



AUSTRALIAN INTERNET BOOKMAKERS ASSOCIATION

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Joint Select Committee on Gambling Reform

Submission by the Australian Internet Bookmakers Association

This submission is made on behalf of the Australian Internet Bookmakers Association. The Association represents many of the leading Australian internet bookmakers including Sportbet, Sportingbet and Centrebet.

This submission will address all of the Terms of Reference before the Committee, as well as the *Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011* proposed by Senator Xenophon.

Executive Summary

This Association supports the basic principles and policy positions espoused in the Productivity Commission in its Report of 2010. This Report presents the results of one of the most detailed reviews of gambling, both on-line and off-line, undertaken in Australia and throughout the world.

Internet gambling is a global phenomenon and Australia cannot act in isolation to the global market. Policy decisions must take account of how Australians currently interact and will, in the future, interact, with the global internet gambling industry.

(1) Commercial Developments

Commercially, internet gambling in Australia and overseas has continued to grow. Its principal driver for growth remains consumer demand. The proportion of the population using internet gambling may be expected to increase as the proportion of the population comfortable with interactive technology increases.

(2) Regulatory Developments

Internationally, the debate between prohibition and regulation has been largely resolved with most jurisdictions now concerned with the correct settings for regulation. This process is marked by disputes over access to markets. In order to defend the market “walls”, several countries have implemented additional controls. Some of the most notable are (1) ISP blocking of unlicensed sites, (2) advertising restrictions and (3) prohibiting financial institutions processing payments relating to unauthorised gambling (“payment bans”).

(3) Responsible Gambling

The Internet platform offers a number of advantages in the delivery of responsible gambling strategies including effective exclusion of problem gamblers, a depth of information about problem gambling, and pre-commitment facilities. This is an area where the internet can be used in a positive way.

The Australian Internet gambling industry is subject to a range of stringent regulatory controls to ensure responsible gambling. These include controls around:

- Access by children
- Access to betting history
- Problem gambling exclusions
- Problem gambling controls
- Pre-Commitment Facilities and
- Advertising Codes of Conduct.

This Association supports the adoption of new measures that would provide for:

- (1) Exclusion from sites being able to be made by Family Members and Others*
- (2) The establishment of a dedicated Australian online advice and counselling service.*
- (3) Nation-wide exclusions.*

Internationally, there has been more research into the risks posed by online gambling.

Two studies are worthy of note. The first is the UK *“Internet Gambling: A Secondary Analysis of the Findings from the 2007 British Gambling Prevalence Survey”* of October 2008. The second is the comprehensive review of the literature undertaken by the Productivity Commission.

The UK Prevalence Study noted that online gambling had more than doubled in the UK since the first study. Those participating in remote gambling were more likely to be male, relatively young adults, single, well-educated, and in professional managerial employment. It also found *“There is no conclusive evidence that Internet gambling is more likely to cause problem gambling”* compared to other forms of gambling.

This conclusion is consistent with the Productivity Commission’s findings. The Commission found that while the internet *“can ... expose new groups to the risks of problem gambling”*..., *“it is not clear that online gaming is more harmful than other forms of gambling. There are a number of features of online gaming that ameliorate its inherent risks to some extent.”*

In summary, there is a recognised risk of problem gambling associated with internet gambling but the internet platform offers a number of advantages in the delivery of responsible gambling strategies

(1) Terms of Reference 1.

(a) the recent growth in interactive sports betting and the changes in online wagering due to new technologies;

Interactive sports betting in Australia is the smallest gambling segment but is growing. Sports betting is popular because of the increased coverage of televised sports, the simple nature of the betting options, and its ready accommodation to interactive technology.

Sports betting was estimated by the Productivity Commission to constitute about 1.2% of Australia’s gambling market in 2008-2009.

Roy Morgan Research has estimated that for the 12 months to March 2011, Australians spent \$2.5 billion betting on racing, down from \$2.8 billion in 2002. Sports betting, although still small at \$0.6 billion, has increased from \$0.4 billion in 2002.

The outstanding statistic is that, allowing for growth, the illegal gaming market is now likely to be some \$900+ million. The illegal online gaming market is ***more than double*** the legal sports betting market with online gaming in Australia to about 4% of gambling expenditure.

Statistical analysis demonstrates that the introduction of sports betting has not had a material impact on the racing industry. This is not to say that sports betting share of the wagering market will not increase in the future. Racing’s share of the gambling market has been falling consistently over recent years.

(b) the development of new technologies, including mobile phones, smart phones and interactive television, that increase the risk and incidence of problem gambling;

Telephone betting including mobile phones has been available for well over a decade. There is little evidence to suggest that this, of itself, has exacerbated the rate of problem gambling.

The use of smart phones in the UK has seen mobile gambling revenue in the UK rise from £19m in 2009 to £41m in 2010. Smart phones are simply an extension of the existing Internet Technology – they allow gamblers to connect with the betting provider by means of technology they carry in their

pockets rather than through their PC. This is consistent with the evidence given previously about online gambling - that its users are the early adopters of new technology, and that gambling, along with other forms of e-commerce, will see an increase in participation rates arising from the new technology.

Growth in interactive gambling by use of smart phones or interactive television is the only to be expected with the growth in the digital economy. In terms of interactive television betting, the question becomes how should this be managed? This is an issue requiring a deal of thought and discussion.

Concerns have been raised that these technologies are particularly used for “live betting” or “exotics”, ie, betting after the event has commenced or betting on certain options are available during game play. “In run” betting has been a feature of sports betting since its inception. There has been no evidence presented that “in run” betting of itself exacerbates the risk of problem gambling by showing that the *proportion* of problem gamblers increases in excess of increased participation rates. However, there is no room for complacency and this should be an area for national monitoring.

It should be noted that the *Interactive Gambling Act* allows the bet type but restricts the technology able to be used to deliver it. An Australian punter is able to bet “in the run” with an Australian betting provider if he or she uses 19th Century technology – the telephone - but is able to bet with anyone else in the world using 21st Century technology – the internet. Restricting “in the run” betting on a technological basis is not sound. The artificiality is becoming more apparent as new generations of smart phones blur the distinction between “telephones” and other forms of interactive communication.

It is recommended the IGA be amended to remove the current restriction on Australians being offered in the run betting services online.

(c) the relative regulatory frameworks of online and non-online gambling;

The online gambling environment provides responsible gambling features that exceed in both scope and effectiveness those offered by land based gambling providers. These include pre-commitment facilities and, in the context of gambling and the integrity of sporting events, the identification of *all* clients.

As far as difference in treatment is concerned, the topics that are usually raised under this heading are the use of credit cards to fund online gambling accounts, and the provision of credit.

Any ban on credit card usage would impact disproportionately on the benefits to recreational gamblers who constitute by far the vast bulk of online gamblers. It is also too late for such a proposition to have any effect. Technology has overtaken the capacity to restrict the use of credit cards even if that was desirable.

It must also be remembered that while credit cards pose an acknowledged risk for problem gamblers, they also provide important fraud, anti-money-laundering and other controls.

Credit betting is more problematic. Credit betting with bookmakers has a very long history and is now provided for in the legislation of several States. Previous reviews of rules regarding credit betting by bookmakers have recognised that credit betting is limited to a select group of punters, with good practice seeing the bookmakers verifying the clients' creditworthiness, and the application of the Consumer Credit Code to bookmakers' credit arrangements.

The Productivity Commission carefully examined the risks with credit betting, and these *“warrant, at a minimum, strict regulation and monitoring of credit betting. However, it is not clear that, in practise, the problems associated with credit betting are sufficient to justify its complete prohibition.”* It noted the *“considerable benefits in terms of convenience and security”* and that *“access to credit is simply an ordinary feature of a business relationship that is common in other sectors of the economy.”*

This Association considers it sensible to maintain the benefits to clients of credit betting, but look to the development of appropriate controls to mitigate the risks. It is proposed the Committee recommend the immediate issue of a reference to a national research body to consider appropriate parameters governing the issue of credit.

(d) inducements to bet on sporting events online;

Recently, some States and Territories prohibited Australian operators from offering modest “signup bonuses” to those who open new accounts - the “\$100 free bet” offer. This had been labelled an improper inducement to gamble.

It was not an evidenced-based step. The Commission agreed, observing that *“offering inducements to wager through discounted prices to new customers is not necessarily harmful, and may primarily serve to reduce switching costs between incumbent wagering operators and new entrants, enhancing competition. The risks for problem gamblers should be assessed and, regardless of whether prohibition or managed liberalisation is the appropriate action, a nationally consistent approach would be warranted.”*

This Association supports the conclusion and recommends the risks to be objectively assessed.

(e) the risk of match-fixing in sports as a result of the types of bets available online, and whether certain types of bets should be prohibited, such as spot-betting in sports which may expose sports to corruption;

The protection of the integrity of sport from corruption due to gambling is rightly a major issue of concern to the community. A deal of work has been undertaken in this area in recent years, and State and Territory Sports Ministers along with the Federal Minister for Sport have recently agreed to a National Framework for nationally-consistent measures to further enhance existing controls.

As far as existing controls are concerned, Australia has a highly regulated sports betting sector. Bookmakers have entered Integrity Agreements with the major Australian sporting codes. These agreements provide for the exchange of information, prior consultation with, and the consent of,

the sporting body for new bet types, and a requirement to advise of any suspicious betting patterns, among other things.

Sporting bodies are increasing their education programs to players, officials and others who, by betting on the sport, may lead to a perception of compromise. They have increased their due diligence measures, in some cases by the formation of specialised Integrity Units.

It is noted that this term of reference focuses on only **one** aspect of the controls protecting the integrity of sport –that of bet types. The concern arises that certain types of exotic bets are conducive to corruption, in that they may be manipulated by the actions of one person, while not affect the outcome of the game.

In considering the propriety of exotic bet types a distinction has to be made between those that encourage a player to underperform (“negative bets”, as it were), and those that reflect positive achievements by players performing to the best of their ability.

Recent events and commentary around sports betting have called for regulators and all sports bodies to have the power of veto over a “negative” and undesirable bet types. It is important to note that these powers already exist and have been, and are, exercised by the sports and gambling regulators.

This is but *one area of risk* around betting related corruption. As international experience shows, any game or contest is at risk if there is a large betting market on it *whether legal or illegal*. This has an important consequence, in that increased controls over the local industry *would do nothing to lessen the threat*. If the market exists offshore, there will be a risk of corruption.

At the moment, it seems the boundary between fair “exotic bets” – where the outcome is a function of good play – and improper exotics bets – which encourage a player to underperform – is about right. There is still room for discussion, but the process is in place for those discussions to occur.

This Association suggests that there is no necessity for further action to be taken on bet types, in particular to ban all exotic bets. Sporting organisations, gaming regulators and betting providers are alive to the risks posed by certain bet types, and the mechanisms are in place to recognise and address those risks.

(f) the impact of betting exchanges, including the ability to bet on losing outcomes;

Betting exchanges (or more specifically Betfair), have established themselves as a feature of the Australian gambling market. Through a combination of strict regulation and high standard business practices, integrity concerns have been addressed by Betfair. Should any other operator seek to be licensed to conduct a betting exchange, it would be essential that similar high standards are set and met.

(g) the implications of betting on political events, particularly election outcomes;

It is not clear why election betting has been raised as a term of reference. The integrity of elections is subject to intense public scrutiny - the possibility of cheating in betting on this event is remote. Election betting has been conducted for over a decade in Australia and for longer periods in such

places as the United Kingdom, without concerns being raised. There are no reasonable grounds for an objection to be made on election betting.

(h) appropriate regulation, including codes of disclosure, for persons betting on events over which they have some participation or special knowledge, including match-fixing of sporting events;

There is no question that disclosure for the purpose of match fixing of sporting events is deserving of a criminal sanction. It is corrupt conduct and should be defined as a criminal offence.

