

Chapter 11

Key issues in wagering and sports betting

11.1 This chapter covers the key issues raised with the committee arising from wagering and sports betting activity. These are: the exclusion of wagering from the *Interactive Gambling Act 2001* (IGA); whether the current ban on online 'in-play' betting should remain in place; the risk of underage gambling; the merits of betting on losing outcomes; calls for nationally consistent regulation of wagering providers across states and territories; the practice of credit betting; and the practice of paying commissions to third parties to introduce new clients to betting agencies.

Exemption of online wagering from the Interactive Gambling Act

11.2 As noted in the previous chapter, online wagering prior to the commencement of an event is not restricted by the IGA. The Australian Internet Bookmakers Association (AIBA) noted that the exemption of wagering (and lotteries) from the IGA had been in recognition of 'a different risk profile for each form of gambling'.¹

11.3 No submitters to the inquiry called for online wagering on racing, sporting and other events to be banned. Of those who mentioned the IGA exemption, all emphasised that it should be maintained. As noted in the previous chapter, Tabcorp supported retaining the exemption.² The Australian Racing Board noted that wagering had been exempted from the IGA 'on the basis of the lower relative risk of problem gambling from wagering'.³ Greyhounds Australasia also argued that:

...race wagering is one form of gambling that is less likely to involve addiction...[E]vidence...has shown that the predominance of problem gambling occurs not with wagering products but with gaming products which are games of pure chance, are repetitive in nature, and do not involve social interaction.⁴

11.4 Greyhounds Australasia⁵ and Harness Racing Australia supported the continuing exemption of wagering but only on the basis that it:

...cannot be exploited by internationally "footloose" wagering providers. This term was used by the Productivity Commission in its 2010 report to describe the practice of bookmakers relocating their businesses away from

1 Australian Internet Bookmakers Association, *Submission 54*, p. 11.

2 Tabcorp, *Submission 22*, p. 7.

3 Australian Racing Board, *Submission 27*, p. 23.

4 Greyhounds Australasia, *Submission 41*, p. 8.

5 Greyhounds Australasia, *Submission 41*, pp 10–11.

established jurisdictions to avoid paying tax or contributing to the controlling body on whose product they are wagering.⁶

11.5 The Australian Racing Board also argued that the UK experience pointed to a potential 'weakness' in the current IGA exemption:

The experience in the UK is that the major bookmaking companies and betting exchange operators have relocated their online businesses to tax havens such as Gibraltar and Malta.

Ensuring payment of industry fees and taxation amongst internationally footloose wagering providers is one of the fundamental challenges thrown up by online gambling.

Accordingly, the IGA should be amended so that compliance with Australian legal requirements (including access to betting records for integrity purposes, compliance with harm minimisation measures and payment of industry fees) are a condition precedent of the IGA wagering exemption.⁷

The current ban on 'in-play' betting online

11.6 The IGA's restriction on 'in-play' (also known as 'in the run') wagering means that online bets can be placed on a sporting event up until the start of play but that no bets can be placed once the match commences. However, betting 'in-play' on the telephone or in person is permitted.

11.7 Betting online 'in the run' on racing events is permitted under the IGA. However, this service is not offered on all racing events by all online bookmakers. For example, Tabcorp only offers live online betting on the Melbourne Cup:

Live betting on racing is difficult in Australia because the majority of our races are sprint races and over in 60 to 90 seconds...That does not make it conducive to live betting, unlike an AFL or NRL game, which plays out over 80-plus minutes.⁸

11.8 A number of wagering providers commented that the restriction on 'in-play' betting on sport was obsolete in light of new developments in technology (see also the discussion of smartphones and other emerging interactive technologies in chapter eight). For example, Betfair's submission stated that:

...restrictions on in-play betting have extended beyond their intended scope, which was to prevent "micro-betting" (or exotic betting) (i.e. discrete contingencies within a broader event, such as whether the next call of a... cricket match would be a wide). The practicality of banning punters from betting in-play using the internet has effectively been rendered obsolete due

6 Harness Racing Australia, *Submission 52*, p. 6.

7 Australian Racing Board, *Submission 27*, pp 23–24.

8 Nicholas Tzaferis, General Manager of Corporate Affairs, Tabcorp, quoted in Roy Masters, 'Odds shortening on net betting shake-up', *Sydney Morning Herald*, 26 October 2011.

to the convergence over the last decade (since the Interactive Gambling Act was enacted) of telephone and internet technologies.⁹

11.9 Similarly, the AIBA argued that:

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.¹⁰

11.10 The AIBA commented on the reasons why 'in the run' online betting had originally been restricted during the development of the IGA:

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.¹¹

11.11 Betchoice stated that 'in-play' betting was no riskier than other bet types:

First, there is no evidence of which Betchoice is aware indicating that in-play betting products carry greater risks than other types of betting (no evidence was submitted as the basis for the distinction at the time that the IGA was passed). The argument is particularly weak when in-play betting is permitted in terrestrial betting outlets.

Secondly, as noted above, online operators have mechanisms available which can be used to detect and prevent those customers that are at risk of problem gambling behaviour. Ironically, such mechanisms are not necessarily available to terrestrial operators that are permitted to offer these bet types.

Finally, the prohibition of these bet types does not protect individuals. Instead, it results in those wanting such bet types to look outside Australia. There is no shortage of overseas operators offering this type of product. The effect of the IGA in respect of in-play betting is to cause and require Australians to use overseas operators which do not necessarily have the same standards of probity, care or interest in the welfare of the customer as

9 Betfair, *Submission 12*, p. 11.

10 Australian Internet Bookmakers Association, *Submission 54*, p. 4.

11 Australian Internet Bookmakers Association, *Submission 54*, p. 24.

Australian operators and which are beyond the regulatory reach of Australian authorities.

For these three reasons, Betchoice submits that the prohibition on in-play betting is not appropriate and should be removed from the IGA.¹²

11.12 According to Betfair, 'in-play' betting is 'crucial for hedging bets to minimise [a punter's] exposure or enable a guaranteed return from an event'.¹³

11.13 Mr Paul Aalto also supported a lifting of the current restriction on 'in-play' betting online as it would have advantages for consumers:

Being able to bet in-play has the major advantage for the punter (especially on a betting exchange), of being able to trade out of a market and either lock in a profit or minimise a loss.

Share traders have the ability to do just that - they can take a position and if they reach an acceptable level of profit, trade out and lock in that profit. Vitaly, they can do the opposite as well - i.e. if the market moves the wrong way, they can trade out and lock in a smaller loss and save their capital for another investment.

Why shouldn't punters be able to do the same?¹⁴

Availability of online 'in-play' betting through offshore providers

11.14 A number of betting providers pointed out the 'anomaly' that Australian wagering operators are permitted to accept online bets from overseas customers, but that Australian customers could not do the same:

Australia is the only jurisdiction in the world that allows online wagering on sport but at the same time prevents punters from using the internet to place in-play bets. To put it another way, except in Australia, wherever it is legal to place a wager over the internet, it is also legal to do so in-play on a racing or sporting event.¹⁵

11.15 Telephone betting was said to be 'impractical for Australian customers trying to limit risk, particularly in circumstances where an event hangs in the balance':

By the time an Australian customer telephones to make an in-play transaction, the odds will often have changed (through weight of money coming from overseas customers who are betting online). The opportunity to trade out of an existing "position" has thus been missed.¹⁶

12 Betchoice, *Submission 43*, pp 14–15.

13 Betfair, *Submission 12*, p. 13.

14 Mr Paul Aalto, *Submission 53*, p. 1.

15 Betfair, *Submission 12*, p. 11.

16 Betfair, *Submission 12*, pp 11–12.

11.16 The Australian Racing Board observed that 'Northern Territory corporate bookmakers and Betfair both promote 'in-play' betting heavily and Australian residents can still place 'in-play' internet bets through UK bookmakers.'¹⁷

11.17 Sportsbet also noted that 'in-play' betting was offered by a majority of offshore wagering providers to Australian consumers and argued that the prohibition should not be maintained for a number of reasons:

This form of betting is legalised in Australia when conducted over the telephone and in retail outlets operated by the TAB's but ironically is specifically prohibited online. Sportsbet believes this inconsistency should be addressed as a priority to allow online Australian wagering service providers to compete on a level playing field, both with its domestic retail and unregulated international counterparts.

Prohibition of online is not working, exposing domestic consumers to offshore gambling services, along with a number of inherent risks and dangers. In addition, it is more difficult for sporting bodies and authorities to monitor for and detect match fixing when bets are placed with unregulated offshore gambling service providers.¹⁸

11.18 To illustrate the point further, Sportsbet listed a number of offshore providers that offered 'in-play' betting to Australian customers¹⁹ and concluded:

As noted previously, technology advancements, the proliferation of the internet and the thousands of online gambling websites available to Australians has meant that prohibition of these types of gambling has become less effective over time.²⁰

11.19 Betfair cited a recent UK Gambling Commission review of 'in-play' betting across Europe which found that 'in-play' betting did not require special regulatory treatment, nor did it pose a specific risk to problem gambling.²¹ Betfair also advocated a liberalisation of online 'in-play' betting, rather than a prohibition:

...in order to prevent Australians from wagering with illegal offshore operators who have no practically enforceable obligations to promote and action responsible gambling nor provide adequate player protection (e.g. identity and funds) measures.²²

17 Australian Racing Board, *Submission 27*, p. 9.

18 Sportsbet, *Submission 44*, p. 24.

19 See Sportsbet, *Submission 44*, p. 27. For example, William Hill, Ladbrokes, Bluesquare, Skybet, Sportsbook, 188Bet, Victor Chandler.

