



**BETFAIR PTY LTD**

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

**INTERIM REPORT - REVIEW OF THE INTERACTIVE  
GAMBLING ACT 2001**

## EXECUTIVE SUMMARY

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Betfair welcomes the opportunity to make a further submission in response to the interim report (**Interim Report**) released by the Department of Broadband, Communication and the Digital Economy (**Department**) as part of its review of the *Interactive Gambling Act 2001* (Cth) (**IGA**).

Betfair considers that the Interim Report contains some important recommendations that should form the foundation for meaningful reform of the IGA and provide the necessary protections to Australian consumers. Most significantly, the Interim Report recognises that the IGA has been largely ineffective in preventing the activities that it seeks to prohibit. As such Australian consumers are openly and increasingly accessing illegal interactive gambling services provided by companies who choose to ignore the prohibitions contained in the IGA. No prosecutions have occurred under the IGA and the evidence presented to the Department has made it clear that the provision of these services is not a priority for law enforcement agencies.<sup>1</sup>

In these circumstances Australian consumers are currently spending up to \$1 billion annually with gambling operators who are beyond the reach of the laws of Australia.<sup>2</sup> This obviously raises significant concerns from a consumer protection and harm minimisation perspective.

It is against this background that the Interim Report seeks to encourage at-risk Australian consumers to transact with operators that are licensed and regulated in Australia by removing the prohibition on online in-play betting on sport and implementing a short-term trial of online tournament poker.<sup>3</sup>

There are innumerable benefits in ensuring that online gambling products are strictly regulated and controlled in Australia, several of which have been highlighted by the recommendations in the Interim Report. In addition to providing much needed assistance to Australian sporting bodies in protecting the integrity of their competitions, this approach would ensure that the issues surrounding problem gambling can be managed more effectively from within Australia through a nationally consistent harm minimisation regime that lifts the standard for all Australian gambling operators.

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<sup>1</sup> See, for example, Department of Broadband, Education and the Digital Economy – Interim Report – Review of the *Interactive Gambling Act 2001*, p58 and submission of the Australian Federal Police to the Joint Select Committee on Gambling Reform

<sup>2</sup> Interim Report p14,

<sup>3</sup> Ibid, p6-19

Whilst Betfair agrees with the intentions of the Interim Report, there are several recommendations that we do not think will achieve their aim and/or be effective and we urge the Department to reconsider these before finalising its review of the IGA. We address each of our concerns in detail below, but generally these concerns relate to:

- (a) insufficient incentives for offshore operators to become licensed in Australia due to the fact that only a very small segment of the online gambling market is being permitted. The effect of this is that many operators will continue to offer unlicensed and unregulated online gambling services to Australian consumers;
- (b) the implementation of a resource intensive and administratively burdensome prevention and enforcement regime that will simply continue to be ineffective in preventing contravention of the IGA by overseas wagering operators; and
- (c) certain elements of the harm-minimisation regime which are overly onerous on account-based online wagering operators, which will not apply offshore and to cash-based operators and in some instances do little to promote responsible gambling.

Betfair welcomes the Department's Interim Report and believes that the majority of the recommendations contained within it are pivotal in Australia's fight against unregulated online gambling. We would welcome any opportunity to address the Department further and believe we can make a significant contribution to any discussions about the future of online gambling in Australia.

## ADDRESSING THE INTERIM REPORT'S RECOMMENDATIONS

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### Harm Minimisation and Consumer Protection (Recommendations 1-3)

The existence of various licensing and regulatory regimes across Australia has caused significant disparities in the harm minimisation and consumer protection measures that wagering operators are required to have in place. On the basis that online gambling necessarily crosses geographical boundaries, the current State based approach is clearly inadequate. Accordingly, Betfair agrees with the Interim Report's recommendation that a nationally consistent harm-minimisation and consumer protection regime be developed and implemented through the COAG Select Council on Gambling Reform and that it applies to all operators regardless of the platform they offer their services.

In the present environment, those online gamblers who are at risk of developing gambling problems have, because of the structure of the prohibitions contained in the IGA, been offered little to no protection from a problem gambling and consumer protection perspective. Therefore it needs to be recognised that any harm minimisation measures will only assist in circumstances where Australian consumers elect to transact with Australian licensed and regulated operators. Of itself, the harm-minimisation and consumer protection regime proposed by the Interim Report will have only a minimal impact due to the volume of online gambling occurring with overseas websites. Accordingly, this regime must be accompanied by measures that encourage a shift to Australian operators.

