcopy under cover of the company letterhead and signed by an authorised company representative.

Respondents without online access may post their submission to:

Mr Ross Kennedy
Executive Director, Gaming and Racing
Department of Justice
PO Box 18055
Collins St East
MELBOURNE VIC 8003

Submissions sent via Australia Post must be date stamped before the closing date for submissions.

1.5 PUBLICATION OF SUBMISSIONS

Submissions may be published on the Department of Justice website. Any content deemed to be defamatory, vilifying or otherwise inappropriate will be removed from submissions for the purposes of publication at the discretion of the Executive Director of the Office of Gaming and Racing.

Persons making submissions on behalf of another legal person or organisation must be authorised to do so by that legal person or organisation (Authorised Person).

Authorised Persons and persons making submissions on their own behalf must clearly identify matters that they consider to be commercial in confidence. It is not intended that these matters will be published on the website.

The Executive Director will determine in his absolute discretion, on a case-by-case basis, whether material provided and identified as such is commercial in confidence. If the Executive Director considers material or information identified as being commercial in confidence is not commercial in confidence, he will return the material or information to the person making the submission and advise them of his view, giving them the opportunity to

withdraw the information or material. If withdrawn, the material or information will not be published.

The lodgement of a submission by an Authorised Person or a person making a submission on their own behalf will be deemed to constitute acceptance of the conditions of participating in this process.

1.6 REPORT OUTLINE

The remainder of this report is set out as follows:

- Chapter 2 describes the nature and extent of the ‘problem’;
- Chapter 3 describes the proposed measure;
- Chapter 4 describes options that were considered to achieve the objectives;
- Chapter 5 assesses the costs and benefits of the options;
- Chapter 6 considers the impact on small business;
- Chapter 7 considers the change in administrative burden;
- Chapter 8 considers compliance with national competition policy;
- Chapter 9 describes the approach to consultation; and
- Appendixes set out cost estimates, bibliography and the Proposed Regulations.

2 NATURE AND EXTENT OF THE PROBLEM

2.1 POLICY CONTEXT

Section 1.3(1) of the *Gambling Regulation Act 2003* defines a bookmaker as a person who (whether on the person's own account or as an employee or agent of any other person) carries on the business or vocation of or acts as a bookmaker or turf commission agent; and/or a person who gains or endeavours to gain a livelihood wholly or partly by betting or making wagers on a racing or sporting event. A bookmaker's key employee is similarly defined by the *Gambling Regulation Act 2003* but is generally taken to be a person who performs employment duties in relation to their employment by a bookmaker.

In Victoria, those engaged in the bookmaking profession are subject to two tiers of regulation. In order to operate as a bookmaker or to work as a bookmaker's key employee, a person or a corporation must:

- firstly, become registered by the Government as fit and proper person to carry on the business of a bookmaker or to be employed as a bookmaker's key employee (the subject of the Proposed Regulations); and
- secondly, become licensed by the relevant racing industry controlling body.

The two-tier system dates back to the 1950's when the BBCRC was established under the *Racing Act 1958*. The function of registration by the BBCRC was largely intended to improve bookmakers' general compliance with tax collection (although it is noted the relevant taxes have since been abolished) and to ensure they meet minimum probity standards⁴. At the second tier level, the requirement for a bookmaker to be licensed by their respective racing Controlling Body reflects the Controlling Bodies' primary role in managing the daily operation of their respective codes.

This two-tiered system is comparable to the regulatory requirements for other professions, for example, the legal profession in Victoria. In order to be qualified to practice in the legal profession, lawyers must first be admitted to the Supreme Court as an Australian lawyer, and then be authorised by the Legal Services Board on an annual basis to hold a practising certificate.

2.1.1 PREVIOUS REGULATORY FRAMEWORK FOR BOOKMAKER REGISTRATIONS

Prior to 1 January 2009, the function of registering bookmakers and bookmaker's clerks at the first tier belonged to the BBCRC. The BBCRC's prime function was to assess applications for registration from prospective bookmakers to ensure they met appropriate

⁴ Op cit 3, page 4.

standards of probity and competency, had sufficient finances to support their operation and were adequately guaranteed. The BBCRC also registered bookmaker's clerks and issued temporary registrations to allow appropriately qualified clerks to act as substitutes for their employing bookmaker. The BBCRC had the general responsibility for monitoring the performance of registered persons and had a range of disciplinary powers at its disposal.

The racing Controlling Bodies – Racing Victoria, Harness Racing Victoria and Greyhound Racing Victoria – were, and still continue to be, responsible for supervising the specific day-to-day operations of bookmakers. The Controlling Body issues the bookmaker with a Club Bookmaker's Licence which enables the bookmaker to field at racecourses. The Controlling Bodies are also responsible for ensuring compliance with betting rules, regulating betting ring positions, etc..

2.1.2 PREVIOUS POLICY OF ZERO-FEE RECOVERY FOR BOOKMAKER REGISTRATIONS

In 1998, the former Government commissioned the independent consulting firm the Centre for International Economics to undertake and report on a '*National Competition Policy review of racing and betting legislation in Victoria*'⁵ (hereafter the NCP Racing Review). The review was undertaken as part of the Government's commitment to National Competition Policy and the Competition Principles Agreement. For further discussion of the National Competition Policy, please refer to section 9 below.

The NCP Racing Review found that even as early as the mid to late 1980s, the Victorian bookmaking profession had begun to face structural challenges caused by competition from other forms of gambling, and the shift of betting from on-course to off-course wagering providers. The enormity of the challenges facing the industry was evident by the dramatic collapse in racing turnover as a percentage of total gambling turnover from approximately 80 per cent throughout the 1980s to around approximately 10% by the mid-1990s⁶.

Although registration fees for bookmaker and bookmaking related registrations were prescribed at one stage, the Government made a policy decision in the early 1990s to abolish such fees in accordance with its long-standing commitment to the sustainability of the Victorian bookmaking profession. The decision to abolish registration fees was taken by the Government in an attempt to reduce any disincentive for bookmakers to enter or continue participating in the industry and to arrest the decline in the numbers of registered bookmakers evident at that time.

The zero-fee recovery policy is also consistent with the subsequent decision by the Government, in 2000, to abolish the bookmaker turnover tax and introduce a levy⁷, which provides a financial return direct to clubs and the bookmaking industry via the Bookmaking Development Fund.

⁵ Centre for International Economics, *National Competition Policy review of racing and betting legislation*, Final Report (2 November 1998).

⁶ Ibid, pg 22.

⁷ Robert Hulls, Minister for Racing, media release (1 March 2000).

Racing in Victoria: Leading the Field was released by the Government in 2006 and is the most recent pronouncement of the Government's racing program. This document identifies several key priority areas for action; one of which is to support the ongoing viability of Victorian bookmakers and to ensure that they remain a valuable race-day presence on Victorian racetracks. This policy commitment is underpinned by the belief that the presence of bookmakers is a significant addition to the colour and excitement generated in and around race meetings.

It is worthwhile noting that the racing Controlling Bodies have chosen not to impose any bookmaker licence fees even though the imposition of such fees is expressly permitted by legislation. This outcome arguably reflects the racing industry's support of the Government's policy commitments towards the bookmaking industry and the need to remove any disincentives for bookmakers to join, or remain in, the Victorian industry.

2.1.3 RECENT CHANGES TO THE REGULATORY FRAMEWORK

The terms of the 2006 Government racing policy statement expressly acknowledges that Victorian bookmakers operate in an increasingly challenging market environment, primarily due to rapid and significant structural changes in the national and international wagering market over the past decade. During this time, the growth of interstate and overseas-based corporate bookmakers, coupled with the emergence of alternate wagering operators such as betting exchanges, have contributed to a marked decline in the Victorian share of the national fixed odds wagering market.

In May 2007, the Government reconvened its Bookmaking Reforms Working Party (BRWP) to consider a range of proposals presented by the racing and bookmaking industries, with a view to amending the regulatory framework for Victorian bookmakers and to improve their competitiveness.

Following consideration of a number of recommendations in the Working Party's final report, the Government introduced the ***Racing and Gambling Legislation Amendment Act 2008***, which received Royal Assent on 25 November 2008 and contained a number of key regulatory changes that are relevant to the Proposed Regulations, specifically to:

- enable a corporation to be registered as a bookmaker;
- introduce a new category of bookmaker registration ('key employees'), which replaced the previous requirement that all persons employed by a bookmaker be individually registered as a bookmaker's clerk; and
- transfer responsibility for the regulation and registration of bookmakers from the BBCRC to the VCGR effective from 1 January 2009.

As a direct result of the new legislation, the VCGR is required to undertake a greater range of probity and financial investigations as part of the assessment procedures in determining the suitability of the applicants for registration, especially for applications for corporations (that is, in terms of the relevant commercial, financial and probity issues, as will be discussed below).

2.1.4 CORPORATE ENTITIES ENTITLED TO BE REGISTERED AS BOOKMAKERS

Prior to 1 January 2009, the entitlement to be registered as bookmaker or bookmaker's clerk was limited to an individual sole trader (in their capacity as a natural person). Although legislative amendments passed around 2002 allowed bookmakers to form partnerships and restricted companies, membership and ownership in such corporate vehicles was limited to bookmakers who were themselves registered as a natural person.

Following enactment of the *Racing and Gambling Legislation Amendment Act 2008*, corporations may apply for registration as bookmakers, and the previous requirement that corporate bookmaking structures be limited to registered bookmakers no longer applies. These changes allow private and public companies to be registered provided that such entities satisfy the VCGR that they are fit and proper entities.

Experience from other jurisdictions has shown that corporate bookmakers tend to conduct the majority of their business with off-course customers betting via remote communication mediums (i.e. betting via the telephone or internet), rather than providing an on-course service to punters attending at race meetings.

The applicability of the Government's policy commitment to support the bookmaking profession should be considered in this context.

