

## Chapter 16

### Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011: Amendments relating to sports betting

16.1 This chapter covers the issues raised by:

- the clause in the bill prohibiting gambling operators from offering specific types of betting services; and
- the schedules in the bill relating to amendments to the *Broadcasting Services Act 1992* (Broadcasting Act) and the *Criminal Code Act 1995* (Criminal Code).

#### Clause 3—Prohibitions on corporations offering gambling services

16.2 Clause 3 of the bill prohibits gambling service providers from offering spot betting (also known as 'micro' or exotic betting), in-play betting or any similar form of betting. For example, these could include betting on the first penalty or the first goal during a football game, the first duck in a cricket match or the first yellow card in soccer or rugby. It also prohibits operators offering players the option of betting on losing outcomes.<sup>1</sup>

16.3 These bet types are defined and discussed in detail in previous chapters. Betting on losing outcomes and 'in-play' betting are covered in chapter 11. Exotic bets are also covered in chapter 14.

16.4 The maximum penalty established by the bill for offering these forms of gambling is 10,000 penalty units which is approximately \$1,100,000.<sup>2</sup>

16.5 By prohibiting these forms of gambling, the bill attempts to address what is thought to be a riskier form of betting for problem gambling as well as match-fixing resulting from bets on 'micro'-events and bets on losing outcomes.<sup>3</sup> In the Second Reading Speech, Senator Xenophon noted that the National Rugby League (NRL) had recently banned some exotic betting options following a match-fixing scandal in 2010 and that the Australian Football League (AFL) had also banned exotic betting on

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1 Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, *Explanatory Memorandum*, p. 1.

2 Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, *Explanatory Memorandum*, p. 1.

3 Senator Xenophon, Second Reading Speech, *Journals of the Senate*, 20 June 2011, p. 3272.

things such as the last goal in a game, tribunal verdicts and 'the first coach to be sacked'.<sup>4</sup>

### *Issues raised with the committee*

16.6 Some submitters supported an outright ban on the offering of certain bet types as proposed in this clause of the bill. For example, the Tasmanian Inter-Church Gambling Taskforce supported the principle of prohibiting the unorthodox bet types proposed by the bill, noting that they have:

...the potential for corrupt gamblers to entice players into rigging outcomes with a view to profiting from the proceeds of gambling. This can compromise the integrity of the sport, undermine public confidence in performances and put pressure on sports people who may get caught up in it, possibly leading to the destruction of their careers...Although such prohibitions are most relevant to online gambling we believe that, in principle, they ought to apply to all methods of gambling.<sup>5</sup>

16.7 Others, such as Tabcorp, argued that these bet types did not pose an integrity problem and that any consideration of regulatory changes to such bet types ought to be undertaken by state and territory governments with a view to national consistency:

...exotic and other similar bets placed with Australia's TAB pose no greater risk to sports integrity than head to head contests because suspicious betting activity on all bet types is monitored and reported by the TABs. If exotic bets were to be prohibited, then consumers would either discontinue their betting activity or such activity would be driven underground, either to illegal domestic or offshore operators...

With respect to spot betting, exotic betting, in play betting and betting on losing outcomes that occurs through non-online channels, Tabcorp's position is that these are matters for the consideration of state and territory governments. There is a role for the Commonwealth in encouraging national consistency in the regulation of such matters.<sup>6</sup>

### *Definitions of bet types*

16.8 The bill establishes that the definitions for betting on losing outcomes, exotic betting, in-play betting and spot betting be prescribed by the regulations.<sup>7</sup> This results in ambiguity about which types of gambling will be prohibited under the bill. The use of this broad definition may be a result of the vast number and continuing development of betting options offered to consumers and the risk of ruling out

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4 Senator Xenophon, Second Reading Speech, *Journals of the Senate*, 20 June 2011, p. 3273.

5 Tasmanian Inter-Church Gambling Taskforce, *Submission 7*, p. 3.

6 Tabcorp, *Submission 10*, p. 2.

7 Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, Clause 3, p. 2.

particular types of gambling by being overly specific when considering which bet types to prohibit.

16.9 FamilyVoice Australia supported the clause but also but noted that leaving the definitions to be specified by the regulations was a 'drafting deficiency':

...it would appear that if no such regulations are made then the terms would have no meaning and the offence could be not be prosecuted.

It would be better for the bill to be amended to provide definitions for these terms while allowing for regulations to add to the definitions. This would be desirable as in a rapidly changing field new problems may emerge which could be suitably addressed by means of regulation rather than requiring the amendment of the statute.<sup>8</sup>

16.10 The Australian Racing Board was generally supportive of the clause in the bill but also noted that consultation with sporting and racing bodies would be required on the drafting of the regulations, 'recognising their capacity to provide useful advice on the types of bets which have potential to cause integrity problems'.<sup>9</sup>

16.11 The Senate Scrutiny of Bills Committee also noted that it would be preferable for the 'gambling services' to be defined in the primary legislation, not in the regulations:

...subclause 3(2) provides that a number of key terms which define the offence are to have their meaning 'prescribed by the regulations', raising the question of whether this is an appropriate delegation of legislative power. The explanatory memorandum does not address the reasons for this approach. In general, it is preferable that offences be dealt with in primary legislation.<sup>10</sup>

### *Applicability to corporations*

16.12 Betfair noted that a deficiency in the bill was that the proposed prohibition applied only to wagering service providers and not to bookmakers:

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

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8 FamilyVoice Australia, *Submission 11*, p. 1.

