

Report of the

**BETTING EXCHANGE
TASK FORCE**

to the

Australasian Racing Ministers' Conference

10 July 2003

(Volume 1 of 2)

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BETTING EXCHANGE TASK FORCE

Australasian Racing Ministers' Conference

Dear Ministers

I am pleased to present the attached Report, on behalf of the Betting Exchange Task Force, for consideration by Ministers.

The Task Force met formally on four occasions:

- Adelaide 21 February 2003
- Launceston 9 April 2003
- Brisbane 14 May 2003
- Canberra 16 June 2003

In addition, a telephone conference was conducted on 2 July 2003 to finalise the Conclusions and Recommendations chapter and the Executive Summary.

During March 2003, Task Force Members corresponded with their respective controlling authorities of racing seeking their views regarding integrity issues arising as a likely consequence of a scenario involving betting exchange operations on Australian racing events.

In April 2003, the Executive Officer, acting in accordance with a resolution of the Task Force, corresponded with principal Australian racing and wagering stakeholders and representative groups, inviting submissions on the terms of reference.

These stakeholders comprised each of the State and Territory racing controlling bodies, the three peak national racing bodies, bookmaker representative groups from all jurisdictions, including corporate bookmakers, and each of the TABs.

The Executive Officer and I also met with the Chairman and Chief Executive of the Australian Racing Board in Sydney on 26 May 2003, as part of the process of consultation.

As Task Force Chairman, I was approached on a number of occasions by the Chief Executive of Betfair, Mr Edward Wray, seeking to provide input into our examination of the introduction of betting exchanges.

While emphasising to Betfair that the focus of the examination would be betting exchanges generally—as against Betfair specifically—I agreed to receive the following input from Betfair:

- A video conference on 9 April 2003, involving the Task Force Members, Messrs Edward Wray and Mark Davies (of Betfair) in London, and Mr Jamie Nettleton (solicitor for Betfair) in Sydney;
- A written submission, dated 13 May 2003; and
- A supplementary written submission, dated 12 June 2003.

The examination of the operation and function of betting exchanges and their likely impact on the Australian racing and wagering industries, and upon State and Territory Governments, has proved a challenging task.

The emergence of betting exchanges has initiated a highly publicised conflict between the need to provide a contemporary and attractive wagering product to consumers, and the challenge to ensure that the integrity and financial sustainability of the racing industry is not jeopardised.

The work of the Task Force was undertaken at a time when betting exchanges were, and continue to be, the subject of robust and at times vigorous debate between individuals and organizations within Australia, and in other first-level racing countries.

As commented upon in detail in the attached Report, the two most significant issues associated with betting exchanges are the enhanced levels of risk (both real and perceived) to the integrity of the Australian racing product, and the likelihood of substantially diminished commercial returns to the racing industry and to State, Territory and Commonwealth Governments.

As a reference point to this latter issue, the Australian Racing Industry and Australian Governments shared in excess of one billion dollars in revenue from TAB wagering in the financial year ending June 2002.

Betting exchanges represent an efficient and convenient mechanism for individuals, with complete anonymity from other punters in the exchange, to profit from knowledge that a particular runner is likely to lose. This characteristic of betting exchanges – unique in the Australian wagering environment - has the potential to encourage persons involved in the racing industry, such as participants and owners, to engage in behaviour which poses a real threat to racing integrity. At a minimum, the mere presence of betting exchange operations on Australian racing events would likely adversely affect punter perceptions regarding racing integrity and consequently undermine punter confidence in wagering on Australian racing. In its examination of this matter, the Task Force noted the current absence of any cost-effective or proven control mechanisms to deal comprehensively with the racing integrity concerns that have been identified.

The implications associated with these issues remain of paramount concern to the Task Force.

The report of the Task Force contains a number of recommendations to the Australasian Racing Ministers Conference. Each of the recommendations are supported unanimously, except for the sole dissention recorded by the Northern Territory membership on the Task Force.

The position adopted by the Northern Territory membership on this Task Force again demonstrates clearly the need for the Australian racing industry (across the three codes) to act quickly to secure its intellectual property rights in racing product and related information.

The Task Force understands that the Australian Racing Board, on behalf of the thoroughbred racing industry, is currently progressing this most critical issue.

The Task Force acknowledges the valuable contributions from various racing and wagering stakeholders and representative groups around Australia. The comprehensive submissions received on a range of key issues proved to be a valuable resource which assisted the Task Force to approach its deliberations in a balanced and well-informed environment.

Finally, and on behalf of all members of the Betting Exchange Task Force, I acknowledge, appreciate and commend the efforts of the Executive Officer, Mr Peter Baldwin, Assistant Director, Racing of the NSW Department of Gaming and Racing. The Task Force had a difficult and challenging issue to examine, with a matching time frame within which to report to the Australasian Racing Ministers' Conference. It was indeed fortunate for the members of the Task Force that Mr Baldwin possessed the knowledge, enthusiasm, commitment and skills to undertake this work.

Denis Harvey
Chairman

10 July 2003

Foreword

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EXECUTIVE SUMMARY

Background

The Betting Exchange Task Force was established out-of-session by the Australasian Racing Ministers' Conference following written communications among members. The Task Force comprises government officers from all eight Australian States and Territories.

The emergence of Internet-based betting exchange wagering platforms raises several highly challenging issues for the future viability of the Australian racing industry, consumer protection of punters and for government revenue flows from wagering.

Australia's situation is unique among the World's first level racing countries. This stems jointly from its status as a Federation and the co-existence in all jurisdictions of bookmakers and totalizators (TAB). Eight individual racing jurisdictions, together with eight State and Territory Governments with a range of often disparate racing and wagering legislation, heightens the challenge of developing and implementing a coordinated national response to the emergence of betting exchanges.

Internet betting exchanges have given rise to a highly publicised conflict between the desires of punters to access attractive wagering products and the need to ensure the integrity and financial sustainability of the racing industry is not jeopardised.

Terms of reference

Draft terms of reference developed at the first meeting of the Task Force on 21 February 2003 were subsequently agreed to by Ministers from all eight States and Territories.

The terms of reference involve an examination of the current legal position in Australia regarding betting exchanges; the effects of betting exchanges; and measures available to governments and the racing industry in response.

Moratorium

Ministers – with the exception of the Northern Territory Minister – also agreed to the implementation of a moratorium until 30 June 2003 on the issue of any licence, permit or other authorization for the conduct of a betting exchange.

As at 30 June 2003, no betting exchanges were licensed in Australia. Hence, the Australasian Racing Ministers' Conference has the opportunity to consider the issue of betting exchanges free of pressures associated with the presence of existing licensed Australian betting exchange operations.

What is a betting exchange?

A betting exchange is a means by which parties stake money on opposing outcomes of a future event – such as a horse race or football game. Exchanges are structured to facilitate customers betting that a particular outcome will or will not occur. It is this “against backing” (or backing to lose) aspect particularly in which betting exchanges differ from the traditional forms of wagering in Australia – with bookmakers or totalizators (TABs).

To date, Great Britain is the only first level jurisdiction to license betting exchanges. This has occurred basically within the existing off-course bookmaker regulatory framework.

The Internet is an ideal vehicle for betting exchange operations. It allows current exchange information to be displayed to a global audience in real time and facilitates automated wagering transactions against pre-established accounts and the efficient transfer of funds to and from accounts.

While Internet betting exchanges on sport have existed since the mid-1990s, it has been in the sphere of racing betting that betting exchanges have enjoyed phenomenal growth recently. The adaptation of betting exchange principles to a multi-outcome event such as a horse race is achieved by breaking down each race into a series of binary events: each horse to win or lose.

From the operator’s perspective, a betting exchange is similar to a totalizator in terms of the absence of risk relating to the outcome of an event. In contrast to a bookmaker, the betting exchange operator is merely an intermediary – the risk is carried entirely by the customers themselves.

Under the betting exchange models currently operating in Britain, operators derive income by charging a commission – at a relatively low rate – on (net) winnings.

Impact of betting exchanges to date on the Australian wagering landscape

The initial impact of betting exchanges in Australia on any significant scale was felt in February 2003, with the commencement of “full-time” operations on Australian racing and sport by the World’s dominant betting exchange, the British Internet operator Betfair. Betfair has also made a point of targeting the Australian wagering market – with measures such as betting in Australian dollars and the automated directing of persons entering the site from Australia to a customized Australian website “home page”.

A second licensed British operator, Twoflys also offers betting on Australian racing and sporting events.

The impact to date of these British betting exchanges targeting the Australian market has been moderate. For example, on Race 8 at Randwick on Saturday, 28 June 2003, Betfair’s win betting exchange reported “matched bets” of A\$44,171 – or “backers’ stakes” of A\$22,085 (half matched bets). By comparison total TAB win betting across Australia on the same race was \$1,142,026. From observation of the Twoflys website, its operations on Australian racing appear small-scale.

In continuing to field on Australian thoroughbred racing events, Betfair has ignored requests from the Australian Racing Board to refrain from using its intellectual property (eg race fields) until if and when satisfactory arrangements are reached between the parties.

Essentially, the current practice of overseas betting exchanges offering betting on Australian racing to Australian punters amounts to the unauthorised discounted selling of somebody else's product (viz races conducted by the Australian racing industry) to Australian racing's own customers. Further, the fact the practice is occurring in the face of opposition from governments in some Australian jurisdictions where punters are being targeted points to an absence of respect for the sovereign rights of governments in areas such as consumer protection (of punters).

The Northern Territory's views on this aspect are set out within the section of this Report containing its conclusions (refer chapter 1).

Two key areas – integrity; effects on existing wagering operators and revenue streams from wagering

Much of the debate on betting exchanges – both in Australia and globally – has focused on the likely effects of exchanges on:

- racing integrity; and
- existing wagering operators and, by extension, wagering revenue streams of the racing industry and governments.

Racing integrity

Since the commencement of wagering on racing in Australia, with some low-key exceptions, punters have generally only been able to profit from backing a successful outcome, ie a runner that wins or places.

In contrast, betting exchanges provide a facility for punters to profit from predicting a loser. The Task Force sought the views of the State-based controlling bodies of racing regarding their concerns for racing integrity arising from betting exchanges on Australian racing. The responses, mostly prepared in consultation with senior stewards, expressed fears for the integrity of racing as a direct consequence of betting exchange operations. Many of these fears centred around the prospect of racing participants and owners benefiting from the defeat of their own runners or from the defeat of another runner whose chances they are in a position to influence during the running of a race. At the extreme sinister end of the spectrum, betting exchanges could, for example, increase the temptation for miscreants to benefit from the doping of runners.

It is emphasised that the bulk of the integrity concerns highlighted in the Report relate to the integrity of the conduct of races – rather than the betting integrity of exchanges themselves. The fixed odds nature of betting exchanges, combined with available measures such as probity controls over exchange operators and the ability to create audit trails of all bets and transactions, would tend to

mitigate the risk of betting integrity failures in a properly regulated betting exchange regime.

Against this background, concerns expressed regarding the integrity of racing relate primarily to the potential for undesirable conduct by people involved with or associated with the racing industry itself, rather than the betting exchange operator.

In addition to the facility to lay a specific runner, the attractive fixed odds available to backers in a betting exchange (with sufficient levels of depth and liquidity) greatly improves the profitability of backing the field (or several other runners) to beat a particular runner. In contrast, in a totalizator (TAB) situation, for example, other than in cases of betting around a short-priced favourite, backing the field to beat a particular runner tends to be at best a marginal proposition.

Importantly, in terms of their willingness to wager on racing, the perception of punters is as important an issue as racing's actual integrity.

In submissions from proponents of betting exchanges it was argued that the audit trail functionality of betting exchanges, complemented by increased stewarding measures, would overcome any incremental threats to racing integrity posed by betting exchanges.

On balance, the Task Force concludes that presently no cost-effective, practical package of tested measures has been identified to deal comprehensively with concerns regarding threats to racing integrity arising from betting exchange operations.

The Northern Territory's views on this aspect are set out within the section of this Report containing its Conclusions (refer chapter 1).

Impacts on existing Australian wagering operators and wagering revenue streams; the concept of "new money"

The Task Force is in no doubt as to the potential popularity of betting exchanges with punters, particularly in circumstances where the only cost to punters is a modest commission on net winnings per event, such as is currently the case with British betting exchanges.

This popularity would likely translate to significant transfers of betting turnover on racing from existing wagering operators, ie TABs and bookmakers.

The Task Force received submissions that any transfers from existing operators would be more than compensated by "new money" bet by punters attracted by betting exchanges and the greater degree of "churn" of each dollar of punter expenditure because of lower operator retention rates in betting exchanges. The Task Force estimates that the volume of turnover through a betting exchange on racing would need to be very large to compensate for turnover transferred from the current TAB systems.

