

BETFAIR AUSTRALIA

SUBMISSION TO THE NSW LAW REFORM COMMISSION
REVIEW INTO CHEATING AND GAMBLING

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INTRODUCTION

Betfair welcomes the opportunity to make this submission to the NSW Law Reform Commission's review of the adequacy of the current criminal laws in relation to cheating in the course of gambling. The essence of this submission is that NSW should legislate for much harsher criminal penalties in this area.

Betfair operates a betting exchange from its operations in Hobart, Tasmania. It is the holder of a Tasmanian Gaming Licence pursuant to the *Gaming Control Act 1993* (Tas) and is regulated by the Tasmanian Gaming Commission.

Betfair believes that while sports authorities should continue to play a central role in investigating alleged corruption in relation to their events, law enforcement agencies should be given the scope to properly investigate allegations of gambling-related corruption. A legislative framework should be introduced to penalise misconduct by players, officials and, if necessary, third parties. The legislation should proscribe specific types of conduct, set clear penalties for wrongdoers and should be accompanied by a series of mandatory conditions to ensure that all wagering on sport is conducted in a transparent and accountable manner.

The greatest disincentives for anyone tempted to engage in corruption are the prospect of being caught and the seriousness of the consequences. In order to ensure this is the case, specific criminal penalties should be introduced in regard to all gambling-related corruption whether those allegations relate to outright match-fixing, spot-fixing or profiting from the benefit of price-sensitive information.

BETFAIR'S COMMITMENT TO INTEGRITY

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

Betfair takes integrity very seriously. As an official partner of all of Australia's major sporting bodies, it pays product fees to the governing bodies and provides extensive betting information when required. Betfair does not offer any betting markets without the prior approval of sporting bodies.

Since day one, Betfair's technology has enabled it to have a complete audit trail on every bet placed by customers on every event. Through its pioneering Memoranda of Understanding (MoUs) Betfair has in place a mechanism to share this information with all of Australia's major sporting bodies and racing stewards including the ability to provide real-time wagering data on all events.

Among the sporting bodies that have signed information sharing agreements with Betfair are:

Australian Football League
National Rugby League
Australian Rugby Union
Cricket Australia
Football Federation of Australia
Tennis Australia
PGA Tour of Australasia
Basketball Australia
ATP Tour

International Cricket Council
FIFA

Betfair also has a representative on the anti-corruption working party of the Coalition of Major Professional and Participation Sports (COMPPS).

Racing stewards across all codes and in all jurisdictions have real time access to transactions taking place on their races through the Betfair platform. Information-sharing agreements with racing control bodies give stewards access to the personal details of Betfair's customers if required. Much of that information is available to stewards live, before a race has been run. This provides Betfair with the ability to track, analyse and share information on wagering activity with regulators and sporting bodies.

All Betfair employees, directors and associates undergo strict probity checks by the Tasmanian Gaming Commission. Employees are required to hold licences in order to work for Betfair's Australian operation.

Betfair has a mandatory requirement that every customer verify his or her identity. All users, whether based in Australia or elsewhere have to meet stringent identity checks in line with the Federal Government's anti-money laundering and counter-terrorism body AUSTRAC. Betfair uses the same identity verification test as financial institutions and various other organisations (this test is similar to the previous '100 point identity test'). It is a condition that all Betfair customers allow the company to disclose their identities and personal information (including betting details) to approved government and non-government regulators. As previously mentioned Betfair has agreements in place with a range of sporting and racing authorities, who've agreed to protocols on the use and storage of personal information.

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

ACCOUNT-BASED BETTING

Dishonest or deceptive behaviour is possible on every wagering platform, but the best deterrent to this type of behaviour is transparency. An account-based system that requires the identity of customers to be verified enables betting operators to quickly identify and expose perpetrators and pass on relevant information to authorities.

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.

The account-based model avoids many of the risks associated with anonymous cash-based wagering. It provides significant advantages in controlling and detecting attempts to launder money or to engage in deceptive conduct and it allows for more effective programs for responsible gambling. In this context, any move towards limiting the dollar value of bets placed anonymously in cash would be beneficial for protecting the integrity of sport. The transparency that an account-based model creates is a vital first step towards guarding against corruption in sport.

VICTORIAN LEGISLATION

The Victorian government took the most significant step of any jurisdiction in the world when it introduced legislation (known as 'Sports Field Legislation' under the *Gambling Regulation Act 2003* [Vic]) requiring all betting agencies offering markets on Victorian events to obtain the approval of the controlling body of the relevant sport. The legislation directs betting agencies to enter into agreements with sporting bodies for sharing betting information for integrity purposes and to provide sports with a share of the revenue generated from betting on their events.

Although this legislation only applies to events held in Victoria, most major betting agencies in Australia have entered voluntary disclosure agreements with the major Australian sports to mirror the Victorian legislation on non-Victorian events. However, there are recalcitrant operators both locally and overseas who ignore the legislation and therefore leave a dangerous blind spot in the sports' attempts to manage the integrity of their events.