9 Australian Racing Board, *Submission 5*, p. 3.

10 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No 7 of 2011*, 6 July 2011, p. 15.

Further, Betfair considers that any prohibition that applies only to wagering service providers which are corporations is discriminatory in nature and places certain Australian licensed operators on an uneven playing field.<sup>11</sup>

### *Betting on losing outcomes*

16.13 Betfair, Australia's only licensed betting exchange, strongly rejected the concept of prohibiting betting on losing outcomes:

There is a misapprehension that the only betting platform on which a punter can lay horses is a betting exchange. This is not the case. It has long been possible to oppose horses through "traditional" channels and technology has made it even easier. It can be achieved via a bookmaker or the TAB, simply by backing all other selections in the race and this has become even easier with automated bet placement technology.<sup>12</sup>

...As outlined earlier in this submission, racing and sporting industry bodies have embraced the betting exchange model as an effective tool in the detection and prevention of gambling related corruption. There is no evidence to suggest that since Betfair's arrival in Australia, allowing punters to place lay bets has been the cause of any gambling related corruption in Australian racing or sport.<sup>13</sup>

16.14 The Tasmanian Department of Treasury and Finance commented on the bill's likely effect on the operation of Betfair, which is licensed in that state, and defended the integrity of the betting exchange's business operations in Australia since 2006:

Of particular concern is the restriction on betting on losing outcomes. As the meaning of key definitions in this clause are to be set out in regulations, it is not yet clear which types of bets and which gambling services will be captured by the provision.

Nevertheless, it would appear that the legislation is likely to prevent a betting exchange from operating its business in Australia.

To bet on a losing outcome is a fundamental feature of a betting exchange. A betting exchange enables registered players to bet against each other on events hosted on the betting exchange operator's website. The operator acts as a broker, matching bets between backers that a participant in an event will win and those that take the opposing position. The opposing position is a 'lay bet' - betting to lose.

Australia's only betting exchange, Betfair Pty Ltd, was licensed in Tasmania in February 2006 under the Gaming Control Act.

Betfair has a highly transparent wagering system where all players must register with Betfair and have their identification verified. It has robust audit trails that enable every bet placed to be traced back to the customer.

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11 Betfair, *Submission 3*, p. 4.

12 Betfair, *Submission 3*, p. 5.

13 Betfair, *Submission 3*, p. 6.

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Betfair has information-sharing agreements with racing and sports industry bodies in Australia and worldwide to provide sporting bodies with access to relevant wagering data to ensure the integrity of their sports.<sup>14</sup>

### *Committee majority view*

16.15 The committee majority noted in chapter 11 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 also noted 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. Therefore, the committee majority does not support the bill's proposed prohibition on betting on losing outcomes.

### *Exotic betting*

16.16 Most submitters to the bill inquiry did not support an outright ban on exotic betting.

16.17 The Responsible Gambling Advocacy Centre (RGAC) argued that while exotic bet types were problematic, prohibition would not be effective:

Firstly, these types of interactive gambling have led to corruption in sports. Where there is an element of participation, there is potential for exploitation ...Secondly, they are more attractive to gamblers because of seemingly better odds. Prohibition of such bets is likely to result in these types of bets going 'underground', which would make it more difficult to track and could result in a greater amount of corruption.<sup>15</sup>

...The Centre is of the opinion that while it is sometimes in the best interest of the consumer to prohibit the availability of certain types of betting, prohibition would be ineffective in this context.<sup>16</sup>

16.18 Instead of a blanket ban on exotic bets, the RGAC recommended mechanisms such as compulsory pop-ups, links to gamblers' help websites and telephone help lines, compulsory breaks in play and easily accessible pre-commitment schemes to enable consumers to block themselves or their children from certain websites.<sup>17</sup>

16.19 A number of submissions also suggested that sporting bodies be granted the power to veto specific types of bets where the integrity of the event may be compromised.

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14 Tasmanian Department of Treasury and Finance, *Submission 8*, p. 2.