As a guide, in respect of the 2001/02, financial year,

- State and Territory racing industries received distributions from their respective TABs totalling around \$600 million in respect of wagering turnover.
- State and Territory Governments received around \$320 million in tax revenues from wagering
- It is estimated the Commonwealth Government GST receipts from wagering operators would have been upwards of \$150 million.

In the case of all three of the above figures, the bulk of revenues (90%+) were attributable to wagering on racing – with most of the remaining portion attributable to wagering on sporting events.

The Task Force concludes that the licensing of betting exchanges in Australia would result in an overall substantial decline in wagering revenue streams to the racing industry and governments – even after factoring-in likely “new money” wagered and relatively lower operator retention rates. The regulatory, taxation and racing industry levy frameworks within which betting exchanges on racing have flourished in Great Britain are incompatible with the Australian environment.

It is reiterated that a considerable disparity exists between the racing funding model in Britain – with its emphasis on off-course bookmaker operations – and the totalizator (TAB) dominated off-course racing funding systems in most other first level racing jurisdictions, including Australia. In Australia, most State and Territory racing industries currently receive distributions of at least 4.5 cents per dollar of wagering turnover on racing from their respective TABs.

Betting exchanges on sport

The Task Force notes that betting exchanges on sport tend to give rise to relatively less integrity issues for the events concerned than betting exchanges on racing. However, particularly in the case of betting exchanges offering multi-outcome betting options (eg the winner of a golf tournament) the potential for adverse effects on the actual and perceived integrity of sporting events remains significant.

Separately, sporting codes – unlike racing – do not generally rely on revenues from wagering as a primary income source. However, TABs, for example, derive significant income streams from sports betting. In many cases, State and Territory racing industries share in that income. Similarly, several race clubs derive income from sports bookmaker operations on their racecourses.

A majority of the Task Force is of the view that the establishment or operation of betting exchanges on sport should not occur in Australia. The sole dissent is from the Northern Territory membership. The Northern Territory views on this specific issue are included in section 5.7.11.

Use of betting exchanges (on racing) by licensed Australian operators

The Task Force examined arguments that allowing Australian bookmakers to use betting exchanges on Australian racing enabled them to offer more competitive odds to Australian punters and would assist bookmaker viability. On the other hand, the Task Force is conscious that the use of overseas exchanges operating on Australian racing by licensed Australian wagering operators would benefit these exchanges. The practice of Australian bookmakers and TABs using overseas exchanges also gives rise to consumer protection issues

In respect of the use of betting exchanges by licensed Australian wagering operators, if betting exchanges on racing are not permitted to establish and operate in Australia, the majority view of the Task Force is that Australian bookmakers and TABs should be prohibited from using betting exchanges for the purpose of laying-off bets or punting on Australian racing events.

The Northern Territory is of the view that Australian business should not be restricted from undertaking legal profitable trading, where appropriate regulation is in place at each side of the transaction. Accordingly, licensed Australian wagering operators (or Australian punters) should not be precluded from using overseas bet exchanges.

The international situation

In being targeted by Internet betting exchanges, Australia is not alone among the World's first level racing countries. With the exception of Great Britain, no other country has yet embraced betting exchanges as being in the best interests of either the racing industry or government. Countries to have expressed their disapproval of either betting exchanges specifically or cross-border betting generally include France, Hong Kong, Japan, The Netherlands, Denmark and USA.

A growing list of countries has enacted legislation establishing the offence of betting with an offshore wagering operator or offering wagering services to residents of the country from an overseas base. Some countries are now moving to prevent credit card transfers to offshore wagering operators. Several OECD countries are now promoting the concept of licensing regimes which prohibit a wagering operator from providing services to residents of other countries – except where appropriate arrangements are in place.

Current legal position in Australia and measures available

Disparities in the scope and effect of wagering legislation among Australian States and Territories give rise to considerable differences in the legislative measures available to jurisdictions in response to threats to wagering revenues – particularly those emanating from overseas. Some States, the target of overseas betting exchanges operating on Australian racing and sport, have already raised legal issues with the operators concerned.

The *Interactive Gambling Act 2001 (Cth)* (IGA) represents the entry of the Commonwealth into the sphere of gaming and wagering regulation. Betting exchanges are able to offer their services to Australians over the Internet within an exemption provided for in the IGA.

The IGA is potentially the most potent legislative instrument in Australia in terms of curtailing the activities of betting exchanges here. Appropriate modifications to the scope of the exemption for wagering services to exclude betting exchanges could foreseeably render the offering or supply of betting exchange services to Australians in breach of the Act. In terms of the enforcement of any prohibition, section 69A could potentially be used to prevent the transfer of funds by Australians to customer accounts with betting exchanges.

The main ground on which the racing industry could potentially challenge the rights of an Internet wagering operator to field on its product is action relating to its intellectual property rights in racing information such as race fields and lists of jockeys.

Summary of Task Force's recommendations

The Report makes a number of majority recommendations to the Australasian Racing Ministers' Conference. In all cases the sole dissent is from the Northern Territory membership.

- 1.1 That no licence be granted in Australia for the conduct of a betting exchange on racing.
- 1.2 That no licence be granted in Australia for the conduct of a betting exchange on sport.
- 2 That in the event a licence (or similar instrument) is issued within Australia for the conduct of a betting exchange on racing or sport, that the operator is limited to fielding (in terms of Australian events) on racing or sporting events within that jurisdiction only, plus events in other States and Territories only where consent is provided by both the government of the other jurisdiction and the racing or sporting body conducting the event.

Additionally, the betting exchange operator is to be limited to accepting bets from residents and persons physically present in the local jurisdiction plus,

- (in terms of other Australian punters) from persons in other jurisdictions only where consent has been obtained from the relevant State or Territory Government and (in the case of a betting exchange on racing) the racing industry; and
- (in terms of overseas punters) from persons in other countries only where it is lawful to bet with an Australian betting exchange and controls are in place to prevent artificial arrangements between overseas persons and Australians for the primary purpose of circumventing the spirit of this agreement.

- 3 That Ministers agree to approach the Commonwealth to seek amendment of the *Interactive Gambling Act 2001 (Cth)* with a view to prohibiting the offering or provision to Australians of betting exchange services on:

3.1 Racing events, unless the following apply,

- (a) formal consent has been obtained of both the State or Territory Government where the punter is located and (in the case of races conducted in Australia) the race club conducting the race on which the exchange is operating.
- (b) the exchange is operating in accordance with certain strict licence conditions:
 - (in the case of an Australian betting exchange) may only accept bets from residents or persons in the State or Territory where the exchange is operating; from persons in other Australian States or Territories where the government and the racing industry of the other jurisdiction have consented; and from overseas punters provided it is lawful in the relevant country and appropriate controls are in place.
 - (in the case of an overseas betting exchange) may only accept bets from punters in Australia where the government and racing industry in the State or Territory of the punter have consented.

3.2 Sporting events, unless the following apply,

- (a) formal consent has been obtained of both the State or Territory Government where the punter is located and (in the case of sporting events conducted in Australia) the club or body conducting the event on which the exchange is operating.
- (b) the exchange is operating in accordance with certain strict licence conditions:
 - (in the case of an Australian betting exchange) may only accept bets from residents or persons in the State or Territory where the exchange is operating; from persons in other Australian States or Territories where the government has consented; and from overseas punters provided it is lawful in the relevant country and appropriate controls are in place.
 - (in the case of an overseas betting exchange) may only accept bets from punters in Australia where the government of the State or Territory of the punter has consented.

- 4 That Ministers agree to prohibit licensed Australian wagering operators dealing with betting exchanges not authorised in Australia for the purpose of:
 - placing bets or betting back on Australian racing events, or
 - referring or transferring customers or business to overseas betting exchanges.

Miscellaneous

The Task Force emphasises that any legislative or regulatory measures intended to deal with betting exchanges should be sufficiently flexible and comprehensive to cover all wagering operations conducted along betting exchange principles, regardless of the underlying structure and practices.

Finally, the Task Force warns that the development of a strong presence in the Australian wagering environment by betting exchanges will exacerbate difficulties associated with the implementation of any subsequent decisions to curtail their operations in Australia.

BETTING EXCHANGE TASK FORCE 2003

MEMBERSHIP

JURISDICTION			ORGANISATION
	MEMBER	DEPUTY	
(Chair)	Mr Denis Harvey (SA)		
ACT	Mr Tony Curtis	Mr Gavan Desmond	ACT Gambling and Racing Commission
NEW SOUTH WALES	Mr Darrell Loewenthal		Department of Gaming and Racing
NORTHERN TERRITORY	Mr Malcolm Richardson		Racing, Gaming and Licensing Division (NT Treasury)
QUEENSLAND	Dr Bob Mason	Ms Dominique Murphy	Department of Tourism, Racing and Fair Trading
	Ms Linda Woo		Qld Office of Gaming Regulation
SOUTH AUSTRALIA		Mr Terry Arbon	Department for Administrative and Information Services - Office for Racing
TASMANIA	Mr Ric De Santi		Department of Infrastructure, Energy and Resources - Racing Services Tasmania
VICTORIA	Mr Ross Kennedy	Mr Ged Prescott	Department of Justice, Office of Gaming and Racing
WESTERN AUSTRALIA	Mr Barry Sargeant	Mr Jon Nichols	Department of Racing, Gaming and Liquor
Executive Officer	Mr Peter Baldwin		

1 CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

Following is an outline of the Task Force's conclusions on various key issues arising from its terms of reference. The Northern Territory membership on the Task Force provided the sole dissent on these conclusions. The Northern Territory views are included in a separate document following the conclusions of the Task Force set out below.

TASK FORCE CONCLUSIONS

1 *Likely impact of betting exchanges*

Betting exchanges on racing and sport will appeal to a wide cross-section of punters along with bookmakers. This will be so particularly where the betting exchange is based in an operator-friendly regime such as Great Britain. Currently, betting exchange operators there are subject to relatively low imposts by way of racing industry levies and government taxes, in turn allowing the exchanges to offer attractive commission rates to customers.

2 *Effects on integrity*

The integrity potentially at risk as a consequence of betting exchange operations is generally that of the event upon which the exchange is fielding (eg a horse race or football game) rather than the betting integrity of the exchange itself.

In terms of effects on wagering levels, punters' perceptions of racing integrity are as important as racing's actual integrity.

Overall, the potential integrity repercussions from betting exchange operations are relatively greater in the case of racing than in sport. However, there still exist significant potential integrity repercussions for sports the subject of betting exchange operations (refer item 6 below).

The State and Territory controlling bodies of racing – with direct input from their respective head stewards – generally opined that betting exchange operations on racing give rise to serious potential threats to racing's actual and perceived integrity. Further, the respondents – with the exception of Racing Victoria Limited – were generally sceptical as to the existence of any cost-effective measures to satisfactorily address these threats. Central to many of the concerns are the heightened risks of racing participants profiting from the defeat of their own runners, or mere perceptions on the part of punters that these risks may be exacerbated by betting exchange operations on racing.

In contrast, some proponents of betting exchanges submitted that the forensic audit trails and real time betting data available from betting exchanges, combined with the scope for enhancement of various key stewarding functions

could potentially address any incremental integrity concerns arising from betting exchange operations on racing.

The Task Force is conscious of the views of the Australian Racing Board that “managed regulation” may represent an appropriate betting exchange strategy – rather than banning. Key elements would include:

- integrity licensing by the Australian jurisdiction in which the races are conducted; and
- equitable tax and revenue returns to Australian governments and the racing industry.

After weighing the evidence, the Task Force concludes that presently no cost-effective, practical package of tested measures has been identified to deal comprehensively with valid concerns regarding threats to racing integrity arising from betting exchange operations.

3 Commercial and revenue repercussions

Some advocates of betting exchanges suggest that exchange operations on Australian racing will “create a purely additive revenue stream for the (racing) industry”, ie the turnover through betting exchanges will be entirely “new money”. The Task Force is not convinced. Rather, it concludes that betting exchanges on Australian racing would pose a serious threat to current betting turnover levels of the three categories of licensed wagering operator in Australia – TABs, traditional bookmakers and corporate bookmakers.

Hypothetically, in the extreme scenario of a national, fully “authorised” betting exchange on Australian racing operating under a local regime similar to that presently applying in Britain, the Task Force forecasts that, over the medium term (five years), transfers of racing betting turnover from existing licensed Australian wagering operators could be as high as 20% in the case of TABs and traditional bookmakers, rising to 30% in the case of corporate bookmakers.

The most appropriate view of “turnover” in a betting exchange is the total of backers’ stakes plus against backers’ (layers) stakes. Thus a matched bet of \$20 at \$4 (3 to 1) in a betting exchange equates to “total turnover” of \$20 + \$60 = \$80. Racing industry levy and government betting taxes should be imposed on this “total turnover”.