2.1.5 COST IMPLICATIONS

Prior to 1 January 2009, the only registration requirement that created a direct cost for bookmaker applicants was the completion of a police probity check. Completion of this check did not have any cost implications for the Government as applicants independently obtained this check at their own expense through the Victoria Police.

A key feature of the new legislation is the capacity for corporations to become registered as bookmakers. The VCGR anticipates that significantly more resources will be required to process an application by a corporation in comparison to an application from an individual. In the case of a corporate applicant, and without limiting the scope of the VCGR's investigations, this will involve checks to verify whether the nominee, each director, partner, trustee, executive officer and secretary or any other person connected with the ownership, administration or management of the operations or the business is a suitable person to act in that capacity. This will place a significant additional burden on the resources of the VCGR.

The typical costs that the VCGR will incur in administering bookmaker and bookmaking related registrations vary depending on the nature of the application (refer to **Appendix 3**). The proposed fees have been calculated taking account of labour costs (that is, the time taken by various VCGR staff to process, review and approve applications), actual probity expenses (that is, actual charges for police checks, ASIC person and company searches, credit checks, and various other matters) and consumable expenses (that is, VCGR corporate expenses).

Consistent with the Government's existing policy of zero-fee recovery in relation to bookmaker and bookmaking related registrations, these costs are currently being absorbed by the VCGR.

Currently, there are fees in place with respect to application for all other licenses or registrations for other categories of gambling service providers that are administered by the VCGR. Therefore, it is appropriate to consider whether the VCGR should similarly recoup part of all of the costs associated with bookmaker and bookmaking related registrations.

2.1.6 GOVERNMENT GUIDELINES FOR COST RECOVERY

The *Cost Recovery Guidelines* produced by the Department of Treasury and Finance establish a whole-of-government framework for ensuring that cost recovery arrangements in Victoria are transparent, efficient, effective and consistent with legislative requirements and policy, and set out the principle that properly designed cost-recovery arrangements can deliver both equity and efficiency benefits to the community.

Cost recovery is defined by the *Cost Recovery Guidelines* as the recuperation of the costs of Government provided or funded products, services or activities that provide, at least in part, private benefits to individuals, entities or groups, or reflect the costs their actions impose⁸. The costs of these activities should be recovered in some way, either from:

- users or others who benefit from the good, service or activity provided;
- those whose actions give rise to it; or
- from taxpayers generally.

By default, the Government's recovery policy is that regulatory fees and user charges should be set on a full-cost recovery basis to ensure that both efficiency and equity objectives are met. The main assumption underpinning this policy is that '...full cost represents the value of all the resources used or consumed in the provision of an output or activity.'⁹

In this regard, the Guidelines explain that:

'Full cost recovery promotes the efficient allocation of resources by sending the appropriate price signals about the value of all the resources being used in the provision of government goods, services and/or regulatory activity.'

*From a horizontal equity point of view, full cost recovery ensure that those that have benefited from government-provided goods and services, or those that give rise to the need for government regulation, pay the associated cost. Those parties that do not benefit or take part in regulated activities do not have to bear the costs.'*¹⁰

However, the Guidelines note there are exceptional situations where it is desirable to recover at less than full cost, or zero-cost, including circumstances where:

- practical implementation issues make cost recovery infeasible;

⁸ Op cit 4, pg 4.

Ibid, pg 6.

Ibid.

- there are benefits to unrelated third parties (sometimes referred to as ‘positive externalities’);
- social policy or vertical policy considerations are considered to outweigh the efficiency objectives associated with full cost recovery; and/or
- full cost recovery might adversely affect the achievement of other government policy objectives¹¹.

More specifically, the *Cost Recovery Guidelines* contemplate that in certain circumstances a full cost recovery approach may adversely impact on other policy objectives of the Government to an undesired extent. In this regard, cost recovery arrangements should at least be compatible with, if not complementary to, the overarching outcomes the Government seeks to advance through providing or funding products and services, and should not jeopardise other Government objectives, for example, by restricting competition or industry innovation.

Given that a full-cost recovery approach to the costs incurred by the VCGR under the Proposed Regulations could adversely affect the Government’s ability to further its policy objectives as outlined in its 2006 racing policy statement, it is also appropriate to consider other alternatives whereby the VCGR may recoup its costs.

2.2 THE PROBLEM TO BE ADDRESSED BY THE PROPOSED REGULATIONS

2.2.1 WHAT IS THE PROBLEM?

The main problem addressed by the Proposed Regulations is whether the costs incurred by the VCGR in undertaking its responsibilities with respect to applications for bookmaker or bookmaking related registrations should be recovered (and by corollary, what is the best fee recovery structure to use), or whether there are policy reasons which mean it would not be in the public interest to do so.

Although the Government is empowered to prescribe fees for costs associated with bookmaker and bookmaking related registrations under the *Gambling Regulation Act 2003* (see section 3.3 below), it has not done so on policy grounds.

The long-standing policy of zero-fee recovery on such registrations may no longer be appropriate, given recent changes to the regulatory environment, including:

- the removal of the requirement on bookmakers to be a ‘natural person’, thereby allowing corporate entities to be registered as bookmakers;
- the additional costs associated with processing bookmaker applications, in particular applications from corporations, due to more complex structural and commercial business arrangements (including those outlined in 2.1.5 above); and

Op cit, pg 6.

- the *Cost Recovery Guidelines*, which contain revisions to the Government's objectives and principles of cost recovery.

Given that the new regulatory regime is likely to result in an increase in government administrative costs, a failure to resolve this issue will result in those parties who give rise to the need for regulation not contributing to its funding. To ensure the costs to government associated with processing such applications are recoverable consistent with the principles set out in the Government's *Cost Recovery Guidelines* and the 2006 'Leading the Field' racing policy statement, the imposition of fees in certain circumstances may be necessary.

2.2.2 COSTS INCURRED BY THE GOVERNMENT

The VCGR has provided an estimate of the costs it anticipates to incur on an annual basis in processing bookmaker and bookmaking related registrations. There are separate categories of applicants with different costs for each of these categories, reflecting the complexity involved in processing that application.

The variation in costs between different classes of applications is reflective of the different levels of complexity associated with each class of application. For example, consideration of a registration application by a corporation requires additional probity checks be undertaken for nominees / associates which are not applicable to sole trader bookmakers. Similarly, the cost for processing a registration renewal is significantly less than the cost for processing a new application because of additional probity requirements (e.g. applicant interviews, fingerprint checks) that apply to new applicants.

The details of the VCGR cost estimates are set out in the following table:

Table 1 – VCGR Cost Estimates for Processing Bookmaker and Bookmaking Related Applications

Application	Category	Processing Cost (\$)
Registration as a Bookmaker	Sole Trader	2,200
Registration as a Bookmaker	Corporation	5,520
Renewal of Bookmaker Registration *	Sole Trader	1,076
Renewal of Bookmaker Registration *	Corporation	2,843
Registration as Bookmakers' Key Employee		162
Renewal of Registration as Bookmaker's Key Employee *		115
Replacement of Bookmaker or Key Employee Certificate / Identity Card		26

* The VCGR has proposed that bookmaker and key employee registrations be renewed every five years.

The costs have been calculated based on a standard formula developed by the VCGR. A detailed summary of the VCGR's cost estimates is contained in **Appendix 3**. The calculation for the processing cost for each application category incorporates:

- labour costs, including time spent by the VCGR staff on processing, evaluating the application, meeting with the applicant and other relevant parties, preparing

recommendations to the members of the VCGR, considering all materials and making a decision as to whether registration should be granted;

- actual probity expenses (for example, police checks, credit checks, Australian Investment and Securities Commission checks and other relevant searches); and
- incidental expenses and consumables.

The typical costs that the VCGR will incur in administering bookmaker and bookmaking related registrations have been calculated on a weighted average of the costs, depending on the nature of the application:

- a simple application will generally involve a bookmaking registration application made by a natural person with no associated individuals and no issues of concern with the applicant or any associate; and
- a complex application will involve applicants that are considered to have more complex business arrangements, including one or more associated entities and/or associated individuals, and other issues of concern, such as non-disclosure or probity checks requiring a more detailed investigation and related external media searches.

The VCGR estimates that around 90 per cent of bookmaker registrations will be simple, with the remaining 10 per cent being complex applications. For bookmakers' key employees the VCGR estimates that 95 per cent of these registrations will be simple, with the remaining 5 per cent being complex applications.

Costs associated with the completion of these activities are currently being absorbed by the VCGR, consistent with the Government's long-standing policy of zero-fee recovery in relation to bookmaker and bookmaking related registrations.

Given that the VCGR has a practice of recouping some or all of the costs associated with the completion of licenses or registrations for other categories of gambling service providers that it regulates, it is appropriate to consider whether the VCGR should similarly recoup part or all of the costs associated with bookmaker and bookmaking related registrations.

2.2.3 THE CASE FOR GOVERNMENT INTERVENTION

2.2.3.1 Government regulation of bookmakers

As stated above the Victorian bookmaking profession is subject to two tiers of regulation. A bookmaker or their key employee must first obtain registration from the VCGR, and then obtain a licence from the relevant racing Controlling Body in order to field at a race meeting. Continued Government regulation of bookmakers in Victoria under this system is considered to be appropriate given the regulatory objectives of the *Racing Act 1958*.

The *Racing Act 1958* does not explicitly set out any objectives other than 'consolidat[ing] the Law relating to Horse Pony Trotting and Greyhound Racing, the Registration of Bookmakers and their Clerks, and Totalizators'. However, the second reading speech for the *Gaming and Betting Act 1994* (which substantially amended the *Racing Act 1958*) offers some insight into the objectives of the *Racing Act 1958*.

In that speech, the then Treasurer Alan Stockdale said that the amendments to the *Racing Act 1958* were to:

‘...remove obsolete or redundant provisions, to deregulate the conduct of racing except in relation to matters of probity and public interest... [emphasis added]’¹²

Protection of integrity and maintaining probity in the racing industry is a key objective of the *Racing Act 1958*, notwithstanding other complementary goals such as reducing associated criminal activity, ensuring regulatory consistency and fairness of racing conduct and economic development of the Victorian racing industry.