20 Sportsbet, *Submission 44*, p. 27.

21 Betfair, *Submission 12*, p. 12. See UK Gambling Commission, 'In running (in play) betting: position paper, May 2009, <http://www.gamblingcommission.gov.uk/pdf/In-running%20betting%20position%20paper%20-%20March%202009.pdf> (accessed 4 October 2011).

22 Betfair, *Submission 3* to the Inquiry into the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 5.

11.20 The 2011 Review of Victorian Sports Betting Regulation recently recommended that a removal of the ban on 'in-play' betting be placed on the agenda of the COAG Select Council for Gambling Reform:

There was widespread agreement amongst all stakeholders that the ban on internet betting 'in the run' contained in the *Interactive Gambling Act 2001* (Cwlth) serves no useful purpose.

If betting consumers wish to bet in the run, they are still able to do this over the telephone or over the counter at TAB outlets and, if they prefer to do so online, they are able to do so with overseas sports betting providers. The net result of this is that Australian bookmakers lose customers and, consequently, sports controlling bodies lose both revenue and access to betting information.

It was also put to the review that, in some cases, in the run betting was to be preferred. Certain betting markets may be better served from an integrity perspective if they can only be bet on during the game, as this would avoid the possibility of pre-game collusion.²³

11.21 The Coalition of Major Professional and Participation Sports (COMPPS) supported lifting the ban to ensure online 'in-play' betting is subject to Australian regulatory controls:

Rather than the current system, which has the potential to and probably will drive some gamblers offshore, the sports' preference is that online in-play betting in Australia be legalised under the Interactive Gambling Act so that the betting takes place in Australia and is subject to the regulatory controls that occur in Australia.²⁴

Support for maintaining the ban

11.22 Other submitters, however, argued that the current restrictions on wagering via the online platform should be maintained given the potential for more rapid betting over the internet (i.e. at the touch of a button or key). For example, FamilyVoice Australia stated that in-play betting was likely to 'induce problem gamblers caught up in the excitement of a match [to bet] inappropriate amounts on the spur of the moment'.²⁵

11.23 Regis Controls advised against a relaxation of the ban on 'in-play' online sports betting, stating that the practice was targeted at 'younger age groups and provides a real incentive for match and live incident fixing (penalties, cricket no balls, goals missed etc.)'.²⁶

23 Mr Des Gleeson, *Review of Sports Betting Regulation*, 31 March 2011, pp 22–23.

24 Mr Malcolm Speed, Executive Director, COMPPS, *Committee Hansard*, 11 August 2011, p. 15.

25 FamilyVoice Australia, *Submission 11*, Inquiry into the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 3.

26 Regis Controls, *Submission 35*, p. 4.

11.24 Dr Jeffrey Derevensky gave evidence to the committee on young people's preference for immediate gratification in relation to gambling activity, suggesting that the availability of 'in-play' betting may be more risky for that age group:

We do know that young people in particular are very much interested in immediate reinforcement. They want to know what the outcome of the event is going to be. So when you look at political races and you can actually bet on the internet who the next Pope is going to be, many adolescents are not really interested in those types of activities. They are interested in knowing in the next quarter on the football game or who is going to win the reality show today as opposed to looking at who is going to be [the] ultimate winner a month from now. Young people are very interested in the immediacy of their gambling and the outcomes of their gambling wagers.²⁷

11.25 Concerns were also raised about the opportunities that the interactive TV platform may provide for gambling 'in-play'. For example, Regis Controls stated that:

...many will argue that [gambling via pay TV] is a logical extension of telephone betting but the technology convergence allows the scope for many other forms of gambling, particularly in conjunction with new and overseas based channels.²⁸

11.26 Further discussion of the merits of 'in-play' betting forms part of chapter 16 on the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011. The bill proposes to ban the provision of 'in-play' betting services in all formats.

Committee view

11.27 The committee considers that the current prohibition on the provision of online 'in-play' betting should remain in place. When the IGA was introduced, 'in-play' betting online was restricted due to concerns about new technology providing a platform for excessive betting 'in the heat of the moment' during a sporting match. While some would argue that today's smartphone technology renders the current prohibition obsolete and inconsistent, the risks associated with rapid 'in-play' betting at the touch of a button and its attraction to young people remain a concern to the committee. 'In-play' betting is still permitted via the telephone and in person, so the committee sees the current restriction on the online format as striking the right balance.

11.28 An alternative to the current ban that could be investigated in the context of research in this area might be to relax the ban on 'in-play' betting online by allowing 'simple' bet types such as which team will win a match or which horse will win a race, but continuing to restrict 'in-play' betting online on micro-events or discrete

27 Dr Jeffrey Derevensky, *Committee Hansard*, 16 September 2011, pp 2–3.

28 Regis Controls, *Submission 35*, p. 8.

contingencies within an event (i.e. exotic bets, which are discussed in greater detail in chapter 14).

11.29 Given that the effects of the convergence of new technologies in this area are not yet well understood, the committee would support the government commissioning research on the risks and effects of online 'in-play' betting. Until such time as a national independent research institute on gambling (as recommended in chapter two and in the committee's previous report) can undertake this work, the committee recommends that research on the risks of online 'in-play' betting in the Australian context be commissioned as part of the current IGA review.

Recommendation 7

11.30 The committee recommends that the current prohibition on online 'in-play' betting should remain in place.

Recommendation 8

11.31 The committee recommends that the attractions, risks and potential harms of online 'in-play' betting be the subject of appropriate research commissioned by the current IGA review being undertaken by the Department of Broadband, Communications and the Digital Economy.

The risk of underage gambling

11.32 During the inquiry, the issue of young people under 18 being able to gamble on betting websites was raised. Gambling providers assured the committee that appropriate preventive measures were in place to address the risk of minors gambling.

11.33 Sports betting agencies told the committee that there was a 90-day identity verification period from when a customer set up a new betting account. Sportsbet's Chief Executive Officer, Mr Cormac Barry, admitted that it could be possible for minors to bet and lose money on the website during that 90-day verification period:

Mr Barry: It is possible. In order for someone to deposit on the site they have to have a credit card or they have to have access to those facilities. Typically those facilities would not be provided to minors. We make every possible effort to ensure that we verify those individuals as quickly as possible.

Senator XENOPHON: Within 90 days?

Mr Barry: Yes.

Senator XENOPHON: So in 90 days there is the potential for that. Have you identified any minors in terms of the verification period after the 90-day period?

Mr Barry: There will be people who fail to provide identification. When you register you provide details and you provide your date of birth. You cannot provide a date of birth that is less than 18. If people are unable to

provide identity, it would not necessarily be the case that we identified someone—that person would choose not to engage further in the process.²⁹

11.34 Betfair's submission also stated that 'strict controls around customer identity and verification also minimise the risk of minors accessing and using Betfair's website'.³⁰

11.35 Sportsbet explained to the committee what proof was required to verify identity and argued that the current 90-day verification window struck the right balance between convenience for consumers who wish to register and a duty of care to minors:

Mr Barry: Those details are the 100 points. It is the same thing that you would use to open a bank account. You have to provide, as you said, a passport or a drivers licence and a Medicare card or credit card to get up to 100 points.

Senator XENOPHON: Sure. So you provide all those cards but no-one actually verifies that the person providing it is the person who is the cardholder, though. By virtue of the online transaction, you cannot, can you?

Mr Barry: I think you can. They have to be able to provide that. They are supplying their passport, they are supplying their drivers licence. It has to match up with the address. We are verifying those details against third-party databases through services like Veda. We verify that information with third parties that that information is accurate.

Senator XENOPHON: And that takes 90 days effectively?

Mr Barry: It actually can be done almost instantly when the customer supplies relevant information.

Senator XENOPHON: Do [you] think it would be appropriate for there to be a much shorter window or in fact require the 100 points before someone sets up an account so that you actually have that verification upfront?