Based on a hypothetical local betting exchange scenario of payments to each of the racing industry and governments of 15% of exchange commissions from customers and assuming a betting exchange model similar to Betfair (the World’s largest exchange), for each \$1 billion transferred from TAB totalizator turnover in Australia, “total turnover” in betting exchanges of around \$24 billion would be required to deliver a similar return to the racing industry and governments. These calculations are based on average current returns from TAB wagering across Australian States and Territories.

4 Use of exchanges by licensed Australian wagering operators

Under the present circumstances where the only betting exchanges operating on Australian racing are based overseas, all licensed Australian fixed odds wagering operators on racing (bookmakers and TABs) should be prohibited from using betting exchanges on Australian racing.

If, at some future stage, a local betting exchange on Australian racing is licensed, any decision to prohibit the use of betting exchanges by licensed Australian wagering operators should then be revisited.

5 Responsible wagering

From the Task Force's observation of existing betting exchange models in Britain, and in light of their predominantly Internet and account-based mode of operation, a betting exchange would have the capacity to implement a range of worthwhile responsible wagering measures. Further, risks associated with credit betting should be manageable.

However, in the context of current betting exchange operators in Britain targeting the Australian wagering market, on the basis of information available to the Task Force, Australians are potentially exposed in areas such as undetected use by minors and potentially excessive losses. The current overseas location of betting exchanges on Australian racing places them beyond the jurisdiction of the responsible wagering regimes applicable in Australian States and Territories.

6 Betting exchanges on sport

Compared to betting exchanges on racing, betting exchanges on sport give rise to fewer concerns overall in terms of adverse effects on the integrity of events upon which the exchange is operating.

Nevertheless, betting exchanges on sport can potentially give rise to concerns regarding the actual and perceived integrity of the sporting events upon which they operate.

Hypothetically, the licensing in Australia of a betting exchange(s) on sport (other than racing) would likely result in:

- The generation of some "new money" in sports betting;
- The transfer of some turnover from existing licensed Australian sports betting operators, with resultant declines in racing industry and government revenues from these sources;
- Some leakage, over the medium term, of racing betting turnover from existing licensed Australian wagering operators; and
- Greater leverage for exerting pressure on governments to permit betting exchanges on racing.

7 Measures available in response to betting exchanges

In the case of:

- overseas betting exchanges operating on Australian racing, or
- the hypothetical licensing by an Australian State or Territory of a betting exchange on Australian racing events,

a range of responses are available to affected parties should they desire to minimise the impact of betting exchanges in respective jurisdictions.

State and Territory Governments have in place various pieces of legislation the enforcement of which may have the potential to reduce the encroachment of betting exchanges across their borders. The existence of relevant legislation varies widely among jurisdictions.

As the *Interactive Gambling Act 2001* (the IGA) stands, the Commonwealth has only limited capacity to act against an Internet betting exchange offering services to Australians. This relates mainly to in-the-run betting. However, under the review of the IGA currently underway, it would foreseeably be possible for the Commonwealth to amend the IGA to, for example, outlaw the provision of betting exchange services to Australians (on racing or sport or both).

The racing industry could seemingly have a cause of action against betting exchange operators for the unauthorised use of its intellectual property (eg race fields). The Task Force is aware that the thoroughbred racing industry is pursuing a course at a national level aimed at better positioning itself to manage its intellectual property.

In the event that a licensed Australian bookmaker were to become involved in a betting exchange, the relevant State or Territory-based racing industry and, in some cases, governments may be able to take action in respect of the bookmaker's licence.

8 The "greenfields" betting exchange landscape in Australia

Finally, it is important to emphasise that no licence or authority has yet been issued in Australia for the conduct of a betting exchange – on either racing or sport. In this respect, the situation in Australia contrasts markedly to that reviewed in 2002 by the Cross-border Betting Task Force. An established feature of the Australian racing wagering landscape is high volumes of cross-border betting under circumstances where licensed "corporate" bookmakers are betting on racing against the wishes of the Australian racing industry (as providers of the events upon which the betting occurs) and some State Governments (whose constituents are being targeted).

The opportunity now exists to ensure that the issue of betting exchanges in Australia is dealt with, from the outset, in a coordinated and structured manner.

NORTHERN TERRITORY CONCLUSIONS

1 *Likely impact of betting exchanges*

The Northern Territory is of the view that:

- Bet exchanges are likely to remain most relevant when customers communicate via the Internet, as opposed to the telephone, facsimile, mail or physical outlets.
- The Northern Territory has long experience in the regulation of Internet based gambling and is confident in the ability to regulate bet exchanges.
- An appropriate regulatory model can apply to bet exchanges to deal with the regulatory and integrity issues. Thus, the key issue for the Territory is determining an appropriate return to the racing industry in respect of wagering on racing contingencies through bet exchanges.

2 *Effects on integrity*

The Northern Territory believes that the more centralised record of betting trends by known persons per a regulated bet exchange, rather than distributed by multiple anonymous transactions around betting rings, allow for greater detection of betting transactions indicative of questionable event integrity.

With regard to punters perception, the Northern Territory view is that a regulated bet exchange is considered the most effective detection control available to any threat to the integrity of racing.

The Northern Territory believes that greater potential for repercussions upon integrity regarding racing is perpetuated by the current, mainly anonymous, cash betting opportunities available through on-course, off-course, Australian, and international bookmakers, totalizators, and (unregulated) international bet exchanges. As bet exchanges operate via internet/it platforms all transactions are traceable and through authorised client accounts.

The Northern Territory suggests that:

- a properly regulated bet exchange through non-anonymous transparent account betting, and secure forensic audit trails, will provide far greater controls to protect the integrity of racing than has been available or is available by the existing betting industry.
- The current system allows anonymous betting opportunities which make corrupt practices undetectable or difficult or impossible to investigate.
- A strong regulated bet exchange industry is likely to overcome these shortcomings in the traditional wagering and racing industries.

The Northern Territory considers bet exchanges may be sufficiently regulated in a similar, but extended, manner to the successful internet gaming and wagering regulatory models already in place. The Productivity Commission acknowledged the success of these regulated industries in its landmark 1999 report *Australia's Gambling Industries*. The Northern Territory has a world-recognised reputation for regulating internet gambling.

4 Use of exchanges by licensed Australian wagering operators

The Northern Territory is of the view that:

- Australian business should not be restricted from undertaking legal profitable trading, where appropriate regulation is in place at each side of the transaction.
- Accordingly, licensed Australian wagering operators (nor Australian punters) should not be precluded from using overseas bet exchanges.

5 Responsible wagering

The Northern Territory acknowledges that the most appropriate controls to restrict both minors and problematic gambling is through regulation and such controls already exist for the Territory's regulated online casino. Therefore, the Northern Territory believes that a properly regulated Australian bet exchange would overcome any of these concerns.

8 The 'greenfields' betting exchange landscape in Australia

The Northern Territory is of the view that the cross-border betting issue provides no conclusive evidence that the Australian racing industry suffers from loss of revenue. In actual fact both Bookmakers and TAB turnovers continue to grow, with subsequent returns to industry. The Northern Territory considers the 'corporate' bookmakers help to stimulate the wagering market by providing a very competitive market for the punter. Their general risk management procedures allow the turnover to be 'churned' through other bookmakers and TABs.

The Northern Territory favours regulation of bet exchanges, not prohibition.

RECOMMENDATIONS

The Betting Exchange Task Force makes the following recommendations to the Australasian Racing Ministers' Conference.

On the basis of the information currently available to it, a majority of the Task Force (with the sole dissent being from Northern Territory) recommends that:

- 1.1 Racing Ministers agree that no licence, authority or other form of permission be granted in Australia for the conduct of a betting exchange (in any form) on racing events.
- 1.2 Racing Ministers agree that no licence, authority or other form of permission be granted in Australia for the conduct of a betting exchange (in any form) on sporting (ie other than racing) events.

The dissenting view of the Northern Territory in respect of recommendations 1.1 and 1.2 above is,

The Northern Territory is unable to support these recommendations.

The major concerns of most members of the Task Force were the racing integrity and revenue issues. The Northern Territory is of the view that prohibition will NOT work, and that regulation is the most appropriate method of control. Proper regulation will address integrity issues and enable an acceptable revenue stream to be negotiated.

- 2 Racing Ministers agree that, in the event the government and/or racing industry of a State or Territory decides to issue a licence, authority or other form of permission for the conduct of a betting exchange (in any form) on racing or sport the operator is to be strictly limited to:

 - (a) Operating on Australian racing or sporting events in that jurisdiction only, with coverage of events in any other State or Territory limited to instances where formal consent and agreement is obtained from both the government of the other jurisdiction and the racing or sporting body conducting the race or event.
 - (b) Opening accounts for and accepting bets from only:
 - (i) Residents of or persons physically present in that State or Territory;
 - (ii) Residents of or persons physically present in other Australian States and Territories only in circumstances where formal consent and agreement is obtained from the government and the racing industry of the other jurisdictions; and

- (iii) Overseas persons, provided that:
- it is lawful in the country concerned; and
 - appropriate controls are in place to prevent the acceptance of bets from persons overseas under circumstances where arrangements have been entered into with persons in Australia for the primary purpose of circumventing the spirit of this agreement.

The dissenting view of the Northern Territory in respect of recommendation 2 above is,

The NT is unable to support this recommendation.

The Northern Territory has strong concerns regarding the restraint of trade implications and unconstitutional restrictions the Task Force is seeking. Customer bases and wagering opportunities are available to all other Australian wagering operators.

- 3** Racing Ministers agree to approach the Commonwealth Government to seek amendment of the *Interactive Gambling Act 2001* (Cth) with a view to achieving the following *in principle* outcomes:

- 3.1** A prohibition on the offering or provision to persons in Australia of any form of betting exchange services on racing (regardless of whether the exchange is operating from within Australia or overseas) unless the following apply:

- (a) The formal consent and agreement has been obtained of both:
- The State or Territory Government where the punter is located; and
 - (In the case of races conducted in Australia) the race club conducting the race on which the exchange is operating.
- (b) The exchange is operating in accordance with the following strict licence conditions:
- (i) (In the case of a betting exchange operating from within Australia) that it may open accounts for and accept bets from only:
- residents of or persons physically present in the State or Territory where it is operating;
 - residents of or persons physically present in other Australian States and Territories only in circumstances where formal consent and agreement is obtained from the Government(s) and the racing industry of the other jurisdiction(s);

- persons outside Australia, provided that:
 - . it is lawful in the country where the person is physically present; and
 - . appropriate controls are in place to prevent the acceptance of bets from persons outside Australia under circumstances where arrangements have been entered into with persons in Australia for the primary purpose of circumventing the spirit of this framework.
- (ii) (In the case of a betting exchange operating from outside Australia) that it may open accounts for and accept bets from persons physically present in Australian States and Territories only in circumstances where formal consent and agreement is obtained from the Government(s) and the racing industry of the jurisdiction(s) where the punter is located.

3.2 A prohibition on the offering or provision to persons in Australia of any form of betting exchange services on sport (regardless of whether the exchange is operating from within Australia or overseas) unless the following apply:

- (a) The formal consent and agreement has been obtained of both:
 - The State or Territory Government where the punter is located; and
 - (In the case of sporting events conducted in Australia) the club or body conducting the event upon which the exchange is operating.
- (b) The exchange is operating in accordance with the following strict licence conditions:
 - (i) (In the case of a betting exchange operating within Australia) that it may open accounts for and accept bets from only:
 - residents of or persons physically present in the State or Territory where it is operating;
 - residents of or persons physically present in other Australian States and Territories only in circumstances where formal consent and agreement is obtained from the Government(s) of the other jurisdictions;

- persons outside Australia, provided that:
 - . it is lawful in the country where the person is physically present; and
 - . appropriate controls are in place to prevent the acceptance of bets from persons outside Australia under circumstances where arrangements have been entered into with persons in Australia for the primary purpose of circumventing the spirit of this framework.
 - (ii) (In the case of a betting exchange operating from outside Australia) that it may open accounts for and accept bets from persons physically present in Australian States and Territories only in circumstances where formal consent and agreement is obtained from the Government(s) of the jurisdiction(s).
- 4** Racing Ministers agree to prohibit licensed Australian wagering operators dealing with betting exchanges (either directly or through agents, associates, etc) not properly authorised in Australia for the purposes of:
- (a) placing bets or betting back (laying-off bets) on Australian racing events;
 - (b) referring or transferring customers or business to overseas betting exchanges, regardless of whether or not those exchanges are licensed in the overseas country.

2 REPORT SUMMARY AND FINDINGS

Following is a collation of the summaries and (where applicable) the findings at the end of each chapter of the Report.