Betfair believes that state governments should adopt the Victorian legislative approach – and effectively mirror what each state has already done for their local racing industry by creating a legislative right for sports to set minimum integrity-management benchmarks for wagering operators. Knowing the identity of punters – at least those betting above a certain threshold – is an essential element of effective integrity management.

UK LEGISLATION

The UK cheating legislation is a better model than what currently exists in any Australian jurisdiction, but it doesn't go far enough. The *Gambling Act 2005* (UK) stipulates clearly that a player involved in wrongdoing is subject to penalties and the act of cheating extends to deception that is related to an event where gambling has occurred. Importantly there is no requirement to prove that a benefit occurred as a result of cheating.

However Betfair doesn't believe that the legislation is adequate to address issues of match fixing or spot fixing in sport. The maximum penalty for an offence is two years imprisonment, a situation that could act as a disincentive for authorities to carry out extensive investigations. Furthermore, the legislation requires knowledge by the player that gambling has actually taken place, where in some instances it is carried out by a third party arising from information obtained from bribing a player or official.

ADDRESSING THE COMMITTEE'S TERMS OF REFERENCE

1. *The extent to which you perceive that, in the course of commercial gaming and betting, conduct of the kind mentioned does in fact occur or is at risk of occurring;*

Gambling may pose as great a risk to the integrity of sport as doping. But unlike the approach used to eradicate doping - where there are stringent and uniform rules in place and regulatory bodies have the right to test athletes for prohibited substances – sporting regulators have been frustrated in their attempts to guard against gambling-related corruption, mainly because of a lack of cooperation from the wagering industry.

Betfair's comprehensive suite of measures in relation to probity ensures that anyone seeking to exploit the betting platform will be caught.

With the exception of the aforementioned Victorian legislation, sporting bodies have traditionally had no right to access betting records or customer details held by betting agencies offering markets on their sports. Under a mandatory system, the chances of misconduct would be minimised.

2. *The potential cost and consequences for the gaming and betting industry if such conduct does occur and is not subject to prosecution;*

It is critical to the ongoing viability of Betfair's business - and the wagering industry more generally - that there is confidence in the integrity of racing and sport. Betfair has invested heavily in technology and human resources to help guard against gambling-related corruption on its platform. One of the strongest weapons for protecting integrity is transparency – both in terms of publicly available information (such as volumes traded at particular prices over time) and the more sensitive information that Betfair makes available to regulators, including but not limited to the personal information of customers.

All local wagering operators should be licensed and subject to mandatory regulations that require knowledge of a customer's identity and betting patterns. In a well-regulated environment, customers are more likely to bet with reputable, locally-licensed wagering operators than offshore companies that aren't subject to the same conditions. It is incumbent upon all jurisdictions to ensure that their own wagering operators are held to high standards. State governments in Australia have the opportunity to set uniform national standards in this area.

3. *The adequacy of existing criminal laws to deter such conduct or to provide a basis for the prosecution of participants in sporting events, gamblers and others who engage in or incite or encourage match fixing, event manipulation, or cheating which may have an impact on the gaming and betting industry;*

The focus of this section relates specifically to whether current NSW laws (Part 4AA of the Crimes Act and section 18 of the Unlawful Gambling Act) are adequate in relation to a) deterring individuals from cheating and b) sufficiently punitive for those who are caught cheating.

In this respect, cheating refers to conduct regarding match and spot fixing, event manipulation and any other form of cheating that may be employed by an individual or group in relation to an event that is the subject of gambling.

Crimes Act 1900 - Part 4AA

This Part of the Crimes Act deals with statutory fraud and related offences (obtaining property/financial advantage by deception). These offences are clearly inadequate to deter conduct

associated with cheating and they provide only a limited basis for prosecuting those who engage in or incite or encourage cheating.

The statutory fraud offences do not adequately address cheating on the basis that:

- The provisions are general in nature and therefore fail to capture the necessary elements involved in cheating. Rather, any legislation designed to deal with cheating should be specifically targeted at conduct that constitutes cheating (e.g. cheating in connection with gambling is an offence).
- The use of the term “deception” in the Crimes Act may not be sufficient to capture all forms of cheating. Deception, as defined in the Crimes Act, is “any deception, by words or other conduct”. It is conceivable that cheating may occur in circumstances where no “deception” is present – thus rendering the statutory fraud provisions redundant.
- Proving deception is too onerous for a prosecutor; legislation addressing cheating does not have to go as far as requiring proof of deception.
- In circumstances where a player involved in cheating is not the direct beneficiary of bets placed on a sporting event, it is unlikely that person would be considered a primary wrongdoer. Proving secondary liability is not an easy task (it needs to be demonstrated that the player intended to procure the primary offence – recklessness is insufficient).
- Due to the legal uncertainty highlighted above, it is unlikely that prosecutions would occur under these provisions. If they were, the prospects of success seem limited.
- As the provisions do not hone in on cheating-specific conduct, they cannot act as a deterrent to potential cheaters.

