

BETFAIR PTY LTD

**SUBMISSION TO THE JOINT SELECT COMMITTEE ON
GAMBLING REFORM**

**INQUIRY INTO THE INTERACTIVE GAMBLING AND
BROADCASTING AMENDMENT (ONLINE
TRANSACTIONS AND OTHER MEASURES) BILL 2011**

EXECUTIVE SUMMARY – THE KEY ISSUES

Betfair welcomes the opportunity to make this submission to the Joint Select Committee's inquiry into the draft Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011 (**Draft Bill**).

Betfair has a number of concerns with the rationale behind, and the terms of, the Draft Bill and we detail these concerns below. We respectfully consider that the Committee should not support the Bill on the basis that it does not provide effective protections around problem gambling, offshore wagering operators and gambling related cheating and corruption in sport and fails to address many of the complex issues that are presently being considered by a number of committees and inquiries.

Further, given the work currently being undertaken by this Committee and the Council of Australian Governments Select Council on Gambling Reform, as well as the Federal Government's impending review of the *Interactive Gambling Act 2001* (Cth), we consider that this is an inappropriate time for such legislation to be formulated and considered. Any legislative reform pertaining to gambling will have broad reaching social and economic impacts for the wagering industry and Australian citizens more generally. It is therefore of utmost importance that due consideration be given to all of the relevant issues and stakeholder views sought, prior to legislation being introduced to Parliament.

This submission should be read in conjunction with Betfair's previous submission to the Joint Select Committee on Gambling Reform in relation to the Committee's inquiry into the prevalence of interactive and online gambling in Australia and gambling advertising (**Main Submission**).

Betfair's position on each of the key issues contained in the Draft Bill have been addressed in the Main Submission, however, for the sake of completeness, we briefly summarise these below.

- Betfair advocates a regulation over prohibition approach in relation to online wagering. Betfair shares the serious concerns of a broad range of industry stakeholders, responsible gambling groups and academics that the prohibition of certain forms of online wagering (e.g. in-play betting, exotic betting, betting on losing outcomes, online poker etc) will encourage Australian residents to continue to wager with offshore operators. Alarming, these operators:
 - are not licensed and regulated in Australia and in some circumstances are totally unregulated;
 - are often not required to provide consumer safety measures, putting Australian residents' personal details and funds at risk;
 - have not executed information sharing information with Australia's sports governing bodies, causing potential concerns regarding integrity;
 - do not advocate responsible gambling nor provide responsible gambling tools (e.g. loss/deposit limits, self exclusion facilities, links to gambling help lines); and

- are not required to pay licensing fees and taxes to Australian governments, thus causing significant revenue leakage to offshore jurisdictions.
- Regulation of the online gambling sector should be accompanied by a series of harm minimisation measures to be imposed on wagering operators.
- Wagering operators must work closely with governments and sports governing bodies to proactively address gambling related corruption in sports. Betfair is strongly committed to providing all necessary information to sports governing bodies on a timely basis in order to assist uphold the integrity of Australian sport.
- It is important for the Committee and the Federal Government to take advice and canvass views from all stakeholders in the gambling industry rather than pre-emptively introduce legislation. The Draft Bill appears to be largely at-odds with a majority of the submissions made to the Committee – including those submissions made by sports governing bodies and responsible gambling advocacy groups.

Betfair considers that several facets of the Draft Bill:

- adopt a broad-sweeping prohibition approach that is likely to encounter similar enforcement issues to the current IGA provisions and mean that Australia will be forced to remain reliant on overseas regulatory support to be successful, particularly in the online sector;
- do not address the key issues associated with problem gambling and will do little to reduce the prevalence of problem gambling in Australia;
- are discriminatory against corporations and place certain Australian wagering operators at a competitive disadvantage;
- have been introduced prematurely given the current work being done by a number of committees and inquiries; and
- are not grounded in a Constitutional Head of Power raising significant concern over the Federal Parliament's constitutional ability to enact such legislation.