But what of activities undertaken without this intention? Should the improper release of confidential information without any intention to affect the outcome of the sporting event or to gain any improper benefit, be regarded as a criminal offence or a disciplinary offence? These are conversations that are underway under the auspices of the NSW Law Reform Commission's work in defining a criminal offence for cheating and gambling.

This Association supports the development of appropriate codes of conduct to govern and regulate the activities of sporting officials. In this regard we commend the UK's "Minimum Standards for a Sporting Authority's Code of Conduct". It is noted that work is already underway in this area. As part of the National Framework to ensure sporting integrity agreed by the State and Territory Sports Ministers, sporting organisations are expected to:

- develop and adopt an anti-match fixing/-anti corruption code of conduct which meets certain nationally agreed standards;
- apply the code to all players, officials and staff; and
- develop and apply a disciplinary framework to enforce the code of conduct.

Sporting bodies will also be required to provide appropriate education to players, officials and staff as to their roles and responsibilities under the code.

(i) any other related matters.- gambling advertising including the level of gambling advertising; the display of betting odds at venues and during match broadcasts; commentators referring to the odds; and the general impact of gambling advertising on sport.

Gambling advertising is a vexed issue. Some in the community object to any and all forms of gambling advertising; others object to gambling advertising at certain times or in certain media; others are object to the type of advertising, for example sporting commentators referring to betting odds during a game.

the sports betting sector has recognised community concern that certain types of gambling advertising are leading to a perception of an unhealthy relationship between sports and gambling.

In May this year, sports betting providers supported changes to advertising practices that:

- Odds updates in commentary during play to be phased out
- Gambling companies sponsors logos not be permitted on children's replica sports shirts (a practice already applied by the Australian companies); and that

- Sporting clubs and gambling providers be banned from offering “white label” betting sites, e.g. Bombersbet.com.au

The companies also asked for greater enforcement of advertising restrictions on non-licensed operators in all media, including the internet.

Subsequently, the Federal Minister for Communications announced that legislation would be imposed if practices such as odds updates in sports commentary and on-ground display of betting odds were not phased out by June 2012.

This Association supports this approach. We suggest it achieves a proper balance between improper advertising and acceptable advertising.

(i) Other matters – Racefields

Racefields legislation was introduced to overcome distortions in the funding of the racing industry caused by cross-border betting by making “product fees” payable to the particular State racing industry by those gambling operators that offered bets on their product.

This Association has always supported the payment of a fair fee to the racing industry, but Members object to a scheme or a fee that is designed to penalise them or discriminate against them.

The arguments have been comprehensively reviewed by the Productivity Commission. It found discrimination to be obvious and was highly critical of high turnover-based fees.

This Association is concerned that the issue has been allowed to drift. The Court may only rule on what is not permitted – it cannot set a figure that is legally permissible.

The Commission was alive to the danger of decisions that risk damage to the racing industry, and recommended that either the Federal Government establish a national statutory scheme, setting a single price for “product fees” based on revenue, or that a reference be issued to the ACCC.

Given the continuing litigation, the current impact on NSW on-course bookmakers from higher costs, as well as the administrative impact on bookmakers of all States due to the overly complex administrative schemes that have been put in place (in some States amounting *de facto* re-licensing), we support an immediate reference being given to the ACCC to review and examine the national racefields schemes.

(ii) Other matters – Interactive Gaming

The terms of reference are almost exclusively directed at sports betting. This is surprising as the most important finding of the Commission’s Report was the extent of the online gaming market. Although an illegal market in Australia, it is well over double the size of the legal sports betting market, and has achieved that growth in a shorter period of time.

This failure of the Interactive Gambling Act was tellingly described by the Commission: From the point of view of consumers, “the IGA completely deregulated the online gaming industry. In essence, the legislation attempts to dissuade people from gambling online by making it more dangerous.

This committee cannot ignore the question of what to do about Internet gaming.

It has two options – recommend higher controls, or recommend higher controls with a local licensing scheme.

The evidence shows ISP blocking and payment bans are of limited utility. They don't work. Even if Australian ISP blocking and payment bans achieved the compliance results coming out of Europe, this would still leave a market larger than the lawful sports betting market.

It is not responsible to claim to protect problem gamblers by putting in place measures that will fail.

Prohibition, even with added controls, is not a realistic option. Serious consideration must therefore be given to a local licensing scheme. This is the outcome that delivers the most benefits in terms of controlling problem gambling.

It is therefore recommended the Committee support managed liberalisation in principle, subject to the preliminary assessment work suggested by the Commission being undertaken to determine the best regulatory model.

- (i) **Other related matters, Senator Xenophon's *Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011***

Exotic Betting

Section 3 of the proposed Bill would prohibit spot betting, exotic betting, in-play betting and the betting on losing outcomes.

A distinction has to be made between those that encourage a player to underperform and those that are too readily subject to manipulation ("negative bets", as it were), and those that reflect positive achievements by players performing to the best of their ability. Gambling regulators and all sports bodies have the power of veto over a "negative" bet types, and these powers have been, and are, exercised by the sports and gambling regulators.

While this Association supports the objective of protecting the integrity of sport, this proposed legislative provision is excessive and unnecessary.

Payment Provision

The bill would also insert a provision enabling a client to reverse a transaction. It is unclear how effective this provision would be, as far as offshore operators are concerned. Credit cards are but one form of payment. E-currency payments and bank transfers are also widely used and are not affected by this measure. As far as credit cards are concerned, this provision would add little to current practice. Australians dealing with overseas providers using credit cards to fund their accounts are already able to repudiate the credit card transactions.

This provision is not supported.

Inducement to gamble

Section 7 appears to be targeting “free play” poker or casino sites that are linked to play for real poker or casino sites.

While the objective is supported, this provision is not. It is strongly arguable that the existing advertising restrictions in the *Interactive Gambling Act* already prohibit free play sites that are linked to play for real sites. In other words the deficiency lies not in the legislation but in the lack of enforcement.

Advertising Restrictions

The Bill contains provisions to prohibit the broadcasting of any advertising of betting venues and online gambling sites during all G classified programs and sports or sports-related programs.

This provision is excessive and unnecessary. Prohibiting the advertising of sports betting during a sporting program (or a sports-related program) seems less of an attempt to regulate sports betting, as an attempt to smother it.

The second aspect is to prohibit the broadcasting of betting odds “where there is a commercial arrangement between the licensee or an agent of the licensee (ie. presenter) to provide betting odds.” It is presumed this is intended to stop the broadcasting of odds during “in play” commentary. As noted, this Association supports the end of this practice and action is being taken to wind it up. However, this provision would appear to go further and would ban any paid discussion of betting odds on the radio or television, regardless of the program.

This provision is excessive and unnecessary and is not supported.

Match-fixing Offence

The Bill contains a draft provision to make cheating at sport an offence.

This Association supports the objective but believes the work being undertaken by the New South Wales Law Reform Commission on behalf of and in conjunction with the other states should be allowed to run its course.

Although the draft provision contains many admirable features, it would pre-empt the work currently being undertaken. Accordingly is not supported

Introduction

- Productivity Commission Report 2010

This Association supports the basic principles and policy positions espoused in the Productivity Commission in its Report of 2010. This independent and far-reaching Report presents the results of one of the most detailed reviews of gambling, both on-line and off-line, undertaken in Australia and throughout the world.

The Commission has a demonstrated policy focus on problem gambling.

This Association commends the Report for its research, its evidence-based recommendations and its conclusions. We are of the view that the Committee is able to rely on the work of the Commission in addressing most, if not all, of the Terms of Reference. It is sound, dispassionate research. The adoption of its recommendations will lead to marked improvements in the way gambling is approached by the community, regulators and gambling providers.

- What is Internet Gambling?

The term “Internet gambling” is very broad and encompasses all forms of gambling delivered by way of the internet (and similarly, other interactive technology).

However, this term can be of limited use depending on the context in which it used, as it embraces all of the different forms of gambling that have different characteristics, appeal to different segments of the market, and, in the context of problem gambling, present different risk profiles.

For example, it encompasses internet *gaming* – which includes simulated casino games, interactive poker and lotteries, but also includes internet *wagering* on sports, racing and other future events. Recognition that there is a different risk profile for each form of gambling was the basis for the exemptions granted to wagering and lotteries by the Commonwealth’s *Interactive Gambling Act*.

It should also be noted that the *formal* (legal) “internet gambling industry” in Australia is – in theory at least – made up only of internet wagering (and the sale of lottery products online). Accordingly, it is important to appreciate the use (and misuse) of “internet gambling” when assessing commentary.

Before turning to the Terms of Reference, it is helpful to offer some preliminary comments. The following gives a broad overview of developments in three key areas: commercial, regulatory and responsible gambling delivery.

It is important to understand the changes that have occurred, and are occurring, in these areas in order to have an informed perspective in the policy conversation about the Australian internet gambling experience. Internet gambling is a global phenomenon and Australia cannot act in isolation to the global market. Policy decisions must take account of how Australians currently interact and will, in the future, interact, with the global internet gambling industry.

(1) Commercial Developments

Commercially, internet gambling in Australia and overseas has continued to grow.

Its principal driver for growth remains consumer demand. Internet gambling has been successful because it is able to deliver consumers better value and better service. It is innovative and offers a greater and variety of betting options.

The key features of the industry of today include:-

- The industry is now mature and is undergoing consolidation. Smaller operators have either gone out of business or been acquired by larger operators;
- The global market is increasingly dominated by large overseas operators. There is greater importance on “brand recognition”;
- The “one-stop shop” business model is now followed as the global standard. For an operator to be competitive, it is increasingly important to offer the full suite of gambling products – sports and race betting, casino games, and poker and, to a lesser extent, games such as bingo and “skill games”;
- There have been technological improvements in the delivery of the gambling experience including enriched graphics and more interactive games. There is also the attraction of “information rich” sports betting sites, and the “streaming” of vision of the game or event is more widely offered;
- “Chat rooms” and other communication features are more common;
- There has been the emergence of various forms of “e-currency” and other specialist payment methods designed for online transactions;
- Gambling products are now delivered by mobile phones -- which provide a mobile method of accessing the Internet -- along with interactive television;
- There is a greater choice of games as operators are able to exploit the flexibility of the technology to refresh old games and offer new ones;
- Technology has also worked to assist consumers by offering greater transparency on prices. “Odds comparison sites” enable consumer to compare the prices offered by bookmakers from around the world on a particular event. As well, competition means the Return-to-Player percentage of, say, simulated gaming machines, is higher than in a land-based venue. The internet offers a player an immediate comparative “snapshot” of the various gambling products;

In addition to these factors, internet gambling may be expected to increase as the proportion of the population comfortable with interactive technology increases. If this is so then serious challenges are posed for Australia's current regulatory approach.

(2) Regulatory Developments

Internationally, the debate between prohibition and regulation has been largely resolved with most jurisdictions now concerned with the correct settings for regulation. This process is marked by disputes over access to markets.

Different countries have taken different approaches.

Europe

In Europe, decisions of the European Court of Justice have concentrated on what type of licensing is acceptable under European Union law. Recent cases have allowed Member States to maintain monopolies where that is part of a consistent and proportionate policy to regulate gambling. Notwithstanding this, countries which have hitherto prohibited or strictly curtailed internet gambling such as Spain France, Denmark, Greece, Holland and Germany, have moved or are in the process of moving to more liberalised and regulated markets.