Mr Barry: I think a barrier of that level would be very onerous. It would only serve to drive customers to use offshore sites that do not have that level of regulation. The key thing when we are looking at regulation here is to strike a balance between allowing the business to operate and to put in processes that protect the customers, whether they are minors or responsible gamblers. It has to be proven that those processes would actually improve those procedures for minors or responsible gamblers. But there is a balance to be struck, because if we have very onerous obligations and very strong barriers to entry to our product it would only serve to drive consumers to offshore operators who operate with much less rigorous regulatory standards. You are exposing the customers to much greater risk...³¹

29 Mr Cormac Barry, Sportsbet, and Senator Nick Xenophon, *Committee Hansard*, 11 August 2011, p. 4.

30 Betfair, *Submission 12*, p. 6.

31 Mr Cormac Barry and Senator Xenophon, *Committee Hansard*, 11 August 2011, pp 4–5.

11.36 Sportsbet argued that it made 'every practical effort that can be made' to verify that account-holders were not minors and that it was not in the company's business interests to allow this to happen:

We are investing a significant amount of money. That verification process is not free; that costs us a couple of dollars per customer, and when you have hundreds of thousands of customers that adds up to a significant sum of money. I do accept that, as with any process, individuals can find a way to get around it, but we are making every effort possible to ensure that people under 18 do not use the site. We have no economic interest in that occurring, and the same applies to problem gamblers. We are in the business of creating a sustainable, growing business and providing a facility to recreational gamblers, so there is no upside for us in taking money from under-age individuals or problem gamblers.³²

11.37 The AIBA argued that the concern over the risk of minors being able to gamble online was 'misplaced'. Its submission quoted the 2004 review of the IGA, which found that:

...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.³³

11.38 The AIBA also pointed out that all Australian online betting providers 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 players identity (including age) within 90 days of the account being opened or they must freeze the account.³⁴

11.39 Chapter four noted that in the UK, in the event that a customer's age is not verified within 72 hours, the betting account must be frozen. If the user is found to be underage, the provider must return any money played and provide no winnings.³⁵

32 Mr Cormac Barry, *Committee Hansard*, 11 August 2011, p. 9.

33 Department of Communications, Information Technology and the Arts, *Review of the Interactive Gambling Act 2001*, 2004, p. 34, quoted in Australian Internet Bookmakers Association, *Submission 54*, pp 15–6.

34 Australian Internet Bookmakers Association, *Submission 54*, p. 15.

35 UK Gambling Commission, *Licence Conditions and Codes of Practice*, Consolidated version, March 2011, <http://www.gamblingcommission.gov.uk/pdf/Licence%20conditions%20and%20codes%20of%20practice%20-%20consolidated%20March%202011.pdf> (accessed 12 October 2011).

Committee view

11.40 The committee notes that while online gambling providers are required to verify a player's identity within 90 days, there remains a risk that underage persons could still open accounts and gamble on such websites for potentially 90 days, having used the identity documents of adults. The committee understands that a proper balance should be struck between customer convenience and a duty of care towards minors. It notes the licensing conditions and codes of practice set out by the UK which require age verification in 72 hours. Given this example and discussion at hearings, it would appear that identity/age verification in a much shorter timeframe is quite achievable.³⁶ As gambling is a risky product, the committee believes that to further minimise the risk to minors, the 90-day timeframe to verify identity (including age) should be reduced to 72 hours.³⁷

Recommendation 9

11.41 The committee recommends that through the COAG Select Council on Gambling Reform, governments, in consultation with industry, review the 90-day timeframe to verify identity when opening a betting account, with a view to reducing it to 72 hours, in order to diminish the risk of minors using the current timeframe to gamble illegally.

Betting on losing outcomes

11.42 The ability to bet on losing outcomes is the main purpose of the betting exchange model, which was explained in the previous chapter. Most submitters who addressed this point supported the concept of the betting exchange, with some advocating the need for greater caution in regulating such a service.

11.43 Betfair, Australia's only licensed betting exchange, explained the rationale for consumers to be able to bet on losing outcomes:

Betting exchanges offer an efficient, cost-effective mechanism for gambling on sports and racing events. The exchange's similarity with a stock market lends itself particularly well to punters seeking to trade during the course of an event by 'backing' one outcome (buying) at a high price and 'laying' it at a lower price (selling). The exchange model allows gamblers to set their own prices and seek better value odds, helping to further extend their gambling dollar.

36 Exchange between Senator Xenophon and Mr Cormac Barry, *Committee Hansard*, 11 August 2011, p. 4.

37 It is not clear to the committee whether betting agencies are complying with Commonwealth legislation such as the *Anti-Money Laundering and Counter Terrorist Financing Act 2006* or state and territory legislative requirements (see Mr Cormac Barry, *Committee Hansard*, 11 August 2011, p. 3: 'We are required by Darwin for a customer to verify their identification within 90 days, and a customer cannot make a withdrawal until that verification has taken place'.). Whatever the legislation, there is nothing to stop companies from undertaking to conduct identity checks in a significantly shorter timeframe such as 72 hours.

It is not immediately apparent to some people that laying generally involves risking a larger sum of money for the potential return of a smaller sum of money (e.g. a lay bet of \$10 at odds of 11.0 means risking \$100 for the chance to win just \$10). Backing is the reverse in that it is risking a smaller sum of money for the potential return of a larger sum of money (e.g. a back bet of \$10 at odds of 11.0 means risking just \$10 for the chance to win \$100). A punter places a lay bet when he or she thinks that the odds are too short – it's the same as an investor selling shares when he or she think[s] the price has peaked.

When a customer places a bet on a winning outcome with any betting operator, they are betting that the other outcomes will lose. This is clearly illustrated in head to head sporting contests when a bet to win on one team is the equivalent of a bet for the opposing team to lose. In respect of contests with more than two runners (for example horse racing), a betting exchange provides an efficient platform for customers to lay a horse.³⁸

11.44 As a worldwide operation, Betfair's Australian arm is regulated by the Tasmanian Gaming Commission in accordance with the *Gaming Control Act 1993*. Under this Act, Betfair must adhere to:

- the prevention of wagering on illegal events;
- allowing the Tasmanian Gaming Commission to override any betting exchange rules if it deems they are oppressive or unfair;
- allowing the betting exchange to freeze player funds immediately where inappropriate activity is suspected; and
- preventing wagering on an event the Commission considers unfit for betting exchange wagering.³⁹

11.45 Betchoice, a Northern Territory online bookmaker, praised the Tasmanian regulatory approach to Betfair's operations:

The Tasmanian legislation under which [Betfair] operates include strict provisions that aim to prevent the corruption of integrity and which have worked well. Betchoice submits that this should be a model for regulation of the wagering sector generally, namely that regulation developed with all stakeholders is preferable to prohibition that only drives the market underground.⁴⁰

11.46 Mr Andrew Twaits, Betfair's Chief Executive Officer, explained why a betting exchange service was not significantly different to more traditional wagering services:

Mr CIOBO: I know you made some comments earlier on about your concern with respect to the proposed prohibition on placing loss bets. I

38 Betfair, *Submission 12*, pp 19–20.

39 Betfair, *Submission 12*, p. 4.

40 Betchoice, *Submission 43*, p. 18.

would just ask you to expand on why you think it is not a bad idea and not a riskier proposition.

Mr Twaits: The starting point is that you can bet on a losing outcome through a bookmaker or a TAB. History has shown that people who have set out to profit from either inside knowledge or intentional conduct—for instance, rigging a race—have used bookmakers and/or TABs. So in a sense we are no different. I guess what I would say is that I think we have shown over the last 5½ years here, and beyond that globally, that transparency is the key to protecting the integrity of racing and sporting events. As I said, we think we are the high-water mark in dealing with integrity issues in sport. We provide a power of veto to sports in terms of saying what markets we can offer and, if they are unreasonably risky or they take too many resources to deal with, we will not offer them.⁴¹

11.47 COMPPS also affirmed that the establishment of Betfair in Australia has had a positive effect on sport:

Six of the COMPPS members have information and revenue sharing arrangements with Betfair, the major betting exchange operating in Australia. The information sharing arrangements have worked well and sports have received valuable, timely and detailed information that has greatly assisted them.

It is in the interests of the betting agencies to work with sports so as to ensure that the integrity of sporting contests is maintained.⁴²

11.48 The AIBA agreed that Betfair's management of integrity concerns was of a very high standard:

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.⁴³

11.49 The Tasmanian Department of Treasury and Finance noted that there had been no complaints regarding Betfair's operations since its inception:

There have been no incidences in Tasmania requiring proceedings to be taken against Betfair. The Tasmanian Gaming Commission has had no instances of prosecutions arising from serious corruption or match-fixing since Betfair began their Tasmanian operations in 2006.

In conclusion, if a betting operator has in place a highly transparent wagering platform with traceable audit trails, and information-sharing

41 Mr Steven Ciobo MP and Mr Andrew Twaits, Betfair, *Committee Hansard*, 11 August 2011, p. 33.

42 COMPPS, *Submission 16*, p. 6.

43 Australian Internet Bookmakers Association, *Submission 54*, p. 32.

agreements with racing and sports industry bodies, then along with strong probity requirements in legislation the risks to the integrity of sport from being able to lay bet are minimised and there is no case to prohibit this type of betting activity.⁴⁴

11.50 The UK Gambling Commission outlined its experience of betting exchanges, stating that:

The introduction of betting exchanges created a business opportunity for many due to the low overhead operations of an exchange. Initially, this had an impact on traditional bookmakers and their profit margins, but with the impact now settled throughout the market many bookmakers find the exchanges as a useful tool for their business and some elect to lay off their liabilities on the exchange. It has also had a large impact on the way starting prices are calculated, in many cases the betting exchange odds are the default starting prices used by bookmakers now as it provides a fair and accurate estimate of the market.

