



BETFAIR PTY LTD

**SUBMISSION TO THE DEPARTMENT OF BROADBAND,
COMMUNICATIONS AND THE DIGITAL ECONOMY**

REVIEW OF THE INTERACTIVE GAMBLING ACT 2001

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EXECUTIVE SUMMARY

Betfair operates a fixed odds wagering business. It provides products through a betting exchange platform, where punters effectively bet against one another, in a similar way to buying and selling on the stock exchange. Technically, Betfair operates in a similar way to a bookmaker – accepting bets from customers, but only doing so where it is immediately and fully able to offset the risk of those bets against requests for bets from other customers. A customer can only bet with money they have in their account – and these monies are held on trust with the National Australia Bank – so there is no risk of the winnings on a successful bet not being paid.

Betfair welcomes the opportunity to make this submission to the review of the *Interactive Gambling Act 2001 (Cth) (IGA)* by the Department of Broadband, Communication and the Digital Economy (**Department**).

The Productivity Commission identified in its 2010 report into the gambling industry in Australia (**Productivity Commission Report**)¹, that the IGA has been largely ineffective in preventing the activities that it seeks to prohibit. As such, Australian consumers are openly and increasingly accessing illegal interactive gambling services that are provided by companies who choose to ignore the prohibitions contained in the IGA. For whatever reasons, the Australian authorities have not acted on the apparent breaches of the IGA. All of this means that Australia has become a haven for unregulated, and untaxed, online gambling operators.

Betfair reiterates its call for the removal of the prohibition on online in-play betting on sport and the gradual and considered move towards regulation of certain popular online interactive games (such as online poker). There are innumerable benefits in ensuring that these products, which will continue to be accessed by Australians regardless of where they are offered, are strictly regulated and controlled in Australia.

This approach would ensure that the issues surrounding problem gambling and integrity in sporting contests can be managed more effectively from within Australia. Further, Australian consumers of these services would be afforded enhanced consumer protection, tax revenues would remain in Australia and can be used to fund problem gambling programs and research projects and Australian operators will be able to compete with offshore gambling operators on an even playing field.

It is appropriate that the IGA contains increased recording and reporting requirements on Australian licensed operators in order to closely monitor the social impacts of interactive gambling. The government should also consider the establishment of education and information campaigns outlining the dangers of wagering with unregulated operators to encourage Australian consumers to migrate to regulated operators. Finally, Betfair considers it appropriate for the IGA to regulate the

¹ Productivity Commission Inquiry Report, Gambling Report No. 50 (2010)



advertising of non-wagering interactive gambling services to ensure that such advertising fosters responsible gambling and is not easily accessible by youth or vulnerable members of society.

The wagering landscape in Australia is undergoing a period of unprecedented change. Not since the introduction of totalisator betting several decades ago have there been so many opportunities and challenges - for governments, regulators, consumers and the industry for which wagering is an important direct or indirect source of income. Technology has led to an international market for gambling products, forever altering the wagering landscape. Racing is no longer the preferred gambling product in Australia for many punters who are now freely able to spend their wagering dollar on an increasing number of online and offline options, from poker machines to casinos and sports as well as poker and other card games. There is now a unique opportunity for Australian policymakers to jettison the outmoded and ineffective prohibition-based approach and pursue a strong regulatory path that will result in superior outcomes from a consumer protection and fiscal perspective.

INTRODUCTION

This submission will directly address the Department's terms of reference and specific questions in detail, but it will initially provide an outline of Betfair's scope and operations in Australia and internationally, as well as underlining some of the numerous practical measures the company applies in regard to harm minimisation and probity on the consumer side of the business and integrity issues on the supply side.

As Australia's only licensed betting exchange, Betfair believes it has an important contribution to make to the Department's review of the IGA. We welcome the opportunity to provide this submission and we would also welcome any opportunity to meet with the Department to discuss further the issues raised in this submission.

Betfair is strongly committed to harm minimisation in relation to problem gambling and we maintain a vigilant stance in regard to the integrity of all sports/racing on which we offer betting markets. Betfair is of the view that Australian licensed account-based wagering operators are better equipped than their cash-based or offshore counterparts to monitor and address the important issues of problem gambling and sporting integrity.

About Betfair

Betfair operates in a number of countries. It has more than 4.5 million customers worldwide, 200,000 of whom are in Australia and New Zealand. Betfair's Australian operations are strictly regulated by the Tasmanian Gaming Commission in accordance with the *Gaming Control Act 1993* (Tas). Betfair is required to adhere to a number of important probity and integrity provisions under this Act, including:

- the prevention of wagering on illegal events;
- permitting the Tasmanian Gaming Commission to override any betting exchange rules it deems to be oppressive or unfair;
- the requirement to verify the identity and age of all customers;
- allowing the betting exchange to freeze player funds immediately where inappropriate activity is suspected; and
- preventing wagering on any event the Commission considers unfit for betting.

Betfair Australasia is a 50-50 joint venture between Crown Limited (ASX listed) and Betfair Group plc (London Stock Exchange listed). Betfair's Australasian operations are based in Hobart, where more than 120 staff work in a state-of-the-art data and call centre. The company also has corporate operations in Melbourne and other staff in Sydney and Brisbane.



How a betting exchange operates

A betting exchange operates in a similar way to a stock exchange. Using sophisticated technology, Betfair administers markets where punters effectively bet against each other. For each transaction one punter is required to 'back' a result and another is required to oppose that outcome by placing a 'lay' bet. Punters are not aware of the identity of their opponents, but Betfair and its regulators have the capacity to view the transactions of every customer in 'real' time. Betfair's revenue is generated by a commission charged to winning customers that is generally between two and five per cent of a punter's net winnings on a particular market.

A number of demonstrations of betting with Betfair, including making a back and lay selection can be found at <http://www.betfair.com.au/demo/>.

The betting exchange model offers participants a number of advantages over traditional wagering products such as bookmakers and totalisator operators. Betfair offers punters better odds, a higher degree of flexibility and more control – through the ability for customers to set their own odds, to back and lay outcomes and to trade their positions more efficiently as odds change.

ADDRESSING THE REVIEW'S TERMS OF REFERENCE

GROWTH OF ONLINE GAMBLING SERVICES AND LINKS TO PROBLEM GAMBLING

1. What impact has the IGA had on the prevalence of problem gambling in Australia?

It is difficult to precisely measure whether the implementation of the IGA in 2001 has had an impact on problem gambling rates in Australia because there remains very little statistical data on this issue. According to Dr Sally Gainsbury, there has been little research directed at online gambling in an Australian context and as such there is a lack of information about demographics, extent of use and the impact of online gambling on Australians.² Whatever the case, it is important to distinguish the relatively small group of highly regulated Australian-based online wagering operators from the hundreds of illegal offshore online operators.

State, Territory and Federal regulators themselves seem unclear about where to draw the boundaries around what constitutes “problem gambling”. For example, in its online counselling service, the COAG-sponsored Gambling Helpline website lists as forms of problem gambling, share market trading and eBay.³ Betfair remains committed to assisting the conduct of research to provide a clearer picture of the wagering market and how spending habits in that industry relate to other forms of “problem spending”.

In an international context, the British Gambling Prevalence Survey of 2010 found that the rate of problem gambling among the adult population in the United Kingdom had remained largely unchanged since 2000, despite a slight rise in the period between 2007 and 2010.⁴ The survey identified 0.9% of the British adult population had a gambling problem, or around 236,000 adults. This study obviously occurred in a jurisdiction with a liberalised approach to online gambling and it would be expected that these results would be higher than in Australia.