In a well regulated environment, the use of technology provides gamblers with opportunities to help curb addictive or problematic gambling behaviours as well as access online clinical and self-help resources from the wagering operator's website.<sup>4</sup> Account-based wagering operators are the best placed to adopt a full suite of measures to promote responsible gambling, such as pre-commitment, self-exclusion, spend-tracking and the delivery of responsible gambling messages. Cash based wagering operators are simply not in a position to deliver these functions as effectively. However, failing to impose the same standards on the cash-based wagering industry will leave a significant blind spot open to continued exploitation by problem gamblers, thus undermining the effectiveness of the measures implemented in the online space.

Equally, offshore operators will not be subject to the Australian harm minimisation and consumer protection standard. Should the regime be too onerous on Australian operators, this will significantly diminish their ability to compete with those offshore, which will continue to remain more attractive to Australian consumers.

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<sup>4</sup> Sparrow, M. 'Can Internet Gambling Be Effectively Regulated? Managing The Risks' (December 2009), p19

We below make some specific comments on some of the standards contained in Recommendation 2 of the Interim Report:

#### Responsible Gambling Messages

The Interim Report calls for “significantly more prominent” responsible gambling messages to be included in all advertising. Betfair agrees that standardised responsible gambling messages should be adopted, but has some concerns over how “prominent” the message is required to be.

The messages must be of sufficient size such that they are legible in order to enhance the public’s awareness of the importance of gambling responsibly and make clearly available the details of gambling support agencies. Betfair’s only concern is that the requirements around responsible gambling messaging are not too onerous on operators promoting their services. It is submitted that the alcohol industry has implemented responsible drinking messages in a manner and form that is appropriate and we suggest that responsible gambling measures should follow this lead.

Betfair would welcome the ability to further consult with the Department regarding the placement, font and sizing of responsible gambling messages on gambling advertisements.

#### Rules regarding the provision of credit to customers

The Interim Report recognises the important distinction to be drawn between the use of credit cards to fund online gambling accounts and the offering of credit by gambling operators.

Credit cards come with a spending limit that has been pre-approved by the issuing financial institution, which carries out a detailed risk assessment on the individual’s spending pattern, asset position and credit history. Further, as was identified by the Productivity Commission, credit card statements are provided to customers on a monthly basis along with a requirement to make minimum repayments.<sup>5</sup> Significant comfort should be taken from the fact that customers can not deposit funds into their accounts over and above these approved spending limits.

These strict controls do not exist in relation to the provision of credit by wagering operators. Betfair understands the need to regulate the provision of credit by online gambling providers. Betfair does not offer credit to its customers and requires all customers to have deposited sufficient funds into their Betfair account to fully cover any exposure that they may have. Betfair does offer terms of trade to a small number of high volume customers, all of who must be pre-approved by the Tasmanian Gaming Commission and must settle with Betfair on a weekly basis. Any move to tighten the rules around the provision of credit must include a carve-out for sophisticated high-end customers.

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<sup>5</sup> Productivity Commission, Report No. 50, Gambling, p16.55

### Limits on betting inducements and payments of commissions to third-parties

The Interim Report recommends limits on the types of betting inducements that can be offered as well as on the payment of commissions to third parties for encouraging others to open a betting account. Whilst Betfair welcomes the establishment of nationally consistent regulation in relation to these areas, they are distinct issues and deserve their own analysis.

#### *Inducements*

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

The increasing level of competition in Australia's online and offline gambling market has seen the proliferation of promotions offering "free bets" to new customers. Betfair does not believe that a free bet, of itself, encourages problem gambling, but we believe that free bets should be limited to a minor amount, say \$50 or \$100. Restrictions on offering inducements should not be confined to online wagering operators and must extend to all offline and cash based operators.

Again, it is important to recognise that any restrictions placed on Australian operators will not apply to offshore operators, thus placing Australian operators at a competitive disadvantage. Customers will continue to vote with their feet and wager with the operator who provides the best value, choice and service, regardless of where they are based. Whilst this does not mean that there should not be restrictions on offering inducements, Betfair considers that it is important that all reasonable opportunities be afforded to licensed and regulated Australian operators to compete for custom with overseas operators.