In March 2009 the European Parliament adopted a report by its Internal Market Committee arguing that the rules governing online gambling should not be laid down by the European Union but by individual member states. The Report called on the European Council to seek a “potential political solution” to the problems of online gambling.¹ But despite promises to harmonise regulation across the EU in 2011, there is still no common licensing scheme and so *“the walled gardens that comprise the European betting market remain relatively undisturbed.”*²

In order to defend the market “walls”, several countries have implemented additional controls. Some of the most notable are (1) ISP blocking of unlicensed sites,(2)advertising restrictions and (3) prohibiting financial institutions processing payments relating to unauthorised gambling (“payment

¹ The Report argued that online gambling is easier to access than traditional gambling, increases the risk of fraud, crime, gambling addiction, and poses dangers to children and the integrity of sporting events. It called for proposals to identify “common objectives” and a “common position” on cross-border betting and social and public order problems such as gambling addiction and the misuse of personal data or credit cards. It also backed the development of standards regarding age limits, a ban on credit, and measures to inform or protect vulnerable gamblers. The Report recommended that governments take steps to ensure sports receive fair financial returns from gambling conducted on those events.

These themes are also prominent in the Australian discussion around internet gambling policy but in the Australian context, these are issues that have already been largely successfully addressed by regulation.

The view that online gambling increases the risk of fraud, crime and risks to the integrity of sports events is mistaken.

“One of the biggest advantages (and drawbacks) of the internet is that it records everything, permanently. To register with an online gambling site, you will typically need to register the details of a credit or debit card, your name and address and proof of age. Gambling transactions are typically recorded by the operator, so that they can deal with any future queries from customers, and so they can police against any possible fraud – which in the end will cost them money. The European Parliament offers no explanation as to why credit card data held by online gambling sites presents an easier target to fraudsters as opposed to any other e-commerce site. This electronic information trail makes any laundering of money impossible. However, bizarrely, the European Parliament proposes removing this electronic trail, presumably to reduce the amount of credit card data held by operators. It proposes obliging operators ‘to make use of pre-paid cards’, which would give money launderers the green light!

The premise that online gambling presents a threat to the integrity of sports events is plain wrong. In fact, the reverse is true. Online gambling has been associated with the fixing of sports events because it has helped to identify that such fraud is taking place, whereas previously it might have gone unnoticed.” (A Brown, Online Gambling Law Report, March 2009.

² Niall O’Connor, *“European Gambling Law – from Schindler to Engelmann”*. Bettingmarket.com 2011

bans”). Their experiences, discussed later in this submission, are useful in assessing the effectiveness of an overly-prohibitive policy.

The United States

The US has taken a strong stance against internet gambling and its experience is a useful illustration of the effect of prohibition.

The US passed the Unlawful Internet Gambling Enforcement Act (UIGEA) in 2006. This Act banned the processing of payments related to internet gambling. The US has adopted strong enforcement posture.

At the same time, legislation to allow for licensing of internet gambling has been under active consideration.³ Although the previous Bills garnered strong support, the Congressional focus on other matters means that the immediate future of online gambling reform in the US is unclear.

The US experience gives two useful pointers for Australian policy:- the international trend is for policy discussion to be around the terms of any regulation rather than any serious promotion of prohibition, and that defences such as payment bans are of limited utility.

(3) Responsible Gambling

The Internet platform offers a number of advantages in the delivery of responsible gambling strategies including effective exclusion of problem gamblers, a depth of information about problem gambling, and pre-commitment facilities. This is an area where the internet can be used in a positive way. The Australian Internet gambling industry is subject to a range of stringent regulatory controls to ensure responsible gambling. The following briefly explains how some of these controls operate.

Access by children

A concern that is regularly raised with internet gambling is access by children, especially given their take-up of new technology. This concern is misplaced⁴.

³ In the previous Congress, Rep. Barney Frank’s Bill for a federal scheme of regulation of internet gambling (HR 2267) passed the mark-up stage of the House Financial Services Committee in July 2010. It was passed by a 41-22 majority, and became eligible for a full vote in the House, but was overtaken by the Congressional Elections.

On June 24, 2011 Rep. Joe Barton (R-TX) introduced H.R. 2366: The Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2011. This Bill has a more modest scope, focusing on poker, but the supporting documentation notes that the UIGEA has only been partially successful in aiding enforcement efforts against unlawful internet operators. Barton's internet poker bill, to date, has 11 co-sponsors. Among the co-sponsors are Rep. John Campbell (R-CA) and Rep. Barney Frank (D-MA) who have introduced their own legislation to regulate internet gambling, although their proposals would not limit regulation to poker. The current Campbell-Frank Bill, H.R. 1174, is pending in committee. The bill would grant the Secretary of Treasury regulatory and enforcement jurisdiction over internet gambling. Though wagering on sports is excluded, permissible forms of gaming would expand well beyond poker.

Online gambling can only be conducted by an account holder. All Australian Internet gambling agencies are obliged to obtain and verify the identity of the account holder. The Federal *Anti-Money Laundering and Counter Terrorist Financing Act 2006* requires internet gambling providers to verify a player's identity (including age) within 90 days of the account being opened or they must freeze the account. Payments to the player may not be made unless evidence of ID has been obtained.

This obligation to verify the identity of the person is in place regardless of whether the punter is betting \$5 or \$5000. This may be compared with the situation for clubs and pubs, casinos and racecourses, where anonymous gambling is the norm. This is pertinent to the discussion about measures to protect the integrity of sport.

Access to betting history

One of the dangers with poker machines is that gamblers can lose track of the extent of their gambling. Unlike poker machine play, clients betting with Australian online providers are able to immediately access their betting history online.

At the press of a button, they can see all of the bets they have placed over the last, say six months or longer.

Problem gambling exclusions

Internet providers offer effective temporary or permanent exclusion to clients who feel they may be developing a problem.

This is effective and enforceable. Internet gambling providers are able to block access to the players' accounts. Without an account the player cannot bet at all. The technology allows internet gambling providers to offer almost total compliance with this requirement.

This is contrasted with the difficulties that are evident in poker machine venues. Clubs and pubs must identify a person from a photograph or similar, before barring the problem gambler. This results in relatively poor compliance rates.

Problem gambling controls

The Internet allows for the inclusion of additional responsible gambling strategies. For example, all Australian sites provide bettors with access to online checklists to help determine if they are

⁴ This issue was dealt with in the Review of the *Interactive Gambling Act* conducted in 2004. The Report found "minors have little motivation to engage in regular, unsupervised Internet gambling because they cannot make any financial gain (unless a parent endorses the gambling) and because parents can easily detect gambling by a minor. Further, methods are available to exclude minors from participating in interactive gambling that are not available to onsite gambling, such as age verification software." Report, page 34.

developing a problem. The sites also provide links to counselling websites⁵ to further assist. These are features that are strikingly absent from gaming machines in clubs and pubs.

Pre-Commitment Facilities

As the Committee is aware, pre-commitment facilities for gaming machines has been a hotly contested measure, with opposition from a number of a land-based gambling providers. In contrast, most of the major Australian internet gambling providers ***have already implemented*** such a facility. A review of the internet sites of Sportsbet, Sportingbet and Centrebet, by way of example, will show they offer their clients the ability to pre-commitment to levels of expenditure.

Clients have the option of setting deposit limits/ loss limits as they see appropriate. These limits cannot be changed for a minimum of seven days.

All major Australian Internet operators have adopted this facility, and work is underway for it to be mandated by the licensing authorities in key Australian jurisdictions to ensure all Australian Internet operators this are meeting this standard.

Codes of Conduct

Compliance with Codes of Conduct is mandatory⁶. The Codes apply to all gambling providers and deal with such things as the requirement for appropriate staff training and skills development, advertising and promotions, as well as exclusions and counselling.

Proposed New Measures

Exclusions by Family Members and Others

There have been repeated calls for a facility to allow family members and others to seek exclusion of problem gamblers from venues. This Association has consistently supported this proposal, which should feature a streamlined process and appropriate definition of the grounds upon which relief may be sought.

The establishment of a dedicated Australian online advice and counselling service.

The UK Prevalence Study cited above, found that *“research suggests that online problem gamblers appear to prefer to seek help online therefore online help guidance and treatment may be a potential way forward to help those who may feel to stigmatise to seek traditional face-to-face help for their gambling problems.”*

⁵ Several Australian sites provide a link to bodies such as GamCare or Gamblers Anonymous International which has branches and local groups throughout the world. The GA page dedicated to Australia has contact names, local group meeting schedules and addresses, contact numbers and emails for all states in Australia.

⁶ For the NT Code of Conduct, please see http://www.nt.gov.au/justice/licenreg/sports_betting.shtml. This Code is mandated by way of licence conditions.

This Association recommends the establishment of a dedicated Australian online advice and counselling service. This would be a resource for all Australian gambling operators and not exclusively for the use of online operators. This site would represent world's best practice in terms of providing information and advice about detecting and recognising problem gambling.

It is proposed that online counsellors be available to further assist and case-manage any persons who feel they are at risk of developing a problem.

It would be mandatory for all Australian Internet gambling providers to provide a link to the site.

Nation-wide exclusions.

Currently a person who feels they are developing a gambling problem may seek exclusion from a site. However this has to be done on a site-by-site basis, requiring applications to be made to all operators with whom the person has a gambling account.

It is proposed consideration be given to a means of implementing a national exclusion process whereby exclusion for problem gambling from one site would see the exclusion extended to all. Apart from the need to craft a mechanism that complies with privacy obligations, it is necessary to be mindful that exclusion would not extend to international sites and that a problem gambler could readily avoid exclusion by gambling offshore.

It may be that this is a strategy best managed in consultation with the gambling counsellor and the online gambling counselling service (recommended above).

Another aspect is the emergence of more research into the risks posed by online gambling.

It is important to recognise and acknowledge from the outset that internet gambling – as with all forms of gambling – can expose gamblers to risks of developing problem gambling. Two studies are worthy of note. The first is the UK *“Internet Gambling: A Secondary Analysis of the Findings from the 2007 British Gambling Prevalence Survey”* of October 2008⁷. The second is the comprehensive review of the literature undertaken by the Productivity Commission.

The UK Prevalence Study is useful as it builds on the earlier Prevalence studies undertaken, and the United Kingdom offers a useful basis for comparison with Australia as it has many of the features of the Australian gambling market.⁸

⁷ *“Internet Gambling: A Secondary Analysis of findings from the 2007 British Gambling Prevalence Survey”*. Griffiths, Wardle, Orford, Sproston, Erens. October 2008.

⁸ In the UK, gambling has been the subject of close analysis by the United Kingdom Gambling Commission and its predecessor, the DCMS. Using the expertise of the International Gambling Research Unit at the University of Trent Nottingham, the UK Gambling Commission has produced in-depth prevalence studies. These studies have the benefit of being able to be compared with earlier results looking at the same subject area, and so allow a more precise assessment of the impact of recent changes to the gambling industry

The 2008 Analysis noted that

- Online gambling had more than doubled in the UK since the first study. Those participating in remote gambling were more likely to be male, relatively young adults, single, well-educated, and in professional managerial employment.⁹
- *“the finding that Internet gamblers are more likely to be below the age of 35 years is unsurprising and most likely reflects Internet usage in the general population”;*¹⁰

The authors found that problem gambling (as measured by the DSM-IV) was also significantly more likely among Internet gamblers when compared to non-Internet gamblers. However, the authors went on to state that this finding “should be put into the context of the data set because of the cross sectional nature of the study, no definitive conclusions can be drawn in relation to causality.” *“There is no conclusive evidence that Internet gambling is more likely to cause problem gambling ...”*¹¹

The authors suggested

“Given these findings and the potential concerns that arise from them it is clear that gaming companies need to acknowledge they will need to provide even better social responsibility infrastructures online and off-line. Furthermore there is also the issue of how Internet problem gamblers can be helped.

Recent research suggests that online problem gamblers appear to prefer to seek help online therefore online help guidance and treatment may be a potential way forward to help those who may feel to stigmatise to seek traditional face-to-face help for their gambling problems.