Despite the lack of available data, it is clear that the IGA is currently failing to control Australians from participating in online gambling with offshore operators. Estimates cited by the Productivity Commission suggest that in excess of \$800 million was spent by Australians in 2009 with offshore online gambling operators.⁵ Accordingly, those problem gamblers with a preference for online gambling have, because of the structure of the prohibitions contained in the IGA, been offered little to no protection from a problem gambling and consumer protection perspective. The IGA therefore may be having an adverse effect on the prevalence of problem gambling amongst Australians.

² Gainsbury, S and Blaszczynski A – Submission to Joint Select Committee on Gambling Reform (JSCGR), p5

³ <http://www.gamblinghelponline.org.au>

⁴ British Gambling Prevalence Survey 2010 - Available at:

http://www.gamblingcommission.gov.uk/research_consultations/research/bgps/bgps_2010.aspx

⁵ Productivity Commission Report, Vol 1, p 8

One of the key deficiencies of the IGA is that it deregulated online gambling from a consumer perspective (e.g. it is not illegal for a consumer to play banned online casino games), but by prohibiting Australian entities from offering those services it made online gambling more dangerous for consumers. The Productivity Commission suggested that the current regulatory approach was unlikely to deter problem gamblers from accessing prohibited services.⁶

2. What are the risks to the prevalence of problem gambling of maintaining, removing or modifying the current prohibition of online gambling services? What are the risks in moving to a strongly regulated approach? How is it best to address these risks?

The vast majority of academic material on this point advocates that a regulated approach combined with strict harm minimisation measures is the most effective way to address the issue of problem gambling on online gambling services.⁷

According to a report conducted by the UK Gambling Commission in 2009,⁸ there is no evidence that online in-play betting (including micro betting after an event has commenced) poses a “specific, identifiable risk to problem gambling as opposed to other forms of betting or online gambling.”⁹ This study should provide the Department with considerable confidence that the removal of the prohibition on online in-play betting does not pose any heightened risks to the Australian public.

The establishment of a well regulated industry in Australia is likely to offer far better protection against the risks associated with online gambling services than the status quo. As Sparrow suggested, “combining a thoughtful regulatory regime with education, technology tools and support appears to be the most effective means of handling the realities and risks of online gambling”.¹⁰

It is apparent that the key risk of maintaining the status quo is to effectively encourage Australian consumers to transact with offshore operators and not afford them the appropriate protections. The key benefit of regulation is the increased control that would be obtained by Australia over the activities of its citizens.

⁶ Ibid, Vol 2, p 15.20

⁷ Ibid, Vol 2 p 15.28-31

⁸ 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>

⁹ Ibid, p8

¹⁰ Sparrow, M. ‘Can Internet Gambling Be Effectively Regulated? Managing The Risks’ (December 2009). Available at: <http://financialservices.house.gov/media/file/hearings/111/sparrow.pdf>

Any risks in removing the current prohibitions in the IGA may be offset and best addressed by the inclusion of mandatory harm minimisation and problem gambling measures in the legislation itself. By ensuring that Australian citizens can access a reasonable level of online gambling services with Australian licensed operators, it is Betfair's submission that more effective measures can be implemented to address problem gambling concerns.

Some State governments (notably those in Victoria and South Australia) have enacted legislation specifically aimed at reducing the number of consumers who open betting accounts with licensed wagering operators – and thereby depriving them of the most effective harm minimisation measures, which are only provided through account-based operators. They have done this purportedly with a view to limiting problem gambling. However, having left the door open to cash-based operators to continue offering incentives to consumers (by way of free bet vouchers, happy hours in Pub TABs and free pizzas at outlets) it seems clear that their motives more protectionist in nature than aimed at preventing problem gambling.

3. What impact have different types of online gambling had on youth in Australia?

There is no evidence to suggest that more youths (over the age of 18) are wagering online than have wagered using cash. However, there is anecdotal evidence that youths (both above and below the age of 18) have been rapid adopters of illegal online gambling products – particularly online poker.

It is of utmost importance that all online gambling operators have in place systems to eliminate (as far as possible) the risk that minors will be able to operate¹¹ an online gambling account.

There exists concern that in certain overseas jurisdictions that minors are easily able to participate in online gambling. This is largely fuelled by poor regulatory regimes and an unwillingness by operators to co-operate due to the costs involved with developing effective prevention mechanisms. This, however, is not the case in Australia where operators are subject to a strict identity verification regime and are strongly committed to preventing minors from transacting on their websites.

Betfair has a number of measures in place to ensure that minors do not access its website. Betfair has a strict requirement that every customer verify his or her identity and meets stringent identity checks. We are also committed to implementing all reasonable measures to ensure that minors are not encouraged to use our platform. This includes a responsible and sensible approach to the advertising of Betfair's products.

¹¹ By operate, we refer to the ability to open, fund, play and withdraw funds from a gambling account

Because Betfair derives only 3.9% of its total revenue from customers aged between 18 and 24, Betfair does not engage in the promotion of its product to young people – it is contrary to both Betfair’s corporate social responsibility obligations and its business interests.

THE IMPACT OF PLATFORM NEUTRALITY, DEVELOPING TECHNOLOGIES AND CONVERGENCE ON THE REGULATION OF GAMBLING SERVICES

1. What are the new technologies/platforms via which online gambling is offered and which of these is likely to grow most rapidly?

The global online gambling market is experiencing a period of significant growth. H2 Gambling Capital have reported that global online gambling revenue reached \$32 billion in 2011 at an annual growth rate of approximately 12% and now accounts for between 5-10% of the worldwide gambling market.¹² This growth has occurred as a result of the increased accessibility of internet, worldwide regulatory liberalisation and the emergence of new technologies such as smart phones and tablets.

There is a growing number of platforms and technologies upon which online gambling is now offered. Increasingly, online gambling services are being offered by smart phones, tablet devices and interactive television, but traditional computers are still the dominant means of access. Apart from their acceptance of cash from anonymous punters, in a technological and usability sense there is virtually no difference between betting with a licensed online wagering operator and betting through a TAB terminal.

Betfair considers that online gambling via smart phones and tablet devices has the greatest scope for growth in the short to medium term, albeit off a small base. This is primarily because of the rapid uptake of these devices amongst Australian consumers, which have the ability to quickly process data and undertake tasks with relative simplicity. Online gambling is only one of many industries which are likely to see significant growth given the onset of these devices.

It is not correct to say that new technology will, of itself, lead to an overall rise in problem gamblers. In fact, studies conducted by the UK Gambling Commission have found no evidence that there has been an increase in the incidence of problem gambling as a result of the emergence of new technologies.¹³ Betfair believes that the mechanisms in place for online, account-based betting could in fact lead to a reduction in the overall number of problem gamblers, or a net positive impact. Technology has the capacity to assist in effectively managing and restricting problem gambling.

¹² Cited in a report by KPMG ‘Online Gaming: A gamble or a sure bet’ p3

¹³ Gambling Commission (UK): Submission to the JSCGR, p8

2. Are there circumstances in which different approaches to regulation of gambling between different platforms/technologies should be retained?