Unlawful Gambling Act 1998 – section 18

This section provides that a person who is engaged in gambling must not “by fraudulent trick, device, sleight of hand or representation, or...by a fraudulent scheme or practice” obtain, or attempt to obtain, any money or advantage for himself or any other person.

Betfair believes this provision is inadequate for the purposes of preventing cheating and is, furthermore, an inadequate platform for prosecution. We draw these conclusions because:

- The offence requires the perpetrator to be involved in wagering on an event (e.g. it does not cover a corrupt player who accepts a bribe to underperform without betting themselves and nor does it cover a third party which induces cheating by bribing a player who hasn't personally placed a bet). Accordingly, the only individuals who are liable to prosecution are those who actually wager on the event and are aware of the existence of cheating. The root cause of cheating (being those involved in the match) is therefore not addressed.
- The offence applies only to gambling that is permitted under the Unlawful Gambling Act. It doesn't apply to gambling that is conducted with an illegal betting operator. This raises the anomalous prospect that NSW police could be unable to prosecute an individual who has clearly breached the cheating provisions because the bets were placed offshore.
- The maximum penalty of \$10,000 or 2 years imprisonment is substantially less than the penalties for engaging in statutory fraud.

4. *The forms of cheating which should be the subject of attention;*

All forms of cheating, either directly by a player, official or a third party not directly associated with a sporting contest should be included in any new legislation. It is in the interests not only of sporting authorities, but sports participants, spectators and wagering operators to ensure all forms of cheating are minimised.

For example, a friend of a footballer who receives information regarding planned cheating and acts on it should be liable to prosecution. Any form of cheating should be subject to similar laws as insider trading on the stock market, where price sensitive information is privileged.

Wagering operators who take risk in order to operate markets have a significant commercial imperative to ensure that cheating does not occur.

5. *Any reform of the existing laws which you may consider appropriate.*

Betfair believes that new laws should encompass *cheating in connection with sports wagering*. NSW could provide a template for a nationally consistent approach in this area. The States and Territories could adopt identical legislation via COAG or similar agreement.

The UK legislation should act as the starting point for new legislation, but various provisions should be added. They should include a statement that stipulates that it is immaterial whether a player benefits financially or has knowledge that gambling took place. Furthermore, a maximum penalty in the range of 10 years would bring the legislation into line with statutory deception laws.

6. *The types of bets that can and are currently accepted in Australia on the outcome of sporting and other events, or in relation to individual incidents, within the general headings of sport or spread betting, or within any other heading.*

In-Play Betting (or Live Betting)

In-play betting is an area that some have claimed has the ability to compromise the integrity of a contest. Betfair's position, however, is that provided the sports themselves determine the types of bets that can be taken during the course of a sporting contest, there is no additional threat to the integrity of a match than there otherwise would be under pre-play betting. In fact it is arguable that in-play betting poses less of an integrity concern because once a contest has started the participants can only communicate with approved third parties, thereby reducing opportunities for corruption or deception. In-play betting is a growing business as smart punters use it to trade during the contest. It is an effective tool for those seeking either to minimise a loss or lock in a profit. In this respect, it is an effective harm minimisation tool as well as a growing opportunity for sports to maximise revenues from gambling.

In-play betting is legally permitted over the phone – through registered accounts – or in cash through TAB outlets. An anomaly in the *Interactive Gambling Act 2001* (Commonwealth) means that in-play betting on sports is banned online for licensed Australian operators. However, there are numerous offshore online bookmakers who will accommodate bets once a game has started.

From an integrity perspective, it makes no sense to offer anonymous cash betting after a game has started but prohibit online in-play bets that require an account where the customer's identity has been verified and can be made known to officials and regulators. If all in-play betting was banned, it would only serve to shift the activity to illegal markets, thereby making it more difficult to manage integrity issues.

Micro Betting

Micro or exotic betting involves placing a bet on an incidental aspect of a sporting contest. Betfair does not offer micro betting on events that are open to manipulation and we only offer markets where they are approved by a sport's governing body. Micro betting was the source of the so-called "spot fixing" allegations involving the Pakistani cricket team and similar allegations in a recent NRL game. The reality – at least in Betfair's case – is that 95 per cent of the money wagered on most sporting events is on which team will win or by how much.

It 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.

CONCLUSION

Betfair welcomes the Law Reform Commission's review into the laws addressing cheating in relation to sport. The wagering industry has come a long way in this area in recent years, but there is significantly more that can be done by wagering operators to help authorities address this important area. We thank the Commission for inviting our views and we would welcome any opportunity to further address the Commission.