The ability to back the loser is and will continue to be under the spotlight particularly in relation to horse racing yet we have found little evidence to suggest that it has led to an increase in betting corruption. A properly regulated betting exchange with built in market integrity checks can provide valuable intelligence and help detect activity that may have otherwise been missed. While the...report 'Risks to the integrity of sport from betting corruption' explored whether exchanges might in principle provide more opportunities to those wishing to fix events, particularly in-running events, in practi[c]e the deterrent benefits of better scrutiny and identification of who is betting appear to outweigh the potential risks.⁴⁵

11.51 Mr Paul Aalto also argued that that betting exchanges posed no harm:

Every sporting event has winners and losers - betting on Team A to win a match automatically means that you are betting on Team B to lose it. This equation becomes a little more complicated in events with multiple entrants but the principle remains the same. There will only ever be one winner (other than in a dead-heat) and the other participants will lose. If you back all but one entrant to win, you are effectively backing that final entrant to lose. This has been happening for years and long before betting exchanges came into play.

Overall, I see the entry of Betfair, the only betting exchange currently licensed in Australia, into the market as a positive for the following reasons:

- As a punter, better prices on average;

44 Tasmanian Department of Treasury and Finance, *Submission 8* to the Inquiry into the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 3.

45 UK Gambling Commission, *Submission 33*, p. 7.

- Additional revenue streams for sports/racing through distributions, sponsorship and most importantly the introduction of overseas clients to our market - i.e. they have grown the pie;
- Their audit trail and willingness to share information with authorities has enhanced, rather than detracted, from the ability of the regulators/stewards to do their job - i.e. they make it easier to detect cheating.⁴⁶

11.52 Some submitters, however, were more cautious about the betting exchange model, highlighting the potential for integrity breaches.

11.53 The NSW Bookmakers' Co-operative Ltd acknowledged that while betting exchanges were 'a legitimate component' of the wagering industry, enhanced vigilance over their activities was required:

As with other technological advances within the industry, our main concern is that bookmakers are legally allowed to access these options whilst conducting their businesses, and that there are no regulatory-imposed commercial disadvantages for our members in terms of this access and related costs.

The Co-op is aware that persons 'betting to lose' via betting exchanges are often closely following the business practices of licensed bookmakers who accept bets 'against' racing and sporting contestants as their main business trade.

Whilst we would not advocate the prohibition of unlicensed persons 'laying' contestants in this manner, we would suggest that the enhanced focus of racing and sports regulatory bodies is warranted in respect of these transactions, given the potential for inappropriate betting activities.⁴⁷

11.54 The Australian Athletes Alliance submitted that betting exchanges 'should not be permitted a free ride on the efforts of [sport] governing bodies, clubs and athletes':

Accordingly betting exchanges should not be permitted to:

- 1) place bets on any sport, including racing, unless the governing body of the sport provides its consent; and
- 2) use the likeness, statistics, and/or name of any athlete without the athlete's specific consent.

A sport should only be permitted to provide its consent if it has collectively bargained the minimum levels of risk management described above.⁴⁸

11.55 Regis Controls also called for better regulation of the ability to bet on losing outcomes, warning that:

46 Mr Paul Aalto, *Submission 53*, pp 2–3.

47 NSW Bookmakers' Co-operative Ltd, *Submission 11*, p. 5. This view was shared by the Australian Bookmakers' Association, *Submission 18*, p. 9.

48 Australian Athletes Alliance, *Submission 48*, p. 3.

...this type of betting allows significant betting on credit and betting on "losing" outcomes increases the risk of fraudulent activity. Regulation relies too heavily on post-bet evaluation of suspicious activities which some State and Territory Government regulators are currently insufficiently equipped to monitor effectively.⁴⁹

11.56 Further discussion of how integrity concerns are managed by racing and sporting bodies in light of 'lay' bet types is contained in the following chapters on match-fixing and corruption in sport.

Committee majority view

11.57 The committee majority acknowledges that Australia's only licensed betting exchange, Betfair, has been operating in the Australian market since 2006, and that no significant concerns about its operation have come to light. However, the committee majority notes the risks inherent in being able to bet on losing outcomes and supports betting exchange providers working closely with governing bodies, as Betfair has done, to mitigate the risk to the integrity of the sporting or racing product on which lay bets are placed.

Regulation of online wagering by state and territory governments

11.58 With the exception of the provisions in the IGA regarding 'in-play' betting online, states and territories are each responsible for regulating and licensing wagering operators. One of the key issues raised during the inquiry was that regulatory approaches differed considerably between jurisdictions. These inconsistencies have resulted in corporate bookmakers gravitating to more 'progressive' jurisdictions to establish and grow their operations. The distinct business advantage held by these online wagering operators has caused considerable tension and 'market distortion' between the newer players and the traditional wagering operators on a range of issues such as wagering taxation, revenue to the racing and sporting industries and regulatory approval processes.

11.59 Harness Racing Australia provided an overview of the race wagering regulation environment and the significant changes that have recently taken place:

The regulation of wagering on racing has traditionally been the domain of the states and territories. For over one hundred years, this proved successful, particularly when each State Government owned and controlled its own TAB, bookmakers were permitted to operate only when situated on a racecourse and arrangements existed between states regarding betting on each other's racing product.

The privatisation of TABs, the emergence of telephone and online betting and the changes associated with globalisation, has irrevocably altered the wagering landscape.

49 Regis Controls, *Submission 35*, p. 4.

No longer are state and territory borders relevant and the protectionist policies of past decades have gone, replaced with an emphasis on competition and free trade. The result is inconsistent regulation being imposed by states and territories, including different taxation rates. For the racing controlling bodies, the prevalence of 'free-riding' bookmakers, located in small jurisdictions, paying little or no tax to the local government and providing minimal or no return to the racing controlling bodies, has had a detrimental effect.⁵⁰

11.60 According to Tabcorp, the regulation of online wagering across different states and territories has not kept pace with the growth of the online industry, and has created significant market distortions:

Whilst the Australian online wagering market has evolved to a national one, state and territory governments and racing industry authorities continue to regulate the industries as if they were still state/territory based markets. Each jurisdiction has its own approach to:

- Racing industry funding, including race field fees
- Wagering taxation
- Integrity management
- Products approved
- Regulatory approval processes
- Harm minimisation/responsible gambling requirements.

Wagering customers will seek out wagering opportunities that provide the best price, product offering and suite of complementary services. Wagering operators will seek out a business environment that enables them to maximise returns. Where a non-level playing field exists, customers and wagering operators will "jurisdiction shop" to find the environment that best suits them.⁵¹

11.61 Tabcorp also stated that a range of different taxation regimes across jurisdictions led to a distortionary 'non-level playing field':

The impacts of a non-level playing field in the areas of taxes, racing industry fees and regulation leads to leakage of wagering revenue to jurisdictions in which wagering operators pay little or no contribution to the racing industry.

In 2008, the loss of income for the NSW and Victorian racing industries as a result of these distortions was \$58 million and \$45 million respectively. As online wagering continues to grow, this leakage will continue.⁵²

50 Harness Racing Australia, *Submission 52*, p. 5.

51 Tabcorp, *Submission 22*, p. 12.

52 Tabcorp, *Submission 22*, p. 13.

11.62 Betfair also referred to 'forum shopping', which resulted in disparities between states and territories and 'an entrenched protection of the state-based monopoly TABs'.⁵³

'Regulatory arbitrage'

11.63 Submitters argued that the regulatory discrepancies between jurisdictions had led to online based businesses being able to take advantage of what are seen as more flexible licensing arrangements in smaller jurisdictions.

11.64 The Australian Racing Board noted three characteristics of the current system of state-based regulation:

Inconsistency. New technologies which can be applied to gambling purposes present the same issues for all States and Territories and a consistent national framework should exist. Instead we have a patchwork series of responses to changes.

Regulatory arbitrage. Lack of a consistent national framework means that operators are able to pick [from] States and Territories willing to trade off regulatory or tax standards in order to secure local investment or other economic activity. The result is a "race to the bottom".