In the context of a national wagering market, the strength of the Victorian Racing Industry is largely based on public confidence in a strong regulatory environment including consistent and reliable integrity assurance services and systems. Any uncertainty with respect to integrity assurance in the Victorian racing industry will have a direct, negative impact on our wagering market.

It is an accepted principle that correction of market failure is a primary rationale for government intervention in markets. The maintenance of an effective regulatory framework for registration of bookmakers and their key employees underpins consumer confidence by allowing open scrutiny of the workings of the racing and betting industry.

2.2.3.2 Cost Recovery

There is currently no mechanism for the VCGR to recover costs associated with regulation of bookmaker activity and the administration of applications for bookmaker and bookmaking related registrations. The threshold question to be addressed is whether there is a sufficient case for the Government to prescribe fees. In the absence of competing policy objectives, the case is answered in the affirmative due to the full-cost recovery benchmark set out in the Government’s *Cost Recovery Guidelines*.

The central justification for government agencies charging fees is to recover the costs, either in full or in part, of providing a service, provided that the recovery of these costs is consistent with other Government policy objectives.

Under the user-pays principle, those who benefit from the services should pay for those services, rather than obliging general taxpayers at large to meet the cost (in exchange for little if any direct benefit). The *Victorian Guide to Regulation* state in relation to regulations imposing fees that,

‘...general government policy is that fees should be set on a full-cost recovery basis. Cost recovery through fees and charges is most often adopted when government services do not directly benefit all Victorians. Many programs benefit only selected groups in the community (e.g. users of particular services of various professions).

In these circumstances, fees on the regulated providers provide a mechanism whereby the costs of the regulation are incorporated into the costs of delivering the service.’¹³

¹² See also para 5.17 of Alert Digest 7 of 1994.

¹³ Department of Treasury and Finance, *Victorian Guide to Regulation* (April 2007), pg 3-12.

Importantly, the Victorian Guide to Regulation explicitly recognises that there are exceptions to the standard approach:

*'Notwithstanding the general rule, cost may not always be the most appropriate basis for settling fees. There may be circumstances in which fees should be set at levels entailing subsidies (i.e. less than full-cost recovery). This may occur, for example, where the benefits of the activity are not full restricted to the entity being charged the fee.'*¹⁴

Furthermore, it is clear from the provisions of Part 5A of Chapter 4 of the *Gambling Regulation Act 2003* and from the current policies with respect to other categories of gambling service providers that the VCGR should have the capacity to charge a fee for these applications (refer to section 3.3 below). In the absence of further government intervention in the form of the Proposed Regulations, this legislative intention will not be met.

In considering the appropriateness or otherwise of imposing application fees for bookmaking related registrations, it is also worthwhile considering the fees which are applied to similar registrations in other racing jurisdictions in Australia. It is noted that there are substantial variance in the level of fees imposed in different jurisdictions. For example, Queensland adopts a full cost recovery model and imposes fees at a level approximately equivalent to the new fee schedule in the Proposed Regulations. Most of the other jurisdictions appear to impose less than full cost fees, however, no other jurisdiction replicates Victoria's current "no fee" approach to bookmaking related registrations. Jurisdictions that have a significant corporate bookmaker presence (for example, the Australian Capital Territory and the Northern Territory) impose substantial fees for sports bookmakers who conduct the majority of their business by telephone or the internet.

2.2.3.3 Risks Associated with Non-Intervention

Without the Proposed Regulations being made under the *Gambling Regulation Act 2003*, the VCGR will not be able to charge any fees for the administration of applications for bookmaker and bookmaking related registrations.

In this instance, failure to establish any fee structure for bookmaking related applications for registrations would mean that the costs of administering such applications would fall to the VCGR, and ultimately the taxpayer.

As such, the taxpayer would be subsidising the registration of individual and corporate bookmakers and their key employees, despite the fact that most taxpayers would receive no direct benefit. Table 2 under section 4.2.1 below provides an estimate of total annual costs foregone by the Government where a course of non-intervention is taken.

¹⁴ Ibid, pg 3-13.

3 THE PROPOSED MEASURE

3.1 OBJECTIVES OF THE PROPOSED REGULATIONS

The objective of the Proposed Regulations is to recover the costs of registering bookmakers and their key employees by the VCGR from those parties that have benefited from those regulatory services or give rise to the need for government regulation, consistent with the Government's *Cost Recovery Guidelines* and also consistent with the Government's policy objective of support for the ongoing viability of Victorian bookmakers and to ensure that they remain a valuable presence on Victorian racetracks.

3.2 THE REGULATORY PROPOSAL

The Government is proposing to make the Proposed Regulations under the *Gambling Regulation Act 2003* to address the main problem raised in section 2.2.1 above. The Proposed Regulations will prescribe new fees that the VCGR will charge for administering certain bookmaker and bookmaking related registrations in order to recover the costs associated with processing such applications.

The Government has considered the options available and has concluded that on balance, option D, with fees at a level approaching full cost recovery for corporations while zero or nominal fees would be applied to registration applications made by a natural person, most accurately reflects the current Government policy in relation to the recoverability of costs associated with applications for bookmaker and bookmaking related registrations without creating a disincentive for bookmakers to enter or continue participating in the industry.

3.3 AUTHORISING LEGISLATION

Under section 11.2.1 of the *Gambling Regulation Act 2003*, the Governor in Council may "...make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act...". Subsection 11.2.1(3) of the Act expressly permits a power to make regulations providing for the imposition of fees, including specific fees, maximum fees, minimum fees, and other fee related conditions.

Chapter 4 of the *Gambling Regulation Act 2003* is the section that regulates wagering and betting in Victoria.

Part 5A of Chapter 4 deals with bookmaker and bookmaking related registrations and contains the following four provisions expressly authorising the setting of prescribed fees.

3.3.1 Registration as a Bookmaker

Under section 4.5A.2 of the *Gambling Regulation Act 2003*, fees may be prescribed by the VCGR in relation to the registration of individuals and corporations for registration as a bookmaker.

Section 4.5A.2 states:

- (1) An individual aged 18 years or more or a corporation may apply to the Commission for registration as a bookmaker.*
- (2) An application under subsection (1)—*
 - ...
 - (b) must be accompanied by the **prescribed fee (if any)**... [emphasis added]*

3.3.2 Registration as a Bookmaker's Key Employee

Similarly, under section 4.5A.2 of the *Gambling Regulation Act 2003*, fees may be prescribed by the VCGR in relation to the registration of individuals as a bookmaker's key employee.

Section 4.5A.3 provides:

- (1) An individual aged 18 years or more may apply to the Commission for registration as a bookmaker's key employee.*
- (2) An application under subsection (1)—*
 - ...
 - (b) must be accompanied by the **prescribed fee (if any)**... [emphasis added]*

3.3.3 Certificate of Registration and Identity Card

Under section 4.5A.6 of the *Gambling Regulation Act 2003*, fees may be prescribed by the VCGR in relation to the issue a certificate of registration and an identity card to the registration holder on granting an application for registration as a bookmaker or bookmaker's key employee.

Subsection 4.5A.6(4) provides that:

- (4) An application for a replacement certificate of registration or identity card must—*
 - (a) be accompanied by a statutory declaration as to the circumstances in which the certificate or card was lost or destroyed; and*
 - (b) be accompanied by the **prescribed fee (if any)**... [emphasis added]*

3.3.4 Registration Renewal

Fees may also be prescribed by the VCGR in relation to registration renewals.

Section 4.5A.13 of the *Gambling Regulation Act 2003* provides that:

- '(1) *A registered bookmaker or bookmaker's key employee may, not earlier than 9 months before the expiration of the current registration, apply to the Commission for a new registration...*
- (2) *An application under subsection (1) must be made in the form approved by the Commission and must be accompanied by the **prescribed fee (if any)**... [emphasis added]*

4 OPTIONS TO ACHIEVE THE OBJECTIVES

Four cost recovery options have been identified to prescribe fees payable for bookmaker and bookmaking related registration applications:

- A. Zero cost recovery (the base case);
- B. Full cost recovery;
- C. Partial cost recovery; and
- D. A tiered cost recovery approach.

The development of these options took into account a number of different policy considerations, such as the approach to fee recovery adopted by the VCGR for other categories of gambling and wagering service providers regulated under the *Gambling Regulation Act 2003*, together with the fees imposed by regulatory authorities for bookmaker and bookmaking related registrations in other jurisdictions. These are discussed in detail in the following sections.

4.1 CONTEXT

4.1.1 OTHER SERVICE PROVIDERS REGULATED BY THE VCGR

As an independent statutory authority created under the *Gambling Regulation Act 2003*, part of the VCGR's legislative responsibilities involve the administration of various applications relating to permits, licences and registrations applications. These applications encompass a broad range of gambling and wagering activity, including gaming machines, minor gaming permits issued to community and charitable organisations for fundraising purposes (e.g. raffles, bingo, lucky envelopes etc), trade promotion lotteries, Club Keno and sports betting.

The VCGR's fees were last reviewed in 2005 as part of the Regulatory Impact Statement prepared for the *Gambling Regulation Regulations 2005*. That Regulatory Impact Statement concluded that all costs incurred by the VCGR in processing permit, licence and registration applications would be recouped on a full-cost recovery basis, with the exception of costs related to minor gaming. The VCGR adopted the full-cost recovery model as its benchmark approach on the basis that this reflects a 'fair' user-pays system which represents value for money, ensures that businesses applying for similar licences or permits are treated equally and was economically neutral.¹⁵ The Regulatory Impact Statement also noted that there were no competing public policy considerations which warranted a Government decision not to recover full costs.

See pages 52-53 of Gambling Regulation Regulations 2005, Regulatory Impact Statement.