Chapter 4 LEGAL POSITION IN AUSTRALIA ON BETTING EXCHANGES

SUMMARY OF CHAPTER 4

- 1 re: the first issue identified in term of reference 2.1 – the establishment of betting exchanges within Australian States and Territories.

It appears that, in most States and Territories, under the current wagering legislation regimes, it would not be possible to establish a betting exchange against the will of the respective Governments.

Notwithstanding this, it appears possible that several State or Territory Governments could – if they desired – issue a licence or authority for the conduct of a betting exchange on racing and/or sport.

In respect of Commonwealth legislation, under the *Interactive Gambling Act 2001*, the only significant prohibition against Internet wagering operations (which presumably encompasses betting exchanges) relates to in-the-run betting, ie betting after an “event” has commenced.

- 2 re: the second issue identified in term of reference 2.1 – the use of betting exchanges by persons in a jurisdiction.

In the case of most Australian States and Territories the use of a betting exchange by a person physically present in a jurisdiction would not appear to be breaching legislation.

The main exceptions are:

- New South Wales and Western Australia, which have similar legislative provisions making it an offence for a person physically present in the jurisdiction to bet on an Australian race with somebody who is not a licensed wagering operator in Australia. This provision is of most relevance in the case of betting with overseas betting exchanges.
- Queensland, where under section 16(2) of the *Interactive Gambling (Player Protection) Act 1998*, a person in Queensland who uses an Internet betting exchange not licensed or authorised under the Act could be technically in breach as participating in an unauthorised game. Advice from the Queensland membership is, however, that legal action against a player in these circumstances would be unlikely.

Chapter 5.1 EFFECTS ON INTEGRITY OF RACING EVENTS AND PARTICIPANTS

SUMMARY OF CHAPTER 5.1

- 1 State and Territory racing and betting legislation, the rules of racing and betting in the three codes and generic consumer protection legislation together recognize the public interest in ensuring races are run honestly and fairly. (*section 5.1.2*)
- 2 In terms of maintaining wagering turnover levels, and hence racing industry and government revenue flows from wagering, punter perception of racing integrity is critical. (*section 5.1.3*)
- 3 Betting exchanges on racing potentially give rise to racing – as against betting – integrity issues. Any diminution in overall punter perceptions of racing integrity would likely have an adverse effect on the turnover levels of all wagering operators fielding on that racing (viz TABs, bookmakers and betting exchanges). (*section 5.1.5*)
- 4 Several stakeholders submitted to the Task Force that betting exchanges on racing would be unlikely to give rise to additional concerns regarding racing integrity. One aspect highlighted was the facility inherent in betting exchanges to monitor closely all transactions and betting patterns/trends and produce detailed audit trails. Timely relevant information can then be provided to racing authorities – in real time if desirable. (*section 5.1.6*)
- 5 Racing controlling body chief executives – in consultation with their respective racing stewards – from a majority of Australian States and Territories opined that betting exchanges on Australian racing would give rise to a range of serious concerns for racing integrity. Overall, they also expressed doubts as to the availability of cost-effective measures to satisfactorily address these concerns. Racing Victoria Ltd expressed a generally contrary view and spoke favourably of the likely opportunities to arise from betting exchanges on Australian racing. (*section 5.1.7*)
- 6 Racing integrity (or perceived integrity) in any Australian jurisdiction could potentially be affected by the establishment of a betting exchange operating on its racing from overseas or interstate. (*section 5.1.8, 5.1.9*)
- 7 Risks to racing integrity can potentially arise as a consequence of betting exchanges providing an accessible, efficient and convenient mechanism for punters to profit from information that a runner will likely be beaten. This can take the form of laying a runner or backing several other runners in a market with a low “overround”. (*section 5.1.10*)
- 8 Unlike bookmaker betting, both parties to a betting exchange wager are anonymous with respect to each other. This aspect advantages “hard money” punters (who win over a period) who have access to valuable information regarding the prospects of runners and who may otherwise experience difficulties placing bets at fixed odds with bookmakers. (*section 5.1.10*)

- 9 Any potential risks to racing integrity posed by betting exchanges are exacerbated by the fact nefarious activity is often not revealed – if at all – until after a race is run. Aggrieved punters then have little prospect of recovering any losses. Any proposal to balance increased risks to racing integrity posed by betting exchanges with increased stewarding measures will likely involve significant additional cost to the racing industry. (*section 5.1.11*)
- 10 It would foreseeably be possible to ensure information regarding betting exchange transactions and the customers involved is able to be legally conveyed to racing stewards. One available measure would be to have betting exchange customers (at the time of opening accounts) agree in writing to the provision of “private information” to stewards, police, etc. However, whereas a bookmaker (basically the only persons in Australia currently permitted to legally lay runners) is licensed and, as such, can be required to attend stewards’ inquiries and provide sworn testimony, it would seem unlikely that stewards would enjoy similar coercive powers in respect of all betting exchange layers. The fact stewards have “private information” regarding the holder of the betting exchange account through which transactions have occurred does not necessarily assist in identifying the party behind the transactions. (*section 5.1.12*)
- 11 If betting exchanges on racing establish a firm foothold in Australia – by whatever means – there would be difficulties in implementing any subsequent decision to deprive Australian punters of access to this wagering medium. (*section 5.1.15*)

FINDINGS ON CHAPTER 5.1

The Task Force is of the view that:

- 1 The preservation of racing integrity is a threshold issue in the consideration of betting exchanges.
- 2 The perception of punters regarding racing’s integrity is a key ingredient in their willingness to wager on racing. Any decline in punter perceptions of racing integrity impacts adversely on the wagering turnover levels of all wagering operators on racing (TABs, bookmakers and betting exchanges). In turn, any significant decline in wagering levels results in reduced:
 - (a) Racing industry revenues from wagering and hence the viability of the Australian racing industry; and
 - (b) State and Territory betting tax revenues and Commonwealth GST receipts from wagering operators.
- 3 Betting exchanges on Australian racing (whether based here or overseas) could give rise to real risks of serious adverse effects on racing’s actual and perceived integrity. Senior racing stewards in the majority of Australian States and Territories have attested to the validity of concerns in this area. (refer section 5.1.7)

- 4 Several parties (refer particularly to section 5.1.6 for relevant portions of submissions by the Australian Racing Board, Betfair and IASBet) are promoting the merits of various proposed measures to counter concerns regarding the possible adverse effects of betting exchanges on racing integrity.

The only first level wagering regime incorporating licensed betting exchanges is Great Britain. From the observations of the Task Force, the development and implementation of measures in response to concerns regarding the effects of betting exchanges on racing integrity (refer particularly section 5.1.10, *The British Experience*) has seemingly involved ad hoc suggestions developed “on-the-run”, rather than as integral aspects of a methodical and balanced strategy developed in consultation with recognised experts such as racing stewards and suitably qualified lawyers. A case in point has been the treatment of the issue of the use of exchanges by participants and owners to lay their own runners.

As a consequence, no established regime presently exists by which to gauge the effectiveness or otherwise of the proposed measures in an actual racing environment. Further, such measures are not accompanied by detailed costings or firm indications as to which parties would properly shoulder any incremental stewarding cost burdens resulting from betting exchange operations on racing.

Against this background, presently no cost-effective, practical package of tested measures has been identified to deal comprehensively with racing integrity concerns arising from betting exchange operations on races.

- 5 If betting exchanges on racing establish a firm foothold in Australian mainstream wagering it would likely be difficult to implement any subsequent decision to deny Australian punters access to betting exchanges. In other words, any “decision” to allow betting exchanges to develop a greater presence in Australia will likely involve an element of irreversibility.

Chapter 5.2 EFFECTS ON LICENSED AUSTRALIAN WAGERING OPERATORS AND ON RACING AND GOVERNMENT REVENUE STREAMS

SUMMARY OF CHAPTER 5.2

- 1 The appeal to punters of betting exchanges on racing lies mainly in:
 - The fact bets are struck at fixed odds – in contrast to totalizator (TAB) betting.
 - Availability of better odds – relative to bookmakers and TABs. These attractive odds are available partly because punters are able to transact directly with each other (no intermediary required to bear the risk of the wager) and, as is currently the case with Betfair’s London-based operations on Australian racing, for example, betting exchanges benefit from operating in regimes characterised by low (or nil) contributions to the racing industry and betting taxes.

- The facility for punters to bet against (“lay”) runners.
 - Punter-friendly commission structures.
 - Punters’ anonymity viz-a-viz each other (in contrast to betting with bookmakers) (*section 5.2.3*)
- 2 If betting exchanges are allowed to (continue to) operate on Australian racing under circumstances where they are able to operate profitably while charging customers an advertised commission rate ranging from 5% down to 2% (on net winnings per event), betting exchanges will likely prove a popular alternative to betting on Australian racing with TABs or licensed Australian bookmakers. This will likely be at significant expense to these existing operators – and hence to racing industry and State/Territory revenue streams from wagering.

The extent of betting exchanges’ future popularity among Australian punters will depend to a degree upon whether one or more betting exchange operators are able to acquire an “authorisation” from the Australian racing industry and/or Australian Governments to operate on Australian racing (or sport) and accept bets from Australian punters. (*section 5.2.4*)

- 3 The exposure of existing licensed wagering operators on racing regarding the transfer of their wagering turnover to betting exchanges will likely be linked to the characteristics of individual bets placed with them, namely:
- Bet simplicity – (win and place bets are more exposed than exotic bets)
 - Bet remoteness (Internet and telephone bets are most at risk). This aspect is likely to increase in relevance, as a new generation of technologically savvy punters emerges.
 - Bet size – smaller bets from recreational punters are likely to be at lower risk.
 - Punter professionalism – the more professional punters will tend to seek out the best deal available.
 - Race status – the higher profile race meetings are likely to be the focus of betting exchange activity, making them relatively more attractive to punters. (*section 5.2.5*)
- 4 Hypothetically, if a betting exchange in Australia were subject to significant levels of racing industry levies and betting taxes (as opposed to Betfair’s current UK impost which enables it to operate under such a low commission structure) the attractiveness of using betting exchanges on racing would likely be decidedly less attractive than currently. (*sections 5.2.8*)

- 5 Particularly in light of the newness of the betting exchange concept, forecasts of their likely financial effects on existing wagering operators are difficult. In the extreme hypothetical scenario of a national, fully “authorised” betting exchange operating in Australia under conditions similar to that currently enjoyed by Betfair the Task Force estimates that, in the medium term (5 years or so), the annual racing turnover of existing wagering operators in Australia could be threatened to the following extent:

	%	\$
TABs	20%	\$2 billion
“Traditional” bookmakers	20%	\$0.25 billion
“Corporate” bookmakers	30%	\$0.3 billion

(section 5.2.10)

- 6 Any estimate of the volume of “new money” an attractive and competitive local betting exchange on Australian racing may generate is highly speculative. Subject to this qualification, the Task Force estimates that only modest volumes of “new money” (incremental “player loss”) would likely only be generated over the medium term (5 years). (section 5.2.12)
- 7 Under wagering “circular flow” theory, it should not be assumed that lower retention rates by a wagering operator such as a betting exchange will axiomatically lead to proportionately higher rates of churn of punters’ expenditure. (section 5.2.13)
- 8 Currently the Australian racing industry receives around \$600 million per annum in revenue streams from wagering. Additionally, State and Territory Governments receive betting tax revenues of around \$320 per annum and the Commonwealth around \$150 million in GST. In all three cases, the vast bulk of the revenue relates to TAB off-course totalizator turnover (section 5.2.14)
- 9 In Australia, the most common measure of activity in totalizator (TAB) and bookmaker wagering is turnover. There is much debate regarding the correct measure of “turnover” in a betting exchange. There is strong reasoning in favour of adopting the comprehensive approach to defining betting exchange turnover, ie “total turnover” is the aggregate of the stakes of the “backer” and the “against backer” (layer). (section 5.2.16)
- 10 The Task Force performed some modelling based on assumptions that a hypothetical Australian betting exchange model would involve similar conditions to those under which betting exchanges such as Betfair and Twoflys currently operate in Britain. For example, an Australian betting exchange was offering to pay each of the racing industry and Governments 15% of its gross commissions. It was also assumed that the racing industry and Governments each receive around 4 cents per dollar of TAB turnover. Under this model, the transfer of \$1 billion of TAB totalizator turnover on racing to a betting exchange would require “total turnover” (refer section 5.2.16) of \$24 billion to provide the same return to the racing industry and Governments. (section 5.2.18)

- 11 The Task Force explored possible suitable regimes for the imposition of racing industry levies and State/Territory Government betting taxes on a betting exchange in Australia. It was concluded that a turnover-based approach was appropriate, with “turnover” comprising the aggregate of the stakes of both the “backer” and “against backer”. (*section 5.2.20*)

FINDINGS ON CHAPTER 5.2

The Task Force is of the view that:

- 1 A significant proportion of Australian racing punters would find a betting exchange (operating under conditions similar to those currently applicable to person-to-person betting exchanges in the UK) sufficiently attractive to result in a transfer of significant volumes of racing betting from existing licensed Australian operators.
- 2 In the event that betting exchanges on Australian racing (along the lines of the Betfair model) are able to penetrate the mainstream Australian wagering market, over the medium term (5 years or so hence) all three categories of licensed wagering operator in Australia – TABs, traditional bookmakers and corporate bookmakers would likely suffer significant transfer of wagering activity to betting exchanges operating on Australian racing. The effects will be reflected in a significant decline in wagering revenues from TABs and bookmakers to the racing industry and Australian governments from TABs and bookmakers.
- 3 The degree of impact on existing wagering operators would be primarily a function of two factors:
 - (a) Whether, at one end of the spectrum, betting exchanges are operating from overseas without “authorisation” from the Australian racing industry and Governments (such as the current situation with Betfair) or, at the other end, a fully “authorised” betting exchange(s) is operating within Australia.
 - (b) The impost on a racing betting exchange(s) in terms of racing industry levy and Government betting tax. The higher this impost, the less attractive a betting exchange is likely to be on the basis of price (odds on offer), relative to TABs and licensed bookmakers.
- 4 The hypothetical formal arrival of a fully authorised and licensed betting exchange on racing in Australia offering attractive and competitive odds could lead to some modest growth in the race wagering “pie”. However, the volume of “new money” generated in the medium term would likely only be modest.