Regulatory capture. Some operators in particular jurisdictions may have significant sway over the relevant regulators and/or legislators because of their size in the particular State or Territory market.⁵⁴

11.65 According to the NSW Bookmakers' Co-operative Ltd, the Australian Capital Territory and the Northern Territory are considered to be 'corporate bookmaking strongholds', having put in place 'progressive regulatory reforms' when compared to the major states.⁵⁵ Its submission argued that:

...non-online regulatory inconsistency across the nation has resulted in poor outcomes for bookmakers who – at least at an on course level – do not have the ready ability to 'relocate' their licenses to more 'favourable' jurisdictions. Whilst we understand the challenges in doing so, jurisdictions should wherever possible provide for nationally consistent State and Territory non-online gambling regulations (and taxes) to avoid competitive bias and the negative commercial and public policy impacts that this brings.⁵⁶

11.66 The Northern Territory's 'flexible regulatory structure', according to Tabcorp, enables corporate bookmakers to:

- offer better prices to customers because of the relatively low tax and racing industry contributions required; and

53 Betfair, *Submission 12*, p. 16.

54 Australian Racing Board, *Submission 27*, pp 12–13.

55 NSW Bookmakers' Co-operative Ltd, *Submission 11*, p. 3.

56 NSW Bookmakers' Co-operative Ltd, *Submission 11*, p. 4.

- offer a broader product suit[e] to customers, including the ability to bet on novelty events and on credit.⁵⁷

11.67 Regarding the detrimental impact on traditional wagering providers, the Australian Bookmakers' Association stated:

Unfortunately these progressive arrangements that allowed 7-day trade via the internet and the broadest possible range of betting products were not readily adopted for bookmaking in the other States. This fragmented approach to regulation continues to this day. As a result many jurisdictions still confine bookmakers to their traditional racecourse locations, traditional operational limitations and limited product range. (For example Queensland bookmakers are still to this day unable to accept bets via the internet.)⁵⁸

11.68 The Association emphasised that traditional on-course bookmakers were heavily disadvantaged by the 'patchwork' regulation approaches across the country:

The vast majority of on-course bookmakers remain 'sole traders' in the sense that they own and operate small businesses with few employees - mainly race day staff such as ledger recorders ('pencillers') and cash handlers ('bagmen') - and minimal administrative support. Although some jurisdictions now allow limited types of partnerships or simple corporate entities to be formed, most on-course bookmakers continue to individually manage and finance their business activities.

These limitations, as well as other operational restrictions, are in most cases the result of longstanding government and/or industry regulatory policy. In essence, the regulatory arrangements that apply to on-course bookmakers have in many cases failed to keep up with changes in the national market, and especially for the newer "corporate bookmaking" businesses.⁵⁹

The call for a national approach

11.69 Sports wagering operators, even those located in more 'favourable' jurisdictions, overwhelmingly called for a nationally consistent regulatory framework to replace the currently fragmented state and territory regimes.

11.70 Tabcorp's submission argued for 'a single national approach to taxation and funding of the racing industry, possibly administered by the Commonwealth'.⁶⁰

11.71 The NSW Bookmakers' Co-operative Ltd also observed that inconsistent regulations across states and territories were problematic and that:

...a single national set of regulations - if only in the area of harm minimisation and related advertising and promotions, would be of

57 Tabcorp, *Submission 22*, pp 4-5.

58 Australian Bookmakers' Association, *Submission 18*, p. 2.

59 Australian Bookmakers' Association, *Submission 18*, p. 2.

60 Tabcorp, *Submission 22*, p. 12.

significant advantage and would negate the attraction of 'border hopping' by wagering licensees.⁶¹

11.72 Betfair, licensed in Tasmania, suggested that the current system was too protectionist towards the monopoly TAB providers:

Betfair believes the current state-based system of gambling regulation in Australia is inconsistent and there's a need for a more co-operative framework. There are too many disparities between the various jurisdictions and an entrenched protection of the state-based monopoly TABs (mostly now in private sector ownership). While Betfair believes it's crucial that states be able to offer tax incentives for new business, it is strongly of the view that a nationally consistent approach be taken in regard to regulation.⁶²

11.73 Taking things a step further, Betchoice, licensed in the Northern Territory, argued there is a need for a single Commonwealth department and minister to oversee gambling and wagering regulation:

In the case of Betchoice, we compete with other operators at a national level and serve customers across Australia. It is costly and time consuming to have separate and, at times, inconsistent regulation in different States and Territories. It makes advertising and marketing expenses greater than they should be and runs the risk that operators may operate in breach of the law due to the complexity of the issues involved.

If the Federal Government intends to play a greater role in gambling issues, we submit that a single minister should be made responsible and that a department be given responsibility over the portfolio. The Federal Minister should then work with State and Territory Governments to harmonise existing laws so that regulation is clearer and serves the public interest.⁶³

Race field fees

11.74 Another issue that was not specifically included in the inquiry's terms of reference, but was nevertheless raised by numerous submitters, is that of race field fees. Arising out of inconsistent regulatory arrangements, the multiple fees and authorisations required by states and territories is a source of consternation for many wagering operators.

11.75 The NSW Bookmakers' Co-operative Ltd drew attention to the complexity of current race field fees models in operation across states and territories:

Our on-course bookmaking members are at present disadvantaged by the complexity of the various State and Territory based fee models. Put simply, the fees charged by each racing code in each jurisdiction are too inconsistent to allow holders of bookmaking licenses to operate under level

61 NSW Bookmakers' Co-operative Ltd, *Submission 11*, p. 4.

62 Betfair, *Submission 12*, p. 14.

63 Betchoice, *Submission 43*, p. 20.

competitive arrangements. As with inconsistent regulatory standards, this results in commercial disadvantage for those operators who are located in higher fee paying jurisdictions.

In addition, our members are now burdened with the unprecedented requirement to obtain 'multiple' regulatory (race fields) approvals from each racing authorisation body within each Australian jurisdiction that he or she operates betting [on]. This exponential increase in required regulatory approvals provides a huge additional administrative burden on bookmakers, the majority of whom operate as small businesses / sole traders.

A single national licensing process, or at minimum a system of mutual recognition of State / Territory approvals, must be a more logical solution.⁶⁴

11.76 Similarly, the Australian Bookmakers' Association argued there was a completely fragmented approach to race fields authorisations and fee collection schemes:

Mutual recognition of interstate licensing is often ignored by relevant authorities.

...The ABA strongly recommends that there be established, either, a single national licensing and financial contributions process or a system of 'mutual recognition' by all jurisdiction of 'home state' licensing and fees payments.⁶⁵

11.77 Betfair outlined the original 'product fee' arrangements that operators paid to the states in which they were licensed, as well as the newly introduced 'race field fees' arrangements:

Licensed wagering operators in Australia have traditionally paid all product fees and taxes to the states where they are licensed. For example, a bookmaker licensed in New South Wales paid taxes and product fees to the NSW Government and/or NSW racing industry. The fees were paid irrespective of an event's location.

The funding model originated with the advent of the state-based (and owned) TABs. It was widely referred to as the 'Gentleman's Agreement'. In effect, each jurisdiction permitted TABs and bookmakers to accept bets on each other's racing without the requirement to pay product fees.

Throughout Australia, this funding model has now been replaced by the introduction of race fields legislation. Wagering operators pay licence fees and taxes in the state in which they are licensed, but the race fields legislation means they now have to contribute product fees directly to the racing bodies that control the product from which they are sourcing revenue. Betfair supports this new funding model. It's an arrangement that allows the racing industries in each state to properly reap the rewards of their own products and gives racing bodies a strong incentive to provide a better quality product.

64 NSW Bookmakers' Co-operative Ltd, *Submission 11*, Attachment 1, p. 4.

65 Australian Bookmakers' Association, *Submission 18*, p. 6.

Betfair supports the concept of product fees provided that the fee being imposed is fair and equitable to all wagering operators.⁶⁶

11.78 Betchoice also highlighted the waste and duplication associated with different fee regimes:

The issue of duplication extends beyond governments, however. For wagering operators, the worst example concerns product fees. Product fees are generally statutorily imposed requirements on wagering operators to pay an amount to a sport or racing code in order to offer bets on the event. The product fee acts as a mechanism, particularly in the case of racing, to provide an ongoing source of funding.

Most wagering operators, including Betchoice, are not opposed to product fees in general. As was noted above in respect of integrity issues, without sport and racing, there is no wagering. Betchoice does not want to see events that could bring in customer dollars disappear. However, the complexity and duplication is a waste of money and time.⁶⁷

11.79 The committee notes that the race field fees matter is currently the subject of legal proceedings in the High Court of Australia, with corporate bookmakers Sportsbet and Betfair appealing against the NSW Government's bid to charge them fees on the basis of 1.5 per cent of turnover. Sportsbet contends that it should not pay any fee to operate in NSW, whereas Betfair contends that the NSW fee model is discriminatory.⁶⁸

11.80 At its last meeting in September 2011, the Australasian Racing Ministers' Conference discussed these matters:

The Ministers discussed the absolute need for a national approach to product fee legislation driven by the Commonwealth to ensure the racing industry continues to be a major contributor to Australia's economy and proposed a further approach to the Federal Government on this issue.⁶⁹

11.81 However, in July 2011, a spokesman for the Assistant Treasurer, the Hon Bill Shorten MP, noted that racing was a state issue and that any proposed Commonwealth intervention was likely to be 'costly and complex and involve a significant impost on

66 Betfair, *Submission 12*, p. 15.

67 Betchoice, *Submission 43*, pp 20–21.

68 Jamie Nettleton, Addisons Commercial Lawyers, 'NSW Race Fields Legislation – Constitutional Challenge by Betfair and Sportsbet – Round 2', 17 November 2010, <http://www.addisonslawyers.com.au/documents/doc-147-nsw-race.pdf>; Nabila Ahmed, 'Tabcorp's stake in Betfair challenge', *The Australian*, 5 August 2011.