As mentioned above, an exception for minor gaming permits was carved out under section 1.1(2)(e)(i) of the *Gambling Regulation Act 2003*. The decision not to recover full costs in respect of these applications was made “to ensure that activities authorised by a minor gaming permit benefit the community or charitable organisations to which the permit is issued”. The Regulatory Impact Statement further noted that “the Government recognises the significant contribution charitable and community organisations make to the community as a whole and propose to retain fees at the current below cost recovery levels for that reason”.

Accordingly, the analysis of the VCGR’s current approach to setting fees illustrates two options for cost-recovery mechanisms for the purposes of this paper:

- a full cost recovery model (as currently used for the majority of licences and permits issued by the VCGR); or
- a partial cost recovery model (as currently applied to the issue of minor gaming permits).

4.1.2 COMPARISON WITH INTERSTATE JURISDICTIONS

In considering the appropriateness or otherwise of imposing bookmaker and bookmaking related registration fees, it is worthwhile considering the fees that are applied to equivalent applications in other racing jurisdictions in Australia. An overview of the fees currently imposed in each jurisdiction is provided in **Appendix 2**.

There appears to be no uniform approach to fee-recovery for such applications across the Australian jurisdictions. Substantial variation exists in the regulatory framework for bookmakers across each of the Australian jurisdictions, and this has led to a range of different approaches regarding the imposition of fees in relation to bookmaker and bookmaking related registrations.

Most jurisdictions appear to impose a less than full-cost recovery mechanism. However, it is also noted that none of these jurisdictions replicates Victoria’s zero-cost recovery approach. With respect to key employees, all jurisdictions (with the exception of Queensland) apply nominal or zero fees, or otherwise choose not to register this category of wagering service provider.

4.1.2.1 New South Wales

New South Wales legislation provides that all bookmaker and bookmaking related registration and licensing activities are the responsibility of the racing Controlling Bodies.

This model has no value for comparative purposes with Victoria as the New South Wales Government does not perform any registration functions, and therefore does not impose fees on bookmaker and bookmaking related registrations.

4.1.2.2 Queensland

A full-cost recovery model has been adopted in Queensland with applicants required to obtain a registration eligibility certificate from the Queensland Office of Liquor Gaming and Racing prior to applying to the relevant racing controlling body for a bookmaking licence.

A fee of \$1,959 applies for eligibility certificate application made by a natural person while a fee of \$5,630 is applicable to corporate applications.

4.1.2.3 The Northern Territory & the Australian Capital Territory

The Northern Territory and the Australian Capital Territory have adopted a tiered approach which incorporates the imposition of differential fees for ‘race’ and ‘sports’ bookmakers.

- ‘Race bookmaking’ refers to a traditional bookmaking model where registration eligibility is limited to a natural person who provides a bookmaking service on-course on the day of a race meeting.
- ‘Sports bookmaking’ refers to what are commonly known as ‘corporate bookmakers’ who confine their business operations to remote communication mediums (for example, betting via the telephone or internet), rather than the provision of bookmaking services directly to on-course clientele.

The quantum of the fees imposed in the Territories suggests that the Government recovers the majority of costs incurred in processing a ‘sport bookmaker’ registration. On the other hand, ‘race bookmakers’ are only required to pay a nominal fee, thus it appears that only a small portion of the costs incurred in processing these applications are recovered.

Both jurisdictions also impose annual registration renewal fees at a level approximately equivalent to a new registration application.

4.1.2.4 Western Australia

In Western Australia, the Department of Racing, Gaming and Liquor imposes a flat registration fee for both sole trader and corporate bookmaker registrations, with a variable annual renewal fee also being levied on a sliding scale dependant upon a bookmakers annual turnover.

A turnover-based model does not appear appropriate for Victoria as a bookmaker’s turnover is not linked to the costs which will be incurred by the VCGR in processing registration applications. Accordingly, the implementation of such a model would be inconsistent with cost recovery principles.

4.1.2.5 South Australia & Tasmania

In South Australia and Tasmania only natural persons are permitted to be registered as bookmakers. Both of these jurisdictions impose nominal registration fees at a level which would appear to be well below full cost recovery.

4.1.3 SUMMARY OF THE AVAILABLE OPTIONS

The analysis of fee models in other jurisdictions reveals four viable potential cost recovery options which could be applied to bookmaker and bookmaking related registrations in Victoria:

- Option A – zero cost recovery (the base case);

- Option B – full cost recovery (as used in Queensland, and as is the VCGR’s current fee structure model for the majority of licences and permit registrations bar minor gaming permits under the *Gambling Regulation Act 2003*);
- Option C – partial cost recovery (as appears to be in place in South Australia and Tasmania); and
- Option D – tiered fee structure (as used in the Northern Territory and the Australian Capital Territory).

The next section compares the likely costs and benefits of each of the four options, and concludes that a tiered approach is the Government’s preferred option.

4.2 THE OPTIONS

4.2.1 OPTION A – ZERO COST RECOVERY (THE BASE CASE)

The term ‘base case’ relates to the legislative and regulatory position that would continue to exist in absence of the Proposed Regulations. While the *Gambling Regulation Act 2003* envisages that application fees may be prescribed, it does not prescribe fees on a mandatory basis. As stated in section 3.3 above, the legislation empowers the Government to prescribe fees but has not required it to do so.

This scenario maintains the status quo, in that no fees would be prescribed, nor will any practical alternatives be implemented to recover costs for applications for bookmaker and bookmaking related registrations.

(continued overpage)

Table 2 - Estimate of annual costs foregone under Option A (zero cost recovery)

Application type	Estimated Number (1)	Cost to government per applicant (\$) (2)	Total cost to government (1) x (2)	Prescribed Fee (\$) (3)	Recovered costs (1) x (3)	Estimated Unrecovered Costs per annum (\$) (1) x (2 – 3)
Bookmaker registration (Sole Trader)	8*	2,200	17,600	0	0	17,600
Bookmaker registration (Corporate)	2*	5,520	11,040	0	0	11,040
Bookmaker Renewal (Sole Trader)	160	1,076	172,160	0	0	172,160
Bookmaker Renewal (Corporate)	4	2,843	11,372	0	0	11,372
Key Employee	28	162	4,536	0	0	4,536
Key Employee (Renewal)	384	115	44,160	0	0	44,160
Replace ID / Certificate	5	26	130	0	0	130
TOTAL	591		260,998		0	260,998

* Of new bookmaker registrations number, it is assumed that a vast majority will be sole traders.

4.2.1.1 Expected benefits

If Option A (zero cost recovery) is taken and the Proposed Regulations are not enacted, the following benefits may be expected:

- for all applicants – applications made on a no cost basis means that each applicant's overall business expenditure is directly lowered. As the Government will meet the costs of the administrative burden, the financial savings in the applicants' hands is equivalent to receiving a Government subsidy.
- The savings generated from this outcome could be utilised by each applicant to benefit and indirectly further their professional activities.

4.2.1.2 Expected costs

If Option A (zero cost recovery) is taken, the following costs may apply:

- for the Government– none of the costs incurred by the VCGR in administering bookmaker and bookmaking related applications will be recoverable. Under Option A, an estimated total of \$260,998 will be lost in foregone costs.

Table 2 provides an estimate of costs that will be foregone should a zero cost recovery model be applied to all bookmaker and bookmaking related registrations.

- for the general Victorian taxpayer – all of the costs incurred by the VCGR must be directly met by the Victorian taxpayer, who will receive little, if any, direct benefit in exchange.

4.2.2 OPTION B – FULL COST RECOVERY

Under this scenario, the VCGR will be allowed to recoup from all applicants the value of resources used in receiving, processing and approving applications for bookmaker and bookmaking related applications. The *Cost Recovery Guidelines* state that general Government policy is for regulatory fees and user charges to be set on a full cost recovery basis.

As outlined above, the VCGR currently sets all of its fees on this basis (with the exception of minor gaming permits issued to community and charitable organisations where fees are set at a level below full cost recovery). Accordingly, it is appropriate to consider whether the costs incurred in relation to bookmaker and bookmaking related applications should also be recovered on a full recovery basis.

Table 3 sets out the estimate of annual costs foregone by the Government under this option:

(continued overpage)

Table 3 - Estimate of annual costs foregone under Option B (full cost recovery)

Application type	Estimated Number (1)	Cost to government per applicant (\$) (2)	Total cost to government (1) x (2)	Prescribed Fee (\$) (3)	Recovered costs (1) x (3)	Estimated Unrecovered Costs per annum (\$) (1) x (2 – 3)
Bookmaker registration (Sole Trader)	8*	2,200	17,600	2,200	17,600	0
Bookmaker registration (Corporate)	2*	5,520	11,040	5,520	11,040	0
Bookmaker Renewal (Sole Trader)	160	1,076	172,160	1,076	172,160	0
Bookmaker Renewal (Corporate)	4	2,843	11,372	2,843	11,372	0
Key Employee	28	162	4,536	162	4,536	0
Key Employee (Renewal)	384	115	44,160	115	44,160	0
Replace ID / Certificate	5	26	130	26	130	0
TOTAL	591*		260,998		260,998	0

* It is noted that the introduction of fees under Option B is likely to reduce the number of applications. As it has not been possible to estimate the likely level of reduction in the numbers of applications this reduction has not been modelled.

4.2.2.1 Expected benefits

If Option B (full cost recovery) is taken to impose a full cost recovery approach under the Proposed Regulations, the following benefits may be expected:

- for the Government – the VCGR will be able to recover all costs incurred in relation to the administration of all bookmaker and bookmaking related applications in line with the benchmark position set out in the *Cost Recovery Guidelines*.

4.2.2.2 Expected costs

If Option B (full cost recovery) is taken to impose a full cost recovery approach under the Proposed Regulations, the following costs may be expected:

- for all applicants – every applicant applying for registration or renewal will sustain a direct financial impact.