- 5 The threats to existing Australian wagering operators of transfer of racing turnover to betting exchanges is in addition to any threats posed by a decline in racing integrity and perceived integrity as a consequence of betting exchanges providing a facility for profiting from an advantageous position relative to other punters – ranging from “inside information” that a runner will likely be beaten to nefarious activity causing an individual runner to perform poorly.
- 6 It is being argued that, because betting exchanges such as Betfair have low “retention rates” relative to TABs, “churn” rates will be proportionately higher. For example, that one dollar of punter expenditure is churned a proportionately greater number of times before being lost. It is suggested this view of the wagering “circular flow” does not take into sufficient account the effect of “hard money” and the fact that a proportion of any reduction in retention rates by wagering operators will often be absorbed as additional winnings by professional punters. Such winnings over a period are also a leakage from the circular flow.
- 7 The most accurate definition of wagering “turnover” in a betting exchange is a comprehensive one. Turnover on each bet is the total of “backer’s stakes” + “against backer’s stakes” (ie layer’s exposure on the bet). For example, if a backer places a bet of \$100 at \$3.00 (\$200 to \$100) turnover is \$100 (the backer’s stake) + \$200 (the against backer’s stake) = \$300. The against backer is essentially placing a bet of \$200 on the “field” to beat the runner the subject of the bet.

Any levy or tax regime on betting exchanges should be based on this comprehensive approach to “turnover” – with both “backers’ stakes” and “against backers’ stakes” subject to levy and tax.

- 8 Based broadly on the operating conditions of betting exchanges under the current UK regime, if a betting exchange were to offer each of the racing industry and State and Territory Governments in Australia 15% of its commissions earned on each Australian race covered, for each \$1 billion transferred from TAB totalizator turnover on racing, the betting exchange would require “total turnover” (in comprehensive terms) of around \$24 billion for the racing industry and Governments generally to be in a similar financial position.
- 9 If betting exchanges on racing are permitted to establish a greater presence in Australia in the absence of a nationally co-ordinated licensing regime (incorporated standard arrangements for levies and taxes), the recurring threat of a “race to the bottom” by Australian States and Territories will manifest, as jurisdictions compete to offer more attractive (viz operator-friendly) levy and tax regimes for betting exchanges.

In any event, the establishment of betting exchanges in Australia will likely expose the local wagering industry to familiar risks such as:

- The future relocation offshore of betting exchanges with the primary aim of avoiding fiscal obligations to the Australian racing industry and Governments.

- Australian punters – who have been (further) exposed to the betting exchange concept – seeking-out a “better deal” from overseas betting exchanges on Australian racing.

Chapter 5.3 EFFECTS ARISING FROM USE OF BETTING EXCHANGES BY AUSTRALIAN LICENSED WAGERING OPERATORS

SUMMARY OF CHAPTER 5.3

- 1 The situation across Australian States and Territories with respect to the role of the racing industry and Government in the licensing and regulation of bookmakers varies markedly. (*section 5.3.1*)
- 2 In Britain, longstanding rules prohibiting on-course bookmakers hedging (laying-off) with anybody but fellow on-course bookmakers were relaxed in April 2003 to permit them to hedge with betting exchanges and off-course bookmakers. (*section 5.3.2*)
- 3 To date, the most vocal opponents to British on-course bookmakers being permitted to hedge with betting exchanges have been the off-course corporate bookmakers – with whom a significant proportion of bets on racing are struck at “starting price”. Their objections appear to relate to the likelihood of starting prices (which are based on the on-course bookmaker rings) improving (ie being better for the punter) and, as a consequence, off-course bookmaker gross profit margins shrinking. (*section 5.3.3*)
- 4 Generally speaking, the odds available on racing events in a betting exchange (at least before allowance is made for any commission payable to the exchange operator) tend to be superior to those available from TABs or bookmakers. (*section 5.3.4*)
- 5 Arguments in favour of allowing access to betting exchanges by Australian racing bookmakers include:
 - It may result (at least in the short term) in punters being able to obtain relatively better prices and being able to get set for larger bets from bookmakers.
 - May assist in improving the viability of bookmaking on racing (at least in the short term). (*section 5.3.5*)
- 6 Arguments against allowing access to betting exchanges by Australian racing bookmakers include:
 - Australian bookmakers using overseas betting exchanges contributes to those exchanges attaining critical mass.
 - A lack of perceived fairness in bookmakers taking advantage of some punters’ (particularly those on-course) lower level of access to betting

exchanges and access to timely information regarding betting exchange transactions.

- If the betting exchange is not licensed in Australia, bookmakers in several Australian jurisdictions transacting with it would likely be in breach of State legislation. (*section 5.3.6*)
- 7 At present bookmakers in some Australian States are prevented by statute from betting or laying-off with overseas betting exchanges on Australian racing events. It is arguably inequitable that some Australian bookmakers can access betting exchanges while others cannot. TABs – in their fixed odds racing betting operations – should be bracketed with bookmakers on this issue of accessing overseas betting exchanges. (*section 5.3.7, 5.3.8*)
 - 8 Some of the arguments against Australian bookmakers being permitted to access betting exchanges on racing do not apply – at least to the same extent – to sports betting. (*section 5.3.9*)

FINDINGS ON CHAPTER 5.3

The Task Force is of the view that:

- 1 Because of the variation in bookmaker licensing and regulation regimes across Australian States and Territories, particularly in respect of the roles of the racing industry and Governments, it would not be possible for the racing industry to implement a uniform national approach to this issue of wagering operator use of betting exchanges without the involvement of State and Territory Governments.
- 2 The appropriate course of action on the issue of whether licensed Australian wagering operators on racing should be permitted to access betting exchanges for the purpose of laying-off and placing their own bets depends primarily upon whether the future impact of betting exchanges on Australian wagering involves:
 - (a) The status quo, with offshore betting exchanges continuing to operate on Australian racing without “authorisation”, but no betting exchanges licensed in Australia to bet on racing, or
 - (b) A future scenario where, for example, a betting exchange on racing is operating in Australia, with “authorisation” from the racing industry and/or State and Territory Governments.

The Task Force is of the majority view (the sole dissent being the Northern Territory membership) that:

- 3 In the event that overseas betting exchanges, such as Betfair, continue to operate on Australian racing without formal authorisation from the Australian racing industry and/or State and Territory Governments [2(a) above], all licensed wagering operators in Australia (bookmakers and TABs) should be prohibited from using betting exchanges on Australian racing events.

The Task Force notes that a key underlying reason for this finding is the potential for damage to the integrity of Australian racing as a consequence of betting exchanges operations on its product (refer chapter 5.1 generally). The use of overseas betting exchanges by licensed Australian wagering operators will likely contribute to the depth and liquidity of such operations.

The stated position of the Northern Territory membership is that,

“The prohibition model will not work (similar view to the ARB) and that regulation is a better option. The Northern Territory is concerned that 'licensed wagering operators' are being discriminated against whilst 'punters' will still have access - it appears incongruous. There may also be *Trade Practices Act* implications restricting them using a legal avenue for business purposes (risk management).”

The Task Force is of the view that:

- 4 In the event a betting exchange(s) on racing is authorised to operate in Australia [2(b) above], it would then be appropriate to reconsider this issue of the use of betting exchanges by licensed Australian wagering operators in light of the precise circumstances under which the betting exchange is permitted to establish and operate in Australia.
- 5 There are no cogent reasons for limiting the access of Australian wagering operators to betting exchanges on sport (ie non-racing events). This would extend to betting exchanges on sport operating:
 - from an Australian or overseas base; and
 - on Australian or overseas sporting events.

Chapter 5.4 EFFECTS IN TERMS OF RESPONSIBLE WAGERING PRACTICES

SUMMARY OF CHAPTER 5.4

- 1 Overseas-based betting exchanges targeting Australian racing and sport have significantly increased the incentive for Australian punters to seek out overseas wagering operators, who are not bound by the responsible wagering regimes applicable in Australian States and Territories. (*section 5.4.1*)
- 2 Licensed wagering operators throughout Australia are subject to responsible wagering regimes at State and Territory level. Separately, the *AUS model*, developed by a National Working Party on Interactive Gaming, includes a range of responsible gambling measures, some of which could have applicability to an Internet betting exchange. (*section 5.4.3*)
- 3 The customer account-based nature of betting exchange operations represents a foundation for the potential implementation of a range of worthwhile harm minimization initiatives by a betting exchange operator. (*section 5.4.4*)

- 4 In the case of British-based betting exchanges currently impinging upon Australia, several aspects of their operations tend to heighten concerns regarding responsible wagering issues. These include:
 - the fact betting exchanges represent an expansion of gambling opportunities;
 - the use of credit cards as the primary means of transferring funds to accounts;
 - the potential for punters to expose themselves to inordinate losses through laying single runners at long odds. (*section 5.4.5*)
- 5 The experience of Australian customers with British betting exchanges relayed to the Task Force pointed to an absence of any verification procedures regarding the identity and age of (Australian) customers. (*section 5.4.6*)

FINDINGS ON CHAPTER 5.4

The Task Force is of the view that:

- 1 The current arrangements by which Australians can establish accounts, make credit card deposits and place bets with overseas betting exchanges (eg in Great Britain) are generally unsatisfactory from a responsible wagering perspective.
- 2 In the event a betting exchange is permitted to operate in Australia, the betting exchange operator must be required to comply with existing responsible wagering regimes – similar to those applicable to TABs. Additionally, consideration should be given to imposing a range of specific responsible wagering measures as conditions of a licence. These would include, but not be limited to:
 - Strict identification and verification procedures relating to the opening of accounts and depositing by credit cards – similar to those generally required of TABs.
 - Default parameters relating to aspects of account activity such as the number of deposits in a period, the amount of net exposure as a layer in any one event and the maximum loss in a period. At the time of account opening, and at regular intervals, the customer should be prompted to choose whether to set a lower level (than the default) on each of the above parameters. There would then be time constraints on the easing of any of these self-imposed levels.
 - Prohibitions on the provision of credit.
 - Strict prohibitions on the opening of accounts or betting by minors.
 - Provisions for self-exclusion.

Chapter 5.5 EFFECTS IN TERMS OF CRIME, PRINCIPALLY MONEY LAUNDERING

SUMMARY OF CHAPTER 5.5

- 1 Theoretically, some aspects of betting exchange operations tend to render them potentially vulnerable to money laundering – including the relatively “low over rounds” in betting markets; the risk of non-arm’s length parties conniving to transact with each other; and the lack of any probity testing of “layers”.
- 2 On the other hand, some aspects of betting exchange operations tend to reduce their vulnerability as a vehicle for money laundering – including the fact transactions are invariably account-based and the fully automated nature of Internet betting exchange operations.
- 3 On balance, it would appear that most of the risks of money laundering arising from the nature of betting exchange operations could be satisfactorily dealt with in a rigorous customised regulatory regime. In the absence of such measures, however, a betting exchange could potentially be a haven for money laundering.

Chapter 5.6 OVERSEAS EXPERIENCE WITH BETTING EXCHANGES

SUMMARY OF CHAPTER 5.6

- 1 A growing list of countries is enacting legislation to make it illegal for:
 - their residents to bet with (unauthorised) overseas gambling operators; and/or
 - overseas wagering operators to accept bets with their residents – regardless of the operator’s legal status in their home country.
- 2 Several countries (eg France and Japan) have already experienced some success at severing the financial link between their residents and overseas wagering operators through action against and/or negotiation with credit card companies.
- 3 There is a groundswell of support among some OECD countries for restrictions on gambling operators, limiting them to accepting bets from customers within their own country or from countries with whom acceptable arrangements are in place.