The Department is currently conducting the Federal Government's "Convergence Review" which is examining the policy and regulatory frameworks that apply to the converged media and communications landscape in Australia. One of the guiding principles of the Convergence Review is that "Australians should have access to the broadest possible range of content across platforms, services and devices".¹⁴

According to the Convergence Review's Emerging issues Paper (**Issues Paper**), which was released on 6 July 2011:

Just about all platforms and devices in the convergent era are digital, which makes them able to converge to a common network that operates over a variety of infrastructure types. This means you can access the internet over your TV, listen to radio on your PC and watch video on your mobile device.¹⁵

The Issues Paper goes on to suggest that a policy framework should develop around a specific service regardless of its mode of delivery. The Issues Paper notes there are strong arguments in favour of regulatory parity on the basis that it is founded on the ideas of fair competition and technical neutrality.¹⁶

Platform neutrality in the online gambling sector is preferable because it will ensure that the IGA will be well equipped to deal with future consumer trends and methods of delivery, therefore allowing the provisions to have an increased shelf-life. One key reason that the IGA is presently ineffective is that it failed to regulate services, and instead focussed on the methods by which those services are delivered (e.g. telephone, internet) and therefore became antiquated on a rapid basis.

Betfair endorses the comments made in the Issues Paper and suggests that platform neutrality is the correct method by which the IGA should regulate each of the different technologies and devices upon which gambling services are offered.

There are a number of reasons why this should be the case, including:

- consistency of regulation;
- the increased public understanding of the laws regarding gambling; and

¹⁴ Department of Broadband, Communication and the Digital Economy 'Convergence Review: Framing Paper', p16

¹⁵ Department of Broadband, Communication and the Digital Economy 'Convergence Review: Emerging Issues Paper', p11

¹⁶ Ibid, p13

- competitive neutrality between operators who provide services on various platforms.

Platform neutral regulation also mitigates the risk of “regulatory bypass” occurring in circumstances where the same service is regulated on an inconsistent basis as a result of the method by which that service is delivered to customers. Neutrality creates parity between services based on end-user experience as opposed to particularly delivery methods.

3. Do the practicalities of telephone wagering still limit access to highly-repetitive forms of wagering as originally designed?

The current exemption in relation to telephone wagering contained in section 5(3) of the IGA continues to be effective to limit access to highly-repetitive forms of wagering, such as whether the next ball of a cricket match will be a no-ball. However, it is completely ineffective insofar as making highly repetitive cash bets with an un-manned TAB terminal or TAB operator is concerned.

The unintended consequence of these provisions is such that Australian licensed wagering operators are unable to offer online betting on sporting events – including on the final result of the game – once the event has commenced. In no sense can the outcome of a match be considered ‘micro betting’, and is clearly in sharp contrast to, for instance, a bet on the outcome of the next ball in a cricket match. Neither is it the case that betting on the outcome of the match can be considered a highly-repetitive form of wagering.

The prohibition is therefore incorrectly aimed at the platform by which the service is delivered rather than effectively regulating “highly-repetitive forms of wagering”. It is in this sense that the IGA’s prohibitions are outmoded, inconsistent and largely unenforceable given the global nature of the internet.

4. If a platform-neutral approach was adopted, what would the impacts be? How should this deal with future forms of gambling?

Implicit in a platform-neutral approach is that the regulation will have sufficient flexibility to deal with all developments in technologies and platforms merely by focussing on regulating the service itself.

A platform neutral approach that lifted the restrictions on online in-play betting on sporting events would:

- allow Australian licensed operators to compete on an even playing field with their offshore counterparts who largely ignore the prohibitions contained in the IGA;
- provide Australian consumers with increased consumer protection and harm minimisation measures which could be enshrined in legislation;
- allow Australian licensed operators to compete with their land and cash based counterparts;
- limit opportunities for “regulatory bypass”; and
- importantly, would not pose any heightened risk to the integrity of sporting events or to the prevalence of problem gambling rates in Australia.

Should certain forms of interactive gambling be deemed to be inappropriate for an Australian audience, the activity or bet-type itself should be prohibited across all platforms. This approach would be eminently more understandable by industry, regulators and most importantly, consumers.

By regulating the product and not the platform, the IGA will be well equipped to deal with any changes in the online wagering landscape. In this respect, we consider that the IGA should be amended to provide a regulatory framework rather than detailed and prescriptive legislation. Such an approach ensures that the IGA will be able to maintain pace with future development.

5. Has ‘in-the-run’ betting and ‘micro-betting’ increased the prevalence of problem gambling and/or the risks to the integrity of sport and/or the probity of the gambling market? If so, how and to what degree?

There is no Australian data presently available regarding whether in-play betting or micro-betting have increased the prevalence of problem gambling in Australia. However, according to a report conducted by the UK Gambling Commission in 2009, where in-play and micro betting are legalised, there is no evidence that online in-play betting (including micro betting after an event has commenced) poses a “specific, identifiable risk to problem gambling as opposed to other forms of betting or online gambling.”¹⁷

Betfair is a strong advocate of the need to ensure the integrity of sporting competitions in the face of genuine or perceived threats. However, we do not accept that in-play betting or micro-betting (as a general concept) pose any specific risks to the integrity of sports and this is a view that is shared by the Coalition of Major Professional and Participation Sports

¹⁷ Gambling Commission (UK): Submission to the JSCOG, p8

(COMPPS)¹⁸ and the UK Gambling Commission, which concluded that in-play betting does not require “any special regulatory treatment”¹⁹ and should be included in any overall effort to ensure that sports remain free of gambling related corruption. As outlined by the UK Gambling Commission in its 2009 report into “In Running Betting”, there have been relatively few incidents reported of concerns of in-play betting and even fewer after examination of those concerns.²⁰

Betfair does not offer micro betting on events that are open to manipulation and considers that wagering operators must be sensible in the types of markets that are offered to customers. The reality – at least in Betfair’s case – is that 95 per cent of the money wagered on most sporting events is on the actual outcome of a sporting event (including handicap markets).

As an approved wagering operator of all of Australia’s major professional 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. The sports themselves are in the best position to determine whether a particular bet-type is liable to any form of corruption or manipulation. Accordingly, 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 this is a view shared by Australia’s major professional and participation sports.²¹

Betfair agrees with COMPPS that the regulation of online in-play betting on sports will assist with the integrity management of sporting contests.²² Currently a number of offshore wagering operators illegally offer online in-play betting on Australian sports to Australian residents without providing access to the sporting bodies of such betting. Therefore Australian sports are being hampered in their efforts to protect the integrity of their sports because customers are being forced to use offshore wagering operators who refuse to share betting data and do not provide a product fee.

Betfair has invested heavily in technology and human resources to help guard against gambling-related corruption on its platform. One of the strongest weapons for protecting integrity is transparency – both in terms of publicly available information (such as volumes traded at particular prices over time) and the more sensitive information that Betfair makes available to regulators.

¹⁸ Coalition of Major Professional and Participation Sports: Submission to the JSCOGR

¹⁹ Gambling Commission (UK): ‘In Running (in-play) Betting: Position Paper’ (March 2009), p1

²⁰ Ibid, p8

²¹ Coalition of Major Professional and Participation Sports: Submission to the JSCOGR, p7

²² Ibid



Betfair's unprecedented audit trail is complemented by information-sharing agreements with industry bodies worldwide. The company pioneered such agreements - and they're now being widely replicated by other gambling operators. Among the sporting bodies that have signed information sharing agreements with Betfair are:

- Australian Football League
- National Rugby League
- Australian Rugby Union
- Cricket Australia
- Football Federation of Australia
- Tennis Australia
- PGA Tour of Australasia
- Association of Tennis Professionals
- International Cricket Council
- FIFA

Betfair has ready-made information that can be passed on to racing and sporting authorities in the case of a transgression of rules or suspicious behaviour. A number of high-profile cases have been prosecuted both in the UK and Australia using evidence provided by Betfair.