The rise and challenges of Internet gambling cannot be seen in isolation particularly as there is ever increasing multimedia integration between the Internet and mobile phones and interactive television. Furthermore young people appear to be very proficient in using and

The 2008 Analysis noted that

- Online gambling had more than doubled in the UK since the first study. Those participating in remote gambling were more likely to be male than female, and were more likely to be aged 18 to 34 years.
- When compared to non-Internet gamblers Internet gamblers were more likely to be male, relatively young adults, single, well-educated, and in professional managerial employment.
- *“the finding that Internet gamblers are more likely to be below the age of 35 years is unsurprising and most likely reflects Internet usage in the general population”;*
- The finding that Internet gamblers are more likely to be single is most likely to be explained by age.
- Internet gamblers were more likely than non-Internet gamblers to be well educated. Computer literacy may be a consequence of being well educated and therefore those who are more computer literate may be more likely to engage in computer-based activities.
- Another consequence of being well educated is that it increases the likelihood of getting a good job. Therefore the finding that Internet gamblers are more likely to work in managerial or professional employment is perhaps unsurprising given its relationship to education.

⁹ Para 5.1

¹⁰ Para 5.3

¹¹ Para 2.9

accessing these media and are likely to be increasingly exposed to remote gambling opportunities. These young people will therefore require targeted education and guidance to enable them to cope with the challenges of convenience gambling in all its guises.”¹²

Productivity Commission’s Findings

These conclusions are consistent with the Productivity Commission’s findings. The Commission found that while the internet “*can ... expose new groups to the risks of problem gambling*”¹³ ..., “*it is not clear that online gaming is more harmful than other forms of gambling. There are a number of features of online gaming that ameliorate its inherent risks to some extent.*”¹⁴

- most internet gaming takes place within people’s homes. This puts online gamblers with partners and families in close proximity to people with a direct and personal interest in their wellbeing. Compared with staff at gambling venues, family members are likely to be more motivated to intervene when evidence of a gambling problem emerges.
- Credit card betting provides a monthly reminder to online gamblers of the full financial costs of their behaviour, as well as making it easier for other family members to detect any problems.
- Online gaming is usually offered more cheaply than venue-based competitors such as casinos. For a given duration and intensity of play, this results in smaller losses.
- Online gaming allows players greater freedom to play at their own pace, rather than at the pace dictated to them by casino conventions.
- Online gamblers do not fit the typical profile of a vulnerable or at-risk group within the community. Rather, they are more likely to come from higher socioeconomic groups with above average education levels and income, and working in professional or managerial jobs.
- Online gaming companies have a strong incentive to self regulate.¹⁵

The Commission cautioned that the literature on problem gambling associated with online gaming has to be carefully interpreted and concluded compositional differences in the types of gambling people engage in over the internet “*can erroneously give the appearance that online gambling is associated with a higher degree of risk.*”¹⁶

Even so, the Commission said “*While the risks associated with online gambling are likely to be overstated, the relatively high prevalence of problem gamblers is still a cause for concern. At the very least, it indicates that the internet is very attractive to this group and, though the evidence is weak, gambling online may exacerbate already hazardous behaviour. In any case, it is clear that careful regulation of the industry is warranted.*”¹⁷

In summary, there is a recognised risk of problem gambling associated with internet gambling.

¹² Para 5.14 and following.

¹³ Report p 15.2

¹⁴ Report p 15.9

¹⁵ Report p. 15.9-15.10

¹⁶ Ibid

¹⁷ Ibid

Conclusion

With this overview of both the risks and benefits of the internet platform, it will be seen that the Productivity Commission's comments neatly encapsulate its position: the internet "can ... expose new groups to the risks of problem gambling" but "it is not clear that online gaming is more harmful than other forms of gambling. There are a number of features of online gaming that ameliorate its inherent risks to some extent."

Most of these features are far in excess of what the land-based gambling providers are willing or able to do.

I now offer short comments on the Terms of Reference.

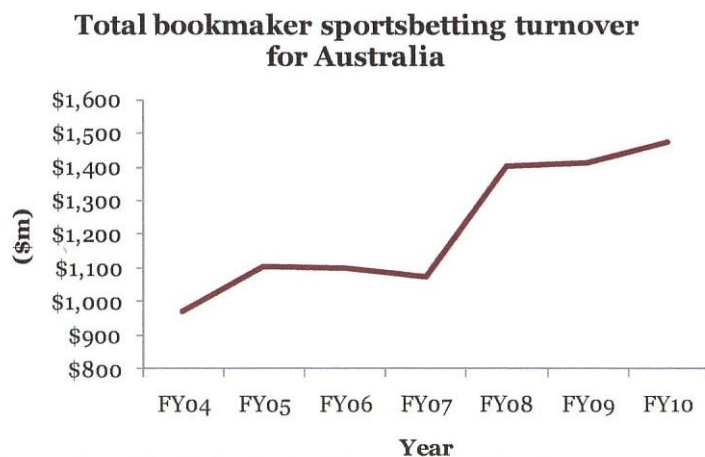
(2) Terms of Reference 1.

(a) the recent growth in interactive sports betting and the changes in online wagering due to new technologies;

Interactive sports betting in Australia is the smallest gambling segment but is growing.

As indicated by Mr Peter Yates in his 2011 Review of the Victorian Thoroughbred Wagering Industry¹⁸, the growth of wagering on sports in Australia "has been nearly 8% over the last 7 years."¹⁹

The following graph prepared by Mr Yates shows total the bookmakers' total sports betting turnover in Australia.



This graph is notable for the modest growth rate over the past two years.

However, turnover is an imperfect measure. The better indicator is player expenditure, or player loss. Sports betting was estimated by the Productivity Commission to constitute about 1.2% of Australia's gambling market in 2008-2009 – around \$300 million in expenditure. Roy Morgan

¹⁸ See vicwageringreview.com.au

¹⁹ Ibid, Issues Paper. p18

Research has estimated that for the 12 months to March 2011, Australians spent \$2.5 billion betting on the races, down from \$2.8 billion in 2002. Sports betting, although still small at \$0.6 billion, has increased from \$0.4 billion in 2002.²⁰

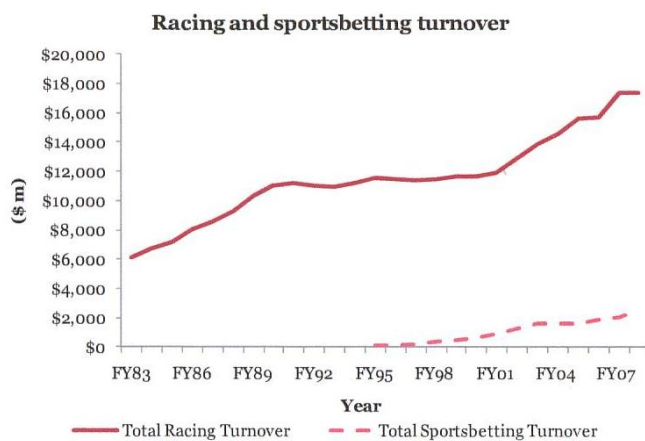
Sports betting has had a solid growth path from a small base, but it remains the smallest segment of the gambling market.

- Around \$19 billion was spent by consumers on Australian gambling products in 2008-09;
- Around \$2.6 billion was spent on wagering (racing) products in that period;
- Around \$800 million was spent on (illegal) online gaming products over that same period.²¹

The outstanding statistic is that, allowing for growth, the illegal gaming market is now likely to be some \$900+ million. The illegal online gaming market is **more than double** the legal sports betting market.²² This is stark indicator of the failure of the current policy approach and one I shall return to later in this submission.

Sports betting is popular because of the increased coverage of televised sports, the simple nature of the betting options, and its ready accommodation to interactive technology.

The second limb of this Term of Reference was sports betting and changes in online wagering. Again the analysis conducted by Mr Peter Yates is illuminating. He found that *“Statistical analysis demonstrates that the introduction of sports betting has not had a material impact on the racing industry.”*²³ The figure below, prepared by Mr Yates, shows the impact on racing of the introduction of sports betting throughout Australia.



²⁰ July 18, 2011 - [Roy Morgan Research](#)

²¹ The Commission estimated some \$250 million was spent on online poker, and \$540 million was spent on online casinos. Report p 2.36

²² “Online gaming in Australia could amount to about four per cent of gambling expenditure.” Report p 2.1

²³ Ibid

This is not to say that sports betting share of the wagering market will not increase in the future. Racing's share of the gambling market has been falling consistently over recent years. Traditional gambling providers have failed to appeal to a younger demographic, have lacked innovation, and have maintained high-cost products. As an industry it has been slow to adapt to the digital world.

Even so, States and Territories that have adapted to the new technology have achieved some of the highest TAB growth rates in the nation. By comparison, protective jurisdictions such as New South Wales have generally performed poorly in both the TAB and bookmaking sectors.

The Commission noted that *"market trends substantiate a decline in the relative importance of wagering on racing during the 1990s, with turnover plateauing over this period ... resulting in a sharp decline in expenditure on wagering when measured as a proportion of total gambling or total household expenditure.*

Since 2000, phone and internet based bookmaking operators have led to increased growth in the wagering market. Whilst still a relatively small part of the wagering market (representing around 25 per cent of turnover), corporate bookmakers have grown rapidly since their inception, increasing their turnover by almost 500 per cent since 2000. In contrast, wagering turnover with TABs on thoroughbred racing was slightly lower in 2008 than it was in 1992, after inflation has been taken into account. The real turnover of on-course bookmakers has declined more markedly. These trends suggest that some of the growth in corporate bookmaking is due to punters switching from one wagering product to another. However, the growth in corporate bookmaking has more than offset these declines, causing the wagering market to grow overall, in terms of both turnover (the total value of the wagers taken) and spending (the total value of punters' losses).²⁴

Regrettably, the racing sector has failed to grasp the challenges of the interactive gambling and has consistently argued for barriers to protect their market share by trying to fetter other types of gambling and to restrict consumer choice. Racing may be better served by making its product more attractive and competitive to the recreational gambler.

As was said in the Victorian wagering review, sports betting is attracting new punters and *"the concern is that if this trend continues the volume of punters who think first of thoroughbred racing will decline and therefore shrink racing's percentage of the wagering wallet."*

(b) the development of new technologies, including mobile phones, smart phones and interactive television, that increase the risk and incidence of problem gambling;

Discussion of this term of reference needs to consider three separate issues: the growth of mobile phones and smart phones, the potential for television betting, and then the risk and incidence of problem gambling arising from these technologies.

Telephone betting including mobile phones has been available for well over a decade. There is little evidence to suggest that this, of itself, has exacerbated the rate of problem gambling.

Recently, attention has been given to the growth in gambling through the use of smart phones.

²⁴ Report p 16.9

In the UK, Paddy Power announced that 34% of its active customers are now accessing the service through their phones, with its mobile revenues more than quadrupling during 2010. In January 2010, the company had 10,000 mobile customers. A year later in January 2011, this had increased to 50,000. By April 2011, it had 120,000 mobile users, due to its applications for the iPhone, iPad and phone and tablets running Google's Android mobile software.

Betfair announced it took more than £1bn in bets from mobile devices, and that 168,000 people placed a Betfair bet from their phones – up 122% on the previous financial year – while revenues from the company's mobile apps and mobile sites was up 88% year-on-year.²⁵

It has been claimed that net mobile gambling revenue in the UK rose from £19m in 2009 to £41m in 2010.²⁶

How should these figures be interpreted? In many ways the new smart phones are simply an extension of the existing Internet Technology – they allow gamblers to connect with the betting provider by means of technology they carry in their pockets rather than through their PC. In the case of Paddy Power, while some 34 per cent of its customers accessed their services through the use of smart phones, it believes some the 55% of the organisation's clients are smart phone users.