Chapter 5.7 BETTING EXCHANGES ON SPORT

SUMMARY OF CHAPTER 5.7

- 1 A consequence of the popularity among sports bettors of bet forms involving only 2 or 3 outcomes is that sports betting is particularly suited to the betting exchange concept. Among the primary reasons for this suitability are:
 - (a) The relative simplicity and ease of understanding involved in a betting exchange application with limited outcomes.
 - (b) The concentration of wagering activity across a small number of outcomes renders it easier for a betting exchange operator to achieve critical mass. (*section 5.7.1*)
- 2 Globally, sports betting mostly involves fixed odds – as against totalizator – betting products. Throughout Australian jurisdictions, the sports betting market is dominated by corporate bookmakers, TABs and a small number of traditional bookmakers operating from racecourse offices. (*section 5.7.2*)
- 3 Sports betting options offered by existing Australian wagering operators involving only two or three outcomes tend to involve odds with an aggregate percentage equivalent closer to 100% than is usually the case with racing betting, where there is an average of around 10 outcomes (the number of runners) per race. (*section 5.7.4*)
- 4 The potential for betting exchanges on sport to incrementally threaten the integrity of the events upon which they operate is relatively less than the potential risks posed to racing integrity by betting exchanges. (*section 5.7.5*)
- 5 Nevertheless, particularly in the case of betting exchange operations on multi-outcome bet types, the facility inherent in betting exchanges for competitors to lay (bet against) themselves has the potential to give rise to concerns for the actual and perceived integrity of sporting events. (*section 5.7.6*)
- 6 The degree of exposure of existing licensed Australian wagering operators to betting exchanges operating on sport is, in some respects, greater than in the case of betting exchanges on racing. The primary reasons for this are:
 - (a) The focus of existing sports betting in Australia on fixed odds products – similar to betting exchanges.
 - (b) The popularity among Australian sports bettors of betting options involving only 2 (or 3) outcomes.
 - (c) The popularity in Australia of “remote” channels of placing sports bets (eg Internet and telephone).
 - (d) The relative ease with which betting exchanges could likely attain critical mass in their operations on those events upon which the bulk of sports betting in Australia occurs. (*section 5.7.7*)

- 7 On the other hand, some key factors tend to reduce the exposure of existing Australian betting operators to betting exchanges on sport. These include:
- (a) The relatively smaller extent to which the odds (prices) on offer in a betting exchange on sport are superior to those obtainable from bookmakers or TABs (fixed odds) – compared to betting exchanges on racing.
 - (b) In many cases, the current situation with British betting exchanges regarding the structure of commissions payable by customers to betting exchange operators tends to favour customers betting in events where there are multiple outcomes to a greater extent than customers betting on two outcome events. (*section 5.7.7*)
- 8 A betting exchange on sport would attract some “new money” (player loss) into the Australian sports wagering market. Also, the competition from a betting exchange may well result in existing licensed sports betting operators offering better odds. However, a possible downside is the potential threat to racing industry revenues from the sports betting activities of existing operators – particularly TABs. (*section 5.7.8*)
- 9 There may exist some further potential downsides associated with the establishment of a betting exchange(s) in Australia operating on sport, in terms of risks to existing revenue streams from wagering on racing. These include:
- (a) Greater exposure of recreational, mainstream punters in Australia to betting exchanges, with the likelihood many would become familiar and comfortable with the betting exchange concept. This could lead to some punters seeking out overseas betting exchanges fielding on Australian racing.
 - (b) An increased risk of referral of Australian punters to an overseas betting exchange operating on Australian racing.
 - (c) The possibility that some wagering turnover on racing with existing licensed Australian TABs and bookmakers would be cannibalised by a betting exchange on sport.
 - (d) The risk of subsequent pressure by an Australian sports betting exchange operator to be allowed to operate on racing events. (*section 5.7.9*)

FINDINGS ON CHAPTER 5.7

The Task Force is of the view that:

- 1 In relative terms, betting exchanges on sport are less likely to give rise to significant additional widespread concerns regarding the actual and perceived integrity of the events involved than betting exchanges on racing. Nevertheless, particularly in respect of betting exchange operations on multi-outcome bet options (such as “wooden spoon” premiership betting or first point scorer in a football game) a facility for competitors to “lay” (bet against) themselves could give rise to concerns regarding actual or perceived integrity for the sporting events the subject of exchange betting.
- 2 A betting exchange in Australia on sport (other than racing) would likely result in:
 - (a) A modest increase in the level of total sports betting in Australia, ie some “new money” in the Australian sports wagering market.
 - (b) Some transfer of turnover from existing licensed Australian sports betting operators, with resultant moderate declines in racing industry and State/Territory Government revenues from these sources. Any future wagering revenue returns from betting exchanges must of course be netted-off against these declines.

The Task Force is of the majority view (the sole dissent being from the Northern Territory) that:

- 3 A betting exchange in Australia on sport would likely result in:
 - (a) Some leakage of racing betting turnover from existing licensed Australian wagering operators over the medium term (around 5 years). While any attempt to quantify the likely amount of any such leakage is necessarily highly speculative and subjective, the amount involved would likely be moderate.
 - (b) Betting exchange operator(s) having relatively greater leverage for exerting pressure on State or Territory Governments to permit betting exchange operations on racing events.

Northern Territory view

The Northern Territory is of the view that there would be minimal migration of race wagering to a sports only bet exchange.

The Northern Territory agrees that any attempt to quantify an amount of such leakage would be purely speculative. The Northern Territory experience suggests that serious punters concentrate on the one medium (sports or racing) while interested recreational punters may cover both.

The Northern Territory sees a regulated licensed sports bet exchange as a growth area that will appeal to the new age internet savvy gambler and we need to cater to the needs of the new gambling generation.

6 MEASURES AVAILABLE TO AUSTRALIAN GOVERNMENTS AND THE RACING INDUSTRY IN RESPONSE TO BETTING EXCHANGES:

Chapter 6.1 MEASURES IN RESPONSE TO BETTING EXCHANGES ESTABLISHED IN AUSTRALIA

SUMMARY OF CHAPTER 6.1

- 1 If a betting exchange were to establish in an Australian jurisdiction, the range of actions available to other State and Territory Governments varies widely – mainly because of the variety of State and Territory wagering legislation. Following are the main legislative measures identified as potentially being available to some Australian States and Territories:
 - (a) Legislation prohibiting the “publication” of betting odds – on racing and, to a lesser extent, sporting events.
 - (b) Legislation restricting the advertising of wagering services – on both racing and sport.
 - (c) Legislation prohibiting the “publication” of lists of race fields without the permission of the body conducting the race meeting.
 - (d) Legislation prohibiting betting on Australian racing with an operator not licensed in Australia.

- 2 The future effectiveness of (a) and (c), and to a lesser extent (b) above in the context of Internet betting exchanges will depend upon the willingness of Courts to apply the Internet publication principles laid down recently by the High Court in Dow Jones v Gutnick to areas beyond defamation.

- 3 The obvious piece of relevant Commonwealth legislation is the *Interactive Gambling Act 2001 (IGA)*. As the IGA stands (at 30 June 2003), there would not appear to be any measures available to the Commonwealth to respond, if it so desired, to a betting exchange commencing operations in Australia. However, some submissions to the review of the IGA underway as at June 2003 advocate an expansion of what is defined as prohibited “interactive gambling services” to encompass betting exchanges.

- 4 Two of the main areas in which the racing industry may be able to respond to the establishment of a betting exchange in Australia would be:
 - (a) (In the case of operations on Australian racing) some action in respect of its intellectual property rights over fields and related information. The thoroughbred racing industry is currently taking steps to enable it to better manage its intellectual property.
 - (b) If a bookmaker licensed by the racing industry or subject to rules of racing/betting was involved in the conduct of the betting exchange the racing industry may be able to act with respect to the bookmaker's licence. In the case of a bookmaker licensed by a Government body, action along these lines may also be available to some State and Territory Governments.

Chapter 6.2 MEASURES IN RESPONSE TO BETTING EXCHANGES ESTABLISHED OUTSIDE AUSTRALIA

SUMMARY OF CHAPTER 6.2

- 1 In the case of an overseas betting exchange targeting Australia (in the sense of betting on Australian racing or sport and/or accept bets from Australians) the range of actions available to State and Territory Governments varies widely – mainly because of the variety of State and Territory wagering legislation. Following are the main legislative measures available to some jurisdictions:
 - (a) Legislation prohibiting the “publication” of betting odds – on racing and, to a lesser extent, sporting events.
 - (b) Legislation restricting the advertising of wagering services – on both racing and sport.
 - (c) Legislation prohibiting the “publication” of lists of race fields without the permission of the body conducting the race meeting.
 - (d) Legislation prohibiting betting on Australian racing with an operator not licensed in Australia.
- 2 The future effectiveness of 1(a) and 1(c), and to a lesser extent 1(b) above in the context of Internet betting exchanges will depend upon the willingness of Courts to apply the Internet publication principles laid down recently by the High Court in Dow Jones v Gutnick to areas beyond defamation.

The applicability or otherwise of the Dow Jones case would not appear to be affected by whether the betting exchange operator is based in Australia or overseas.

- 3 The relevant Commonwealth legislation is the *Interactive Gambling Act 2001 (IGA)*. As the IGA stands (at 30 June 2003), there would not appear to be any measures available to the Commonwealth to respond, if it so desired, to an overseas betting exchange accepting bets from persons in Australia. However, some submissions to the review of the IGA underway as at June 2003 advocate an expansion of the prohibited interactive gambling services to encompass betting exchanges. Some of these submissions make specific reference to the need for action against overseas exchanges.
- 4 Two of the main areas in which the racing industry may be able to respond to an overseas betting exchange targeting Australia would be:
 - (a) (In the case of operations on Australian racing) some action in respect of its intellectual property rights over fields, etc. The thoroughbred racing industry is currently taking steps to enable it to better manage its intellectual property. The practicality of such a course of action would be greater in the case of a betting exchange operator in a first level jurisdiction such as Great Britain.
 - (b) If a bookmaker licensed by the racing industry or subject to rules of racing/betting was involved in the conduct of an overseas betting exchange, the racing industry may be able to take action in respect of the bookmaker's licence. In the case of a bookmaker licensed by a Government body, action along these lines may also be available to some State and Territory Governments.

3 PRELIMINARY

3.1 TERMS OF REFERENCE (February 2003)

1 Composition and objective

A Task Force comprising government officers from the eight Australian States and Territories is to conduct an examination of all aspects of betting exchanges.

The Task Force is to provide a detailed report to the Australasian Racing Ministers' Conference no later than 31 May 2003.

The Task Force is to consult with the racing industry during the course of this examination.

2 Terms of Reference

In respect of betting exchanges, the Task Force is to:

2.1 Examine the legal position in each Australian State and Territory, and under any relevant Commonwealth law, regarding:

- the establishment of betting exchanges within a jurisdiction; and
- the use of betting exchanges by persons in a jurisdiction.

2.2 Identify and assess any and all possible implications, risks and opportunities arising from the establishment of betting exchanges to which Australians may have access.

The issues addressed are to include, without being limited to, the effects of betting exchanges:

- (a) upon the integrity – or perceived integrity – of racing events and participants.
- (b) upon existing Australian licensed wagering operators and hence revenue streams of the Australian racing industry and Governments.
- (c) arising from the use of betting exchanges by Australian licensed wagering operators.
- (d) in terms of responsible wagering practices.
- (e) in terms of crime, principally money laundering activities.

- 2.3 Identify and evaluate any measures available to Australian governments and the racing industry in response to betting exchanges:
- (a) established in Australia, conducting an exchange on Australian racing events.
 - (b) established in Australia, conducting an exchange on Australian sporting events.
 - (c) established in Australia, conducting an exchange on non-Australian races or sporting events and accepting bets from persons residing in Australia.
 - (d) established outside Australia, conducting an exchange on Australian racing events.
 - (e) established outside Australia, conducting an exchange on Australian sporting events
 - (f) established outside Australia, conducting an exchange on any sporting events and accepting bets from persons residing in Australia.

In the course of this exercise, where appropriate, factors applying to different aspects of betting exchange activity are to be identified and considered. These different aspects are to include, without being limited to:

- betting exchanges located locally versus overseas.
- betting exchange operations on racing versus sports.