69 Australasian Racing Ministers' Conference, Communiqué, 23 September 2011, <http://www.mediastatements.wa.gov.au/Pages/default.aspx?ItemId=144578&> (accessed 4 October 2011).

business.' The Commonwealth would prefer to see a harmonised approach arrived at by states and territories.⁷⁰

Committee view

11.82 The committee notes the legal proceedings currently underway in the High Court of Australia on the matter of race field fees. It acknowledges the frustration of wagering providers in what appears to be a fragmented and complex system. The committee notes the level of concern raised during the inquiry on this issue and welcomes the work being undertaken by the Australasian Racing Ministers' Conference to achieve national consistency in this area. The committee supports the Commonwealth Government's view that a harmonised approach by jurisdictions should be pursued over federal intervention.

Consumer protection issues

11.83 Recent media reports have highlighted examples of consumer protection concerns in relation to gambling and sports betting services.

11.84 In August 2011, Sports Alive, an online bookmaker based in Melbourne but licensed in the ACT, went into liquidation. Almost 13,000 customers are likely to lose up to \$3.2 million, including \$2.6 million in payouts not made to winners and \$600,000 in 'wagered open bets'. Staff of the betting agency confirmed that company managers were falsely marking customers' betting accounts as 'paid' and it is claimed that this was being done to mislead the regulator, the ACT Gambling and Racing Commission.⁷¹ Liquidators said that it was unlikely that Sports Alive had complied with the ACT *Race and Sports Bookmaking Act 2001*, requiring bookmakers to keep a separate bank account for all betting monies and to not withdraw money from this account until a bet's outcome is determined. Inquiries are being conducted into whether the company had been trading while insolvent.⁷²

11.85 Another case relates to three gambling-related schemes being operated in Victoria which promise financial returns to clients by using computer software to predict the outcome of racing and sporting events. Media reported that the schemes,

70 Mathew Dunckley, 'Shorten cracks whip on national racing rules', *Australian Financial Review*, 21 July 2011.

71 Michael Bachelard, 'Betting agency misled, say staff', *The Age*, 4 September 2011.

72 Henrietta Cook, 'Sports Alive a long shot to survive two years ago, company papers show', *The Canberra Times*, 10 September 2011; Noel Towell, 'Fraud squad will probe collapse of Sports Alive', *The Canberra Times*, 19 November 2011. See also Nick Clark, 'TOTE's \$5m losing bet', *Hobart Mercury*, 10 November 2011, which reports that the Tasmanian Government (through TOTE Tasmania) had invested \$5 million in Sports Alive to give TOTE a 25 per cent stake in Sports Alive's parent company Bet Worldwide Pty Ltd in December 2009. A recent media article reported that another online bookmaker, Betezy (registered in the Northern Territory), has alleged financial problems. The Australian Taxation Office has filed a lawsuit claiming that Betezy owes \$160,000 in tax and should be wound up as it is insolvent. See Ben Butler, 'Taxes and Tinkler trip up Betezy', *The Age*, 16 November 2011.

operating under the names of Pro-Trader Technologies, Advanced Trading Strategies and Queenbury Investments, offer potential investors profits of up to 70 per cent by predicting the winners of horse racing and other sporting events. Some investors have found that the promised returns did not materialise and have had difficulty recovering their money. The Victorian Consumer Affairs Minister has warned against investing in such schemes, suggesting they may well be scams.⁷³

11.86 The Australian Competition and Consumer Commission (ACCC) warns consumers against buying into gambling schemes which are camouflaged as 'investments'.⁷⁴ Until recently such schemes have been operating out of Queensland. The ACCC has been working with the Queensland Office of Fair Trading, Queensland Police, the Australian Securities and Investment Commission and the Australian Taxation Office 'to develop coordinated enforcement and consumer education strategies to tackle these types of sports betting products'.⁷⁵

Committee view

11.87 The committee notes with concern the emerging consumer protection issues around sports betting and wagering and gambling-related schemes being marketed as 'investments'. The committee urges regulators to continue to be vigilant in monitoring for and addressing such practices, as well as providing appropriate consumer education. Additional consumer protection issues that arose during the inquiry are discussed below.

Credit betting

11.88 Credit betting refers to the practice of placing bets on credit and settling the account at a later date. The practice of wagering providers offering clients 'free' credit will be dealt with in the next chapter under the topic of inducements.

11.89 The Productivity Commission's (PC) 2010 report into gambling addressed the practice of credit betting and ultimately recommended that there were insufficient grounds to recommend a prohibition on current credit betting practices:

...bookmakers have a commercial interest in the prudent provision of credit facilities as they bear the cost of the collection of outstanding debts, as well as the risk of default. As credit seems to be offered to well known and established clients, bookmakers' commercial interests may be reinforced by a personal interest arising from the ongoing relationship they have with

73 Richard Baker and Nick McKenzie, 'Gambling "scam" websites targeting Victorians', *The Saturday Age*, 22 October 2011.

74 ACCC, 'Sports 'investment' scams', Fact Sheet, <http://www.accc.gov.au/content/item.phtml?itemId=878568&nodeId=571b137e58039f712f74468418602adc&fn=Sports%20investment%20scams.pdf> (accessed 24 October 2011).

75 ACCC, 'Horse betting software promoter stops advertising', <http://www.accc.gov.au/content/index.phtml/itemId/940129> (accessed 24 October 2011).

their clients. Such relationships are likely to be stronger in the face-to-face environment on-course, than they are over the internet.⁷⁶

11.90 The NSW Bookmakers' Co-operative Ltd noted that credit betting was 'an important part of bookmaking practices in the modern era' and it supported the PC view that there would not be a net benefit in a ban on the use of credit betting in either the online wagering or online gaming environment. The Co-operative:

...strongly advocates the retention of credit betting as an essential tool in doing business established clients who have demonstrated a capacity to bet (and settle any debts) at a level appropriate to their personal financial circumstances.⁷⁷

11.91 Betfair advised that it does not allow customers to bet on credit and that an account-based betting model has particular advantages for regulation:

Unlike traditional wagering platforms such as bookmakers and the TABs, Betfair does not accept cash, nor does it allow customers to obtain credit. Betfair only permits customers to place bets if they have opened an account. There are a number of advantages in offering only account-based betting, the key one being that Betfair is always aware of who has placed a bet.

The account-based model removes the traditional anonymity of punters. It provides significant advantages in controlling and detecting attempts to launder money or to engage in deceptive conduct...⁷⁸

11.92 Tabcorp pointed to the inconsistency across jurisdictions on the practice of credit betting:

The approach of states and territories to harm minimisation in online wagering differ markedly. For example, while totalisators in general cannot provide credit to their customers, bookmakers are free to offer credit betting services. Between jurisdictions, differences also apply to restrictions on bet types, wagering advertising and the capacity of operators to offer account opening inducements to wagering customers.

Customers who wish to take advantage of credit betting, account opening inducements and a broad product offering are taking their business to jurisdictions with regulatory environments that allow wagering operators to provide these services.⁷⁹

11.93 The AIBA supported further research into the merits of credit betting to consider whether further controls would be appropriate:

76 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 16.55.

77 NSW Bookmakers' Co-operative Ltd, *Submission 11*, pp 5–6. See also Australian Bookmakers' Association, *Submission 18*, pp 10–11.

78 Betfair, *Submission 12*, p. 6.

79 Tabcorp, *Submission 22*, p. 10.

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...⁸⁰

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.⁸¹

Sportsbet case

11.94 During a public hearing, the committee questioned Sportsbet about a case in which a Melbourne man with a mental illness ran up \$80,000 in debts with that company.⁸² According to media reports, the man claimed he was lured in to open a betting account by the offer of \$5,000 in free bets. He then accepted thousands of dollars worth of credit to continue betting. After joining in May 2010, he said he accepted an offer of \$10,000 credit, then a further \$30,000 within the next week. He also successfully applied for a further \$40,000 in credit. Sportsbet took the man to court to force him to pay but eventually agreed to cancel his debts.⁸³

11.95 This case raised a number of concerns for the committee. Despite this, the committee thanks Sportsbet for being very open about its business practices during this inquiry and also for its openness about this case. The committee commends Sportsbet's compassionate approach for the individual involved and understands that the case is well on the way to being resolved.

11.96 The 'free bets' aspect of this case is discussed in more detail in chapter 12 under a section covering inducements to bet. The final section of this chapter also deals with another aspect of the case – i.e. the introduction of the man to Sportsbet by a third party and the payment of commissions.

80 Australian Internet Bookmakers Association, *Submission 54*, p. 27.

81 Australian Internet Bookmakers Association, *Submission 54*, p. 28.

82 Senator Xenophon declared his interest in the case, as he had been acting *pro bono* for the man in question. See *Committee Hansard*, 11 August 2011, p. 3.