- for bookmakers that are natural persons – particularly in the case of small scale sole trading operators with limited turnover and field at a limited number of race meetings per year, the financial impact is likely to be significant. It is reasonably foreseeable that the financial impact of taking this option will indirectly create a ongoing and sizable disincentive for small scale ‘picnic’ sole trading operators to register or renew their registrations. Such operators may be discouraged from entering the bookmaking profession by the regulatory start-up costs, and may have a detrimental effect of stifling competition in the market in the long term. The Government is strongly in favour of supporting the industry’s grassroots, and considers that any fee affecting sole traders is likely to, at the very least, act as *a* disincentive for them to register or renew their registrations in the bookmaking profession, particularly in the case of ‘picnic’ operators with limited turnover and might only field at a limited number of non-metropolitan race meetings per year. The imposition of fees on such operators, whose net returns from the industry may be marginal at best for some, could lead to a decline in the overall participation rate in the Victorian bookmaking profession. Given the policy objectives of the 2006 ‘Leading the Field’ racing policy statement for supporting the Victorian bookmaking profession and ensuring that they retain a valuable on-course presence, this is not an optimal result.
- for corporate bookmakers – the financial impact is likely to be insignificant for such entities in context of their operating costs and balance sheet positions.

4.2.3 OPTION C – PARTIAL COST RECOVERY

Option C (partial cost recovery) presents a middle ground between the first two options. The fee model solution proposed by Option C is:

- to limit the recoup of cost recovery to actual probity expenses (i.e. charges incurred by the VCGR for the conduct of police checks, ASIC person and company searches, credit checks etc) and consumables (e.g. forms, postage); but
- include a waiver of the labour component sustained by the VCGR.

Under this proposal, the VCGR estimates that the fee for a new bookmaker registration for a natural person would be reduced from the \$2,200 under the full cost recovery option to \$256. Similarly, the fee for a renewal of bookmaker registration for a natural person would be reduced to \$205.

Table 4 - Estimate of annual costs foregone under Option C (partial cost recovery)

Application type	Estimated Number (1)	Cost to government per applicant (\$) (2)	Total cost to government (1) x (2)	Prescribed Fee (\$) (3)	Recovered costs (1) x (3)	Estimated Unrecovered Costs per annum (\$) (1) x (2 – 3)
Bookmaker registration (Sole Trader)	8*	2,200	17,600	256*	2,048	15,552
Bookmaker registration (Corporate)	2*	5,520	11,040	5,520	11,040	0
Bookmaker Renewal (Sole Trader)	160	1,076	172,160	205^	32,800	139,360
Bookmaker Renewal (Corporate)	4	2,843	11,372	2,843	11,372	0
Key Employee	28	162	4,536	0	0	4,536
Key Employee (Renewal)	384	115	44,160	0	0	44,160
Replace ID / Certificate	5	26	130	26	130	0
TOTAL	591*		260,998		57,390	203,608

* A difference of \$1,944 to the full cost of the service provided.

^ A difference of \$871 to the full cost of the service provided.

4.2.3.1 Expected benefits

If Option C (partial cost recovery) is taken to impose a partial cost recovery approach under the Proposed Regulations, the following benefits may be expected:

- for the Government – the VCGR will be able to fully recover all of its estimated costs in relation to the administration of corporate bookmaker and bookmaking related applications in line with the benchmark position set out in the *Cost Recovery Guidelines*.
- for the Government – the VCGR will be able to partially recover its estimated costs in relation to the administration of all bookmaker and bookmaking related applications by natural persons.

4.2.3.2 Expected costs

If Option C (partial cost recovery) is taken to impose a partial cost recovery approach under the Proposed Regulations, the following costs may be expected:

- for all applicants – every applicant applying for registration or renewal will sustain a direct financial impact.
- for sole traders – it is reasonably foreseeable that the financial impact of taking this option will indirectly create a possible ongoing disincentive for small scale ‘picnic’ sole trading operators to register or renew their registrations. Such operators may be discouraged from entering the bookmaking profession by the regulatory start-up costs, and may have a detrimental effect of stifling competition in the market in the long term. The Government is strongly in favour of supporting the industry’s grassroots, and considers that any fee affecting sole traders is likely to, at the very least, act as a disincentive for them to register or renew their registrations in the bookmaking profession, particularly in the case of ‘picnic’ operators with limited turnover and might only field at a limited number of non-metropolitan race meetings per year. The imposition of fees on such operators, whose net returns from the industry may be marginal at best for some, could lead to a decline in the overall participation rate in the Victorian bookmaking profession. Given the policy objectives of the 2006 ‘Leading the Field’ racing policy statement for supporting the Victorian bookmaking profession and ensuring that they retain a valuable on-course presence, this is not an optimal result. However, it is noted that the adoption of Option C (partial cost recovery) vis-à-vis Option B (full cost recovery) would lead to a smaller negative impact on the viability of the sector, given the much smaller fee it involves compared with full cost recovery.
- for corporate bookmakers – the financial impact is likely to be insignificant for such entities in context of their operating costs and balance sheet positions.

4.2.4 OPTION D – TIERED FEE STRUCTURE

Similar to the model in place in the Northern Territory and the Australian Capital Territory, a viable option would be to impose fees at a level approaching full cost recovery for corporations while zero or nominal fees could be applied to registration applications made by a natural person. The total unrecovered costs under this option have been estimated at a net present value of \$238,456.

Table 5 - Estimate of annual costs foregone under Option D (tiered fee structure)

Application type	Estimated Number (1)	Cost to government per applicant (\$) (2)	Total cost to government (1) x (2)	Prescribed Fee (\$) (3)	Recovered costs (1) x (3)	Estimated Unrecovered Costs per annum (\$) (1) x (2 – 3)
Bookmaker registration (Sole Trader)	8*	2,200	17,600	0	0	17,600
Bookmaker registration (Corporate)	2*	5,520	11,040	5,520	11,040	0
Bookmaker Renewal (Sole Trader)	160	1,076	172,160	0	0	172,160
Bookmaker Renewal (Corporate)	4	2,843	11,372	2,843	11,372	0
Key Employee	28	162	4,536	0	0	4,536
Key Employee (Renewal)	384	115	44,160	0	0	44,160
Replace ID / Certificate	5	26	130	26	130	0
TOTAL	591*		260,998		22,542	238,456

4.2.4.1 Expected benefits

Under Option D (tiered fee structure), the following benefits may apply:

- The Government will be able to recoup all of its costs in relation to the administration of all bookmaker and bookmaking related applications by corporate entities.
- For sole trader applicants, applications made on a no-cost basis means that the applicant could use the saving relative to the full cost recovery option to benefit their

professional activities. This will continue to protect the viability of the sector for on-course bookmakers.

4.2.4.2 Expected costs

On the other hand, the following costs may apply:

- From the Government's perspective, the VCGR will not be able to recoup any of its costs incurred in administering bookmaker and bookmaking related applications by natural persons. These costs must then be covered from the Government's consolidated revenue base. This effectively creates a taxpayer-funded subsidy for the bookmaking industry for their bookmaker and bookmaking related registrations in line with the Government's policy objectives in the 2006 'Leading the Field' racing policy statement.
- for corporate bookmakers – corporations applying for registration or renewal will sustain a direct financial impact. The financial impact is likely to be insignificant for such entities in context of their operating costs and balance sheet positions.

5 MULTI CRITERIA ANALYSIS

5.1 OVERVIEW

The objective of the Proposed Regulations is to prescribe fees that meet the costs of the efficient and effective administration of bookmaker and bookmaking related registrations, in a manner that is consistent with the *Cost Recovery Guidelines* and the 2006 'Leading the Field' racing policy statement. In order to achieve this objective, it is necessary to introduce fees on some users of the service to ensure the incremental costs of the Government are recovered. Options B to D allow recovery of these costs in a full, partial or tiered fee structure. They differ in terms of the quantum and/or allocation of these costs among specific user groups within the client base of bookmakers and bookmakers' key employees.

The purpose of the multi-criteria analysis is to undertake an assessment of each of the four viable options identified in section 4 above, and incorporates an analysis of the financial, economic, social and environmental implications for the groups of society that will be impacted by the Proposed Regulations, being those particular individuals and businesses that intend to apply for or renew their registrations as a bookmaker or a bookmaker's key employee, and the Government as the provider of the relevant administrative services. Each of the criteria used has been weighted to take into account its importance relative to other criterion used.

Due to the limited scope of the Proposed Regulations, the environmental impacts (based on the criteria in Chapter 5 of the *Victorian Guide to Regulation*) of adopting any of the options considered in this Regulatory Impact Statement are considered to be minimal. Accordingly, the remainder of this section will focus on the economic and financial impacts of the Proposed Regulations on all affected stakeholders.

5.2 THE CRITERIA USED

The following criteria have been used to determine the preferred option:

1. Ensuring the future and ongoing viability of the Victorian bookmaking industry and promoting the race-day presence of bookmakers on Victorian racetracks; and
2. Ensuring the efficient allocation of resources and the value that users place on the service equates to the costs of production;

Criterion one relates to the long-term viability of the Victorian bookmaking profession and ensuring that bookmakers continue to add to the excitement generated by the trackside atmosphere, and is considered to be the most important factor. Given the substantial benefits associated with eliminating financial barriers for sole trader bookmakers and their key employees associated with entry to the bookmaking profession, particularly at the smaller 'picnic' end of the scale, criterion one was given a 55 per cent weighting.

Criterion two, in relation to ensuring efficiency of resource allocation, relates primarily to the objective of recovering the costs of production borne by the Government as the service provider in registering bookmakers and their key employees. Criterion two was considered to be the next most important, given that the Government policy in the *Cost Recovery Guidelines* clearly indicated the need for implementation and operational costs to be recovered. Criterion two was weighted at 45 per cent.

In terms of methodology, an eleven point scale has been used:

- a score of -5 is assigned for negative outcomes relative to the base case — for example, an option that eliminated the race-day presence of bookmakers on Victorian race courses would score a -5 on criterion 1
- a score of 0 is assigned for neutral outcomes relative to the base case — for example, as the current arrangements do not recover any of the costs of the regulations, Option A (zero cost recovery) is awarded a zero for criterion 2; and
- a score of +5 is assigned for positive or desirable outcomes relative to the base case — for example, a full cost recovery in absence of any other factors would score a +5.