This is consistent with the evidence given previously about online gambling - that its users are the early adopters of new technology, and that gambling, along with other forms of e-commerce, will see an increase in participation rates arising from the new technology. Smart phones enable people to use online services – everything from Facebook, to news, to stock market reports, to online shopping and even a GPS - whenever and wherever they choose. It is not surprising therefore that online gambling has seen an increase in use of this device.

Growth in interactive gambling by use of smart phones or interactive television is the only to be expected with the growth in the digital economy. All businesses have been affected by these changes and indeed the Federal government's policy, as evidenced by the roll out of the NBN, is to keep Australia at the forefront of technological development. It is simply not appropriate to think that some sections of online business, such as gambling, can be quarantined from the sweeping changes that are occurring.

Similar comments can be made with respect to the interactive television betting. It is pointless to resist the introduction of this technology. Instead, the question becomes how should this be managed? Interactive television betting raises slightly different issues to online gambling because, in the usual case, the person must *choose* to access a particular gambling site whereas television viewers have little choice in the stations they watch. However this objection is readily overcome if the interactive gambling service is a supplementary "add on" to the televised program. The client would choose whether a betting service should be available alongside the live coverage of, say, a golf tournament, cricket match or horserace. This would also avoid the concerns that arise with certain forms of advertising around sporting events (to be discussed later in this submission.)

The principal issue with interactive television betting would be ensuring equitable access to the technological platform, as it would favour only the largest operators. Attention would also have to

²⁵ "Gambling on Smartphones takes Off" The Guardian, 30 June 2011

²⁶ "Mobile gambling doubled in the UK last year" Fonecast, 28 June 2011

be given to controls around television networks, to avoid them becoming *de facto* betting providers. While there is no objection in principle to interactive television betting, it is clear that it is an issue requiring a deal of thought and discussion.

The current question is whether the adoption of these forms of technology is likely to increase the risk and incidence of problem gambling.

Concerns have been raised that these technologies are particularly used for “live betting” or “betting in the run”, ie, betting after the event has commenced or betting on certain options are available during game play (“exotics”).

Are concerns around “in run” betting well placed? The evidence suggests they are not. “In run” betting has been a feature of sports betting since its inception. There has been no evidence presented that “in run” betting of itself exacerbates the risk of problem gambling by showing that the *proportion* of problem gamblers increases in excess of increased participation rates. However, there is no room for complacency and this should be an area for national monitoring.

It should be noted that the *Interactive Gambling Act* allows the bet type but restricts the technology able to be used to deliver it²⁷. An Australian punter is able to bet “in the run” with an Australian betting provider if he or she uses 19th Century technology – the telephone - but is able to bet with anyone else in the world using 21st Century technology – the internet.

Restricting “in the run” betting on a technological basis is not sound. The artificiality is becoming more apparent as new generations of smart phones blur the distinction between “telephones” and other forms of interactive communication.

As far as the bet types are concerned, Australian wagering operators are only permitted to offer bet types that have been approved by the State or Territory gambling regulator and sporting bodies. “Micro-event wagering” bet types are not, and would not be approved, by State and Territory gambling regulators. In addition, it is a term of integrity agreements entered into between sports authorities and Australian wagering providers that the particular sport must also approve the bet type offered. These requirements for separate and independent approval of bet types provide an adequate check on the probity of “betting in the run”.

From the perspective of the Australian punter, he or she may “bet in the run” by means of the internet (or any other interactive technology) with any of the major global betting providers, *except* local providers. The restriction in the *Interactive Gambling Act* encourages local punters to bet with offshore providers, which serves no sensible policy purpose. Removing the anomaly would not

²⁷ This approach reflected an inability to distinguish between “betting in the run” and “micro-event wagering” when the Act was developed. “Betting in the run” refers to betting on approved bet types (eg, who will win) after the event has commenced. “Micro-event wagering” is the much publicised notion of whether the next ball bowled in a cricket match will be a Googly, or whether a tennis player will serve an ace on the next point. Although the restriction was imposed in the light of concerns with “micro-event wagering”, “betting in the run” was caught up in the process. The amendment allowed “betting in the run” by Australians with Australian betting providers only when it was undertaken by means of the telephone. The internet could not be used.

exacerbate the risk of problem gambling as Australian consumers already have access to these services, either by telephone (Australia) or by the internet (all other global operators).

It is recommended the IGA be amended to remove the current restriction on Australians being offered in the run betting services online.

(c) the relative regulatory frameworks of online and non-online gambling;

It was observed earlier in this submission that the online gambling environment provides responsible gambling features that exceed in both scope and effectiveness those offered by land based gambling providers. These include pre-commitment facilities and, in the context of gambling and the integrity of sporting events, the identification of **all** clients.

This Association supports the recommendations already made by the Committee to improve the controls are around gaming machines, and the recommendations made by State and Territory Sports Ministers to protect the integrity of sport. The latter will be discussed in more detail later in the submission.

As far as difference in treatment is concerned, the topics that are usually raised under this heading are the use of credit cards to fund online gambling accounts, and the provision of credit.

There is a need to distinguish between credit betting and the funding of a betting account by means of a credit card.

Credit Cards

A consistent theme of gambling regulation has been to prohibit the use of credit cards for gambling. Community and counselling bodies have regularly argued against its use. In the case of online gambling, the concern is that the dangers of credit card misuse coupled with online gambling could exacerbate both problems.

Although this Association supports the principle that all gambling providers should broadly be subject to similar responsible gambling controls, the use of credit cards shows that this principle must also be balanced with the realities of the particular gambling type.

In the case of Internet gambling and e-commerce, credit cards remain a principal form of payment. Almost every commercial site on the Internet allows for credit card payments either online or by telephone. Every internet gambling site allows for the funding of the account through a credit card.

In the light of this, a proposition to ban only Australian providers from accepting funds from credit cards is futile and dangerous. It seems counterintuitive to promote the ban in the name of problem gambling when its sole effect is to drive Internet gamblers to offshore sites.

Any ban on credit card usage would impact disproportionately on the benefits to recreational gamblers who constitute by far the vast bulk of online gamblers.

It is also way too late for such a proposition to have any effect.

A review of any major gambling sites will show that credit cards are but one of a number of forms of deposits that are accepted. Internet gambling and e-commerce generally is now serviced by

specialist online payment systems and online payment mechanisms such as PayPal (well-known to users of Ebay), Neteller²⁸ or Moneybookers²⁹. These facilities enable consumers to create an account funded by a credit card, which may be used in any of the thousands of sites that except that form of e-currency.

A ban on the direct deposit by way of a credit card could be easily circumvented by the two-step process of funding the E-wallet by means of a credit card and then depositing funds with the gambling provider by means of on the e-wallet.

The simple fact is that technology³⁰ has overtaken the capacity to restrict the use of credit cards even if that was desirable.

It must also be remembered that while credit cards pose an acknowledged risk for problem gamblers, they also provide important fraud, anti-money-laundering and other controls.³¹

Credit Betting

Credit betting is more problematic.

Credit betting with bookmakers has a very long history and is now provided for in the legislation of several States.³²

²⁸ See www.neteller.com.

²⁹ See www.moneybookers.com. It boasts 7 million members and services some 35,000 sites around the world.

³⁰ The above discussion also applies to “smart cards”, Stored Value cards and other payment methods that facilitate e-commerce.

³¹ Online gambling is sometimes perceived as being especially attractive and susceptible to money laundering. The concerns arise because the perceived anonymity of both the gambling transactions and the payment methods. But on examination, regulated online gambling sites are not especially attractive or susceptible to money laundering.

With respect to concerns about credit cards, it is useful to note the comment by the United States General Accounting Office:

“Banking and gaming regulatory officials did not view internet gambling as being particularly susceptible to money laundering, especially when credit cards, which create a transaction records and are subject to relatively low transaction limits, are used for payment. Likewise, credit card industry officials did not believe that internet gambling was any more or less susceptible to money laundering than any other types of electronic commerce and pointed out that, in their view, the financial industry, which is responsible for the payments system, is better suited to monitoring for suspicious activity...”
United States Accounting Office, “Internet Gambling: An Overview of the Issues” GAO- 03-89 (2 December 2002)

³² See for example, Section 76ZZAA of the Tasmanian *Gaming Control Act 1993*. which deals with “Trading accounts”. A wagering provider (wagering or sports, and betting exchanges) “*may operate a trading account in respect of a player or other person if the provider –*

(a) is the holder of an authority to operate trading accounts; and

(b) considers that –

The genesis of credit betting is betting on a racecourse. To avoid the inconvenience and risks associated with handling large amounts of cash on course, bookmakers would allow certain clients to “bet on the nod”, or on credit, on the understanding that they would settle up at a later time.

The facility is also used by larger professional gamblers who seek to arbitrage differences in prices between various operators. In this case, the punter will outlay large sums for a more probable small win.

The practice of credit betting is limited to wagering, and the extent and terms of any “trading account” that an operator allows a client to use, is agreed between the two of them. Any commercial default is borne by the operator, although there have been instances of bankruptcies where the outstanding debts included debts owed to bookmakers.

Previous reviews of rules regarding credit betting by bookmakers have recognised that credit betting is limited to a select group of punters, with good practice seeing the bookmakers verifying the clients’ creditworthiness, and the application of the Consumer Credit Code to bookmakers’ credit arrangements.

The Productivity Commission carefully examined the risks with credit betting, and these *“warrant, at a minimum, strict regulation and monitoring of credit betting. However, it is not clear that, in practise, the problems associated with credit betting are sufficient to justify its complete prohibition.”*³³

It noted the *“considerable benefits in terms of convenience and security”* and that *“access to credit is simply an ordinary feature of a business relationship that is common in other sectors of the economy.”*³⁴

The challenge for policy is to ensure that credit is directed towards those with a lower risk profile (such as professional punters), and that wagering providers who offer credit retain strong incentives for due diligence.

The Commission was especially concerned with the off-course provision of credit betting due to the different interaction with clients over the internet, and as some corporate bookmakers are beginning to advertise credit facilities on relatively small bets - *“this increases the chances of attracting customers with a higher risk of harm (non-professional, smaller bettors)”*.³⁵

(i) the player or other person is suitable to have access to a trading account; and
(ii) it is otherwise appropriate to operate the trading account; and
(c) operates the trading account in accordance with the conditions to which the authority to operate trading accounts is subject.”

See also Rules made under the Race and Sports Bookmaking Act 2001 of the ACT which revised Rules first developed under the Bookmakers Act.

³³ Report, p.16.55

³⁴ Ibid

³⁵ Report p. 16.57

The Commission went on to recommend the issue be the subject of further research.³⁶

This Association supports the recommendation for further research. It appears sensible to maintain the benefits to clients of credit betting, but look to the development of appropriate controls to mitigate the risks. It is proposed the Committee recommend the immediate issue of a reference to a national research body to consider appropriate parameters governing the issue of credit.

(d) inducements to bet on sporting events online;

Recently, some States and Territories prohibited Australian operators from offering modest “signup bonuses” to those who open new accounts - the “\$100 free bet” offer. This had been labelled an improper inducement to gamble.

Offers such as this must be kept in perspective.

“Cash-back” offers and giveaways are a standard (and unremarkable) feature of the marketing of all businesses. In the case of gambling sites, the “free bet” or other “bonus” offers are a practical way of appealing to the market.

This is not a new concept, with “free bets” and bonuses having become so prevalent in the global internet gambling industry, they are now the subject of specialist websites and services that compare the bonuses on offer.

As this is global practice, with various forms of bonuses being offered by all major operators, a ban on Australian operators matching these modest offers has had the effect of making the Australian industry less competitive in the global market but at the same time making overseas operators more attractive to Australian punters.

Furthermore, it appears that the impetus for such a step was less a concern about problem gambling, and more a desire to protect TABs from competition. It was not an evidenced-based step.