ADDRESSING THE KEY TERMS OF THE BILL

Section 3: Prohibition on corporations offering gambling services

Section 3 of the Draft Bill would prohibit corporations from offering exotic betting, in-play betting and betting on losing outcomes (**Prohibited Offerings**). We address each element of the proposed prohibition below.

Corporations

The Draft Bill seeks only to prohibit corporations from accepting bets on the Prohibited Offerings, which will allow bookmakers operating as sole-traders or in partnership to continue to offer these bet types to Australian residents. Accordingly, the proposed prohibition fails to prevent Australian punters from being able to place wagers on the Prohibited Offerings. The target of the legislation has clearly been missed.

Further, Betfair considers that any prohibition that applies only to wagering service providers which are corporations is discriminatory in nature and places certain Australian licensed operators on an uneven playing field.

In-Play Betting

In-play betting allows punters to place wagers during the course of an event. For many punters, this type of betting is crucial for hedging bets to minimise their exposure or enable a guaranteed return from an event.

In March 2009 the UK Gambling Commission conducted an exhaustive review of in-play betting across Europe, where it has been used by punters for a number of years.¹ The Commission concluded that in-play betting doesn't require special regulatory treatment – that is, treatment in isolation of other types of betting which occurs before an event begins. Furthermore, the Commission found no evidence to suggest that in-play betting posed a specific, identifiable risk to problem gambling.

A blanket ban on in-play betting will merely exacerbate the current situation as Australian residents will continue to wager with offshore operators who are likely to continue ignore Australian laws in a similar vein as they are presently ignoring the *Interactive Gambling Act*. The key concern from a responsible gambling perspective is that Australian punters who seek to bet offshore will not be afforded the protections relating to security of customers' funds and identities, problem gambling and sporting integrity that can be offered by Australian regulated operators.

¹ Gambling Commission (UK): In running (in-play) betting: Position Paper (March 2009) Available at: <<http://www.gamblingcommission.gov.uk/pdf/In-running%20betting%20position%20paper%20-%20March%202009.pdf>>

Importantly, offshore operators have not executed Information Sharing Agreements with Australian sporting and racing bodies and therefore there exists a “blind spot” in relation to maintaining the integrity of Australian sport. Further, this represents a significant missed revenue opportunity for Australian governments.

The Committee should reject the clause in the Draft Bill and favour regulation of in-play betting rather than prohibition in order to prevent Australians from wagering with illegal offshore operators who have no practically enforceable obligations to promote and action responsible gambling nor provide adequate player protection (e.g. identity and funds) measures.

Exotic or Spot Betting

Micro or exotic betting involves placing a bet on an incidental aspect of a sporting contest. Betfair considers that wagering operators must be sensible in the types of markets that are offered to customers.

As an approved wagering operator of all of Australia’s major sporting bodies, Betfair seeks approval from the relevant governing body for all markets it intends to offer on a sporting event. Betfair does not offer markets or bet types without specific approval and works with the sporting bodies to ensure that exotic betting is not offered on events that are open to manipulation.

Betfair considers that:

- (a) the sports themselves are in the best position to determine whether a particular bet-type is liable to any form of corruption or manipulation and any decision should remain in the hands of the sporting bodies to reasonably determine the number and types of exotic markets that are offered on a particular event; and
- (b) as with all forms of prohibition in an increasingly borderless world, the Bill will not be successful in preventing Australian residents from continuing to wager on exotic bets; it will simply encourage Australians to bet with offshore operators who will continue to evade Australian legislative and licensing requirements and often do not afford the appropriate player protection and responsible gambling measures.

Betting on Losing Outcomes

Betfair strongly rejects the proposed ban on offering wagers on “losing outcomes”, which it considers is aimed at Betfair, Australian’s only licensed betting exchange.

There is a misapprehension that the only betting platform on which a punter can lay horses is a betting exchange. This is not the case. It has long been possible to oppose horses through “traditional” channels and technology has made it even easier. It can be achieved via a bookmaker or the TAB, simply by backing all other selections in the race and this has become even easier with automated bet placement technology.