Each option is given a rating on a scale of -5 to +5 for each criteria based on expected outcomes under that particular option (the assigned score) relative to the base case. The assigned score for each criteria is adjusted to take into account its individual weighting (the weighted score). The weighted score for all criteria are totalled to form a final score for that option. The final score then becomes the overall basis on which each option is judged.

5.3 ANALYSIS

5.3.1 OPTION A – ZERO COST RECOVERY (THE BASE CASE)

Option A represents the base case scenario, and accordingly its weighted score for each of the criteria has been set at zero by default.

5.3.2 OPTION B – FULL COST RECOVERY

Adoption of this option would adversely impact on the long-standing Government policy commitment of supporting the sustainability of Victorian bookmakers and ensure that they continue to retain a visible race-day presence on Victorian racecourses. Accordingly, Option B was given the highest negative score possible (-5) on criteria one.

Conversely, Option B was given a score of (+4) on criterion two as this option provides a full cost recovery outcome consistent with the general principles of the *Cost Recovery Guidelines*. It is noted that the highest score of +5 was not given to acknowledge the possibility that not all sole trading bookmakers are likely to be discouraged from operating due to the introduction of fees.

The overall score using the balanced scorecard assessment for this option was assessed as 0.05.

5.3.3 OPTION C – PARTIAL COST RECOVERY

Option C represents an attempt to balance user pay principles and existing Government policy commitments in support of the bookmaking industry. With regards to bookmaker applicants who are natural persons, it can be argued that the imposition of some limited fees is reasonable given the approach adopted in other jurisdictions and the fact that the VCGR intends to undertake a range of additional probity, financial and commercial checks which were not required under the previous regulatory regime. With regards to bookmaker applications who are corporations, a policy of partial recovery is not supported as it does not fairly reflect additional costs involved and the capacity of such organisation to pay.

The Government's general cost-recovery policy is that fees be set on a full-recovery basis. Nonetheless, there are circumstances where it is desirable on other policy grounds to recover less than full cost, or not to recover at all. These include situations where social or equity policy considerations are deemed to outweigh the efficiency objectives associated with full cost recovery, and/or where full cost-recovery might adversely affect the achievement of other government policy objectives, such as those set out in the 2006 'Leading the Field' racing policy statement.

Adoption of this option would adversely impact on the long-standing Government policy commitment to support the sustainability of Victorian bookmakers and ensure that they continue to retain a visible race-day presence on Victorian racecourses. Whilst the negative impacts on the long-term viability of the bookmaking profession here are not as severe as is the case under Option B in that the fee level may not post a significant financial hurdle for some bookmakers, a score of -2 for criteria one for Option C was given to recognise the possible financial barrier this approach may pose to bookmakers who are sole traders, particularly those operating at the picnic level.

As for criterion two, Option C was given a score of +1 on the basis that it recovers some, but not all, of the production costs associated with registering bookmakers and their key employees.

The overall score using the balanced scorecard assessment for this option was assessed as -0.65. Because this score is negative (i.e. it is no better than the base case), this option is not recommended.

5.3.4 OPTION D – TIERED FEE STRUCTURE

Option D provides the strongest endorsement of the Government's long-standing commitment to support the sustainability of Victoria's bookmakers and ensure they retain a valuable race-day presence on Victorian racecourses.

For sole traders, retaining the zero-recovery approach in relation to registrations applications appears to be the best solution for carrying out the Government's 2006 'Leading the Field' racing policy statement objective of ensuring the ongoing viability of the bookmaking profession and their valuable race-day presence on Victorian racecourses.

It is recognised that there would be foregone costs associated with adopting the fee structure proposed under this option. Based on the projections in table 5 above, it is estimated that a total of \$203,608 in costs will be foregone by the Government on an annual basis. Although these foregone costs will be met by the Government and Victorian taxpayers, this is

outweighed by the expected benefits to society which flow from promoting the ongoing viability of the Victorian bookmaking industry and their contribution to the on-course experience for Victorian race-goers.

The imposition of fees on a full cost recovery basis on applications by corporate entities is considered appropriate given that it is anticipated such operators will conduct the majority of their business operators by telephone or via the internet. Accordingly, the overarching policy commitment to promoting a race day presence does not apply to this category of applicants. As previously outlined, the imposition of full cost fees also most fairly reflects the additional costs that will be incurred by the VCGR in processing corporate applications and the capacity of these organisations to pay.

Accordingly, criterion one was rated at zero for Option D, as it is considered that this option will not significantly impact upon the long-term viability of the Victorian bookmaking profession relative to the base case (i.e. zero cost recovery). In relation to criterion two, Option D was given a score of +0.5 on the basis that it recovers some, but not all, of the production costs associated with registering bookmakers and their key employees.

The overall score using the balanced scorecard assessment for this option was assessed as +0.225, being the highest overall score.

5.4 SUMMARY

The result of the balanced scorecard assessment is provided in Table 6 below.

Table 6 - Multi Criteria Assessment

		OPTIONS							
		Option A		Option B		Option C		Option D	
		Zero Recovery		Full Recovery		Partial Recovery		Tiered	
Criteria	Weighting (%)	Assigned Score	Weighted Score	Assigned Score	Weighted Score	Assigned Score	Weighted Score	Assigned Score	Weighted Score
Impact on long-term viability of bookmaking progression	55	0	0	-4	-2.2	-2	-1.1	0	0
Cost-recovery matches production costs	45	0	0	+5	+2.25	+1	+0.45	+5	+0.225
Total			0		0.05		-0.65		+0.225

Option D is has yielded the highest positive score and is, therefore, the recommended option. Table 6 above shows that in total, the Proposed Regulations scored the highest weighted score of 0.225, while Option A, the base case, scored the next most highly. The main driver behind the difference in scoring outcomes between the alternatives is that the first criterion (of financial impact on sole traders) has been weighted most heavily.

As noted above, the weighting towards the first criterion is justifiable considering the substantial benefits which flow from reducing as much as possible all financial barriers for sole trader bookmakers and their key employees in entering the bookmaking industry.

While these benefits are expected to be substantial for sole traders, there will nonetheless be a need to balance out the policy objectives set out in the 2006 'Leading the Field' racing policy statement with the requirements of the Cost Recovery Guidelines in relation to the administrative costs incurred by the VCGR.

Allowing corporate bookmakers to pay no registration fees is not considered appropriate, particularly given that:

- the proposed fees would be unlikely to significantly raise the costs of entry or production for these bookmakers;
- the assessment of probity for corporate bookmakers have considerable added complexity resulting in higher costs for the VCGR;
- a zero-cost recovery approach on corporations is inconsistent with other jurisdictions which require corporate bookmakers to pay substantial registration and/or annual licence fees; and
- a policy of partial recovery is not supported as it does not fairly reflect additional costs involved and the capacity of such organisation to pay.

Accordingly, a fee differential under Option D (tier fee recovery) is considered to be an appropriate mechanism, notwithstanding the negative scoring for cost-reflectiveness and the cross-subsidy between users implied in this option.

6 IMPACT ON SMALL BUSINESS

Under the recommended option, Option D, the Proposed Regulations would bring in new fees on applications made by corporate entities and their key employees. On the other hand, no fees will apply to applications by sole traders or natural persons.

This differential fee structure has been deliberately applied in order to achieve a balanced outcome whereby the Government is enabled to recover costs incurred in the course of discharging its administrative duties, and concurrently promote the ongoing viability of the Victorian bookmaking industry and ensuring bookmakers continue to remain a valuable presence on Victorian racetracks in accordance with the policy objectives set out in the 2006 ‘Leading the Field’ racing policy statement.

Given that the Proposed Regulations will only affect corporate bookmakers and their key employees, and that they do not introduce a substantial variation in compliance burden (see also section 7 below), it is considered that there would be no significant impact upon small business. Further consultation under the *Small Business Regulatory Impact Assessment Manual*¹⁶ is therefore not required.

It is noted that the decision not to impose fees on non-corporate bookmakers will mean that their presence in the market will be unaffected.

¹⁶ Op cit 15, pg G-1.

7 THE PREFERRED OPTION

The Government is proposing to make the Proposed Regulations under the *Gambling Regulation Act 2003* to address the main problem raised in section 2.2.1 above. The Proposed Regulations will prescribe new fees that the VCGR will charge for administering certain bookmaker and bookmaking related registrations in order to recover the costs associated with processing such applications.

Following consideration of all practicable options, the Government has concluded that on balance Option D (tiered fee recovery) most accurately reflects the current Government policy in relation to recoverability of costs associated with applications for bookmaker and bookmaking related registrations, and provides the strongest endorsement of the Government's long-standing commitment to support the sustainability of Victoria's bookmakers and ensure they retain a valuable race-day presence on Victorian racecourses.

The imposition of fees on a full cost recovery basis on applications by corporate entities is considered appropriate given that it is anticipated such operators will conduct the majority of their business operations by telephone or via the Internet. Accordingly, the overarching policy commitment to promoting a race day presence does not apply to this category of applicants. As previously outlined, the imposition of full cost fees also most fairly reflects the additional costs that will be incurred by the VCGR in processing corporate applications and the capacity of these organisations to pay.

For sole traders, retaining the zero-recovery approach in relation to registration applications appears to be the best solution for carrying out the Government's 2006 'Leading the Field' racing policy statement objective of ensuring the ongoing viability of the bookmaking profession and their valuable race-day presence on Victorian racecourses.

It is recognised that there would be foregone revenue associated with adopting the fee structure proposed under this option. Based on the projections in table 5 above, it is estimated that a total of \$238,456 in costs will be foregone by the Government on an annual basis. Although these foregone costs will be met by the Government and Victorian taxpayers, this is outweighed by the expected benefits to society which flow from promoting the ongoing viability of the Victorian bookmaking industry and their contribution to the on-course experience for Victorian race-goers.