83 Richard Willingham, 'Betting agency settles over man's \$80,000 debt', *The Age*, 26 July 2011.

11.97 Sportsbet's Chief Executive Officer, Mr Cormac Barry, and the Chief Financial Officer, Mr Ben Sleep, explained Sportsbet's policy in relation to credit betting:

Mr Barry:...of the people who have credit accounts with Sportsbet, 80 per cent have a facility of \$200 or less and 90 per cent have a facility of \$1,000 or less. Of the 15,000 active credit accounts we had in the last financial year, 21 of them went to legal action pursuant in the recovery of funds and there were two cases of bankruptcy. We would typically treat these matters with compassion and it is very much a last resort. We would only pursue individuals if we believed they had the ability to pay ... [A]s it has come to light through the proceedings within the court that this individual does not have the ability to pay, there are now currently unprejudiced discussions underway to waive that debt. In the vast majority of cases, we will come to an arrangement where we make a partial settlement to paying on plan or we write off the amount. In the last financial year, we wrote off close to \$1 million.

Senator XENOPHON:...But how on earth did we get to the stage where an individual who, if you scratch below the surface you could tell, was quite a vulnerable individual and got to the stage of getting that amount of credit so quickly and lost that money so quickly?...

Mr Sleep: If you look at the transactional history of the particular customer, he bet with us for a number of months and, in fact, was very successful. In his operation he certainly looked to us like he was a professional punter, as in the information provided. Initially, the credit facility provided was \$10,000, which was in existence for a reasonable period of time. The particular customer in question then, on repeated occasions, was requesting high levels of credit—in fact, higher than where he ended up. Statements were made to us about his ability to pay, about certain assets that the individual had and about a history of having similar types of facilities and repaying them accordingly. Over a series of many conversations, this was the basis of extending the credit that we did. As Cormac pointed out, proceeding to this level of legal proceedings is an absolute last resort for us. To the extent that we go legal in the 20-odd cases, typically that is dropped, but in this instance it was based on what the particular customer was saying. It was our belief, based on his statements, that he in fact had the ability to pay. It was not until we got further into the proceedings and saw the reports from the trustee that those statements were baseless.⁸⁴

11.98 The committee wrote to state and territory regulators asking them to outline their rules around credit betting. Responses were received from all jurisdictions except the Northern Territory where it appears this practice is allowed:

Senator XENOPHON: Are you familiar that in other jurisdictions, for instance in South Australia, under the Gaming Machines Act it is an offence to provide credit to someone for the purpose of gambling?

84 Senator Xenophon, Mr Cormac Barry and Mr Ben Sleep, Sportsbet, *Committee Hansard*, 11 August 2011, p. 6.

Mr Barry: I am familiar with the fact that there are different regulations in the different states. It is not illegal in Darwin to provide those services.⁸⁵

11.99 New South Wales, Victoria and Queensland appeared to have the strictest rules against credit betting while other jurisdictions permitted the practice to differing degrees, depending on the licensees in question.⁸⁶ As the case referred to above involves a betting agency registered and licensed in the Northern Territory, the committee is disappointed that the Northern Territory has not responded to its inquiries around rules in place for credit betting.

11.100 Sportsbet expressed its view in relation to this practice at the hearing during this exchange:

Senator XENOPHON: I appreciate you are operating within the laws of the Northern Territory. But do you understand the policy rationale between not providing credit to someone to gamble, in the sense that it may help fuel problem gambling or exacerbate existing problem gambling?

Mr Barry: I do not believe that the provision of credit has the effect that you outlined. There is a broad number of credit facilities available to consumers, whether it be retailers or banks et cetera, so I do not believe the fact that we provide credit in any way increases the likelihood that a problem gambler would have an issue.

Senator XENOPHON: Sportsbet is not a charity. You are not giving credit because you are philanthropists. You are giving credit to get more customers—

Mr Barry: We are giving credit to provide a convenient facility for customers to bet. We do not charge for credit. Obviously we are not a charity, but nor are the other people who provide credit in society.⁸⁷

11.101 The committee notes that under the *Privacy Act 1988*, gambling providers such as Sportsbet do not fall under the current definition of a credit provider as they do not charge interest or fees.⁸⁸ While the definition of a credit provider is being broadened under the government's privacy reforms, gambling providers such as

85 Senator Xenophon and Mr Cormac Barry, *Committee Hansard*, 11 August 2011, p. 3.

86 Correspondence received from the NSW Office of Liquor, Gaming and Racing, 5 October 2011; Western Australian Department of Racing, Gaming and Liquor, 30 September 2011; Victorian Commission on Gambling Regulation, 20 September 2011; the Queensland Office of Liquor and Gaming Regulation, 16 September 2011; South Australia's Independent Gambling Authority, 8 September 2011; the South Australian Office of the Liquor and Gaming Commissioner, 14 September 2011; Tasmanian Gaming Commission, 16 September 2011; and ACT Gambling and Racing Commission, 21 September 2011.

87 Senator Xenophon and Mr Cormac Barry, *Committee Hansard*, 11 August 2011, p. 3.

88 Comlaw, 'Credit Provider Determination 2011-2 (Classes of credit providers)', <http://www.comlaw.gov.au/Details/F2011L01648> (accessed 21 September 2011) and Australian Government, Companion Guide, 'Privacy Reforms: Credit Reporting', p. 7, http://www.aph.gov.au/Senate/committee/fapa_ctte/priv_exp_drafts/guide/credit_guide.pdf (accessed 21 September 2011).

Sportsbet will still not fall within the new definition. The committee's view and recommendation on credit betting is incorporated into this chapter's conclusion below.

Payment of commissions to third parties

11.102 In relation to the case mentioned above, in which a Melbourne man ran up \$80,000 in debts with Sportsbet,⁸⁹ the committee heard about the practice of third parties being paid commissions by Sportsbet to introduce new clients.

11.103 While explaining the case to the committee, Mr Barry, Chief Executive Officer of Sportsbet, stated that third parties could refer potential clients to Sportsbet and receive an 'affiliate share' of the gambler's losses. The exchange took place as follows:

Mr Barry: In this case, the client was referred to us by a third party. There are a number of third-party agents who would network within racing clubs and professional gambling circles. He was referred to us on the basis—

Senator XENOPHON: Sorry—let's go back a step. When you get a referral from a third party, and you have your Facebook page where people share tips and things like that, do you provide any credits, any inducements or any reward for third parties introducing customers to you?

Mr Barry: Yes. Those third parties can be on a finders fee or they could gain a share of the revenue from the customer—an affiliate share.

Senator XENOPHON: If the punter loses \$10,000 and they were introduced by a third party, that third party could be getting a share of that?

Mr Barry: Absolutely.

Senator XENOPHON: Is that disclosed to the punter?

Mr Barry: Not necessarily, but it would not be in any way deliberately hidden.⁹⁰

11.104 The question of whether this practice constituted a 'secret commission' was then discussed:

Senator XENOPHON:...I know that there have been laws in place around the country about secret commissions and disclosing commissions. If a third party introduces someone, they can get a cut of that person's losses?

Mr Barry: Yes, but it is a reasonably standard business practice for referrals to occur. I think many businesses would operate on the basis that people get recommended to another service if they enjoy using a service or they believe an individual may wish to use that service.

Senator XENOPHON: But isn't this a little bit different? The bigger the person's loss, the more the referrer gets.

89 Richard Willingham, 'Betting agency settles over man's \$80,000 debt', *The Age*, 26 July 2011.

90 Senator Xenophon and Mr Barry, *Committee Hansard*, 11 August 2011, p. 5.

Mr Barry: It is often the case that when a third party refers someone to you they would get a share of the benefit. I do not think it is any different.

Senator XENOPHON: But given that you are dealing with an unusual product—you are dealing with a product that you acknowledge in your very comprehensive submission has a risk of harm and you have items on your website to deal with problem gambling—don't you see that offering those sorts of inducements could fuel problem gambling? The third party that introduces the punter to you might have an incentive to encourage that person to keep playing.

Mr Barry: Typically an affiliate would be something like a racing forum, an information site or that type of thing and those people would have links to our site. They refer a customer through that means. So typically that is a reward for the affiliate and the affiliate has an ongoing relationship with that customer.

Senator XENOPHON: How much do you pay out in commissions each year?

Mr Barry: Each year we would pay out approximately \$3 million to \$4 million.

Mr Sleep: About \$3½ million.⁹¹

11.105 Giving evidence to the committee, Mr Mick Rolfe, Vice Chairman of the Australian Bookmakers' Association, stated that he would not support such a practice:

Senator XENOPHON: As a bookmaker of good standing and 40 years experience, do you have a view about that sort of practice of a) giving a commission to someone and b) not disclosing that commission to your new customer?