15 Responsible Gambling Advocacy Centre, *Submission 4*, p. 4.

16 Responsible Gambling Advocacy Centre, *Submission 4*, p. 5.

17 Responsible Gambling Advocacy Centre, *Submission 4*, p. 5.

16.20 The Coalition of Major Professional and Participation Sports (COMPPS) supported such an option:

The COMPPS sports do not oppose spot-betting per se. They do, however, seek support for a power of veto over types of spot-bets that may be offered by betting operators on their sports where they have serious integrity concerns over the type of bet that is being offered.<sup>18</sup>

16.21 The veto power (discussed in greater detail in chapter 13) was also supported by COMPPS' member sports:

Netball Australia supports the notion of the right of veto for sports over types of "spot betting"; and strongly discourages any bets on scenarios that could be open to breaches of integrity.<sup>19</sup>

16.22 Betfair also supported the sporting codes having veto power over bet types and argued that prohibition would simply encourage Australians to bet offshore:

(a) the sports themselves are in the best position to determine whether a particular bet-type is liable to any form of corruption or manipulation and any decision should remain in the hands of the sporting bodies to reasonably determine the number and types of exotic markets that are offered on a particular event; and

(b) as with all forms of prohibition in an increasingly borderless world, the Bill will not be successful in preventing Australian residents from continuing to wager on exotic bets; it will simply encourage Australians to bet with offshore operators who will continue to evade Australian legislative and licensing requirements and often do not afford the appropriate player protection and responsible gambling measures.<sup>20</sup>

16.23 However, the Social Issues Executive of the Anglican Diocese of Sydney argued that a ban as proposed in the bill was 'more straightforward and understandable to the community than COMPPS' proposal for specific veto of various particular kinds of exotic betting'.<sup>21</sup>

### ***Committee majority view***

16.24 As already stated in chapter 14, the committee majority holds some concern about exotic bets, noting in particular the evidence from the University of Sydney Gambling Treatment Clinic suggesting that the existence of exotic betting opportunities presents difficulties for problem gamblers. While recognising that exotic bet types make up a small portion of the overall sports betting market, the committee

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18 Coalition of Major Professional and Participation Sports (COMPPS), *Submission 16* to the Inquiry into Interactive and Online Gambling and Gambling Advertising, p. 7.

19 Netball Australia, *Submission 5* to the Inquiry into Interactive and Online Gambling and Gambling Advertising, p. 2.

20 Betfair, *Submission 3*, p. 5.

21 Social Issues Executive, Anglican Diocese of Sydney, *Submission 9*, p. 3.

majority notes that the risks associated with exotic betting have the potential to be damaging to the integrity of Australian sport. The committee majority commends and supports the action taken by the AFL and NRL to eliminate certain exotic bet types. The committee majority considers that the work being undertaken by Sports Ministers is the appropriate forum in which to consider nationally consistent policies in relation to regulation of exotic betting, including providing sports with the right to veto bet types. 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 majority suggests that research on the risks of exotic betting (both for those who bet and for sporting participants) and appropriate regulatory responses be commissioned under the existing work by Sports Ministers on the National Policy on Match-Fixing in Sport to assist sports' with decisions in relation to veto power over bet types.

### *'In-play' betting*

16.25 As outlined in chapter 11, 'in-play' betting is currently permitted via the phone or in person (e.g. at a TAB) but not online. However, Australian residents are able to use overseas wagering providers to take part in online 'in-play' betting.

16.26 Betfair argued that a prohibition of 'in-play' betting would be detrimental and noted that a recent UK review had identified no specific risks posed by such betting to problem gambling:

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

A blanket ban on in-play betting will merely exacerbate the current situation as Australian residents will continue to wager with offshore operators who are likely to continue ignore Australian laws in a similar vein as they are presently ignoring the *Interactive Gambling Act*. The key concern from a responsible gambling perspective is that Australian punters who seek to bet offshore will not be afforded the protections relating to security of customers' funds and identities, problem gambling and sporting integrity that can be offered by Australian regulated operators.<sup>22</sup>

16.27 However, FamilyVoice Australia argued that there were significant risks to 'in-play' betting:

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22 Betfair, *Submission 3*, p. 4.

In-play betting is likely to induce problem gamblers caught up in the excitement of a match from betting inappropriate amounts on the spur of the moment.<sup>23</sup>

### *Committee majority view*

16.28 'In-play' betting is currently permitted via the telephone and in person and the committee majority does not support the bill's provision to restrict forms of 'in-play' betting that are currently legal. In chapter 11, the committee majority recommended 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 argued that this prohibition is anachronistic, the risks associated with rapid 'in-play' betting at the touch of a button and its attraction to young people remain of concern to the committee majority.

16.29 Given that the effects of the convergence of new technologies in this area are not yet well understood, the committee majority would support the government commissioning research on the risks and effects of online 'in-play' betting as part of the current review of the IGA. The committee majority has made a recommendation on this in chapter 11.

### **Schedule 3—Advertising**

16.30 Schedule 3 of the bill amends the Broadcasting Act to prohibit advertising of betting venues and online gambling sites during G classified programs and all sport or sport related programs. The bill requires the Australian Communications and Media Authority to ensure all commercial television, commercial radio and subscription television broadcasting licence holders adhere to these provisions.<sup>24</sup>

16.31 This schedule also prevents licence holders from broadcasting betting odds where there is a commercial arrangement between the licensee and the betting agency providing these odds.<sup>25</sup>

### *Views of submitters*

16.32 Some submitters were strongly in favour of the amendments, arguing that they would properly restrict the promotion of gambling to children and young people. Betting agencies, however, were not supportive and argued that such provisions could affect sponsorship and partnership agreements between gambling providers and broadcasting licensees or sporting teams.