Assessment of Costs and Benefits

Under Option D, the following benefits may apply:

- The Government will be able to recoup all of its costs in relation to the administration of all bookmaker and bookmaking related applications by corporate entities.
- For sole trader applicants, applications made on a no-cost basis means that the applicant could use the saving to benefit their professional activities.

On the other hand, the following costs may apply:

- From the Government's perspective, the VCGR will not be able to recoup any of its costs incurred in administering bookmaker and bookmaking related applications by natural persons. These costs must then be covered from the Government's consolidated revenue base. This effectively creates a taxpayer-funded subsidy for the bookmaking industry for their bookmaker and bookmaking related registrations in line with the Government's policy objectives in the 2006 'Leading the Field' racing policy statement.
- for corporate bookmakers – corporations applying for registration or renewal will sustain a direct financial impact. The financial impact is likely to be insignificant for such entities in context of their operating costs and balance sheet positions.

How the Preferred Option Will Function in Practice

In terms of implementation and enforcement, the feasibility of the Regulations must also be addressed. A measure of the effectiveness of the Proposed Regulations is the likely level of compliance. Option D will function by continuing the existing policy of zero fees to be applied to applications for bookmaker and bookmaking related registrations made by natural persons, while introducing a policy of full cost recovery for applications by corporations.

An applicant pays the fees (if applicable) at the time they submit an application for registration or renewal to the VCGR.

The significant penalties contained within the *Gambling Regulation Act 2003* for betting by persons or companies not registered by the VCGR as bookmakers will ensure compliance with the regulations by any corporation intending to conduct betting operations in Victoria.

In this case, non-compliance is also unlikely to be an issue as the relevant authorising sections of the *Gambling Regulation Act 2003* require that an application for registration, certification or renewal be accompanied by the prescribed fee.

Given the fee-based nature of the Proposed Regulations, they may be described as self-enforcing with the only cost of enforcement being the cost of returning to the applicant an application that is not accompanied by the prescribed fee. Therefore, the Proposed Regulations are likely to be feasible.

The application process

As stated above, an applicant pays the fees (if applicable) at the time they submit an application for registration or renewal to the VCGR (please refer to www.vcgr.vic.gov.au as the licensing body for further details).

8 CHANGE IN REGULATORY BURDEN

As a result of the Victorian Government's 2010 *Victorian Regulatory Change Measurement Manual* policy statement and the *Reducing the Regulatory Burden* initiative, all significant new administrative burdens created by legislation or regulation are required to be measured using a Regulatory Change Measurement methodology, established by the DTF. The results of this analysis are generally expected to be reported in a Regulatory Impact Statement in respect of the relevant proposed regulations that would impose significant new administrative burdens, where feasible.

A Regulatory Change Measurement analysis is required where there is prima facie evidence that the change in regulatory burden is likely to be material. A regulatory change is material if the change in administrative burden experienced by the affected sector is greater than \$250,000 per annum or the change in the sum of regulatory burdens within scope of RRB initiative, experienced by the affected population, is greater than \$500,000 per annum.. According to the Victorian Regulatory Change Measurement Manual, the sum of regulatory burdens within scope include all compliance costs (including administrative and substantive compliance costs) as well as costs of delays.

In this regard, it is noted that the Proposed Regulations simply imposes new fees on certain bookmakers and their key employees in respect of functions the VCGR has carried out since 1 January 2009. It is determined that the changes introduced by the Proposed Regulations will not lead to a material change in regulatory burdens for Victorian businesses.

The basis for this view stems from the fact that any additional administrative burden imposed on business as a result of the new processes for determining whether an applicant is suitable to be registered or reregistered as a bookmaker or bookmaker's key employee are, in practice, attributable to the requirements of the *Gambling Regulation Act 2003*, rather than the Proposed Regulations per se. This reflects the fact that the Act establishes the relevant criteria for assessment (and hence, is primarily responsible for the nature of the administrative processes followed), whereas the Proposed Regulations merely set the fees to be charged. Accordingly, no Regulatory Change Measurement analysis is required for the purposes of this Regulatory Impact Statement.

9 COMPLIANCE WITH NATIONAL COMPETITION POLICY

The National Competition Policy (NCP) is the product of Australia's landmark microeconomic reform program which began in October 1992, when the then Prime Minister commissioned Professor Hilmer to undertake an independent Inquiry (hereafter the Hilmer Report) into a national competition policy.

One of the key principles espoused by the NCP is that competitive markets will generally best serve the interests of consumers and the wider community. Under the *Competition Principles Agreement* formalised on 11 April 2005, the Federal Government and all State and Territory Governments undertook a commitment to identify, review and reform any new or existing legislation that restricted competition.

Clause 5(1) of the *Competition Principles Agreement* sets out the basic principle that must be applied to both existing and proposed legislation:

'The guiding principle is that legislation (including Acts, enactments, Ordinances or Regulations) should not restrict competition unless it can be demonstrated that:

- (a) the benefits of the restriction to the community as a whole outweigh the costs; and*
- (b) the objectives of the legislation can only be achieved by restricting competition'*

Clause 5(5) further stipulates:

'Each party will require proposals for new legislation that restricts competition to be accompanied by evidence that the restriction is consistent with the principle set out in sub-clause (1)'

Accordingly, each Regulatory Impact Statement must include a section providing evidence that the proposed regulatory instrument is consistent with these NCPA obligations.

Competition is defined by the Hilmer Report as the "striving or potential striving of two or more persons or organisation against one another for the same or related objects". The Hilmer Report later adds, "...it is the striving to meet the same consumer need that is the essence of competition".

In this case, the relevant 'consumer need' is for the provision of competitive bookmaking services in Victoria. The key issue, therefore, is whether the fees proposed by Option D under the Proposed Regulations restricts competition in the provision of bookmaking services in Victoria.

In this regard, the *OECD Competition Assessment Toolkit* provides a checklist for identifying potentially significant and negative impacts on competition, where a proposal has any of the following three effects:

1. the proposal limits the number or range of suppliers;
2. the proposal limits the ability of suppliers to compete; or

3. the proposal reduces the incentives of suppliers to compete vigorously.

For the purposes of this Regulatory Impact Statement, none of these criteria can be said to apply to the introduction of the Proposed Regulations for the following reasons:

- the number or range of corporate bookmakers is unlikely to be limited as the quantum of the proposed fees do not significantly raise the cost of entry for these bookmakers;
- the ability of corporate bookmakers to compete is unaffected as the proposed fees do not significantly raise the costs of production for such bookmakers; and
- finally, incentives for corporate bookmakers to compete vigorously would not be diminished (i.e. would remain the same) as the incentive to compete is not distorted, for example, by a requirement to self-regulate or publish market-sensitive information.

It is also noted that the decision not to impose fees on non-corporate bookmakers will mean that their presence in the market will be unaffected.

Therefore, it is concluded that the Proposed Regulations do not restrict competition, and that they are fully compliant with the NCP Agreements.

10 CONSULTATION

Preliminary consultations with the VCGR were undertaken during the course of the development of the Proposed Regulations. Given the limited nature of the Proposed Regulations, no preliminary consultation with stakeholders has been undertaken in relation to the Proposed Regulations prior to commencement of the statutory consultation period. It is noted that consultation on bookmaker regulatory reform was previously undertaken with a wide range of stakeholders throughout the Victorian Racing Industry as part of the Bookmaking Reforms Working Party's review in 2007. These stakeholders included the Victorian Bookmakers Association, Racing Victoria Limited, Harness Racing Victoria, Greyhound Racing Victoria and Tabcorp, as well as all relevant Business Units within the Government.

The publication of this Regulatory Impact Statement provides an opportunity for public comment on the Proposed Regulations, the policy alternatives and the costs and benefits associated with each policy option.

The Regulatory Impact Statement will be exhibited for a period of at least 28 days on the department's website and advertised in accordance with the requirements of the *Subordinate Legislation Act 1994*. Although Government policy is for such consultation periods to be extended to 60 days where feasible, this is not considered to be necessary or appropriate in the current situation given the limited scope and extent of issues arising from the Proposed Regulations.

Additionally, the Regulatory Impact Statement will be circulated to the following stakeholders at the commencement of the statutory consultation period:

- Racing Victoria Limited;
- Harness Racing Victoria;
- Greyhound Racing Victoria;
- Victorian Bookmakers' Association;
- Australian Bookmakers Association;
- Tabcorp Holdings Limited; and
- All relevant Business Units within the Government.

11 APPENDIXES

(This section has been left blank by intention)

APPENDIX 1: THE PROPOSED REGULATIONS

Gambling Regulation Amendment (Bookmaking Related Registration Fees) Regulations 2010

S.R. No.

TABLE OF PROVISIONS

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STATUTORY RULES 2010

First Draft 19/8/2010

S.R. No.

Gambling Regulation Act 2003

Gambling Regulation Amendment (Bookmaking Related Registration Fees) Regulations 2010

The Governor in Council makes the following Regulations:

Dated:

Responsible Minister:

ROB HULLS

Minister for Racing

Clerk of the Executive Council

1 Objective

The objective of these Regulations is to amend the Gambling Regulation Regulations 2005 to prescribe certain fees to accompany applications for registration as a bookmaker, or as a bookmaker's key employee for the purposes of the **Gambling Regulation Act 2003**.

2 Authorising provision

These Regulations are made under section 11.2.1 of the **Gambling Regulation Act 2003**.

3 Commencement

These Regulations come into operation on 1 January 2011.

4 New Division 7 of Part 9 inserted

After Division 6 of Part 9 of the Gambling Regulation Regulations 2005¹ insert—

"Division 7 – Bookmaking registration

106A Fee for registration as bookmaker

For the purposes of section 4.5A.2(2)(b) of the Act, the prescribed fee to accompany an application for registration as a bookmaker is—

- (c) in the case of an applicant who is a corporation, 461.85 fee units;
or
- (d) in the case of an applicant who is a natural person, nil.

106B Fee for registration as bookmaker's key employee

For the purposes of section 4.5A.3(2)(b) of the Act, the prescribed fee to accompany an application for registration as a bookmaker's key employee is nil.