When a customer places a bet on a winning outcome with any betting operator, they are betting that the other outcomes will lose. This is clearly illustrated in head to head sporting contests when a bet to win on one team is the equivalent of a bet for the opposing team to lose. In circumstances where backing an outcome to win is tantamount to backing the other outcome(s) to lose, it is artificial to draw a distinction between a bet to win and a bet to lose. In respect of contests with more than two runners (for example horse racing), a betting exchange provides a more efficient platform for customers to bet on a particular outcome to lose.

Since being licensed in Tasmania in 2006, Betfair has been permitted to offer its services to all Australians. In January 2007, Western Australia enacted legislation prohibiting the operation of betting exchanges in the state and making it an offence for residents to use a betting exchange. The Western Australian government justified the prohibition on the basis that betting exchanges supposedly threatened the integrity of racing in WA. The legislation was ruled constitutionally invalid by the High Court.² The Court found that a prohibition is not “necessary for the protection of the integrity of the racing industry of that State”. In reaching its decision, the High Court compared the three types of betting operators in the Australian marketplace – totalisators, bookmakers and betting exchanges – and determined that Western Australia was not permitted to treat betting exchanges differently on the basis of integrity.

As outlined earlier in this submission, racing and sporting industry bodies have embraced the betting exchange model as an effective tool in the detection and prevention of gambling related corruption. There is no evidence to suggest that since Betfair’s arrival in Australia, allowing punters to place lay bets has been the cause of any gambling related corruption in Australian racing or sport. We note that several of the submissions to the Committee that commented on Term of Reference (f) regarding the impact of betting exchanges did not consider that betting exchanges, nor betting on losing outcomes, pose any heightened risk to the integrity of sport. These submissions included those made by:

- **The Coalition of Major Professional and Participation Sports:** “...as long as the sports impose proper internal mechanisms for their own personnel...we do not take issue with the concept of betting to lose.”
- **Australian Bookmakers Association:** Betting exchanges are “a legitimate component of the Australian wagering industry.”
- **Tasmanian Department of Treasury and Finance:** Betfair is “a highly transparent wagering platform.”
- **Australian Racing Board:** “The Australian thoroughbred industry has a two-pronged strategy for addressing the integrity risks associated with betting exchanges: (a) access to betting information; and (b) rules dealing with industry insiders “laying” horses.”
- **UK Gambling Commission:** “There is very little evidence to suggest that it [the ability to bet on losing outcomes] has led to an increase in betting corruption. A properly regulated

² (2008) 234 CLR 418

betting exchange with built in market integrity checks can provide valuable intelligence and help detect activity that might otherwise have been missed.”

Schedule 1: Amendments to the *Interactive Gambling Act 2011 (Cth)* relating to online transactions

Betfair’s primary concern with the proposed amendments relating to the suspensions/cancellation of financial transactions for interactive gambling payments is that they are contrary to the promotion of responsible gambling and may even create a new wave of problem gamblers.

By allowing Australian residents to cancel deposits to an interactive gambling provider, the Draft Bill is effectively encouraging Australians to participate in these activities under the mis-apprehension that there is no risk of suffering losses. This scenario is clearly contrary to the intention of the Draft Bill which is to reduce the incidence of problem gambling amongst Australian residents.

We also note that the relevant financial transaction provider is not compelled under the Draft Bill to cancel or suspend the transaction. This, in addition to being a significant cause of uncertainty to the practical operation of the provision, may also cause Australians to gamble more than they can afford to lose because they believe that the transaction will be cancelled. In circumstances where the financial transaction provider does not cancel the transaction, individuals are likely to suffer significant losses as a direct result of this legislation.

Schedule 2: Amendments to the *Interactive Gambling Act 2001 (Cth)* relating to inducements to gamble

Wagering operators, like any other legal business, have the right to advertise their services responsibly. The offering of inducements is common place and legitimate for all types of businesses and as such, operators should be permitted to offer inducements to attract customers - provided such offerings are responsible.