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23 FamilyVoice Australia, *Submission 11*, p. 2.

24 Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, *Explanatory Memorandum*, p. 2.

25 Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, *Explanatory Memorandum*, p. 2.

16.33 As discussed in detail in chapter 12, the government has announced that it will work with sporting bodies and the betting industry to reduce the promotion of live odds during sports coverage through amendments to their existing industry codes. If satisfactory amendments are not in place by the end of June 2012, the government has stated that it will consider the need for legislation.

16.34 The Tasmanian Inter-Church Gambling Taskforce strongly supported these amendments:

We believe that gambling services are a dangerous product and their advertising should therefore be restricted to a context where they are least likely to attract interest from vulnerable people, especially children, who may not be fully aware of the risks involved. This means excluding such advertising from all children's viewing times, all G classified programs and all sports related programs of interest to children.

The prohibition of broadcasting odds where there is a commercial arrangement between the licensee and the betting agency concerned is a wise precaution to prevent the broadcasting of what are, in effect, paid advertisements masquerading as news, commentary or information.<sup>26</sup>

16.35 The Royal Australian and New Zealand College of Psychiatrists (RANZCP) also praised the proposed restrictions on broadcasting of gambling advertising:

The RANZCP is fully supportive of these amendments, which are in line with our previous submission calling for tighter regulations to monitor the advertising of gambling to reduce the impact it can have on vulnerable groups and problematic gamblers. Recommendations included that commentators not be allowed to discuss or talk about any odds on offer at any point in time, and that display of odds on television screens during broadcast should be limited. The RANZCP is pleased that the proposed amendments to the Bill appear to prohibit these activities.<sup>27</sup>

16.36 FamilyVoice Australia also strongly supported the amendments but noted that, as far as possible, key terms should be defined in the primary legislation:

Schedule 3 should be supported subject to it being amended to provide definitions of each of the relevant terms, while also allowing expansion of the definitions by regulation.<sup>28</sup>

16.37 The Senate Scrutiny of Bills committee also raised the matter of definitions in the regulations:

Schedule 3, item 1, of the bill requires the ACMA to impose certain conditions on commercial television broadcasting licences. The key terms

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26 Tasmanian Inter-Church Gambling Taskforce, *Submission 7*, p. 4.

27 Royal Australian and New Zealand College of Psychiatrists, *Submission 12*, p. 2. See also Social Issues Executive, Anglican Diocese of Sydney, *Submission 9*, p. 2.

28 FamilyVoice Australia, *Submission 11*, p. 3.

of the conditions that are to be imposed, are left to be defined in the regulations. The explanatory memorandum does not address the reasons for this approach.

The same issue arises in relation to items 2 and 3 of the Schedule, which relate to conditions to be imposed on radio broadcasting licences and subscription television broadcasting licences, respectively.

In general, it is preferable that important information is included in primary legislation.<sup>29</sup>

16.38 The RGAC said that the proposed amendments could go further, with penalties for breaches required:

Penalties are important to include in order to deter potential breaches of this section. The lack of penalties in the Act has often meant abiding by it is not always paramount to those who offer interactive gambling services.

There is potential to broaden this section because advertising has been recognised as a major inducement to gamble. Profits indicate that online advertising is proving very successful for interactive gambling providers and regulation in this area would be valuable. With a dramatic increase in online use, including watching sport and other entertainment online, it would be timely to introduce advertising restrictions now.<sup>30</sup>

16.39 Betfair, however, rejected the proposed advertising restrictions, arguing that they pre-empted work already underway between government and industry:

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

On the basis of the above approach, which has been embraced by a broad range of stakeholders, legislation should not be considered until such time that the wagering and broadcasting industries have had an opportunity to develop an appropriate framework for gambling advertising.<sup>31</sup>

16.40 COMPPS did not state outright its view on these amendments but noted the potential for a decrease in sponsorship from gambling operators were they to become law:

**Senator BILYK:** Do you have concerns regarding the bill's proposal to prohibit advertising at certain times and during certain programs? Is there

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29 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No 7 of 2011*, 6 July 2011, p. 15.

30 Responsible Gambling Advocacy Centre, *Submission 4*, p. 6.

31 Betfair, *Submission 3*, p. 8.

any concern about the potential to affect sponsorship and partnership agreements that your member sports might have in place with betting agencies?

**Mr Speed:** The sports generally welcome the opportunity to consult on advertising, sports betting advertising, in relation to their matches and their teams. They will engage on that, as requested, over this 12-month period. There is the potential, if the regime for advertising were changed significantly, for there to be a diminution in sponsorship, but I think that is one of the factors that will be taken into account.<sup>32</sup>

16.41 Betfair also told the committee of its concerns about the proposed advertising restrictions and their likely impact on sponsorship agreements:

**Senator BILYK:** Do you have any concerns about the [bill's] proposal to prohibit advertising during certain times and programs?