106C Fee for replacement certificate of registration or identity card

For the purposes of section 4.5A.6(4)(b) of the Act, the prescribed fee to accompany an application for a replacement certificate of registration or

identity card with respect to a bookmaker or bookmaker's key employee is 2.14 fee units.

106D Fee for registration renewal

- (1) For the purposes of section 4.5A.13(2) of the Act, the prescribed fee to accompany an application for a new registration as a bookmaker is—
 - (c) in the case of an applicant who is a corporation, 237.81 fee units;
or
 - (d) in the case of an applicant who is a natural person, nil.
 - (2) For the purposes of section 4.5A.13(2) of the Act, the prescribed fee to accompany an application for a new registration as a bookmaker's key employee is nil.
-

ENDNOTES

- ¹ Reg. 4: S.R. No. 61/2005 as amended by S.R. Nos 100/2007, 108/2009, 141/2009 and 167/2009.

APPENDIX 2: INTERSTATE COMPARISON OF BOOKMAKER AND BOOKMAKING RELATED REGISTRATION FEES

Description	VIC	NSW ¹⁷	QLD ¹⁸	NT ¹⁹	ACT ²⁰	WA	SA	TAS
Bookmaker registration (Sole trader)	\$0	N/A	\$1,959	\$115 (metro race bookmakers) \$25 (country race bookmakers)	\$756 (sports bookmakers) \$179 (race bookmakers)	\$620	\$204	\$133 (\$266 if accepting bets by telephone)
Bookmaker registration (Corporation)	\$0	N/A	\$5,630	\$5,750 (sports bookmakers)	\$583 (sports bookmakers) with an additional \$179 per registered Director.	\$620	N/A	\$133 (\$266 if accepting bets by telephone)
Annual renewal - bookmaker registration (Sole Trader)	\$0	N/A	N/A	\$115 (metro race bookmakers) \$25 (country race bookmakers)	\$11,637 (sports bookmakers) \$79 (race bookmakers)	\$340 (if annual turnover < \$250k) \$685 (if annual turnover > 250k but less than \$1 million) \$1030 (if annual turnover > \$1 million)	\$133	\$133 (\$266 if accepting bets by telephone)
Annual renewal - bookmaker registration (Corporation)	\$0	N/A	N/A	\$5,750 (sports bookmakers)	\$11,637 (sports bookmakers)	\$340 (if annual turnover < \$250k) \$685 (if annual turnover > 250k but less than \$1 million) \$1030 (if annual turnover > \$1 million)	N/A	\$133 (\$266 if accepting bets by telephone)
Key Employee Registration	\$0	N/A	N/A	\$20	\$179	\$30 (bookmakers employee) \$150 (bookmaker's manager)	N/A	\$13
Annual renewal of key employee registration	\$0	N/A	N/A	\$20	\$28	\$30 (bookmakers employee) \$80 (bookmaker's manager)	N/A	\$13
Replacement of lost registration certificate	\$0	N/A	N/A	\$0	\$28	\$30	\$0	\$0

¹⁷ Responsibility for bookmaker and bookmaking related registration and licensing in New South Wales belongs to the relevant racing controlling bodies.

¹⁸ Perpetual registration eligibility certificates are issued by the Queensland Office of Liquor and Gaming Regulation (i.e. no annual renewal fees apply). Holders of an eligibility certificate are also required to separately apply to relevant racing control bodies for a bookmaking licence.

¹⁹ Race bookmaker registration in the Northern Territory is limited to natural persons. Sports bookmaker (i.e. corporate telephone/internet bookmakers) registration is open to natural persons and corporations. These costs do not include the cost of conducting police checks in the Northern Territory.

²⁰ Race bookmaker registration in the Australian Capital Territory is limited to natural persons. Sports bookmaker (i.e. corporate telephone/internet bookmakers) registration is open to natural persons and corporations.

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APPENDIX 3: SUMMARY OF VCGR COST ESTIMATES

This section provides a breakdown of the VCGR's costs in assessing different categories of applications for bookmaker and bookmaking related registrations.

The calculation for the processing cost for each application category incorporates:

- labour costs, including time spent by the VCGR staff on processing, evaluating the application, meeting with the applicant and other relevant parties, preparing recommendations to the members of the VCGR, considering all materials and making a decision as to whether registration should be granted;
- actual probity expenses (for example, police checks, credit checks, Australian Investment and Securities Commission checks and other relevant searches); and
- incidental expenses and consumables.

The labour cost component constitutes the majority of the processing cost for each application. In order to calculate the labour costs, it was necessary to assume an estimated average of time spent per application by:

- by the licensing analyst and senior analyst on various matters, such as liaising with the applicant, checking their probity and finances, conducting an initial assessment, file preparation and maintenance, database maintenance, assessment of financial standing, preparing a Commission paper, and issuance of provisional licence and information package to the applicant.
- by the Deputy Director, Executive Commissioner, Deputy Chairperson and Chairperson in reviewing each application is also included, as is time spent on miscellaneous administration by the Administration Officer and Commission Secretariat in processing the necessary paperwork; and
- by members of the Compliance and Investigation Branch (CIB) in preparing and carrying out an investigation, conducting interviews and taking fingerprints, preparing and reviewing a report, and preparing legal advice on gaming and administration law.

Incidentals costs vary depending on the nature of the application, and may include items such as an ASIC Organisation extract (\$17), an ASIC person search (\$33), a Dun & Bradstreet credit worthy check (\$3.75), and transcripts of taped interviews (\$6/page).

The processing cost also takes into account the difference between simple and complex applications. The total costs for complex applications are generally higher, reflecting the higher labour costs, actual probity expenses and incidental expenses and consumables involved. Depending on the nature of the application:

- a simple application will generally involve a bookmaking registration application made by a natural person with no associated individuals and no issues of concern with the applicant or any associate; and

- a complex application will involve applicants that are considered to have more complex business arrangements, including one or more associated entities and/or associated individuals, and other issues of concern, such as non-disclosure or probity checks requiring a more detailed investigation and related external media searches.

For example, the labour cost figure for each application category was calculated by multiplying the estimated average of time spent by each staff member against the mid-point of their respective salary. This calculation was performed twice (i.e. for simple and complex applications) for each category of application.

The following table shows the labour and incidental costs (excluding consumables) that are estimated for each application category.

Application	Category	Simple Application Cost (\$)	Complex Application Cost (\$)
Registration as a Bookmaker	Sole Trader	1,698	6,516
Registration as a Bookmaker	Corporation	4,545	14,101
Renewal of Bookmaker Registration *	Sole Trader	840	2,981
Renewal of Bookmaker Registration *	Corporation	2,387	6,747
Registration as Bookmakers' Key Employee		88	1461
Renewal of Registration as Bookmaker's Key Employee *		42	1414

The processing costs for each application category have been calculated on a weighted average of simple and complex applications. In this regard, the VCGR has estimated that around 90 per cent of bookmaker registrations will be simple, with the remaining 10 per cent being complex applications. For bookmakers' key employees the VCGR estimates that 95 per cent of these registrations will be simple, with the remaining 5 per cent being complex applications.

The following table shows the corrected processing costs (excluding consumables) after applying the weighted average ratios:

Application	Category	Simple Application Cost (\$)	Complex Application Cost (\$)
Registration as a Bookmaker	Sole Trader	1,529	651
Registration as a Bookmaker	Corporation	4,090	1,410
Renewal of Bookmaker Registration *	Sole Trader	757	299
Renewal of Bookmaker Registration *	Corporation	2,149	675
Registration as Bookmakers' Key Employee		84	73
Renewal of Registration as Bookmaker's Key Employee *		40	71

After taking into account consumables, the final processing costs for each application category are as follows:

Application	Category	Processing Cost (\$)
Registration as a Bookmaker	Sole Trader	2,200
Registration as a Bookmaker	Corporation	5,520
Renewal of Bookmaker Registration *	Sole Trader	1,076
Renewal of Bookmaker Registration *	Corporation	2,843
Registration as Bookmakers' Key Employee		162
Renewal of Registration as Bookmaker's Key Employee *		115
Replacement of Bookmaker or Key Employee Certificate / Identity Card		26

Costs associated with the completion of these activities are currently being absorbed by the VCGR, consistent with the Government's long-standing policy of zero-fee recovery in relation to bookmaker and bookmaking related registrations.

1 October 2010

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Dear Mr Chng

ASSESSMENT OF REGULATORY IMPACT STATEMENT

Thank you for seeking an assessment of the Regulatory Impact Statement (RIS) on the proposed *Gambling Regulation Amendment (Bookmaking Related Registration Fees) Regulations 2010*. The Victorian Competition and Efficiency Commission (VCEC) received the final version of the above RIS and draft regulations on 29 September 2010.

The VCEC assesses the adequacy of the RIS prior to the public consultation process as required under section 11 of the *Subordinate Legislation Act 1994*.

I advise that the RIS meets the requirements of section 10(3) of the *Subordinate Legislation Act 1994*.

The VCEC's assessment is based on the adequacy of the evidence presented in the RIS and is focused on the quality of the analysis rather than the merits of the proposal itself. Feedback from affected parties during public consultation may provide further information on the nature and size of the costs and benefits. This must be taken into account when making the final decision as to whether or not to proceed with the proposal.

In the interests of transparency, most departments and agencies publish this assessment letter alongside the RIS when it is released for consultation. The VCEC recommends that you do the same.

The VCEC is building a database of Victorian Government RISs and statements of reasons for change, and will be putting your material on our website when it is released. Please inform us when you have placed this RIS on your website. Please also provide us with an electronic copy of your statement of reasons for changes to the final regulations when they are provided to the Scrutiny of Acts and Regulations Committee (refer 5.53 *Subordinate Legislation Act 1994 Guidelines*, 17 January 2005).

If you have any questions, please contact RegulationReview@vcec.vic.gov.au.

Yours sincerely



Sam Abusah

Assistant Director

Victorian Competition and Efficiency Commission