The best deterrent to unscrupulous behaviour is the likelihood of being caught, combined with serious sanctions. An account-based system that requires the identity of customers to be verified enables betting operators to quickly identify and expose perpetrators and pass on relevant information to authorities. All wagering operators should be required to enter into information sharing agreements with racing and sporting bodies to enable such bodies to obtain access to all relevant betting data in respect of their sport. It is also imperative that governments formulate and impose heavy penalties on anyone found to have engaged in gambling related corruption.

It is essential for Betfair's long term sustainability and that of the wagering industry generally, that its customers have confidence in the honesty of the markets on which they place bets. Betfair's business interests, therefore, are aligned with those of sports governing bodies and governments: all need to ensure that sport is conducted fairly and is free of corruption.

6. Should current rules regarding online 'in-the-run' betting and online 'micro-betting' be aligned with those in the offline world? Are there circumstances where they should not be aligned?

At the outset it is important to note that the IGA does not prohibit micro-betting per se. Micro-betting is only prohibited online and in circumstances where it is offered after a sporting event has commenced. Accordingly, our comments below are focussed primarily on in-play betting, which includes all bet types offered after the event has commenced.

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. Betfair and other Australian wagering operators are permitted to accept online in-play bets from customers who live in overseas jurisdictions such as New Zealand, South Africa and much of Europe.

In line with Betfair's submissions regarding platform neutral regulation, we consider that there is no valid or justifiable public policy reason to maintain the current prohibition on online in-play wagering in circumstances where it is permitted by telephone and by anonymous punters using cash at TABs or unmanned TAB terminals. There is no evidence that in-play betting, of itself, is likely to create problem gamblers, nor are there heightened integrity concerns that cannot be managed by wagering operators, the major sports and government regulators.

To the contrary, we consider that it is preferable for in-play betting to occur online via Australian licensed account based operators as opposed to unscrupulous and unregulated offshore operators. From an integrity perspective, this ensures that the operators and the sports governing bodies are able to accurately trace the identity of all individuals placing bets on an event. The advanced probity systems and identity checks conducted by online operators are significantly more effective than using CCTV footage or eyewitness accounts to identify punters who are placing wagers in cash based retail outlets. Further, account based wagering is also preferable from a problem gambling perspective as there are a suite of harm minimisation mechanisms in existence. Australian licensed operators, such as Betfair, have the ability to offer voluntary deposit and loss limits, exclusion facilities and prominently display responsible gambling messages on its websites.



The following table demonstrates in a general sense what is/is not permitted under the IGA and the anomaly therein:

	Pre-play	In-play
Telephone betting – sport	✓	✓
Telephone betting – racing	✓	✓
Online betting – sport	✓	X
Online betting – racing	✓	✓
Cash based betting – sport	✓	✓
Cash based betting – racing	✓	✓

Betfair believes restrictions on in-play betting have extended beyond their intended scope, which as can be discerned from the explanatory memorandum to the IGA to prevent micro-betting on a rapid and repetitive basis. The practicality of banning punters from betting in-play using the internet has effectively been rendered obsolete due to the convergence of technologies and the increased number of offshore wagering operators offering services to Australian residents.

Betfair also believes that the current prohibitions on in-play betting limit the funding opportunities available to Australia’s major professional sports and effectively encourage Australian residents to wager on sporting events with offshore operators who are not subject to this restriction - which also means that these punters are not afforded protections relating to security of customers’ funds and identities, problem gambling and sporting integrity.

Australia is the only jurisdiction in the world that allows online wagering on sport but at the same time prevents punters from using the internet to place in-play bets. To put it another way, except in Australia, wherever it is legal to place a wager over the internet, it is also legal to do so in-play on a racing or sporting event.

As has been identified by the Department, and explained elsewhere in Betfair’s submission, telephone betting is impractical for Australian customers trying to limit risk, particularly in

circumstances where an event hangs in the balance (e.g. a tie-break in tennis or the final few holes of a golf tournament).²³ By the time an Australian customer telephones to make an in-play transaction, the odds will often have changed (through weight of money coming from overseas customers who are betting online). The opportunity to trade out of an existing “position” has thus been missed.

Breaches of the IGA by overseas wagering companies

An added difficulty for licensed Australian online wagering companies such as Betfair is that many of the larger international online gambling companies do not block Australian residents from betting online in-play on sport. Because there is no law against someone placing such bets (the prohibition is directed solely at the operator) there is a large incentive for Australians to bet with overseas operators. The submission of the Australian Federal Police to the Joint Select Committee on Gambling Reform confirmed that there have been no prosecutions under the prohibitions contained in the IGA despite the AFP receiving 15 referrals from ACMA.²⁴ This type of betting happens at present and will continue to happen regardless of prohibition-style provisions contained in the IGA.

Importantly, these 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. It is clearly the case that the hundreds of millions of dollars spent by Australians each year with these operators (on a range of wagering and gambling products) represents a significant missed revenue opportunity for Australian governments.

By removing the anomaly within the IGA regarding in-play betting online, Australian customers will (as they have historically – most notably with the inception of off-course totalisators in the 1960’s) migrate to Australian licensed and regulated operators who are within the jurisdiction of Australian governments, law enforcement agencies and sports governing bodies.

7. If current prohibitions to online ‘in-the-run’ and online ‘micro-betting’ are retained, how best would these be enforced?

Betfair is of the opinion that the current prohibitions are unable to be effectively enforced – given the global nature of the internet, the apparent competing priorities of federal law enforcement authorities and the inability of Australian law to impact on the operators of offshore wagering operators. This has been the case since the commencement of the IGA and there is no reason to believe that things will change in the future.

²³ Department of Broadband, Communication and the Digital Economy ‘Review of the Interactive Gambling Act 2001 – Call for Submissions’, p10

²⁴ Australian Federal Police: Submission to the JSCOGR, p1

We outline our detailed view on enforcement options on Question 4 of the following section of our submission.

THE EFFECTIVENESS OF THE EXISTING PROVISIONS IN THE IGA

1. Are there sections of the IGA which could operate more clearly?

The IGA in its entirety is a confusing piece of legislation. It is difficult for regulators, industry and particularly consumers to understand and appreciate. Preliminary research conducted by Dr Sally Gainsbury suggests that there is a “high level of confusion” regarding the legalities of internet gambling amongst Australians.²⁵ However, there can be little doubt that offshore operators who are providing illegal gambling products to Australians, know that they are doing so illegally. In this sense, the current issue is effectiveness and enforceability; not clarity.

2. Could the current sanctions regime in the IGA be improved, and if so how?

We consider that the current sanctions contained in the IGA are appropriate. The more pressing issue is that the federal authorities are unable or unwilling (due to competing priorities) to enforce the prohibitions contained therein.

3. Are the current regulatory arrangements under the IGA the most effective way in which to limit the provision of prohibited interactive gambling services to Australians?

Betfair considers that the IGA is outdated and fails to adequately cater for the current state of play in the online wagering industry – therefore it cannot effectively deal with the social and economic impact of online gambling. The IGA has not kept pace with rapid advances in technology with devices such as smart phones and tablets and the consumer preference for this type of technology. As such, Australia has been forced to rely on overseas regulators to support our policy objectives and so far such support has not been forthcoming.