**Mr Twaits:** Yes. Our submission deals with that and, as I said, we are happy to cooperate with regulators and broadcasters et cetera to find a workable solution, but I guess the point we would make is that the wagering industry is already highly regulated. We think we represent the high-water mark in acting responsibly with regard to harm minimisation and integrity management. We do not see any reason for severe limitations on the times or locations that we can advertise. I would point out that the effect of the restrictions on—

**Senator BILYK:** Do you not think that you should not advertise through kids' prime-time television, for example, or—

**Mr Twaits:**... To the extent that we would advertise during the cricket, if it is a one-dayer starting at 10.30 in the morning I do not think there should be any restrictions on that provided the nature of the advertising is not designed for or likely to appeal to under-18s.

**Senator BILYK:** Do you think it has the potential to affect sponsorship or partnership agreements that you might have in place?

**Mr Twaits:** Definitely, if we cannot advertise we would not have sponsorship agreements in place or they would be severely limited.<sup>33</sup>

#### *Exemption for the racing industry*

16.42 The Australian Racing Board stated its broad support for the amendments but emphasised the need for explicit exemptions for the racing industry. Its submission argued that the restrictions on broadcasting of betting odds should not apply to race betting odds, nor should restrictions on advertising of betting venues apply to racecourses:

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32 Senator Bilyk and Mr Malcolm Speed, Executive Director, COMPPS, *Committee Hansard*, 11 August 2011, p. 16.

33 Senator Bilyk and Mr Andrew Twaits, Chief Executive Officer, Betfair, *Committee Hansard*, 11 August 2011, p. 30.

For example, for many years now the major racing carnivals conducted in Melbourne and Sydney have been broadcast on commercial television. It will be readily accepted that these broadcasts could not feasibly be made excluding broadcasting of the betting odds relating to those race meetings. It will also be understood that one or more of the betting agencies generating the betting odds may have a commercial arrangement with the television broadcasting licensee (either to place an advertisement or endorsement within or during a race broadcast, or to advertise at some other time slot). What has been described here has occurred for many years and is not of the same nature and complexion as the recent developments involving betting odds being promoted in cricket, football and other sport. The bill should not destroy these opportunities for iconic Australian sporting events, such as the Melbourne Cup, to be broadcast on commercial television.

...If the regulations defined 'betting venue' to include racecourses then an advertisement encouraging people to attend a race meeting could not be shown during any sports program or sports-related program. Preventing such advertising taking place would not further the objectives of the bill.<sup>34</sup>

16.43 The Australian Racing Board also noted an inconsistency between the Explanatory Memorandum and the bill itself:

The Explanatory Memorandum says that schedule 3:

*“requires ACMA to enforce conditions to require commercial television, radio and subscription television broadcasting licencees **not to broadcast betting odds where there is a commercial arrangement** between the licensee (i.e. presenter) to **provide betting odds.**”* (our emphasis)

However, the drafting in items 1, 2 & 3 goes beyond this. For example, item 1 says that the ACMA must impose a condition:

*“that has the effect of requiring the licensee of a commercial television broadcasting licence not to broadcast betting odds in relation to a matter if there is a commercial arrangement between the licensee or an agent of the licensee and the betting agency providing the betting odds”*

This casts a wider net than is suggested by the Explanatory Memorandum. A commercial arrangement to provide the betting odds is not required. Instead it is enough that there is a commercial arrangement between the broadcaster and the betting agency. On a plain reading this could be any type of commercial arrangement; indeed it may be a commercial arrangement between other divisions of the two parties and have no connection with betting.

This is not intended to suggest opposition to the bill's intended objective of winding back the recent trend of broadcasts of cricket, football and other sporting fixture[s] becoming filled with exhortations to gamble. However

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34 Australian Racing Board, *Submission 5*, p. 5.

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the drafting approach that the bill employs to achieve this might be further considered.<sup>35</sup>

### *Committee view*

16.44 Advertising of gambling services and products was a key issue raised with the committee throughout the inquiry—see chapters nine and 12 for detailed discussion. In relation to gambling on sport, much of the concern focused on the broadcasting of live odds during sporting matches. However, the concern went further to the amount of gambling advertising that children in particular are exposed to during sporting matches and how this may affect their view of sport.

16.45 In earlier chapters, the committee has already noted its concern about the effects of gambling advertising, particularly on young people. In the context of online advertisements, the committee heard how research has shown that young people are particularly vulnerable to and are highly influenced by the messages in gaming advertising. Researchers stressed the need to protect children and adolescents from being exposed to such advertisements. The committee considers that research findings about the susceptibility of youth to gambling advertising are equally applicable to sports betting advertising. The committee also heard of research to indicate that the earlier people start gambling, the more likely they are to continue gambling, and the more they continue gambling, the probability of developing gambling problems increases.

16.46 As already stated in chapter 12, the committee welcomes the government's recent announcement to work with industry to reduce and control the promotion of live odds. This is a step in the right direction and picks up on the understandable degree of community concern about the infiltration of gambling into sport and sports coverage.