3 Moratorium on betting exchange activity

A majority of the jurisdictions present at the initial meeting of the Betting Exchange Task Force on 21 February 2003 resolved as follows:

That, at least until Racing Ministers have had reasonable opportunity to consider the scheduled report of the Task Force (ie until 30 June 2003) Australian States and Territories refrain from issuing any licence, permit or other authorisation in respect of any activity broadly in the nature of a betting exchange or associated with the brokerage of wagers. This extends to any operation involving an agency or other contractual arrangement between an Australian wagering operator or other entity and an overseas betting exchange.

The moratorium applies to all betting exchange activity (ie racing and sport).

3 PRELIMINARY (continued)

3.2 WHAT IS A BETTING EXCHANGE?

3.2.1 INTRODUCTION

Betting exchanges on sporting events have existed on the Internet since the mid-1990s.

While there are many Internet betting exchanges around the World, the global market is heavily dominated by one – Betfair. Its address is www.betfair.com.

Betfair is the trading name of The Sporting Exchange Ltd – a company registered in England and founded in August 1999. Betfair operates its betting exchange Web site under the *Betting, Gaming and Lotteries Act 1963* and holds a bookmaker's permit in England and Wales.

Recent media reports¹ allude to the launch of Betfair's Web site in June 2000, with a staff of 3 and growth to 30 (December 2001) and 160 staff (December 2002). Similarly, matched bets on the site have risen from 5 million pounds per week in December 2001 to 50 million pounds in December 2002. These figures encompass betting on all event types.

In correspondence to the Task Force dated 13 May 2003, Betfair indicated it is currently earning commissions (refer section 3.2.4) of around 5 million pounds per month.

The relevance of betting exchanges for Australia increased significantly in February 2003, with the commencement by Betfair of "full-time" operations on Australian racing and sport. Further, it now trades in Australian dollars on these events.

3.2.2 BROAD CONCEPT OF BETTING EXCHANGES

The concept behind betting exchanges is not new or novel. The notion of parties wagering on opposing sides of a contingency (a future occurrence of uncertain outcome) predates either bookmaker or totalizator wagering.

Stock and futures exchanges, upon which betting exchanges are loosely modelled, have existed for centuries. Two notable differences between stock/futures exchanges (on the one hand) and betting exchanges (on the other) are:

- bet exchange trading is not based on any tangible item or commodity
- in the case of betting exchanges, time is of the essence (ie the focus is on individual races). In contrast, items traded on a stock exchange (eg equities in companies) tend to have continuity of existence.

¹ *A Dotcom Licence to Print Money*, Greg Wood, The Guardian, 8 January 2003

The Internet provides an ideal vehicle for betting exchange operations. As is the case in other forms of wagering, it allows the efficient global display of betting information in real time and facilitates automated transactions against pre-established accounts.

3.2.3 RISK FREE FOR THE OPERATOR

Flowing from the principle that a betting exchange transaction emanates solely from the matching of punters taking diametrically opposing positions on a future event, the conduct of a betting exchange is risk-free for the operator.

It should be emphasised this absence of risk refers to the fact an operator's revenue stream is in no way dependent on the outcome of events on which the betting exchange is operating.

However, issues may arise if, for example, a (losing) customer successfully repudiates a credit card transfer in circumstances where the funds have already been paid out to customers of the exchange who had matched bets with the repudiating customer.

3.2.4 HOW THE BETTING EXCHANGE OPERATOR DERIVES REVENUE

In the simplest betting exchange model, customers are matched against each other at odds which are "pure" in the sense that the bet struck between them is at the odds the bet initiator offered (ie the odds are not adjusted by the exchange operator). An exchange conducted on these principles is often referred to as the "person-to-person" (P2P) model.

Customers are then charged a commission by the exchange operator – normally on their net winnings on each event.

In the P2P model, all transactions do not necessarily involve a single person on each side. For example, a bet exchange displaying that a customer(s) wishes to lay horse 3 for \$2,550 at \$3.90 may involve a composite of several similarly minded customers. Hence, a single customer "claiming" a match for the entire amount (ie a bet of \$2,550 at \$3.90) may effectively be matched against several other customers.

There also exists a second model of a betting exchange – often referred to as the "twin-bet bookmaker" betting exchange. This involves, for example, a customer indicating to the "bookmaker" they wish to lay a horse (or, from another angle, back the field to beat that horse) at say, \$4.00 and they are prepared to accept \$1,000. When another customer responds through the exchange that they wish to "take" all or part of that \$1,000 at \$4.00, the "bookmaker" simultaneously writes two bets – one the inverse of the other. The bookmaker then usually charges the winning customer a commission at a predetermined rate.

3.2.5 BOOKMAKER, TOTALIZATOR OR OTHER?

A relevant issue in any debate on the regulation of betting exchanges is that of whether the betting exchange concept would more properly be dealt with in the Australian wagering environment as a bookmaker, a totalizator (TAB) or as a completely separate regime.

The betting exchange concept shares some key traits with bookmakers in Australia, including the offering of fixed odds² and the focus on win and place betting.

At the same time, however, some aspects of betting exchanges are probably more reflective of the totalizator (TAB) wagering environment in Australia. These include their risk-free (for the operator) nature and the fact betting exchanges currently enjoy (albeit from overseas) unfettered access to the off-course punter market – free of minimum bet levels and restrictions on the dissemination of odds. Bookmakers in most Australian jurisdictions are restrictively regulated in these two areas.

Additionally, arguments that the betting exchange concept would most appropriately be accommodated under existing bookmaker regimes in Australia should be evaluated in terms of equity for current bookmakers. As part of their qualitative (ie in addition to financial) contribution to racing, it is widely acknowledged that bookmakers are a major drawcard in attracting punters to race meetings. In return for the right to stand-up in a ring, bookmakers are subject to several obligations, including:

- displaying a fixed price about every runner in each race upon which they are fielding; and
- the acceptance of bets at the prices displayed in accordance with the applicable “minimum wager obligation”, eg Melbourne and Sydney metropolitan rails bookmakers are required to set punters to win at least \$5,000 at any price displayed.

Based on the betting exchange models observed by the Task Force, betting exchanges on racing would not make any direct contribution to attracting punters to race meetings. In fact, it seems more likely the opposite would apply, with punters remaining at home to access betting exchanges on the Internet and view racing on payTV.

3.2.6 A ROSE BY ANY OTHER NAME

It is noteworthy that, for example, two betting exchanges ostensibly identical to the outside observer and punter may be operating – from a licensing and regulatory perspective – on significantly different platforms. This relates to the possible different modes of operation, set out above in section 3.2.4, including the person-to-person model and the twin-bet bookmaker model.

² The main exception to this are the corporate bookmakers licensed in the Northern Territory and ACT – who are permitted to offer betting products based, not on fixed odds, but the payouts of totalizators.

Additionally, a betting exchange not licensed in a jurisdiction can penetrate the wagering market through the use of “white label operations”. This might involve, for example, the operator of a licensed Internet wagering site in one jurisdiction acting as an agent for a betting exchange in another jurisdiction by relaying customers to that exchange.

The above are important considerations in the development and implementation of any legislative or regulatory measures relating to betting exchanges. Such measures should be sufficiently comprehensive and flexible to cover:

- **any and all wagering operations broadly of the nature of betting exchanges – regardless of the guise under which they may be operating.**
- **licensed wagering operators in Australia acting as agents for offshore betting exchanges.**

3.2.7 A BETTING EXCHANGE IN ACTION

A racing example

		To back			To lay		
		Aggregate %:		104.5%	99.4%		
1	Paleface Adios	\$11 (880)	\$11.5 (160)	\$12 (1,250)	\$13 (120)	\$14 (1,000)	\$15 (1,100)
2	Young Quinn	\$7.6 (1,000)	\$7.8 (400)	\$8 (300)	\$8.4 (386)	\$9 (80)	\$9.6 (100)
3	Christian Cullen	\$5.8 (300)	\$6.4 (100)	\$6.6 (100)	\$7 (1,578)	\$7.2 (60)	\$7.6 (1,880)
4	Mount Eden	\$13 (800)	\$14 (60)	\$15 (140)	\$16 (310)	\$17 (240)	\$18 (270)
5	Popular Alm	\$3.4 (900)	\$3.5 (250)	\$3.6 (2,500)	\$3.65 (542)	\$3.7 (661)	\$3.8 (1,859)
6	Eliza Palms	\$8 (170)	\$11 (370)	\$11.5 (260)	\$12.5 (940)	\$13.5 (100)	\$19.5 (100)
7	Village Kid	\$5.8 (550)	\$6.2 (790)	\$6.8 (4,160)	\$7 (3,800)	\$8 (880)	\$8.2 (500)
8	Roballan	\$15 (1,030)	\$16 (90)	\$17 (740)	\$20 (100)	\$24 (250)	\$40 (80)
9	Hondo Grattan	\$18.5 (400)	\$20 (180)	\$21 (90)	\$22 (500)	\$25 (310)	\$28 (200)

“To back” side (left-hand side)

The 3 columns left of centre comprising the “To back” side represent the most competitive pending offers of customers who wish to lay (bet against) the relevant horse. Any customer may back a runner at the odds displayed. On the top line is the odds offered (shown as the return for \$1), while in parenthesis underneath is the amount available at those odds.

The best offer, ie the highest odds at which customers are currently prepared to lay each horse is in the right-hand of the three columns. If a customer offers to lay a runner at better odds than those displayed (eg \$12.00 about *Eliza Palms*) that new offer will then occupy the right hand column and the existing other offers to lay *Eliza Palms* will be shunted to the left.

Conceptually, the right-hand (closest to centre) column on the “To back” side is the equivalent of a bookmaker’s board.

“To lay” side (right-hand side)

Conversely, the “To lay” side represents the pending offers of customers who seek to back the relevant horse. Any customer may now lay (back to lose) a horse at the odds displayed. In parenthesis underneath is the amount which is sought to be placed on the relevant horse.

For example, a customer who wishes to lay *Village Kid* can strike a bet of up to \$3,800 at \$7.00 (or odds of 6 to 1). If the customer took the full amount offered at \$7, the matched bet would be \$22,800 to \$3,800. In other words, the “layer” is staking \$22,800 for a profit of \$3,800 if *Village Kid* is beaten.

Alternatively, if Customer ‘A’ wishes to back *Roballan* but desires better odds than the \$17 currently available, they could offer to back him at, say \$18 and indicate they are prepared to back him with a stake of, say \$200. This offer to back *Roballan* would then occupy the left most (closest to the centre) column in the “To lay” side of the exchange. If Customer ‘B’ then accepts all or part of that offer by laying *Roballan* at the \$18, a bet is struck between ‘A’ and ‘B’. If ‘B’ only wishes to lay *Roballan* for \$1800 to \$100, ‘A’s residual \$100 remains in the exchange as a pending offer.

The customer(s) responsible for the offers to back *Roballan* at \$40 (in the far right hand column) is clearly being optimistic regarding the direction of the market on that horse.

General comments

A customer is usually able to withdraw their offer at any time – provided of course it has not been accepted by another customer.

The odds offered pivot either side of centre. It is impossible for the odds available on the “To back” side to exceed those on the “To Lay” side.

The “Aggregate %” figure at the top of the “To back” side is the total of the percentage equivalents of the best odds currently on offer to lay runners, eg \$4.00 (or 3 to 1) = 25%. It is unlikely this figure will drop below 100% for any extended period, because it would then be theoretically possible for a customer to “Dutch book the field” (ie back every runner at varying stakes and return a profit regardless which horse wins). The inverse applies on the “To lay” side.

A sport example

	To back			To lay		
	Aggregate %:		102.5%	98.9%		
Melbourne Storm	\$2.80 (9,300)	\$2.85 (1,700)	\$2.90 (895)	\$3.05 (2,200)	\$3.10 (2,850)	\$3.15 (3,010)
Brisbane Broncos	\$1.45 (12,450)	\$1.46 (920)	\$1.47 (3,600)	\$1.51 (786)	\$1.52 (1,800)	\$1.55 (9,000)

Above is a hypothetical betting exchange market for head-to-head betting on Rugby League game. Particularly since the introduction of the “golden point” rule, this tends to be a genuine two-outcome betting option.

In two outcome situations, a betting exchange with critical mass has an inherent tendency to maintain alignment between the odds for a team to win and the inverse odds for the other team to lose. For example, backing the Storm to win (\$2.90) is the equivalent of laying the Broncos (\$1.51).

3.2.8 BIGGER IS USUALLY BETTER

One possible drawback of a betting exchange is that the amount which can be staked or layed at the odds displayed is limited to the amount the other customer(s) behind those offers are prepared to bet. For example, a large-scale punter seeking to invest \$5,000 on a runner is hardly going to bother with a low-volume exchange in which the offers to back or lay runners involve small amounts.

However, an exchange with thousands of enthusiastic customers seeking (among them) to back or lay every runner in a race will in turn encourage other customers into the exchange. High levels of activity will usually also result in aggregate % close to 100% (see section 3.2.4). As a result, the exchange odds will likely be better (at least on a majority of runners) than those available with bookmakers or TABs fielding on the same race.