#### *Third-party commissions*

Betfair agrees with the findings of the Joint Select Committee on Gambling Reform (**JSCOG**R) in this regard, which recommended the development of nationally-consistent consumer protection standards for greater transparency around the practice of paying third-party commissions by betting agencies.<sup>6</sup>

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<sup>6</sup> Joint Select Committee on Gambling reform, Review of interactive and online gambling and gambling advertising, p236



Payments made to third-parties who refer new customers are standard business practices across a wide range of industries and Betfair does not consider this is in any manner irresponsible. Provided that the gambling operator is transparent in its dealings with customers about the existence of these arrangements, we do not consider that any further controls are required.

Betfair has in place a “Refer and Earn” program (<https://referandearn.betfair.com/au/>) which provides current customers with rewards for introducing their friends to Betfair as well as an Affiliates program (<https://affiliates.betfair.com>) under which third-party-websites that contain links to Betfair’s website or carry Betfair’s advertising are entitled to a payment from Betfair for any new customer that registers with Betfair from the third-party-website. Affiliate marketing is an increasingly popular form of internet advertising and can be likened to payments made by all types of businesses to Google in circumstances where a new customer is introduced to a business through a “pay per click” advertisement viewed on Google.

Full details of both of these programs are contained on their respective websites, which are easily accessible from Betfair’s home page. Importantly for each of the programs offered by Betfair, the referrer has no access to the referee’s betting activity. Betfair welcomes a minimum standard for transparency for this type of marketing but is strongly opposed to placing any regulation over its ability to conduct these activities.

#### Pre-commitment

Betfair’s website already has a suite of measures in place to deal with problem gambling. They include the ability for customers to elect to impose loss and deposit limits on a daily, weekly or monthly basis. Customers are also offered the option of excluding themselves from betting or a third party can intervene to exclude a punter from the site. These measures are significantly more advanced than those that can be offered by cash-based operators.

We note that the Interim Report calls for pre-commitment measures that go above-and-beyond the setting of financial limits, to include pre-commitment capabilities in relation to total spend, total time played and number of bets placed. These measures are more appropriate in the online gaming sphere and do not translate well as a wagering pre-commitment tool. For example, a consumer may wish to bet on a full day of racing, which extends over an entire afternoon and is therefore not properly addressed by a time based pre-commitment measure.

On the basis that pre-commitment is predicated on the basis of allowing consumers to limit their financial losses, Betfair considers that there is no need to require operators to implement pre-commitment tools other than deposit and loss limits.

We consider that items such as total spend, profit and loss and full account histories are items that are best offered to users upon request as opposed to part of a pre-commitment facility.

### Identity and age verification

Betfair shares the view of a number of other stakeholders regarding the importance of stringent measures to limit the access of online gambling services to minors. It is for this reason, as well as for probity, to ensure that customers' identity and age are verified as quickly as possible after registration.

Betfair views the current 90-day period in which identity verification should be completed is too long. However, we disagree with the conclusions drawn by the JSCGR that 72-hours is sufficient time in which to verify the identity of customers.<sup>7</sup> Whilst around 60% of Betfair's customers can be instantaneously verified by electronic sources, a large percentage are required to provide physical documentary evidence in order to satisfy the identity verification requirement. Typically, this will involve the customer attending an Australia Post office or otherwise having identification documentation certified and returned to Betfair. It is clear that in these circumstances that 72 hours is insufficient. Betfair submits that 45 days is a reasonable time frame in which to complete verification, the failure of which will result in the automatic suspension of the account and freezing of the relevant funds contained in the account until verification has occurred.

Betfair places significant restrictions on accounts that are unverified. An unverified customer is unable to withdraw funds from the account, which limits the ability of any fraudulent customer or minor to profit from registering an account in the name of a third-party.

A measure that will assist Betfair and other online gambling operators in identifying customers in a timelier manner is improved access to government electronic verification sources, which will improve rates of electronic verification.