Mr Rolfe: I take the position that that would be wrong. I think that that would be counter-productive. I think that that would give the wrong view to any potential client that you may be looking at that you need to have those clients to reward others for coming forward to you. I myself would take a dim view of that policy. I have never practised it, and I do not know any of my colleagues who have practised it.⁹²

11.106 Betfair also told the committee it ran a 'refer-and-earn scheme', where a customer would be introduced by an existing customer, who would get \$50 credit in their account. However, this would be disclosed, as well as the trailing revenue share, on Betfair's website.⁹³

11.107 In response to a question taken on notice at the hearing regarding this issue, Sportsbet provided further information that the potential for commission arrangements

91 Senator Xenophon, Mr Barry and Mr Ben Sleep, *Committee Hansard*, 11 August 2011, p. 5.

92 Senator Xenophon and Mr Mick Rolfe, Vice Chairman, Australian Bookmakers' Association, *Committee Hansard*, 16 September 2011, p. 12.

93 Mr Andrew Twaits, *Committee Hansard*, 11 August 2011, pp 24–5.

to exist is disclosed in the 'General Rules' section of its website.⁹⁴ After scrolling through terms and conditions, under 'General Rules', number 49 states:

49. Where a Member has been referred to Sportsbet by a third party including by a third party operated website and where that third party is an Affiliate or agent of Sportsbet, Members acknowledge that Sportsbet may make commission payments to that third party. Payments to agents or Affiliates are unrelated to the odds or prize money offered to Members by Sportsbet. Details of Sports's Affiliate program can be located at <http://www.sportsbetaffiliates.com/>.⁹⁵

11.108 The committee notes that the committee and Senator Xenophon have separately approached the Northern Territory Licensing Commission to ask about regulations covering the practice of third party commissions. However, to date the committee has not received a response. It notes that no other jurisdiction that responded to the committee has addressed this practice in its legislation or regulations.⁹⁶

11.109 The committee's view and recommendation in relation to this practice are contained in the conclusion below.

Conclusion

11.110 It is clear that betting on sports or racing is now a national market. The committee heard how, for example, a customer in South Australia can bet on an event in New South Wales through a service licensed in the Northern Territory. The online environment facilitates this national market.

11.111 The committee does support maintaining the exemption for online wagering in the IGA. However, the committee remains cautious about allowing 'in-play' betting in the online format, given that not enough is known about the effect of new technologies on this form of gambling.

11.112 The committee notes a growing focus on consumer issues generally in the online environment around complaints about online shopping and that this matter is

94 Sportsbet, answers to questions taken on notice at the 11 August 2011 hearing, received 6 October 2011.

95 Information available from <http://www.sportsbet.com.au/help/betting/rules#GeneralRules> (accessed 17 October 2011).

96 Correspondence received from the NSW Office of Liquor, Gaming and Racing, 5 October 2011; Victorian Commission on Gambling Regulation, 20 September 2011; the Queensland Office of Liquor and Gaming Regulation, 16 September 2011; South Australia's Independent Gambling Authority, 8 September 2011; the South Australian Office of the Liquor and Gaming Commissioner, 14 September 2011; and Tasmanian Gaming Commission, 16 September 2011; ACT Gambling and Racing Commission, 21 September 2011; Western Australian Department of Racing, Gaming and Liquor, received 30 September 2011.

'on the radar' of the Australian Competition and Consumer Commission.⁹⁷ While these complaints concentrate on unclear refund policies and lack of available stock, clearly concern about consumer protection in the online environment is on the rise.

11.113 In the online gambling environment, the committee heard about a number of emerging areas where differences in jurisdictional regulation expose marked differences in standards for online wagering services. While the committee supports competition between jurisdictions, it believes that harm minimisation and consumer protection measures for customers should be nationally consistent. However, achieving national consistency should not be at the expense of trade-offs that result in a lowering of current standards.

11.114 In emphasising a consumer protection approach to credit betting and third party commissions, the committee draws on the view of the Productivity Commission, which recognised that a consumer protection framework, along with the public health model, 'provide the broadest insights into the kinds of policies that promote the public good in this area':

The consumer approach recognises that gambling is a consumer good, and that, as for other consumption, the policy environment should seek to maximise benefits for consumers. This includes ensuring appropriate product safety standards; fitness for purpose; informed consent; the absence of unconscionable behaviour and misleading or deceptive conduct by suppliers; protection of vulnerable consumers; and markets that encourage innovation and low prices for consumers.⁹⁸

Credit betting

11.115 The committee notes that credit betting is a long-standing practice that has traditionally been reserved for 'professional punters' in an on-course setting. However, the committee has reservations about the practice now taking place in an online bookmaking environment. The committee is concerned to hear that such vast amounts of credit are seemingly provided to sports betting agencies' clients with such ease. As this issue currently needs to be addressed through pursuing consistency in state and territory legislation, the committee considers that the COAG Select Council on Gambling Reform, in consultation with the COAG Legislative and Governance Forum

97 News.com.au, 'Deal of the day: Fix coupon sites or we'll fix them for you', <http://m.news.com.au/TopStories/fi893720.htm> (accessed 18 October 2011).

98 Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. 3.20.

on Consumer Affairs,⁹⁹ should investigate nationally consistent regulations in relation to tighter controls on credit betting (see below).

Payment of commissions to third parties

11.116 The committee is concerned about what it sees as a lack of sufficient transparency regarding the payment of third party commissions raised in Sportsbet's evidence. While third party commissions are indeed standard business practice, in other business contexts (e.g. mortgage brokers), the payment and disclosure of commissions is governed by strict rules and regulations. The committee believes that a commission for a gambling product should be treated in the same way.

11.117 While the committee acknowledges that the inclusion of the potential for commission arrangements to exist in the Terms and Conditions section of the Sportsbet website goes some way to achieving a basic level of transparency, it believes this does not go far enough. As an example, the committee notes the *National Consumer Credit Protection Act 2009* which applies to licensed credit providers:

(2) The licensee's credit guide must:

...(g) give information about:

- (i) any commissions that the licensee, or an employee, director or credit representative of the licensee, is likely to receive, directly or indirectly, from credit providers in relation to credit contracts for which the licensee has provided credit assistance; and
- (ii) a reasonable estimate of the amounts of those commissions or the range of those amounts; and
- (iii) the method for working out those amounts; and

(3) The regulations may prescribe:

- (a) information that need not be included in the credit guide, despite subsection (2); and
- (b) for the purposes of paragraph (2)(g):
 - (i) the method for working out amounts of commissions; and
 - (ii) how commissions or amounts of commissions must be described.¹⁰⁰

99 The COAG Legislative and Governance Forum on Consumer Affairs, formerly the Ministerial Council on Consumer Affairs, comprises Commonwealth, state, territory and New Zealand ministers responsible for consumer protection and fair trading. Its role is to 'provide the best and most consistent protection for Australian and New Zealand consumers through its consideration of consumer affairs and fair trading issues of national significance and, where possible, development of consistent approaches to those issues.' See http://www.consumerlaw.gov.au/content/mcca/mcca_meetings/downloads/Meeting_25_3_June_11.pdf (accessed 17 October 2011).

100 Section 113, *National Consumer Credit Protection Act 2009*, <http://www.comlaw.gov.au/Details/C2010C00182> (accessed 17 October 2011).

11.118 The committee believes that a greater level of transparency is required; i.e. reasonable estimates of commission amounts and how these are worked out. Therefore, the committee believes that increasing transparency of the payment of commissions to third parties by betting agencies should be subject to closer scrutiny by the COAG Select Council on Gambling Reform in consultation with the COAG Legislative and Governance Forum on Consumer Affairs. Work should be undertaken with a view to developing nationally consistent standards in relation to tighter controls on credit betting and greater transparency for the practice of third party commissions. This work should include consultation with industry.

Recommendation 10

11.119 The committee recommends that the COAG Select Council on Gambling Reform, in consultation with the COAG Legislative and Governance Forum on Consumer Affairs, develop nationally consistent consumer protection standards for tighter controls on the practice of credit betting.

Recommendation 11

11.120 The committee recommends that the COAG Select Council on Gambling Reform, in consultation with the COAG Legislative and Governance Forum on Consumer Affairs, develop nationally consistent consumer protection standards for greater transparency around the practice of paying third party commissions by betting agencies.

11.121 The committee notes that this work should feed into the work recommended in the next chapter for a national code of conduct for wagering providers addressing a number of business practices, including advertising. The development of appropriate standards around the practices of credit betting and the payment of third party commissions should be incorporated into this national code of conduct.

11.122 The committee believes that, in the interests of harm minimisation and consumer protection, the practices of credit betting and third party commissions in the online environment should be addressed so that standards are nationally consistent. The committee would prefer that this national consistency for harm minimisation and consumer protection measures be achieved by states and territories in consultation with industry. The committee notes comments by the NSW Sports Minister, the Hon Graham Annesley MP, reported in the media that match-fixing was 'an issue serious enough to reach uniformity between the states'.¹⁰¹ The committee considers that harm minimisation and consumer protection should also be sufficiently serious to warrant consistency.

11.123 In the event that consensus cannot be achieved in a reasonable timeframe over 2012, the committee believes that the Commonwealth should consider legislating in this area in order to achieve consistent regulatory arrangements.

101 Paul Kent, 'Tighter laws on way to fix rorts', *Courier Mail*, 7 October 2011, p. 114.