This has been recognised by the Productivity Commission. *“Whilst the overall costs of these restrictions for consumers are unlikely to be high, it is not clear why customers attracted by inducements such as free bets are more likely to develop gambling problems than customers attracted by other advertising strategies. Moreover, a large number of the customers accessing free bet promotions are likely to be simply shifting from one wagering provider to another. Indeed, as opening an internet or phone betting account with a corporate bookmaker involves some degree of effort, it is clear that the inducements are partly directed at overcoming ‘switching costs’ between providers (a practice common in a number of other industry such as telecommunications, health insurance etc.). As the wagering market is largely dominated by TABs, the prohibition on*

³⁶ RECOMMENDATION 16.3 *The impact of credit betting should be examined in further detail by either the regulator overseeing the national regulatory regime (recommendation 15.1) or the national gambling research body (recommendation 18.3). In the interim, advertising credit betting facilities should be prohibited, and credit betting should not be extended to TABs.*

inducements risks advantaging incumbents with a significant degree of market power, at the expense of greater competition.”³⁷

It concluded “offering inducements to wager through discounted prices to new customers is not necessarily harmful, and may primarily serve to reduce switching costs between incumbent wagering operators and new entrants, enhancing competition. The risks for problem gamblers should be assessed and, regardless of whether prohibition or managed liberalisation is the appropriate action, a nationally consistent approach would be warranted.”

This Association supports the conclusion and recommends the risks to be objectively assessed.

(e) the risk of match-fixing in sports as a result of the types of bets available online, and whether certain types of bets should be prohibited, such as spot-betting in sports which may expose sports to corruption;

The protection of the integrity of sport from corruption due to gambling is rightly a major issue of concern to the community. Although the number of instances of corrupt practices in Australian sport is relatively low, the much publicised examples of match-fixing and corrupt practice in Europe and Asia show that this a real risk which demands coordinated action by betting providers, sports bodies, regulators and governments.

A deal of work has been undertaken in this area in recent years, building on Australia’s already high standards of regulation. State and Territory Sports Ministers along with the Federal Minister for Sport have recently agreed to a National Framework for nationally-consistent measures to further enhance existing controls.

As far as existing controls are concerned, Australia has a highly regulated sports betting sector. Bookmakers and key employees are subject to probity assessment; all computer systems and recording equipment are subject to approval by a gambling regulator; all bets are recorded and auditable; in the case of online bookmakers, the identity of every customer must be verified regardless of whether the bet is \$5.00 or \$5000.

Bookmakers have entered Integrity Agreements with the major Australian sporting codes. These agreements provide for the exchange of information, prior consultation with, and the consent of, the sporting body for new bet types, and a requirement to advise of any suspicious betting patterns, among other things.

Sporting bodies are increasing their education programs to players, officials and others who, by betting on the sport, may lead to a perception of compromise. They have increased their due diligence measures, in some cases by the formation of specialised Integrity Units.

It is noted that this term of reference focuses on only **one** aspect of the controls protecting the integrity of sport –that of bet types. The concern arises that certain types of exotic bets are

³⁷ Report p.16.58

conducive to corruption, in that they may be manipulated by the actions of one person, while not affect the outcome of the game.

There are two aspects to be considered under this heading. The first is that the propriety of certain bet types and the second is the mechanism for review and approval of bet types.

In considering the propriety of exotic bet types a distinction has to be made between those that encourage a player to underperform (“negative bets”, as it were), those that are too readily subject to manipulation, which also need to be controlled, and those that reflect positive achievements by players performing to the best of their ability.

Recent events and commentary around sports betting have called for regulators and all sports bodies to have the power of veto over a “negative” and undesirable bet types. It is important to note that these powers already exist and have been, and are, exercised by the sports and gambling regulators.

The Victorian sports betting legislation has been put forward as a model for adoption by other States and Territories.³⁸ In recognition of its deficiencies and in support of the integrity objectives, internet bookmakers and, subsequently other betting providers, negotiated agreements directly with the sports. These agreements had national reach (i.e. covered all events across the country), provided for the provision of information regarding suspicious bet types and expressly gave the power of approval of the bet types to the sports. In other words, the bookmakers and the sports jointly developed a national scheme which was more effective and more advanced than that provided by the Victorian sports betting legislation.

There is clearly a need for national consistency in the regulation of sports betting. This is the guiding principle in the national framework announced by the Sports Ministers. However, the replication of legislation based on the Victorian model by the other States and territories will not materially add anything to the current arrangements.³⁹

Furthermore, this would not address the central issue for consideration which is the development of a nationally consistent approach, reflecting the national (if not international) markets for sports

³⁸ There are obvious limitations and efficiencies arising with a State Act that attempted to regulate a national market. For example, in the case of the Victorian Act, it could only address sporting events conducted in Victoria. It also did not expressly give the sports the power to approve (or disapprove) bet types.

³⁹ The most serious concern is the constitutional question mark which hangs over the validity of the Victorian legislation. The New South Wales Law Reform Commission, in its recent Discussion Paper on Cheating and Sport, noted “the lack of uniformity between the States in relation to what is permissible in the way of betting, and to the application, in relation to lawful wagering in Australia, of the constitutional protection concerning the freedom of interstate trade and commerce. ... This is an area of trade and commerce to which s 92 of the *Constitution* (Cth) has potential application, as appears from the decision of the High Court in *Betfair Pty Ltd v Western Australia*.”

Amendments to the Victorian Act, or the passage of interstate legislation modelled on its provisions will not necessarily cure this deficiency.

betting in which both Australian betting providers and Australian punters now operate. For the individual States and Territories to simply aggregate power does not cure the overarching problem of each State and Territory trying to regulate a national market.

There appears to be two alternatives. The first is for a Federal role to be exercised by the Federal government; the second is for greater coordination and cooperation between the States and Territories in such areas as the approval of bet types. For example, a simple mechanism for identifying bet types of concern is where the sports, having exercised a determination to approve or disapprove a particular bet type, notify all other State and Territory regulators (assuming the local regulator has given approval). Should any particular State or Territory have a significant concern over the propriety of the decision, it may raise this with the particular sport and the regulator of the particular betting provider. Any differences are therefore to be resolved by way of discussions and agreement, rather than the pre-emptory exercise of any purported regulatory power.

It is understood that discussions are already underway between the States and Territories to address this, and related, issues.

While the focus of this term of reference is on exotic bet types, it must be appreciated that this is but *one area of risk* around betting related corruption. As international experience shows, any game or contest is at risk if there is a large betting market on it *whether legal or illegal*.

This raises the important distinction between Australian and other operators. As noted, Australia has a highly regulated betting sector. Sportsbookmakers are almost exclusively online, and so all transactions are recorded and available for review. There are controls over the bet types that may be offered, with new bet types needing the separate prior approvals of the sporting body and the gambling regulator. Australian betting providers are more likely to be the victims of the sting than a perpetrator.

The threat is usually from illegal betting syndicates operating in India, Pakistan, or Eastern Europe. Estimates of the size vary widely – it has been said the illegal gambling industry in Asia is worth as much as US\$450bn per year.

This has an important consequence, in that increased controls over the local industry *would do nothing to lessen the threat*. Instead, local betting providers are able to provide an “early-warning” for a sport if suspicious betting patterns are detected. Indeed, the majority of high-profile investigations into betting-related sports corruption have been initiated by an online betting provider flagging concerns about betting patterns.

As mentioned above, bet types are subject to approval by both the sports and the gambling regulator. The sports have refused to approve bet types where the result may have been improperly manipulated or where a perception of manipulation may result. Hence, calls for further bans on “exotic bets” would not address corruption concerns – if the market exists offshore, there will be a risk of corruption.

At the moment, it seems the boundary between fair “exotic bets” – where the outcome is a function of good play – and improper exotic bets – which encourage a player to underperform – is about right. There is still room for discussion, for example, should a bet type be permitted if there are

additional controls to mitigate the risk? And how should the sports apply their discretion to approve? However, the process is in place for those discussions to occur.

This Association suggests that there is no necessity for further action to be taken on bet types, in particular to ban all exotic bets. Sporting organisations, and gaming regulators and betting providers are alive to the risks posed by certain bet types, and the mechanisms are in place to recognise and address those risks.

(f) the impact of betting exchanges, including the ability to bet on losing outcomes;

Betting exchanges (or more specifically Betfair), have established themselves as a feature of the Australian gambling market.

When betting exchanges were first developed, a number of objections were made ranging from:

- threats to the integrity of sports and racing due to clients being able to bet on losing outcomes,
- threats to the funding of racing due to a low margin operator taking away a business from existing high margin operators (TABs), and
- providing a facility for unlicensed persons to act as a bookmaker.

Overtime, most of these concerns have been allayed, the exception being the level of “product fees” payable to the NSW racing industry, which is the subject of current litigation.

Through a combination of strict regulation and high standard business practices, integrity concerns have been addressed. Betfair has recognised the potential for corrupt betting arising from the use of its facility, and has in response implemented state-of-the-art monitoring and review mechanisms to detect unusual or suspicious betting activity. Indeed, Betfair must be credited with providing early warning of corrupt activity.

The issues around betting on losing outcomes are more pertinent with racing than with sports. In a sports bet, if a person is backing Team A to beat Team B, they are, in effect, betting on Team B to lose. With a betting exchange, the facility offers punters who take different positions on a possible contingency the ability to set prices which reflect their assessment of the probable outcome. Each is attempting to “back a winner”, but each is also betting on the other contestant to lose.

With racing, the issue is a little more complicated due to the number of competitors. However, it is understood that Betfair’s arrangements with racing authorities, including Racing Victoria Ltd, have been made to address integrity concerns.

In summary, the combination of strict regulation and careful business practices allows confidence to be given in the integrity of Betfair’s operation. Should any other operator seek to be licensed to conduct a betting exchange, it would be essential that similar high standards are set and met.

(g) the implications of betting on political events, particularly election outcomes;

It is not clear why election betting has been raised as a term of reference. The integrity of elections is subject to intense public scrutiny - the possibility of cheating in betting on this event is remote.

Election betting has been conducted for over a decade in Australia and for longer periods in such places as the United Kingdom, without concerns being raised.

While some persons may have issues regarding the propriety of such a bet type, betting on elections is now an accepted feature of Australian elections, with the media often regarding the betting markets as more accurate indicators of betting intentions than the opinion polls. Indeed, if the concern is that the publication of betting markets may influence voting intentions, then there should also be a corresponding ban on the publication of opinion polls as well as many opinion pieces published in the media.

The New South Wales Law Reform Commission observed “there is no relevant controlling body that can supervise the [election] event, or enforce a code of conduct or other rules that would govern the behaviour of those who are involved in the event, or who may place a bet on it.... This then gives rise to a broader question of whether betting on events and contingencies should be confined to those activities where there is an effective controlling body such as a sports controlling body.”

We suggest this may be an example of promoting form over substance. The Australian Electoral Commission strictly oversees the conduct of elections, and the gambling regulators closely monitor all betting activities.

In short, there are no reasonable grounds for an objection to be made to election betting.

(h) appropriate regulation, including codes of disclosure, for persons betting on events over which they have some participation or special knowledge, including match-fixing of sporting events;

This issue has been canvassed by the New South Wales Law Reform Commission in its consideration of the development of an offence of cheating at sport. What is “appropriate regulation”?

This raises fine questions as to what should be regarded as corrupt conduct worthy of a criminal sanction, and what conduct should be regarded as conduct worthy of disciplinary sanction under the jurisdiction of the sporting authority.

There is no question that disclosure for the purpose of match fixing of sporting events is deserving of a criminal sanction. It is corrupt conduct and should be defined as a criminal offence.

But what of activities undertaken without this intention? Should the improper release of confidential information without any intention to affect the outcome of the sporting event or to gain any improper benefit, be regarded as a criminal offence or a disciplinary offence?

The boundary line between them in some ways turns on the mental element required to be proven to establish an offence. Should the offence only include those with a definite intention to benefit directly or indirectly from gambling, or is recklessness as to the outcome sufficient?