16.47 However, the committee believes this does not go far enough and notes that the undertaking to reduce live odds promotion by mid-2012 does not appear to be a commitment to a total ban, is based on self-regulation by industry and is not underpinned by legislation. The committee has recommended that there should be a total ban on the promotion of live odds which should be enforced by legislation.

### *Committee majority view*

16.48 The committee believes that live odds are not the only area requiring attention. It considers that the restrictions on the times for gambling advertising as proposed in the bill are necessary to protect children from viewing sport through the prism of gambling.<sup>36</sup> However, the committee majority notes the need to address definitional issues in Schedule 3 of the bill. The committee majority therefore

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35 Australian Racing Board, *Submission 5*, pp 5–6.

36 Dr Samantha Thomas, *Committee Hansard*, 11 October 2011, p. 2.

supports the general intent of the amendment to the *Broadcasting Services Act 1992* proposed in the bill to prohibit advertising of betting venues and online gambling sites during G classified programs, i.e. when children are likely to be watching.

16.49 The committee majority believes that any sport and sport related programs that are broadcast during periods when children are likely to be viewing should not include any form of gambling advertising. The committee majority therefore supports an amendment to the Broadcasting Services Act to prohibit advertising of gambling during periods when children are likely to be watching. In practice, this would still permit advertising of gambling during sport or sport-related programs that are broadcast during late night viewing times (i.e. when children are not likely to be watching). Additional comments from Senator Xenophon on this schedule of the bill follow this report.

### **Recommendation 19**

**16.50 The committee majority recommends that the *Broadcasting Services Act 1992* be amended to prohibit gambling advertising during times when children are likely to be watching.**

### **Schedule 4—Obtaining a financial advantage by deception, in relation to a code of sport**

16.51 Schedule 4 of the bill inserts a provision into the Criminal Code, making it an offence to participate in match-fixing, establishing a maximum penalty of 10 years imprisonment and/or 10,000 penalty units. This penalty would apply to players, referees, persons associated with players, match officials and persons associated with a code of sport who attempt to fix a match by deception.<sup>37</sup>

16.52 Deception would be defined as:

- conduct by a person that contrives the outcome of a sporting match or the occurrence of micro-event during a sporting match;
- deliberate underperformance by a player during a sporting match that achieves a particular result in the sporting match;
- contriving the withdrawal of a player during a sporting match to achieve a particular result in the sporting match;
- use by a person of confidential information in relation to a code of sport, to which the person has access because of that person's association with the code of sport, before that information is publicly available;
- making a deliberately incorrect refereeing or like decision during a sporting match to influence the outcome of the sporting match;

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37 Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, *Explanatory Memorandum*, pp 2–3.

- deliberate interference before a sporting match with the equipment or playing surface to be used during the sporting match;
- offering a bribe or making a threat, or engaging in any other coercive behaviour, against a person to achieve a particular result in a sporting match;
- any other conduct prescribed by regulations.<sup>38</sup>

### *Views of submitters*

16.53 While the broad intent of this amendment was generally supported, much of the commentary on the bill, particularly from COMPPS and wagering providers, noted current national work underway on a national match-fixing policy as well as recent work by the NSW Law Reform Commission (LRC) in this area. This work is discussed in detail in chapter 13.

16.54 Mr Malcolm Speed, Executive Director of COMPPS, explained that the bill cut across work being undertaken by Sports Ministers and Attorneys-General on nationally consistent legislation:

Over the last 12 months, and perhaps a little longer for the coalition, we have had our working party in place and we have been working through these issues. We have had great support from government. The Minister for Sport, Senator Arbib, has taken a leading role in this. The Australian Olympic Committee has been very supportive and has taken a similar view. The state sports ministers and attorneys-general have all come into this issue and are enthusiastically endorsing recommendations for legislation. We are looking at civil legislation, which would be a duplication of the Victorian legislation. Our view is that we would like to finish that process and that the legislation that is proposed in the bill is premature. Our preference would be to continue the discussions that are underway with the federal government and the states before we achieve legislation.<sup>39</sup>

16.55 Betfair's submission also noted its support for a maximum 10 year penalty proposed by the NSW LRC and stated that this framework provided a 'much stronger and more coordinated framework for reform' than that proposed in the bill:

The NSW LRC position should be preferred because:

(a) in order to trigger an offence under the Draft Bill, the participant must both engage in the "deception" and themselves obtain the financial advantage, whereas the NSW LRC draft provision extends to third parties who gain a financial advantage as a result of the deceptive conduct.

(b) the draft provision prescribes certain conduct that constitutes deception in the relevant sense but does not cover cheating or corruption that may

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38 Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, *Explanatory Memorandum*, pp 2–3.

39 Mr Malcolm Speed, *Committee Hansard*, 11 August 2011, p. 15.

occur for reasons other than gambling, which is effectively covered in the NSW LRC draft provision.

(c) the wording in the proposed s135A.3 is difficult to follow and should be simplified by stating that person is guilty of an offence if:

- a. the person obtains a financial advantage from any other person; and
- b. the deception takes place in, or the financial advantage is obtained in, a Territory.