It has been suggested that as many as 700,000 Australians have participated in online casino gambling despite the prohibitions contained in the IGA.²⁶ Their net losses are estimated to have exceeded \$800 million in 2008/09 alone.²⁷ This would make the illegal online gambling industry nearly three times larger than the regulated sports betting industry (both online and offline). It is clear from such statistics that the regulatory arrangements in the IGA are not limiting the provision of prohibited interactive gambling services to Australians. The IGA has failed to meet its stated policy objective of curtailing demand for these products.

²⁵ Gainsbury, S and Blaszczynski A – Submission to the JSCOGR, p3

²⁶ Productivity Commission Report, Vol 1, p 8

²⁷ Ibid, Vol 2, p 15.16

The most significant shortcoming of the IGA is that despite stipulating a series of punitive measures for offshore gaming companies that breach Australian law, it hasn't allowed for the prosecution of companies in other jurisdictions who offer poker, online in-play betting and other gaming products to Australian residents. Betfair believes that any move to strengthen the bans will ultimately prove fruitless and serve only to consolidate the global market positions of the companies that have so far defied the bans. Accordingly, Betfair reiterates its view that the government should take steps to allow Australians betting with these operators to migrate to Australian licensed and regulated operators under strict regulatory controls.

4. Given that currently prohibited online gambling services are offered predominantly by service providers based overseas, are there more effective means of enforcing the prohibition? What options might be used?

There have been a number of enforcement mechanisms that have been used internationally and/or suggested to be utilised to prevent prohibited interactive gambling services to be offered in Australia. The most common of these are the use of financial transactions controls to stop money flowing to and from illegal operators and requiring internet service providers to block websites that offer prohibited services.

Betfair does not consider that these enforcement mechanisms are satisfactory to ensure that the IGA can be enforced on an international basis. A study conducted by the National Office for the Information Economy in 2001, found that there were no viable means available in order to effectively impede access to offshore gambling websites²⁸ and Betfair submits that this remains true to this day.

It has been widely suggested that Australia should enact financial controls legislation similar to the Unlawful Internet Gambling Enforcement Act (**UIGEA**) in the United States. Under such a regime, banks and credit card companies are restricted from processing transactions for any internet gambling websites. Operators are also prohibited from accepting deposits from residents of the United States. Despite much postulating and self-praise from US regulators, the recent prosecutions of Full Tilt Poker (and others) under the UIGEA did not come about because the Act itself uncovered the illegal activity; rather, it took the information provided by Australian Daniel Tzvetkoff to inform the authorities of the widespread practices that had long been used to avoid the UIGEA. Without this information, the UIGEA would have continued to fail to counter this activity.

²⁸ National Office for the Information Economy 'Investigation into the Feasibility and Consequences of Banning Interactive Gambling' (2001)

ISP blocking has also been raised as an alternative enforcement method whereby regulators would be granted the power to require internet service providers to block overseas gambling websites. Betfair has serious concerns about the effectiveness of ISP blocking and indeed the Productivity Commission Report found that the effectiveness of any ISP blocking system is undermined by the existence of a number of methods by which the block can be bypassed.²⁹ For example, proxy servers are easily obtained on the internet (for less than \$100) as a means of avoiding similar restrictions that have been implemented elsewhere.

5. Are there more effective means of enforcing the advertising prohibition? What role should sports bodies and broadcasters play regarding such advertising? What role should state and territory governments play?

Unlike the lack of options that Australia has in relation to enforcing the prohibition on offering prohibited online gaming services, the IGA remains an effective means to ensure that the advertising prohibition is enforced. This provision is much easier to enforce because it requires a specific nexus with Australia e.g. Australian television network or sports team, and there will therefore always be an appropriate defendant in any enforcement action.

The advertising prohibition as it currently stands in the IGA is sufficient – however, what is lacking is the ability and commitment of the authorities to undertake enforcement action.

It is incumbent on all sporting bodies and broadcasters to play an active role in ensuring that prohibited interactive services are not offered to Australian residents.

INTERNATIONAL REGULATORY APPROACHES TO ONLINE GAMBLING SERVICES

1. What international approaches to online gambling are most effective?

The international experience strongly points to the fact that the jurisdictions that implement a strict regulatory regime for the provision of online gambling services have been more effective in protecting consumers than those that have prohibited online gambling. For example, despite the prohibitions contained in the UIGEA the online gambling industry in the United States remains the world's largest.

In its recent submission to the Joint Select Committee on Gambling Reform, the UK Gambling Commission stated that regulation of online gambling is not only possible, but essential if gambling is to be kept free of crime, fair and open and the young and vulnerable

²⁹ Productivity Commission Report, Vol 2, p 15.21

protected.³⁰ The Alderney Gambling Control Commission submitted that robust, enlightened and active regulation that is responsible to a changing industry is the key to minimising the harms associated with online gambling.³¹

The Remote Gaming Association recently released a report titled “Online Gambling: Key Objectives for a Successful regulatory Framework”.³² This report suggests that the best regulation of online gambling creates a market that:

- (a) is fair and competitive;
- (b) protects the young and the vulnerable;
- (c) is crime-free; and
- (d) is attractive to consumers because it provides them with the right level of value and choice.³³

The key features of international systems that effectively regulate online gambling include:

- (a) legislation that provides a regulatory framework rather than prescriptive requirements;
- (b) legislation that does not prevent cross border trade and the pooling of customers;
- (c) deregulation of all forms of online wagering to encourage consumers to wager in well regulated jurisdictions;
- (d) active and independent regulators;
- (e) protections regarding the integrity of sport and consumer’s rights;
- (f) a fair and equitable taxation regime;
- (g) controls on advertising; and
- (h) mandatory measures to foster responsible gambling and to assist those at risk of problem gambling.³⁴

As can be seen, Australia already has the vast majority of these hallmarks in its regulatory arrangements. Accordingly, it is well placed to effectively manage the risks associated with deregulation of online gambling.

³⁰ Gambling Commission (UK): Submission to the JSCOG, p14

³¹ Alderney Gambling Control Commission: Submission to the JSCOG, Attachment 1, p2

³² Remote Gambling Association ‘Online Gambling: Key objectives from a successful regulatory and tax framework’. Available at: http://www.rga.eu.com/data/files/Factsheets/rga_key_objectives.pdf

³³ Ibid, p1

³⁴ Ibid, p1-3

2. What (if any) international approaches to online gambling would most suit an Australian context?

The United Kingdom has a thoroughly regulated online gambling industry, which allows its citizens to participate in the full gamut of interactive gambling, including poker and casino games. The hallmarks of the British system are:

- (a) the prevention of gambling from becoming a source of crime or disorder;
- (b) gambling is to be conducted in a fair and open way; and
- (c) children and other vulnerable people are to be protected from being harmed or exploited by gambling.³⁵

The UK Gambling Commission is the independent authority charged with the responsibility of administering and enforcing the *Gambling Act 2005* (UK). The Act permits entities licensed in the United Kingdom or “white listed” States to offer services in the United Kingdom. The Gambling Commission has developed relationships with regulators around Europe to ensure that all operators can be effectively regulated. A review is presently underway which may create the requirement for all operators to be licensed in the United Kingdom, which would represent a shift towards regulation at the point of consumption as opposed to at the point of supply.

Operators who are licensed in the United Kingdom are subject to strict licensing conditions and compliance with mandatory codes of conduct requiring them to report suspicious betting activities, comply with technological requirements to provide safe and fair gaming, employ stringent age verification checks and periodically report to the Gambling Commission of its revenues, funds held on trust, etc.