A similar question arises for the treatment of punters. A bet that is placed by a fixer and his or her accomplices would be subject to the new law. If “attempts” to commit the crime are also criminal offences, would a bet that is placed by a person “knowing” the fix is on be subject to criminal action? Would a bet that is placed by a person who has heard a rumour that a fix was on be subject to criminal action?

In terms of “insider information”, and betting, a bet placed by a player or official would be subject to disciplinary action by the sport.

This Association supports the development of appropriate codes of conduct to govern and regulate the activities of sporting officials. In this regard we commend the UK’s “Minimum Standards for a Sporting Authority’s Code of Conduct”.

It is noted that work is already underway in this area. As part of the National Framework to ensure sporting integrity agreed by the State and Territory Sports Ministers, sporting organisations are expected to:

- develop and adopt an anti-match fixing/-anti corruption code of conduct which meets certain nationally agreed standards;
- apply the code to all players, officials and staff; and
- develop and apply a disciplinary framework to enforce the code of conduct.

Sporting bodies will also be required to provide appropriate education to players, officials and staff as to their roles and responsibilities under the code.

The national standards for the codes of conduct include obvious matters such as receiving money, or other benefit or reward to act corruptly or to provide insider information, as well as an obligation to disclose any approach from another person to engage in corrupt conduct. Players, officials and staff must also report any reasonable suspicion of the occurrence of corrupt conduct.

This Association strongly supports this approach. The challenge will be the appropriate definition of the boundary lines between criminal conduct and conduct deserving of disciplinary action (a breach of the code) on the one hand, and the boundary line between conduct deserving of disciplinary action and allowable activity on the other.

(i) any other related matters.- gambling advertising including the level of gambling advertising; the display of betting odds at venues and during match broadcasts; commentators referring to the odds; and the general impact of gambling advertising on sport.

Gambling advertising is a vexed issue. Some in the community object to any and all forms of gambling advertising; others object to gambling advertising at certain times or in certain media; others are object to the type of advertising, for example sporting commentators referring to betting odds during a game.

Where is the boundary to be drawn?

The starting point is that gambling is a legitimate and lawful business activity. Providers should be entitled to advertise provided it is done in a responsible and not misleading fashion. Advertising provides benefits to consumers, helping to promote consumer choice, and is a fundamental part of business practices in all parts of the economy.

Concerns around the advertising of sports betting fall into two broad categories: the first is the risk that it exacerbates the rate of problem gambling, and the second is that it creates an unhealthy relationship between gambling and sport.

Gambling advertising is clearly intended to increase participation rates. It is targeted at adult recreational gamblers. Gambling is an enjoyable pastime for most Australian adults and, when conducted responsibly, is unobjectionable.

Gambling advertising is already subject to strict codes of practice. Advertising is not targeted at problem gamblers and there is no evidence to suggest that it increases the rate of problem gambling per se. It is true that as the number of sports bettors increases, the number of sports bettors who have a gambling problem would correspondingly increase. But this is not to say that the rate or percentage of problem gamblers in the sports betting sector increases.

As noted at the outset of this submission, it is recognised and acknowledged by the industry that a small percentage of clients may develop a gambling problem. This is an ongoing concern and the interactive sports betting industry has been proactive in developing strategies to minimize this risk and to help those with a problem. We do far more in this area than any other form of gambling.

But we see no evidence that the advertising of sports betting is exacerbating or increasing the current rate of problem gambling within this sector.

We do not see any justification for restrictions on advertising based on this ground.

As to the community concern that certain types of gambling advertising are leading to an unhealthy relationship between sports and gambling, this has been recognised by the sports betting sector.

In May this year, sports betting providers including Sportsbet, Sportingbet, Centrebet and Betfair presented a proposal to the Federal Minister for Sport for changes to advertising practices.

Importantly, these included proposals that:

- Odds updates in commentary during play to be phased out
- Gambling companies sponsors logos not be permitted on children's replica sports shirts (a practice already applied by these companies); and that
- Sporting clubs and gambling providers be banned from offering "white label" betting sites, e.g. Bombersbet.com.au

The companies also asked for greater enforcement of advertising restrictions on non-licensed operators in all media, including the internet.

It is noted that the sponsorship of sporting clubs by gambling providers would still be permitted. Sponsorship is a valuable source of funding for sporting organisations (many of whom claim they would be adversely affected by proposals to amend the operation of gaming machines.)

Sponsorships are a practice of longstanding and to this point no objections have been raised to their continuation.

These proposals were subsequently adopted by the State and Territories Sports Ministers, and the Federal Minister for Communications announced that legislation would be imposed if practices such as odds updates in sports commentary and on-ground display of betting odds were not phased out by June 2012.

This Association supports this approach. We suggest it achieves a proper balance between improper advertising and acceptable advertising.

(iii) Other matters – Racefields

It is appropriate to offer some brief comments about the racefields issue.

Racefields legislation was introduced to overcome distortions in the funding of the racing industry caused by cross-border betting by making “product fees” payable to the particular State racing industry by those gambling operators that offered bets on their product.

This Association has always supported the payment of a fair fee to the racing industry, but Members object to a scheme or a fee that is designed to penalise them or discriminate against them.

The fundamental problem with the race fields legislation is that it is State-based legislation that is designed to protect State interests, but that is trying to regulate a national market. Each State is looking at itself and its racing industry as a separate “economic unit” to the rest of the country. Most States have adopted sensible and workable schemes. The exception is the NSW thoroughbred and harness racing authorities, and the Victorian harness racing authority, which have imposed a fee of 1.5% of turnover *on top of* existing taxes and charges payable by interstate bookmakers. I note that Queensland has, following the release of the Commission’s Report, adopted the Victorian thoroughbred formula.

The arguments have been comprehensively reviewed by the Productivity Commission. It found discrimination to be obvious: *“The financial impost of turnover-based product fees varies greatly by type of wagering operator. As the take-out rate declines, the proportion of gross revenue that a given turnover based product fee accounts for increases. For example, if a product fee of 1.5 per cent of turnover was imposed on all wagering operators, this would result in an equivalent product fee of:20*

_ 9.4 per cent of gross revenue for totalisators operated by TABs (based on an average take out rate of 16 per cent)

_ 25 per cent of gross revenue for corporate bookmakers (based on an average take out rate of 6 per cent)

_ 33.3 per cent of gross revenue for Betfair (based on an average take out rate of 4.5 per cent).

This puts lower margin operators — which offer the best prices to consumers — at a relative disadvantage.⁴⁰

⁴⁰ Report p.16.38

The Commission was highly critical of high turnover-based fees. *“[I]t is not clear that buttressing high margin operators through turnover based measures would actually result in a larger racing industry in the long run. Product fee basis that can also accommodate lower margin operators (in addition to higher margin retail operators) may enable the wagering industry as a whole to compete more effectively against other forms of gambling or recreation. Also, corporate bookmakers increase betting turnover through price competition and through their advertising efforts.”*⁴¹

The differential impact of turnover-based fees has led Betfair and Sportsbet to legally challenge their validity. These cases are due to be heard by the High Court in August. The Commission said that, *“irrespective of the legal outcome, it is evident that turnover-based fees will tend to either drive low margin operators out of business, or compel them to change their business models and increase their prices to punters. In short, turnover-based fees (if universally applied) discourage price competition between firms.”*⁴²

While the High Court is yet to rule on the application of the law to this case, *“the economics is relatively straightforward. Protectionist measures risk supporting and entrenching existing inefficiencies, in addition to contributing to ongoing uncertainty and litigation in the wagering industry.”*⁴³

This Association is concerned that the issue has been allowed to drift. The Court may only rule on what is not permitted – it cannot set a figure that is legally permissible. The Commission was alive to the danger of decisions that risk damage to the racing industry⁴⁴, and recommended that either the Federal Government establish a national statutory scheme, setting a single price for “product fees” based on revenue, or that a reference be issued to the ACCC. The Commission identified a number of outcomes that, if observed over the next 3 years, would indicate a move to a national price setting model is needed.⁴⁵

⁴¹ Report p. 16.38

⁴² Report p. 16.38

⁴³ Report, p. 16.22

⁴⁴ “In particular, the future health of racing and wagering is dependent on a funding model that can accommodate lower margin operators. Much of the wagering industry is characterised by operators whose prices (take-out rates) substantially exceed that of other forms of gambling. In the long term, the racing and wagering industries will be better served by a funding model that allows wagering operators to offer comparable prices to the alternative gambling products they are in competition with.” Report, p. 16.15

See also FINDING 16.2

The current approach to setting product fees by racing authorities in New South Wales and Queensland (excluding Greyhounds NSW) is unlikely to result in integration of their industries into a national wagering market. The costs of this will be felt most keenly by the racing industries in those jurisdictions.

⁴⁵ These were

(1) Agreement over product fees cannot be reached and litigation is ongoing.

The Committee should give weight to the observation of the Commission that *“should the existing legal avenues be unable to bring about an acceptable resolution, or if the costs of a litigation based solution are judged to be too high, then the national price setting model described by the Commission should be pursued.”*⁴⁶

The Commission recommended that, should the third outcome eventuate – namely inequitable treatment of low margin operators in NSW - further analysis of the competitive implications of race fields legislation may be needed to “motivate movement by the Australian Government towards a national body”. This could be conducted by the ACCC, or through a specially constituted independent review.

Given the current impact on NSW on-course bookmakers from higher costs, as well as the administrative impact on bookmakers of all States due to the overly complex administrative schemes that have been put in place (in some States amounting *de facto* re-licensing), we support an immediate reference being given to the ACCC to review and examine the national racefields schemes.

(iv) Other matters – Interactive Gaming

The terms of reference are almost exclusively directed at sports betting.

This is surprising as the most important finding of the Commission’s Report was clearly the extent of the online gaming market. Although an illegal market in Australia, it is well over double the size of the legal sports betting market, and has achieved that growth in a shorter period of time.

This failure of the Interactive Gambling Act was tellingly described by the Commission: From the point of view of consumers, *“the IGA completely deregulated the online gaming industry. In essence, the legislation attempts to dissuade people from gambling online by making it more dangerous.”*⁴⁷

As the Commission pithily said, *“In any event, relative to the current arrangements, a managed liberalisation of online (poker) gaming cannot increase the already unfettered access to both safe and unsafe international websites that Australians currently have.”*

This committee cannot ignore the question of what to do about Internet gaming.

(2) Wagering providers are able to avoid paying product fees and the free-rider problem re-emerges.

(3) Inequitable treatment of certain types of wagering operators is obvious when comparing major racing jurisdictions to each other. In particular, if it appears that low margin operators are being forced out of New South Wales and Queensland, but are operating in Victoria, South Australia and Western Australia.

⁴⁶ Report p. 16.45

⁴⁷ Report15.19

It has two options – recommend higher controls, or recommend higher controls with a local licensing scheme.

The usual response is to consider further restrictions the two most favoured being ISP blocking and payment bans.

The evidence shows that these would be of limited utility. They don't work.

Bypassing internet filtering is relatively easy. It is possible to use a free web proxy, which acts as a middleman between ISP and sites. Web-based circumvention systems are special web pages that allow users to submit a URL and have the web-based circumventor retrieve the requested web page. As well, for \$5 per month, a private VPN to the US is available. A client need only run the installers.