(d) as appears to be tacitly accepted by the drafter of the provision (see the existence of a “Constitutional basis for Division” in s135A.2 and the clumsy wording in s135A.3), there exists significant doubt over the constitutional basis upon which the Federal Parliament could enact these provisions.

For these reasons, the Committee should advocate that each of the States and Territories enact nationally consistent legislation that mirrors the Victorian Sports Betting Act and the NSW LRC draft cheating provision.<sup>40</sup>

16.56 Netball Australia also supported existing work underway at the national level over the approach proposed in the bill:

Netball Australia acknowledges the recommendations in the NSW Law Reform Commission’s report into Cheating at Gambling, March 2011 and draws particular reference to the need for a nationally consistent approach, specific statutory cheating offence and penalties in relation to sporting and other events.

Accordingly, Netball Australia welcomed the announcement of 10 June 2011 by the Sport and Recreation Minister’s Council of a National Policy on Match-Fixing in Sport to provide the foundation for all Australian governments to work with sports and betting companies to deter and deal with corruption in sport.

A critical aspect of the National Policy is the agreement to pursue nationally consistent legislative arrangements. It is preferable that this Legislation is Federal, specific to sport, creating a criminal offence of “cheating in connection with sports wagering”.<sup>41</sup>

16.57 The Tasmanian Government also commented that the amendment pre-empted the National Policy on Match-Fixing in Sport.<sup>42</sup>

16.58 The Australian Racing Board stated support for the amendments in the bill but suggested that the term 'sporting match' should be defined in the regulations to include a horse race:

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40 Betfair, *Submission 3*, pp 8–9.

41 Netball Australia, *Submission 6*, p. 2.

42 Tasmanian Department of Treasury and Finance, *Submission 8*, p. 1.

Racing faces at least the same level of risk of its integrity being undermined for gambling-related purposes as other sports. Accordingly the protection that is given to sport by this new criminal offence should apply also to racing events.<sup>43</sup>

16.59 The Senate Scrutiny of Bills Committee also pointed out that it was preferable for certain definitions to be included in the primary legislation, not left to the regulations:

Schedule 4, item 1 would insert proposed section 135A.3 in the *Criminal Code Act*. This provision makes it an offence for a person to obtain financial advantage in relation to a 'code of sport' by deception. The meaning of 'code of sport' is to be determined by the regulations and the meaning of deception (a central element of the offence) is defined to include 'any other conduct prescribed in the regulations' (see proposed section 135A.1). The penalty for the offence is imprisonment for 10 years or 10000 penalty units or both. Unfortunately the explanatory memorandum does not address this issue. As noted above, in general it is preferable that important information is included in primary legislation.<sup>44</sup>

#### *Other issues in relation to Schedule 4*

16.60 A submission from Ms Juliette Overland of the University of Sydney drew attention to the need for a number of clarifications in the drafting of the amendment to the Criminal Code. Ms Overland raised three principal questions:

- (i) Why has liability been limited to people who have an "association with the code of sport"?
- (ii) What is meant by the term "confidential information"? What is meant by the term "publicly available"?
- (iii) Why is there no requirement that the information be "material"?<sup>45</sup>

16.61 Ms Overland's area of research interest and expertise is insider trading and her submission to this inquiry focused on the proposed definition of the term 'deception' in the bill and its similarities to insider trading offences under the Corporations Act:

The Explanatory Memorandum to the draft Bill states that deception is considered, amongst other things, to be "use by a person of confidential information in relation to a code of sport, to which the person has access because of that person's association with the code of sport, before that information is publicly available." This concept, which essentially amounts to "insider gambling", is similar, but not identical, to the prohibition on insider trading which applies in relation to certain financial products under the Corporations Act. The Corporations Act prohibits any person in possession of information which they know, or ought reasonably to know,

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43 Australian Racing Board, *Submission 5*, p. 7.

44 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No 7 of 2011*, 6 July 2011.

45 Ms Juliette Overland, *Submission 14*, p. 2.

is price-sensitive non-public information from trading, or procuring trading, in relevant financial products.<sup>46</sup>

16.62 She suggested that liability should not only be limited to those who have 'an association with the code of sport', but to anyone who possesses 'inside information':

It is not explained in the Explanatory Memorandum or elsewhere why liability should be limited to people who have an “association with the code of sport.”

This is in contrast to the position under ordinary insider trading laws. The prohibition on insider trading under the Corporations Act applies equally to all persons who possess inside information, so that there is only a requirement for what [is] known as an “information connection” rather than a “person connection.” All who possess information which they know, or ought reasonably to know, is inside information are prohibited from trading in relevant financial products, regardless of their status, relationships or how they came to possess the information.