The Gambling Act has been effective in securing the United Kingdom’s licensing objectives and the proposed amendments will provide the United Kingdom with significantly greater control over those entities offering online gambling services to its residents. Betfair submits that the Gambling Act (together with the proposed amendments) is an approach that should be followed by Australia in a staged deregulation of the online gambling industry. This is easily achievable given that Australian licensing regimes are substantially similar to that provided for in the United Kingdom and the Australian policy objectives are largely aligned with those in the United Kingdom.

The jurisdiction of Malta has also proved to be an effective regulator of online gambling. Under the *Lotteries and other Games Act 2001*, the Lotteries and Gaming Authority (**LGA**) was established as an independent statutory authority with sweeping powers as to the

³⁵ Gambling Commission (UK): Submission to the JSCOG, p4

licensing and regulation of internet gambling by operators licensed in Malta. The LGA's mission statement is:

*To regulate competently the various sectors of the lotteries and gaming industry that fall under the Authority by ensuring gaming is fair and transparent to the players, preventing crime, corruption and money laundering and by protecting minor and vulnerable players.*³⁶

The LGA regulates online gambling on a technology and game neutral basis. Provided that a particular game can be securely managed in accordance with the LGA Regulations, consideration will be given to its licensing.

There are currently approximately 400 licensees in Malta, generating employment for 9,000 people (3,100 in the online sector alone) and €48M in taxation revenue (€21M from online gambling). These funds have been used in part to support research into program to support responsible gambling, innovative technical ideas for gambling and research of the legal, social and psychological assessments of the gambling sector.³⁷

There are a number of measures in place to ensure that the regulation is effective, including the rigorous testing and certification of gaming equipment, monitoring the gaming systems and rules of operators (pre and post licensing), segregation and protection of customer funds and other consumer protection measures.³⁸

Further, the LGA has developed a number of preventative measures that are designed to promote responsible gambling and provide assistance to those at risk of becoming problem gamblers. These measures include:

- strict age limits and verification processes;
- an advertising code of practice that covers all promotions and inducements;
- education programs regarding the risks of irresponsible gambling;
- the ability for customer to set financial and time limits on their activity;
- self exclusion facilities;
- self-testing facilities; and
- mandatory warnings to be displayed.³⁹

Betfair believes that Malta has proved itself to be a trusted jurisdiction for the effective regulation of online gambling. As with the United Kingdom system, it is evident that most of

³⁶ <http://www.lga.org.mt/lga/content.aspx?id=85487>

³⁷ Lotteries & Gaming Authority of Malta, Annual Report 2010, p2

³⁸ Ibid, p13

³⁹ Ibid

the measures in place are already requirements under Australian law – in the case of Betfair, these requirements are enshrined in the *Gaming Control Act 1993* (Tas) and the conditions attached to its Tasmanian Gaming Licence. Accordingly, Australia is well placed to follow the regulatory lead of jurisdictions such as the United Kingdom and Malta in regulating online gambling in this country.

Other European jurisdictions are in the process of regulating and licensing online gambling in their respective jurisdictions. These include Spain, Ireland and Denmark.

There are a number of regulatory regimes in place around the world that Betfair submits have been largely ineffective in adequately controlling online gambling by its citizens.

France's regulation of the online gambling industry is not an attractive proposition for any of the operators acting in that jurisdiction. The effective tax rate of 8.8% of turnover is discriminatory and excessive and accordingly, there has been a lack of product development which has caused a significant drop in activity from consumers.

The draft legislation introduced in Greece in April 2011 sought to liberalise online gambling, however, it excluded betting exchanges from the regime and sought to tax operators at a rate of 6% of turnover, which led to Betfair lodging an objection with the European Commission in June. Prior to enacting the legislation, Greek authorities have modified the taxation regime as a 30% of gross revenue tax, which is a more equitable basis on which to tax operators.

In April 2011, 15 of the 16 German States agreed to a proposal that would liberalise the gambling industry. However, the taxation rate was mooted to be 16.7% of turnover and contained a number of operational restrictions on the products that could be offered. The European Commission heavily criticised the proposal arguing that it would create a "commercially unattractive" market in Germany.

The recurring theme amongst such jurisdictions is that their heavy-handed approaches have caused operators and consumers to move offshore and away from the regulated environment. This has the obvious impact of failing to provide these customers with appropriate consumer protection and harm minimisation measures, a blind-spot in protecting sporting integrity and a leakage of taxation revenue to other jurisdictions.

THE POSSIBLE IMPACTS OF REGULATED ACCESS TO SERVICES CURRENTLY PROHIBITED UNDER THE IGA

1. What are the key risks and harms of online gambling? What are the key attractions and benefits?

There is detailed academic literature regarding the potential benefits and costs associated with a liberalised online gambling market.⁴⁰ Betfair has articulated a number of these in its responses earlier in this paper.

Some obvious benefits include convenience, value and variety for customers who choose to participate in forms of entertainment and significant tax revenue for governments and sports bodies.

There are several key risks associated with online gambling including the accessibility of gambling services, exploitation of customers, money laundering and fraud. However Betfair considers that each of these risks is manageable, provided that online gambling takes place in a well regulated jurisdiction.

2. If a strongly regulated approach to online gambling services is taken, what will be the social impacts? How could this be assessed?

Betfair advocates that a strongly regulated approach to online gambling would have a positive social impact when compared to the status quo. By removing the prohibitions contained in the IGA and introducing mandatory harm minimisation measures, there are a number of benefits that are likely to flow to Australian society. These include:

- the migration of Australian consumers to Australian licensed operators who are subject to the regulations and sanctions in the IGA, and who are required to have in place stringent probity, integrity and harm minimisation programs;
- the increased ability of the government to ensure that Australian consumers are protected through appropriate harm minimisation and problem gambling measures – including voluntary limits, exclusion facilities and problem gambling support;
- sports governing bodies, racing control bodies and governments will obtain product fees and tax revenue that is presently going offshore – these funds can be used to maintain the integrity in sports and develop and maintain responsible gambling programs.

We consider that the primary social benefit of a regulated online gambling industry in Australia is that of the ability to ensure that Australian consumers are afforded adequate

⁴⁰ See for example the studies cited in Gainsbury, S and Blaszczynski A – Submission to the JSCOG, p3

consumer protection and assistance to those at risk of problem gambling. Online gambling operators are well placed to develop and implement harm minimisation measures when compared to land based venues. These measures include account tracking to identify potential problem gamblers, the extension of treatment and counselling services and the use of software to detect deviations and atypical gambling patterns.

We also note the development of internet treatment options for problem gamblers, which are more likely to be accessed due to their private, confidential nature. At present, less than 10% of problem gamblers seek help and this is largely as a result of embarrassment and the stigma attached with approaching counselling services for help.⁴¹

This approach should be accompanied by education and information campaigns regarding the dangers of gambling online with unlicensed operators to guide Australian consumers to websites that are licensed and regulated within Australia. Betfair agrees that any liberalisation of the IGA should also be accompanied by funding for Australian specific research to provide a clearer picture of the impacts of gambling generally on Australian society.

A further benefit of a regulated approach to online gambling is that strict controls would exist from a money laundering and tax fraud perspective. This specifically addresses the concerns raised by the Australian Crime Commission in its recent submission to the Joint Select Committee on Gambling Reform.⁴²

BEST PRACTICE PROBITY AND HARM MINIMISATION MEASURES

1. What harm minimisation measures are currently used for online gambling in Australia and overseas, and how effective are they in limiting problem gambling and supporting problem gamblers?