### 'Dynamic warning' messages

The Interim Report recommends that targeted warning messages be implemented that alert consumers to gambling behaviour that is indicative of problem gambling. Betfair is concerned that it is not in a position to accurately advise customers if their activities are "indicative of problem gambling". For example, some customers may place a large number of bets but for very small amounts. Alternatively, a customer may place a very large bet, but that bet is within their typical spending patterns. As can be seen, it is far from simple to determine whether any individual customer displays signs of behaviour indicative of potential problem gambling issues.

Betfair is not opposed to the notion of using pop-up messages to warn customers of the type of behaviour that may cause problem gambling issues or point to the responsible gambling tools that Betfair has on its website. However, it has significant concerns with effectively being required to diagnose instances of problem gambling based only on the betting patterns of an individual customer.

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<sup>7</sup> Joint Select Committee on Gambling Reform Report, p78



## **Prevention and Enforcement (Recommendations 4-11)**

As the Interim Report has identified, the most significant shortcoming of the IGA is that despite stipulating a series of punitive measures for offshore gaming companies that breach Australian law, it hasn't allowed for the prosecution of companies in other jurisdictions who offer poker, online in-play betting and other gaming products to Australian residents. The Interim Report recognises the significant jurisdictional issues with enforcing the prohibitions contained in the IGA.

Betfair reiterates its strong view that any move to strengthen the bans will ultimately prove fruitless and serve only to consolidate the global market positions of the companies that have so far defied the bans. The government's focus must therefore be on encouraging Australians presently betting with offshore operators to migrate to Australian licensed and regulated operators which operate under strict regulatory controls and the soon to be implemented nationally-consistent approach to harm minimisation and consumer protection.

The Interim Report contains three strategies to improve the prevention and enforcement of breaches of the IGA. The first of which is to "streamline" enforcement provisions so that they are more likely to facilitate action by the appropriate enforcement agency. Whilst the proposed measures are sound, they will have no impact unless law enforcement agencies elect to prioritise the enforcement of breaches. To date, the Australian Federal Police (**AFP**) has not undertaken any prosecutions under the IGA and has not publically expressed a change in enforcement priorities.<sup>8</sup> Of course, the ability of the AFP to undertake any enforcement action is undermined by their ability to locate and prosecute gambling companies located offshore.

Secondly, the Interim Report recommends steps to increase awareness amongst offshore gambling operators that by offering services to Australian residents they are in breach of the IGA. Betfair considers that such steps will not act in any way as a deterrent to these operators, a large proportion of which would already be aware that they are breaching the IGA. These companies will simply continue to do so due to the lack of enforcement options available.

Finally, the Interim Report advocates the restriction of access to prohibited gambling services and recommends the further investigation of financial transactions blocking measures. This is surprising given the Interim Report admits that "the size and continued growth of the US online gambling market illustrates the limited effectiveness of these measures"<sup>9</sup> and accepts that the implementation of financial transactions blocking in Australia would have merely a "disruptive effect on the operation of prohibited gambling providers". In essence, the Interim Report accepts that these "highly resource intensive"<sup>10</sup> and "administratively burdensome"<sup>11</sup> measures are ultimately

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<sup>8</sup> Interim Report, p58

<sup>9</sup> Interim Report, p65

<sup>10</sup> Ibid, p73

doomed to fail.

#### **Education and Awareness (Recommendations 12 -16)**

Betfair agrees that there is a significant lack of clarity amongst Australian residents as to those activities prohibited by the IGA. There is also a lack of awareness as to the dangers of transacting with overseas websites, which are not subject to the strict probity, trust fund and consumer protection laws that apply to Australian licensed and regulated operators. Accordingly, Betfair agrees with the recommendations contained in the Interim Report in relation to Education and Awareness.

#### **Advertising and Promotion (Recommendations 17-20)**

Betfair has no comments to make in relation to these recommendations.

#### **Online Gaming (Recommendations 21-24)**

Betfair considers that the establishment of a strictly regulated online gambling industry in Australia is likely to offer far better protection against the risks associated with online gambling services than the status quo. As Sparrow suggested, “combining a thoughtful regulatory regime with education, technology tools and support appears to be the most effective means of handling the realities and risks of online gambling”.<sup>12</sup>

Betfair therefore considers that the recommendation contained in the Interim Report regarding the “managed liberalisation” of online tournament poker is an important first step in implementing a regulatory regime that adequately addresses the social and economic issues associated with online gambling.