Filters, as the Commission said, *“the internet filtering scheme may better serve as a compliment to managed liberalisation, rather than as a substitute. However, the usefulness of internet filtering to ensure regulatory compliance would still need to be weighed against the reservations that many in the community hold about government censorship of the internet.”*⁴⁸

In Italy, which has *both* ISP blocks and payment bans, Italy's regulated sports betting sector has seen turnover fall by 12% so far this year amid concerns that – as acknowledged by the Italian regulator AAMS in June – even with ISP blocking, it is too easy for Italian punters to access unlicensed sites and operators had many ways to help bypass the site blocking.⁴⁹

The poor compliance rate has led to the Italian Government proposing building even higher walls - new laws would require financial institutions, in particular credit card companies and banks, to provide details of *customer transactions* with betting and gaming companies abroad. Institutions that fail to provide details to the authorities will face fines of between €300,000 and €1.3m for each breach of the new rules.

Payment bans, as seen in the US, Italy and Norway, don't work. A report from the Norwegian Gaming Authority earlier this year showed that even though Norway's online players find it harder to use foreign sites, **over half** are still bypassing the payment blocks introduced in June 2010.⁵⁰

Criminalising customer participation seems harsh, but is the logical consequence of this style of regulation. Once you start building walls, where does it stop?

Prohibition has run its course. At some \$900 million in player expenditure to overseas' providers, it has shown that it does not work. Overseas experience shows it cannot be preserved by simply increasing barriers to access. Even if Australian ISP blocking and payment bans were as effective as those in Europe, this would still leave a market larger than the lawful sports betting market.

As the Commission noted, “The IGA will be least effective on problem gamblers whose behaviour means they may not respond appropriately to the riskier online gaming environment the IGA

⁴⁸ Report p 15.34

⁴⁹ “Italy's Online Operators Suffering As Players Look Elsewhere” 17 Jun, 2011 *GamblingCompliance Ltd.*

⁵⁰ “Scrutiny Shows Mixed Results For Norway's Payments Ban” , 18 Feb, 2011 *GamblingCompliance*

facilitates.” In the same way, it is likely to be problem gamblers who take the steps to avoid the restrictions.

It is not responsible to claim to protect problem gamblers by putting in place measures that will fail.

Prohibition, even with added controls, is not a realistic option.

Serious consideration must therefore be given to a local licensing scheme.

This was recommended by the Commission. The Commission was cautious in its approach – liberalisation should only occur after due evaluation and with the imposition of appropriate controls.⁵¹

This is the outcome that delivers the most benefits in terms of controlling problem gambling.

It is only by giving a highly regulated local alternative, with added restrictions on overseas sites if that is felt desirable, will serious inroads be made on Australia’s enormous online gaming market. At the moment, Australians have “*unfettered access to both safe and unsafe international websites*”. Adding restrictions on access to overseas sites will not, on their own, effectively address the problem. They are too easy to circumvent.

It is therefore recommended the Committee support managed liberalisation in principle, subject to the preliminary assessment work suggested by the Commission being undertaken to determine the best regulatory model.

⁵¹ Online poker, along with other gambling forms currently exempted from the Interactive Gambling Act, should be subject to a regulatory regime that mandates:

- _ strict probity standards
- _ high standards of harm minimisation, including:
 - prominently displayed information on account activity, as well as information on problem gambling and links to problem gambling support
 - automated warnings of potentially harmful patterns of play
 - the ability to pre-commit to a certain level of gambling expenditure, with default settings applied to new accounts, and the ability for gamblers to set no limit on their spending as one of the system options (with periodic checking that this remains their preference)
 - the ability to self-exclude.

The Australian Government should monitor the effectiveness of these harm minimisation measures, as well as the performance of the regulator overseeing the national regulatory regime. The Australian Government should also evaluate whether:

- _ the provision of online poker card games should continue to be permitted liberalisation should be extended to other online gaming forms.

The Australian Government should assess the feasibility and cost effectiveness of:

- _ Australia-wide self-exclusion and pre-commitment options for equivalent online providers
- _ the capacity for extending self-exclusion through the payments system or through software solutions selected by problem gamblers
- _ the scope for agreement on international standards on harm minimisation and their enforcement through self-regulatory or other arrangements.

(ii) –related matters, Senator Xenophon’s *Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011*

Exotic Betting

Section 3 of the proposed Bill would prohibit spot betting, exotic betting, in-play betting and the betting on losing outcomes.

The Second Reading Speech describes the purpose of this provision as being intended to protect the integrity of sport. *“Exotic betting is an invitation to corruption by individuals or a small group of players. To rig an outcome of a footy match, you need the consent of a majority of a team, but to ensure a player only kicks points in a match and no goals or is the first to score a penalty or the first to be issued with a yellow card, only requires the consent of one player. By prohibiting these forms of betting we will reduce the likelihood of players rigging certain outcomes in a game.”*

As discussed earlier in this submission, a distinction has to be made between those that encourage a player to underperform and those that are too readily subject to manipulation (“negative bets”, as it were), and those that reflect positive achievements by players performing to the best of their ability.

Gambling regulators and all sports bodies have the power of veto over a “negative” bet types, and these powers have been, and are, exercised by the sports and gambling regulators.

While this Association supports the objective of protecting the integrity of sport, this proposed legislative provision is excessive and unnecessary. On a strict reading, it may also have the consequence of banning betting exchanges in Australia. Sporting organisations, gaming regulators and betting providers are alive to the risks posed by certain bet types, and the mechanisms are in place to recognise and address those risks.

Ironically, this was also acknowledged in the Second Reading Speech, “Indeed, sporting codes themselves have begun to move towards eliminating spot betting and reducing the chance for corruption in sport. The NRL has recently banned some exotic betting options offered by bookmakers following a match-fixing scandal in the sport in 2010, where there was a massive plunge on a penalty goal being the first scoring play in a Canterbury-North Queensland match. The AFL has also banned exotic betting such as the last goal in a game and does not allow wagers on decisions such as tribunal verdicts and the first coach to be sacked.”

It might also be noted that the reason this incident came to light was because of betting agencies reporting suspect betting transactions.

This proposal is excessive and is not supported.

Payment Provision

The bill would also insert a provision enabling a client to reverse a transaction. The Second Reading Speech states, *“This Bill will also make it possible for a gambler to cancel a transaction with an illegal overseas gambling company, so long as the transaction has not been completed. What this means is that a player, if he or she gambles on an overseas gambling website and loses money on their credit*

card will be able to suspend or cancel that transaction.This Bill will most likely lead the sites to ban Australian gamblers, because they know if they lose they won't pay up."

It is not clear that the operation of the provision, in its terms, is restricted to the operators of overseas sites. As drafted, it would appear to enable the same steps to be taken against an Australian licensed operator.

It is also unclear how effective this provision would be, as far as offshore operators are concerned. As noted earlier in this submission, credit cards are but one form of payment. E-currency payments and bank transfers are also widely used. With these payment methods the money *has already been transferred* to the player account held by the offshore provider, which is subject to the law of the licensing jurisdiction and not Australian law. As the money has already been transferred and paid over (the money must be in the account before betting is permitted), it is not clear how this provision will entitle an Australian client to seek repayment.

As far as credit cards are concerned, this provision adds little to current practice. Credit card payments over the Internet are always liable to "chargeback" or being repudiated because the online credit transaction is made without the signature of the cardholder. In short, Australians dealing with overseas providers using credit cards to fund their accounts are already able to repudiate the credit card transactions.

In reality therefore, this provision would do little to deter the provision of gaming services by offshore providers even if they banned Australian clients from depositing by way of credit card and instead insisted upon direct payment by another method. This would have little effect on the provision of services to Australians.

This provision is not supported.

Inducement to gamble

Section 7 appears to be targeting "free play" poker or casino sites⁵² that are linked to play for real poker or casino sites.

The Second Reading Speech describes the purpose as follows: *"The Bill also makes it illegal to offer an inducement to gamble. Inducements are a way to lure people to gambling. It sucks them in with the offer of free games to "practice your online poker skills" or it could be free credits."*

The Explanatory Note describes the operation of the provision as targeting the provision of the "free game" where it is supplied "with the intention of subsequently inducing the customer to use a gambling service."

While the objective is supported, this provision is not. Firstly it is strongly arguable that the existing advertising restrictions in the *Interactive Gambling Act* already prohibit free play sites that are linked to play for real sites. This Association has been calling for a number of years for the proper enforcement of the current law. In the United Kingdom, the Advertising Standards Authority had already banned such sites. In its ruling, it stated,

⁵² As they are played without funds or are "free", it is technically not gambling and are therefore not caught by the gambling laws.

“We believe the advertising for www.partypoker.net indirectly publicised www.partypoker.com primarily because of the similarity in the website names. It is easy to overlook the suffix when looking at the website address and viewers may decide to search online to find it. If so, viewers searching for the poker school website using the word partypoker on a search engine could easily be directed to the online gaming site;...

... we believe there was likely to be a general level of awareness among viewers of the [TV] channel that www.partypoker.com was an online gaming website. Both websites had almost identical website names and logos were very similar so it was likely that viewers would connect the two. We therefore believe that a significant effect of the television advertisements for the poker school website was to publicise the unacceptable gaming website.”

The ASA went on to observe that *“it is unlikely that any advertisement for the poker school website would be acceptable if the name is the same as a gaming company.”*⁵³

This sensible conclusion of the UK ASA is starkly different to the approach taken in Australia.

In terms of the other methods used to convert a player from a free “for fun” site to a “real money”, namely a hotlink placed on the (free) .net site or conversion emails sent to players of the .net site, this Association believes each of these methods constitutes clear evidence of a breach of the advertising prohibition contained in the existing Act.

In other words the deficiency lies not in the legislation but in the lack of enforcement.

In addition to being unnecessary, we consider the proposed new provision is poorly crafted and raises significant evidentiary questions. It will also be seen that subsections (c) and (d) add nothing to for the current provision. (c) would prohibit any element of the service “which encourages or invites the customer to use a gambling service” and (d) would prohibit “direct or indirect links to a gambling service.” In our view these actions already constitute advertising in breach of the current provision.

This proposed provision is not supported.

Advertising Restrictions

The Bill contains provisions designed to do two things. The first is to prohibit the broadcasting of any advertising of betting venues and online gambling sites during all G classified programs and sports or sports-related programs.

This provision is not supported. It is excessive and unnecessary. It underestimates the intelligence of consumers, who are not as susceptible to advertising as this provision supposes. The inclusion of a prohibition on advertising during G rated programmes may well be an attempt to try to imply a link between advertising and children. Betting providers do not advertise at children, or during children’s programmes. Prohibiting the advertising of sports betting during a sporting program (or a sports-related program) seems less of an attempt to regulate sports betting, as an attempt to smother it.

⁵³ Advertising Standards Authority, Broadcast Advertising Adjudications, 25 May 2005, page 12-13

The second aspect is to prohibit the broadcasting of betting odds “where there is a commercial arrangement between the licensee or an agent of the licensee (ie. presenter) to provide betting odds.” It is presumed this is intended to stop the broadcasting of odds during “in play” commentary. As noted earlier in this submission, this Association supports the end of this practice and action is being taken to wind it up. However, this provision would appear to go further and would ban any paid discussion of betting odds on the radio or television, regardless of the program.

Again this provision is excessive and unnecessary. It is not supported.

Match-fixing Offence

The Bill contains a draft provision to make cheating at sport an offence.

This Association supports the objective but believes the work being undertaken by the New South Wales Law Reform Commission on behalf of and in conjunction with the other states should be allowed to run its course. The New South Wales Law Reform Commission has already issued an Issues Paper and a further Discussion Paper, outlining a model provision. The Commission has had the benefit of the input from Governments, government agencies, sporting bodies, betting providers as well as other interested parties.

It is currently under active discussion by the States and Territories as part of the national framework for sport integrity.

Although the draft provision contains many admirable features, it would pre-empt the work currently being undertaken. Accordingly, is not supported.

In conclusion, I look forward to the next step in the consultation process. The Committee’s policy decisions will have major impact on the sports betting industry.

Thank you for the opportunity to comment. Please do not hesitate to contact me if you would like further information or explanation.

Kind regards

Tony Clark
Executive Officer AIBA
26 July 2011