If a person possesses “confidential information” in relation to a code of sport, which they exploit for their own purposes (for example, by using the information when placing bets on a relevant sporting event) why should it matter if they have any particular association with that code of sport? Additionally, would the proposed offence be intended to apply to people who have no connection with the relevant code of sport but who acquire information from others – for example, if a person with an association to a code of sport passes information onto their spouse, or friend, or other unrelated parties, who then use the information to place bets on a sporting event, is it intended that those person would not have any liability under the draft "insider gambling" offence? Under the current drafting, it would seem that no such liability would exist. It is suggested that the most important issue should be preventing the misuse of information, rather than focusing on the role or position of the person who possesses that information.<sup>47</sup>

16.63 Ms Overland also argued that the terms 'confidential information' and 'publicly available' need to be defined clearly in the bill, as they are in the Corporations Act:

Whilst at times, the meaning of these terms has been contentious and the subject of significant judicial consideration in a number of insider trading cases, the inclusion of definitions at least provides some scope and context for the relevant offence. It is recommended that consideration be given to including definitions for the “confidential information” and “publicly available” for the offence of "insider gambling" as well.

Issues which need to be considered before appropriate definitions can be drafted:

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46 Ms Juliette Overland, *Submission 14*, pp 1–2.

47 Ms Juliette Overland, *Submission 14*, pp 2–3.

(i) Why is an obligation of confidence required? If the information is not publicly available, is it necessary that the information also have a requirement of confidentiality?

(ii) Who needs to have knowledge of or access to the information before it would be considered to be publicly available? Does it need to be known or available to the general public, or only those who have a connection with the relevant code of sport?<sup>48</sup>

16.64 Ms Overland also suggested there should be a requirement in the bill that information should be 'material':

Why should an offence be created if the information is unlikely to be sensitive in nature? The offence of insider trading only exists in respect of information which is likely to have a material effect on the price or value of relevant financial products.<sup>49</sup>

### *Committee majority view*

16.65 The committee majority supports the intent of the amendments relating to fraudulent conduct in a code of sport, as did most submitters. However, as noted in chapter 13, the committee majority welcomes the cooperative work being done at a national level to advance the new National Policy on Match-Fixing. It also acknowledges the comprehensive work that has been done in both NSW and Victoria to ensure regulation keeps pace with developments in the modern sports betting environment. The committee majority is supportive of the current work underway by Sports Ministers and Attorneys-General to pursue nationally consistent legislative measures to curb the threat of match-fixing in Australian sport.

### **Conclusion**

16.66 The committee majority has formed the view that the bill should not be passed.

16.67 The committee majority does not support the bill's amendments to the IGA (covered in chapter 15) to make online transactions with international gambling websites voidable by consumers. Nor does it support the alternative model proposed during the committee's public hearing to establish and maintain a 'blacklist' of merchant identification numbers to which financial institutions would be required to block transactions.

16.68 The committee majority is particularly concerned about the practice of interactive and online gambling services offering inducements to gamble. Therefore, the committee majority supports the intent of the amendment to the IGA to prohibit inducements to gamble. However, the committee majority has recommended that the

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48 Ms Juliette Overland, *Submission 14*, p. 3.

49 Ms Juliette Overland, *Submission 14*, p. 4.

bill's amendments to the IGA in relation to inducements not be considered until the current review of the IGA has been completed. This would allow them to be considered alongside any other amendments to the Act proposed by the government that arise from the review.

16.69 In this chapter, the committee majority does not support prohibiting the offering of certain bet types, including betting on losing outcomes, 'in-play' and exotic betting as proposed in Clause 3 of the bill. The committee majority believes that the risks around betting on losing outcomes can be adequately mitigated by existing regulation around the operation of betting exchanges. As noted in earlier chapters, the committee majority takes a precautionary approach to 'in-play' (chapter 11) and exotic betting (chapter 14). The committee majority believes that the current arrangements for 'in-play' betting should remain in place. However, the committee majority supports further research on the risks of 'in-play' betting online. Until such time as a national independent research institute on gambling can undertake this work, the committee majority has recommended that such research be commissioned as part of the current review of the Interactive Gambling Act. On exotic betting, the committee majority considers that further research on the possible risks of this bet type should also be commissioned. Again, until such time as a national independent research institute on gambling can undertake this work, it should be commissioned under the existing work by Sports Ministers on the National Policy on Match-Fixing in Sport.

16.70 Throughout the inquiry, the committee heard how research has shown that children and young people are particularly vulnerable to and are highly influenced by the messages in gambling advertising. The committee believes that any sport or sport related programs that are broadcast during periods when children are likely to be viewing should not include any form of gambling advertising. The committee majority therefore supports an amendment to the Broadcasting Services Act to prohibit advertising of gambling during periods when children are likely to be watching (whether programs are sports related or not).

16.71 While the committee welcomes the commitment by government and industry to reduce and control the promotion of live odds during sports coverage, it believes that more must be done in this area. As noted in chapter 12, the committee believes that the government should legislate a total ban on live odds promotion at venues and during broadcasts, including during pre-match coverage. However, the committee majority notes the need to provide an exemption for the racing industry.

16.72 Finally, while the policy intent of the match-fixing amendment in this bill is supported in-principle, the committee majority considers that work already underway by Sports Ministers on the National Policy on Match-Fixing in Sport is the most suitable forum in which to pursue reform.

**Recommendation 20**

**16.73 The committee majority recommends that the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011 not be passed.**

**Mr Andrew Wilkie MP**

**Chair**