We hold the general view that Australians will migrate towards licensed Australian operators because of better customer service, security of engaging with an Australian based company and superior product offerings. It is against this background that Betfair is concerned that offshore operators and Australian residents currently engaging in online gambling activities that are prohibited by the IGA are unlikely to migrate to the regulated Australian environment for online tournament poker alone. The Interim Report states that only 3.2% of all online gambling revenues are derived from tournament poker, evidencing that tournament poker is not comparable to online casino games and “cash” poker.<sup>13</sup> On the back of these statistics, it is likely that offshore operators will continue to offer their full suite of products to Australians rather than accept the Australian

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<sup>11</sup> Ibid, p72

<sup>12</sup> Sparrow, M. ‘Can Internet Gambling Be Effectively Regulated? Managing The Risks’ (December 2009). Available at: <http://financialservices.house.gov/media/file/hearings/111/sparrow.pdf>

<sup>13</sup> Interim Report, p 100

licensing and harm-minimisation regime and offer only a tiny fragment of their current product offering.

The Department must therefore consider whether the removal of the prohibition on online gambling should extend beyond tournament poker in order to provide a greater incentive for migration of operators and players to the Australian environment. Should it be concluded that the IGA only allow tournament poker, the move should be revisited post-implementation to test whether the planned migration of activity has in fact occurred. Should the offshore market continue to flourish, then the government must then take further steps to liberalise other elements of online gambling to ensure that migration actually does occur.

Finally, we note that the Interim Report recommends that a five year sunset clause be imposed on the trial of online poker. Betfair is opposed to this proposal which provides no certainty to operators as to the ongoing operation of the service. The commercial reality is that there are significant expenses associated with establishing and conducting an online poker business and it is unlikely that operators would incur such expenses knowing that the trial period would end in the medium term. Alternatively, we recommend that the IGA be amended to enable online tournament poker on an ongoing basis, with such legislation to be reviewed by the Department after 3 to 5 years to ensure that it is functioning effectively and in line with the goals of the IGA.

### **Online Wagering (Recommendations 25-28)**

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

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

Betfair also agrees with the recommended prohibition of “micro betting”, however, any prohibition will not apply to offshore operators, which will continue to make those bet types available to Australian residents. We consider that the guidelines contained in the Interim Report provide a sensible framework to ensure that only those bet-types that are repetitive and of high-frequency are prohibited and whether any bet type should be prohibited as a “micro bet” thus largely mitigating the risk that Australian sports punters would continue to wager offshore.

We also agree that the sports themselves are in the best position to determine whether a particular bet-type is liable to any form of corruption or manipulation. Accordingly, it is correct that the decision should remain in the hands of the sporting bodies to reasonably determine the number and types of exotic markets that are offered on a particular event which is conducted under their auspices.<sup>14</sup>

However, Betfair does not agree that Australian sports controlling bodies should be involved in the determination of bet types that can be offered on overseas-based sporting events. Australian sports organisations are not involved in the management or operation of overseas competitions and are not in a position to determine which bet types are appropriate. At first instance, the wagering operator’s regulatory body (in Betfair’s case, the Tasmanian Gaming Commission) possesses the right to veto any bet-type that Betfair may offer and these bodies will obviously have regard to the provisions of the federal law in making any such determination. The Interim Report also provides for the relevant federal minister being granted the power to make regulations to deem a bet-type to be a micro bet. These measures are sufficient to negate the need for involvement of Australian sports controlling bodies in relation to bet types offered on overseas sports.

#### **Online Gambling on Social Media and other Online Platforms (Recommendation 29)**

Betfair has no comments to make in relation to these recommendations.

#### **Fantasy Sports (Recommendation 30)**

Betfair has no comments to make in relation to these recommendations.

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<sup>14</sup> Coalition of Major Professional and Participation Sports: Submission to the JSCOG, p7

## CONCLUSION

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Betfair welcomes the Department's Interim Report review into the IGA. As has been outlined above, the Interim Report contains some important recommendations that lay the foundations for meaningful reform of the IGA. We would welcome any opportunity to address the Department further on the issues that have been raised in this supplementary submission and believe we can make a significant contribution to any discussions about the future of online gambling in Australia.