Gambling related inducements are presently regulated on a state-by-state basis and Betfair welcomes the proposed nationally consistent approach. However the draft provision in the Bill is both confusing and limited in its application. Betfair implores the Committee to reject this provision and to develop a coherent national framework for the offering of inducements by wagering operators, which reflects both the wagering operators’ right to advertise and the importance of promoting gambling in a responsible manner.

Schedule 3: Amendments to the *Broadcasting Services Act 1992 (Cth)* relating to broadcasting about gambling

Betfair agrees that a uniform national advertising code of practice should be implemented across the wagering industry and therefore welcomes the Committee's inquiry into gambling advertising, however, we reject the provisions in the Draft Bill regarding advertising.

On Friday 27 May 2011, the Federal Government announced that it would take measures to reduce and control the promotion of live odds during sports broadcasts. In first instance the Federal Government is permitting the broadcasting industry a 12 month period to establish an industry code of conduct to control this type of advertising. Betfair is committed to engaging in this process to ensure that all of its advertising is presented in a socially responsible manner.

On the basis of the above approach, which has been embraced by a broad range of stakeholders, legislation should not be considered until such time that the wagering and broadcasting industries have had an opportunity to develop an appropriate framework for gambling advertising.

Schedule 4: Amendments to the *Criminal Code Act 1995 (Cth)* about obtaining a financial advantage by deception, in relation to a code of sport.

Betfair endorses the recommendations of the NSW Law Reform Commission (NSWLRC) whose report into "Cheating at Gambling" advocated that:

- (a) NSW (and in Betfair's submission, all States) should implement a specific statutory cheating offence in relation to sporting and other events. The offence would carry a maximum penalty of up to 10 years imprisonment and should extend to:
 - 1. insider trading in a similar vein to the Corporations Act provisions;
 - 2. cheating for reasons other than gambling; and
 - 3. certain individuals (including players and officials) who have knowledge of cheating, but fail to report it;
- (b) NSW (once again, all States) should codify gambling legislation into a new Gambling Act and establish an independent gambling authority with responsibility for all gambling activities (similar to the Victorian Commission for Gambling Regulation); and
- (c) a national approach should be pursued to ensure that cheating and corruption laws are consistent and that appropriate integrity measures are in place for all competitive sports.³

Betfair agrees with each of these recommendations and believes that a national sports related cheating framework is imperative in order to deter potential corruption in Australian sports. These recommendations were based on a great deal of research and rigorous legal analysis undertaken by

³ This has recently been advocated by the Federal and State Sports Ministers. See "Minister's Take United Stand against Match Fixing" (10 June 2011).

the NSWLRC. Betfair considers that they provide a much stronger and more coordinated framework than the provision in the Draft Bill.

The NSWLRC position should be preferred because:

- (a) in order to trigger an offence under the Draft Bill, the participant must both engage in the “deception” and themselves obtain the financial advantage, whereas the NSWLRC draft provision extends to third parties who gain a financial advantage as a result of the deceptive conduct.
- (b) the draft provision prescribes certain conduct that constitutes deception in the relevant sense but does not cover cheating or corruption that may occur for reasons other than gambling, which is effectively covered in the NSWLRC draft provision.
- (c) the wording in the proposed s135A.3 is difficult to follow and should be simplified by stating that person is guilty of an offence if:
 - a. the person obtains a financial advantage from any other person; and
 - b. the deception takes place in, or the financial advantage is obtained in, a Territory.
- (d) as appears to be tacitly accepted by the drafter of the provision (see the existence of a “Constitutional basis for Division” in s135A.2 and the clumsy wording in s135A.3), there exists significant doubt over the constitutional basis upon which the Federal Parliament could enact these provisions.

For these reasons, the Committee should advocate that each of the States and Territories enact nationally consistent legislation that mirrors the Victorian Sports Betting Act and the NSWLRC draft cheating provision.