Betfair takes problem gambling very seriously. It is strongly committed to taking all reasonable measures to reduce the prevalence of harm from gambling addiction. The company considers itself the industry leader on harm minimisation. It's twice been named the Socially Responsible Operator of the Year at the annual eGaming awards in the UK.

As was identified in the Productivity Commission Report, gambling companies have a strong incentive to self regulate given the importance that consumers place on transacting with a trusted brand.⁴³ By becoming known as a responsible and ethical operator, wagering

⁴¹ Sparrow, M. 'Can Internet Gambling Be Effectively Regulated? Managing The Risks' (December 2009), p62

⁴² Australian Crime Commission, Submission to the JSCOGR

⁴³ Productivity Commission Report, Vol 2, p 15.10

providers are more likely to attract custom. Accordingly, operators will seek to exceed any minimum standards set in relation to probity, integrity and harm minimisation.

According to Sparrow, in a well regulated environment, the use of technology provides gamblers with opportunities to help curb addictive or problematic gambling behaviours as well as access online clinical and self-help resources from the wagering operator's website.⁴⁴

All of Betfair's Australian employees undertake a nationally accredited Responsible Gambling Services Course on commencement of their employment (and attend a refresher course every 24 months). Betfair has always provided this training to all staff, not merely customer facing staff (as has been the strict legal requirement). The training assists participants to develop the skills and knowledge required to detect, and if necessary assist, a problem gambler.

The Betfair website has a suite of measures in place to deal with problem gambling. They include the ability for customers to elect to impose loss limits and deposit limits on a daily, weekly or monthly basis. Customers are also offered the option of excluding themselves from betting or a third party can intervene to exclude a punter from the site. The minimum period for self-exclusion is six months, but customers are free to set their own, longer periods of exclusion. Customer accounts can be reactivated only after a 'self exclusion review' is conducted by Betfair. Approximately 12 per cent of Betfair's active Australian customers have accessed at least one of the site's responsible gambling mechanisms since opening their account.

Betfair's website maintains links to relevant responsible gambling websites across Australia as well as the national gambling helpline. In addition, all of Betfair's print and online advertising contains responsible gambling messages and the gambling helpline telephone numbers.

2. Does industry have a responsibility to support harm minimisation measures, including education and counselling services?

Betfair believes that society as a whole, including the gambling industry, has a responsibility to support harm minimisation measures, education and counselling services for potential problem gamblers. As a wagering operator, Betfair is best placed to implement and maintain appropriate harm minimisation measures and foster and promote responsible gambling. However, wagering operators do not have the expertise to themselves conduct education and counselling services – this is best left to responsible gambling centres and government authorities. That being said, wagering operators do have a responsibility to

⁴⁴ Sparrow, M. 'Can Internet Gambling Be Effectively Regulated? Managing The Risks' (December 2009), p19



ensure that its clientele are well informed of the existence, function and accessibility of education and counselling services.

In conjunction with the services provided by problem gambling counselling services and government agencies, Betfair is committed to ensuring that its harm minimisation measures are effective in detecting and assisting those at risk of becoming problem gamblers. We are of the opinion that such measures are integral in tackling the issue of responsible gambling and it is only through encouraging Australian consumers to transact with Australian licensed operators that that Federal Government can ensure that minimum standards are being met.

3. What probity measures are available in relation to online gambling, and how effective are they in protecting consumers?

Betfair has in place stringent probity requirements to ensure that consumers are protected and Betfair's platform is not subject to fraudulent activities. We consider that our probity measures are industry leading and have confidence that our consumers are adequately protected.

Betfair has a strict requirement that every customer verify his or her identity. All users, whether based in Australia or elsewhere, have to meet stringent identity checks in line with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) which is administered by AUSTRAC. Betfair uses the same identity verification test as financial institutions and various other organisations (this test is similar to the previous '100 point identity test'). As a reporting entity to AUSTRAC, Betfair is also required to submit Suspicious Matter Reports and Threshold Transactions relating to withdrawals and deposits from customers.

It is a condition of use that all Betfair customers allow the company to disclose their identities and personal information (including betting details) to approved government and non-government regulators. Betfair has agreements in place with a range of sporting and racing authorities (as set out above), who've agreed to protocols on the use and storage of personal information. These strict controls around customer identity verification also minimise the risk of minors accessing and using Betfair's website.

Every bet placed on Betfair can be tracked to a particular customer. The site records every detail, down to each click of the mouse. It can trace every dollar in and out of the exchange, and all bets can be linked directly to the end customer and their end bank account.

Unlike traditional wagering platforms such as cash-based bookmakers and the TABs, Betfair does not accept cash and only permits customers to place bets if they have opened an account.

There are a number of advantages in offering only account-based betting, the key one being that Betfair is always aware of who has placed a bet. The account based model removes the traditional anonymity of punters. It provides significant advantages in controlling and detecting attempts to launder money or to engage in deceptive conduct and it allows for more effective programs for responsible gambling.

Betfair (and other Australian licensed operators) is compliant with the *Privacy Act 1988* (Cth), the National Privacy Principles and its own Privacy Policy. Betfair is concerned that offshore operators are not required to meet these exacting standards and therefore the confidential and personal data of Australians citizens is likely to be a risk. Should a breach of privacy occur with an overseas operator, Australian residents are likely to be left with little recourse due to a lack of available avenues to have their complaint addressed.

4. If a strongly regulated approach to online gambling services is taken, what consumer protection measures should be put in place? Should measures be used to monitor for problem-gambling and referral to support services?

As is advocated throughout Betfair's submission, the regulation of certain types of online gambling in Australia should be accompanied by a suite of consumer protection measures. A key policy reason for making certain online gambling products legal in Australia is to ensure that consumers are not exposed to offshore operators who are not required to have in place adequate consumer protection measures and often operate in jurisdictions with consumer laws that are not up to the Australian standard.

The following measures may be introduced to ensure that Australian consumers are adequately protected in a regulated online gambling industry:

- (a) the offering of harm minimisation measures by Australian wagering operators, including the ability to set loss and deposit limits and the ability to self-exclude from gambling services – with these limits applying across all operators (including cash-based operators);
- (b) the establishment of a national database of excluded individuals to ensure that those who wish to be excluded from gambling are excluded across the board, and not merely with certain operators;
- (c) the imposition of minimum operating standards, such as holding customer funds in trust accounts and routine audits to ensure that customer funds are protected;
- (d) mandatory compliance with recording and reporting requirements;
- (e) controls on advertising of interactive gambling services to protect the young and the vulnerable; and

- (f) increased education and information should be provided to customers about their rights as consumers and responsible gambling.

We point out, however, that imposing these standards on online wagering operators without also raising the standards of the cash-based wagering industry will leave a significant blind spot open to continued exploitation by problem gamblers.

5. Do Australian gamblers value gambling services licensed in Australia more than those based overseas?

The Productivity Commission Report found that because Australian providers are well known to Australians and are known to be subject to Australian laws, it is probable that a large portion of online gambling by Australian residents would be conducted with Australian companies.⁴⁵ This view is endorsed by Sparrow, who suggested that, “in the long run, domestic companies should come to dominate online gambling opportunities chosen by US citizens and each of the relevant categories of risks [relating to online gambling] would be better controlled than at present”.⁴⁶

Australian consumers are more likely to transact with an Australian regulated entity than one licensed offshore – provided that the Australian operator is able to offer services that are competitive with those operated elsewhere in the world. There are very few online industries in which Australian consumers seek to transact with corporations that are regulated other than in Australia. This is primarily because of the strength of Australia’s consumer protection laws and the availability of recourse to Australian companies through the Australian judicial system.

A prime example of Australian wagering customers valuing licensed gambling services was the migration of people to totalisator wagering when off-course totalisators were introduced throughout Australia in the 1960’s. Despite several decades of legislation and enforcement action designed to decrease the popularity of “SP” or “Starting Price” bookmakers, it was only when off-course totalisators became an option did people finally shift their wagering business away from SP bookmakers.

⁴⁵ Productivity Commission Report, Vol 2, p 15.29

⁴⁶ Sparrow, M. Can Internet Gambling Be Effectively Regulated? Managing The Risks (December 2009), p15

The Victorian introduction of an off-course totalisator is a case in point. Following a Royal Commission in which it was revealed that the value of the illegal off course industry was in the vicinity of \$250 million per year, The Age reported that:

SP betting is excessive, it has many evils and reforms are obviously necessary...After a close examination (Justice) Martin (who conducted the Royal Commission) recommended that the most desirable system would be an off-course totalisator. The advantages of a legalised system are strong. From the public point of view it would create a facility for people who wish to bet to do so lawfully, encourage public support for enforcement measures, reduce corruption and the State would benefit through additional revenue being spent on off-course betting.⁴⁷

The Victorian government introduced legislation in the early 1960's to legalise off-course totalisators and to grant the police extended power to control illegal wagering. This afforded the police their first chance to stifle "SP" betting by providing for significant and enforceable offence provisions against both providers and consumers. It was only a matter of months before SP bookmaking had been largely eradicated from Victorian hotels and workplaces as consumers migrated in their droves to the safer, licensed and regulated form of totalisator wagering.

GOVERNANCE AND ADMINISTRATION

1. What should be the governance arrangements for the interactive gambling services currently prohibited by the IGA?

Australia should move to a regulated environment for online gambling, as prohibition is not working. We are of the view that Australians will migrate towards licensed Australian operators because of better customer service, security of engaging with an Australian based company and superior product offerings. An important additional benefit of a regulated environment is that responsible gambling initiatives could be enforced on Australian based operators, as well as a requirement for licence fees and taxes to be paid.

Poker has undergone a phenomenal rise in popularity in recent years, and as a result, more and more poker and other card game players are turning to the web. It is illegal to offer online poker for money to Australian residents, but that hasn't prevented rogue international operators from creating an enormous customer base here. The Productivity Commission estimated that more than \$800 million is bet by Australians annually on online poker and gaming with illegal operators – and it's a figure that is rapidly growing.⁴⁸ All revenues are flowing directly offshore without any taxes being paid in Australia. Of greater

⁴⁷ Lifted from Pacini, J. 'A Century Galloped By: The first hundred years of the Victoria Racing Club'

⁴⁸ Productivity Commission Report, Vol 2, p 15.20

concern is that players are gambling in an environment that does not accord with Australian regulations.

Finally, Betfair supports the recommendation made in the Productivity Commission Report that following the regulation of online poker, a gradual deregulation of the online casino gaming market should follow.

4. How can we work better with other countries and overseas based providers to improve regulation, enforcement and probity and harm minimisation measures?

Betfair agrees with the Productivity Commission recommendation that we should seek to adopt a cohesive approach with jurisdictions that have adopted a similar approach to Australia.⁴⁹ The UK Gambling Commission has suggested that regulation will be more effective and less resource intensive if there is cross border-cooperation.⁵⁰

Participation by Australian regulators in initiatives such as the CEN Workshop Agreements would be beneficial to Australia forming part of a co-ordinated regulatory approach to online gambling. The CEN Workshop is made up of regulatory agencies of over 30 nations that have regulated online gambling. The key policy objectives of the group include the protection of underage and vulnerable customers, the removal of fraudulent and criminal behaviour and the establishment of a safe and secure online environment.⁵¹

5. If a strongly-regulated approach is adopted, what form of regulation should this take?

The IGA remains the most appropriate vehicle by which to deliver a strongly regulated approach to online gambling in Australia. It is important that any amendments to the IGA are clear, strong and apply equally to all forms of gambling providers on a platform neutral basis.

6. If a strongly-regulated approach is taken, overseas service providers that do not come within such regulation will still be capable of providing gambling services to Australians given the nature of the internet? What measures are appropriate to discouraging this?

For the reasons outlined above, Betfair considers that there are limited enforcement options available, whether or not the IGA remains in its current form or is amended to regulate certain forms of online gambling. Accordingly, it is likely that offshore operators will continue to encourage Australian players to wager with them.

⁴⁹ Ibid, Vol 2, p 15.32

⁵⁰ Gambling Commission (UK): Submission to the JSCOG, p4

⁵¹ <http://www.cen.eu/cen/Sectors/TechnicalCommitteesWorkshops/Workshops/Pages/WS58eGambling.aspx>

The best measure to discourage Australian consumers from transacting with these providers is a regulated Australian market in conjunction with a concerted education and information campaign regarding the dangers associated with wagering with offshore companies from a consumer protection and harm minimisation perspective. Provided that Australian companies can compete on an even playing field with those offshore operators, Betfair is of the view that the vast majority Australian customers will choose to use services provided by Australian licensed operators which are perceived as more proximate, safer and trusted.

TAXATION

1. If a strongly-regulated approach is taken, how should licensed online gambling operators be taxed?

An appropriate taxation regime is critical to the effective operation of a regulated online gambling market. In this respect, it is integral that government adopt a fair and equitable taxation system at levels that do not discourage operators to withdraw from the Australian market.

The overall cost of taxation to operators is critical in determining whether a jurisdiction's overall policy in relation to remote gambling will be successful. A prohibitively high tax, or an improperly structured one is likely to drive operators out of the market; resulting in lower revenue for the government and fewer choices for consumers.

In combination with a workable effective rate, the choice of an efficiently structured tax can have benefits for consumers, operators, and governments. Betfair advocates the use of a tax on the "gross revenue" of operators for online gambling (e.g. casino and poker) activities. This tax, which has been adopted by all of Australia's major sports governing bodies and all but two of Australia's racing control bodies creates a level playing field between operators, permitting the freedom to provide consumers with greater choice and value without concern for the margin of specific offerings.

Betfair is of the view that if online gambling was regulated, Australian wagering operators should be permitted to offer their services to residents in any global location that permits the offering of online gambling. This will enable Australian companies to compete in the global market place and generate the required liquidity to ensure their business remains viable. This is especially important for peer to peer products such as online poker which success is enhanced by large player numbers and prize pools. Attempting to ring-fence Australia from a customer perspective will only harm Australian operators and lead to consumers seeking the larger off-shore operators.



- 2. Should a portion of revenue be used to fund problem-gambling support services and research?**
- 3. Should a portion of revenue be used to fund other programs?**

In response to both questions 2 and 3, Betfair considers that wagering operators are not the correct parties to be directing where taxation revenues should be paid. This is the role of government.

CONCLUSION

Betfair welcomes the Department's review into the IGA. As has been outlined above, there are many reasons why the IGA, in its current state, is ineffective and failing to meet its important policy objectives. We believe internet-based wagering in Australia has come a long way in recent years, but we believe that more can be done to improve regulation and to help reduce the prevalence of problem gambling. We would welcome any opportunity to address the Department further and believe we can make a significant contribution to any discussions about the future of online gambling in Australia.