In this respect, betting exchanges are not unlike totalizators. TAB win totalizators on the Melbourne Cup, for example, are extremely robust in that they can accommodate relatively large bets without excessive fluctuations in the approximate odds. In contrast, the TAB win pools on a country greyhound meeting may only be a few thousand dollars, thus severely restricting the size of bets able to be accommodated.

This feature of exchanges (the need for critical mass) creates an effective hurdle to entry for prospective exchange operators seeking to enter the market – particularly on racing, where the field size usually means that betting activity is dispersed over many outcomes.

This point is not lost on the World's largest existing operator, Betfair. In correspondence to the Task Force dated 13 May 2003, Betfair wrote,

In 5 years' time, there will only be a handful of betting exchanges as the economics of the business dictate that the big will get bigger and better while the smaller ones will struggle to achieve critical mass. The number one exchange will always be several times bigger than the number two exchange which will be several times bigger than the number three exchange, and so on. It is vital, therefore, that the number one exchange is one which is embraced by the Australian authorities and is not one which has been forced to operate from offshore. The betting exchange genie is well and truly out of the bottle and punters will not now accept a betting environment without them. If they cannot find the betting exchanges on-shore they will search them out off-shore.

Finally, like totalizators and bookmaker rings, betting exchanges cannot survive without the "soft" money (refer section 3.4) of recreational punters. Professional punters (who win over a period) are only interested in betting if they identify what they consider "value" (also refer section 3.4) in the odds on offer.

3 PRELIMINARY (continued)

3.3 METHODOLOGY OF TASK FORCE'S REVIEW

3.3.1 FORMATION

At its meeting on 17 May 2002, the Australasian Racing Ministers' Conference established the Cross-border Betting Task Force which reported back to the Conference at the following meeting on 1 November 2002. The executive summary of that report included,

Further possible threats to racing industry revenues

While not strictly within the terms of reference, the Task Force is conscious of other possible looming threats to the Australian racing industry's wagering revenue flows.

Several operators have established Internet "betting exchanges" operating on racing. Very recently, Australian racing has become a target. In broad terms, these bet exchanges promote a form of brokerage wagering by providing a matching service between two punters.

The Task Force highlights and acknowledges the importance of ongoing examination and monitoring of threats posed by operations such as these.

Following correspondence among Racing Ministers, government officers from relevant departments in all eight States and Territories met on 21 February 2003 and developed recommended terms of reference for the consideration of Ministers. Ministers agreed unanimously (out-of-session) to the recommended terms of reference, set out in chapter 3.1.

Further, all jurisdictions with the exception of the Northern Territory agreed to the implementation of a moratorium on the issue of any licence for the conduct of a betting exchange (on either racing or sport) until 30 June 2003.

3.3.2 MEETINGS

The Task Force convened formally as follows:

1	Adelaide	21 February 2003	(preliminary meeting)
2	Launceston	9 April 2003	
3	Brisbane	14 May 2003	
4	Canberra	16 June 2003	(final meeting)
5	Teleconference	2 July 2003	

3.3.3 CONSULTATION

Consultation with State and Territory controlling bodies of racing on integrity issues arising

During March 2003, Task Force members corresponded with their respective controlling bodies of racing seeking their views regarding any integrity issues arising as a consequence of betting exchange operations on racing.

Section 5.1.7 is a summary of responses received.

Consultation with stakeholders

During April 2003, following a resolution of the Task Force, the Executive Officer corresponded with Australian racing and wagering stakeholders in the following categories, inviting submissions on the terms of reference.

State and Territory racing controlling bodies (3 codes)
Peak national bodies of racing (3 codes)
State-based bookmaker representative groups
Australian Bookmakers Association
Corporate bookmakers
TABs

Appendix D is a listing of the responses received.

Input from betting exchange operator

The Task Force Chairman was approached by Betfair, the World's largest betting exchange, seeking to provide input to the review.

While emphasising to Betfair that the focus of the review would be betting exchanges generally – as against Betfair specifically – the Chairman agreed to receive the following input from Betfair:

- 9 April 2003, video conference involving the Task Force in Launceston, Messrs Ed Wray and Mark Davies (of Betfair) in London and Mr Jamie Nettleton of Coudert Brothers (solicitors for Betfair).
- 13 May 2003, written submission from Betfair
- 12 June 2003, supplementary written submission from Betfair.

3 PRELIMINARY (continued)

3.4 KEY CONCEPTS

3.4.1 THREE TYPES OF WAGERING SYSTEMS

Totalizator (pari-mutuel) betting

“(The totalizator system) is used to bet on horse racing in most parts of the World. It was invented in Paris in 1865 by Pierre Oller. In France it is called the pari-mutuel, in English speaking countries usually the tote, short for totalizator, the equipment used to register and indicate the total bets and dividends.”³

A totalizator system involves a wagering operator collecting bets of the same type (eg win or quinella) on a particular contingency, such as a horse race. The bets form an “investment pool”.

In making the wager the operator contracts only that the punter’s bet will be placed into a pool. The precise dividend on a successful bet will not become known until after the pool is closed – usually at or just before the time of race start. However, with sophisticated computer totalizator systems, approximate displays provide a reliable guide as to progressive dividends (on the basis of bets placed up to that point) as race start time approaches.

In Australian totalizator systems, a set amount (known as the “commission” or “takeout”) is deducted, leaving a “dividend pool”. This pool is divided by the number of units on the successful outcome(s) to arrive at (after rounding down) a “dividend” – the basis upon which the dividend pool is divided pro rata amongst the holders of winning tickets.

Fixed odds (bookmaker) betting

“Fixed odds” betting is defined as involving predetermined odds⁴.

That is, a wagering operator is required to display a price about each runner in a race. In the language of contract law these prices are an *invitation to treat*. A punter is then entitled to *offer* to place a wager on a particular outcome (runner) at the price displayed. The bookmaker *accepts* the punter’s offer (at the displayed or a negotiated price) and a wager takes place.

The most important distinction between “fixed” odds and “totalizator” betting is that, in the case of the former, the price is settled at the time the contract is entered into.

³ *The Encyclopaedia of Gambling*, Peter Arnold, Collins, London 1977. p 44

⁴ *Concise Oxford Dictionary*, 6th Edition

Bookmakers are generally also permitted to bet “starting price” (or SP) or “top fluctuation”. Both are a composite price of a bookmaker ring. In any event, the payout is still based on odds displayed by bookmakers.

Brokerage wagering (bet exchanges)

Here, instead of directly accepting the wagers, the operator acts as a broker and arranges wagers between punters. The operator serves as the stakeholder and takes a commission on the wager.⁵

3.4.2 “HARD” versus “SOFT” MONEY

To a casino operator, each dollar placed on a “pure” form of gaming (ie no skill element) such as Roulette, is basically homogeneous.

In contrast, the skill element in wagering gives rise to the phenomena of punters who return a profit from punting over a period. In this report, the term “hard money”⁶ refers to bets placed by these successful (“professional”) punters.

These professionals usually combine relevant information on the relative chances of runners in a race with judgment skills in the prediction of the outcome of races to locate “value” among the anticipated dividends available from totalizators and fixed odds from bookmakers.

“Soft money” is used in this report to refer to bets placed by recreational punters who return a net loss over a period.

While by no means the case universally, there is logically an inverse relationship between the size of bets and their “softness”. Much of the betting transacted on racing by way of small bets (say, less than \$50) tends to be from recreational punters who regard wagering as primarily a form of entertainment.

3.4.3 “PERCENTAGES” AND “OVER ROUNDS”

“Odds” or “prices” about outcomes in any event or contingency (eg a horse race or football game) are convertible to a percentage, eg \$4.00 or 3 to 1 equates to 25%.

A racing bookmaker is required to display fixed odds about each runner in a race. When the percentage equivalent of the odds for each runner are aggregated and the total exceeds 100%, the bookmaker is said to be betting “over round”⁷.

⁵ *The Internet Gambling Report*, Anthony Cabot, 1st Edition, page 14

⁶ The expression “hard money” does not in any way connote foul play or improper influence in the outcome of races.

⁷ *The Bookie Book*, Harry Robinson, John Fairfax Marketing, 1985, page 79

In theory, a bookmaker betting to an over round of 20% would make a gross profit of 20% of turnover (stakes of total bets) – provided the odds are unchanged during betting and punters place their bets precisely in proportion to the odds.

In the case of a totalizator, the over round is more or less constant and is a function of the commission rate. For example, in a win pool with a takeout of 14.25% and a rounding down of dividends to the nearest 5 cents on 50 cent units the over round will be about 118%.

3.4.4 “VALUE” IN WAGERING

The theory of successful wagering centres around taking odds which represent “value”.

In a horse race, each runner has a theoretical chance of success (probability) – based loosely on how many times it would win if the race were, hypothetically, conducted 100 times under identical conditions.

If *Lets Elope* would win her race in 20 out of 100 occasions, her theoretical chance of success (the probability of her winning) is 20%. To obtain “value”, a punter would need to back *Lets Elope* at odds better than 4 to 1 (\$5.00) – the equivalent of 20%.

Professional punters might of course lose on an individual race. However, they tend to win over a period because they are able to accurately assess a runner’s theoretical chance of success and combine it with a disciplined and methodical betting approach.

Report of the

**BETTING EXCHANGE
TASK FORCE**

to the

Australasian Racing Ministers' Conference

10 July 2003

(Volume 2 of 2)

*

Foreword

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4 LEGAL POSITION IN AUSTRALIA ON BETTING EXCHANGES

4.1 INTRODUCTION

Term of reference 2.1 states that the Task Force is to,

Examine the legal position in each Australian State and Territory, and under any relevant Commonwealth law, regarding:

- *the establishment of betting exchanges within a jurisdiction; and*
- *the use of betting exchanges by persons in a jurisdiction.*

4.2 LEGAL POSITION IN STATES AND TERRITORIES

(i) AUSTRALIAN CAPITAL TERRITORY

Legal advice indicates that the *Race and Sports Bookmaking Act 2001* does not provide for the licensing of betting exchanges.

Certain aspects relating to the operation of a exchange betting activity may breach provisions of the *Games, Wagers and Betting Houses Act 1901* and, similarly, the *Gaming and Betting Act 1906*.

(ii) NEW SOUTH WALES

Issue 1 – Establishment of betting exchanges within NSW

The two most relevant NSW statutes are the *Unlawful Gambling Act 1998* (UG Act) and the *Racing Administration Act 1998* (RA Act).

Section 9 of the UG Act states,

- (1) *A person must not carry on bookmaking unless the person is a licensed bookmaker.*
- (2) *A person who is a licensed bookmaker must not carry on bookmaking except:*
 - (a) *at a licensed racecourse, and*
 - (b) *when it is lawful for betting to take place at the racecourse.*

Section 4 of the UG Act defines “bookmaker” to include any person:

- (a) *who carries on the business of, or who acts as, a bookmaker, bookmaker’s clerk or turf commission agent, or*
- (b) *who gains, or who endeavours to gain, a livelihood wholly or partly by betting or making wagers.*

It is debatable whether a person operating a (person-to-person) betting exchange would be regarded as:

- receiving or negotiating bets, or
- gaining a livelihood either wholly or partly by betting or making wagers,

and thus in breach of the relevant sections of the UG Act.

Section 29 of the RA Act provides that a person must not publish any betting information – which is defined broadly in section 27. The operation of a betting exchange in NSW would likely breach section 29, as any person operating an Internet betting exchange clearly “publishes betting information” during the currency of the race meetings upon which the betting exchange is trading.

Any licensed NSW bookmaker attempting to conduct a betting exchange in NSW, and hence seeking to post odds on racing events on the Internet or conduct any Internet wagering operations would require an “electronic betting” authorisation from the Minister under section 16 of the RA Act.

Under section 13 of the *Totalizator Act 1997*, it seems the Minister has the capacity to authorise the holder of an off-course totalizator licence (currently TAB Limited) to operate a betting exchange.

Issue 2 – Use of betting exchanges by persons in NSW

Section 8(3) of the UG Act provides:

A person must not make a bet on any horse race, harness race or greyhound race that is to be held anywhere in Australia if:

- (a) *the bet is made by telephone or electronically by means of the Internet, subscription TV or other on-line communications system, and*
- (b) *the bet is made with another person whom the person making the bet knows (or would be reasonably expected to know):*
 - (i) *is not a legal bookmaker, or*

(ii) *is not a person who is authorised under the law of any State or Territory to conduct totalizator betting.*

(4A) *Subsection (3) extends to a bet that is made by a person while in the State even though the other person with whom the bet is made is outside the State (including outside Australia).*

As at 30 June 2003, no betting exchanges were licensed to conduct wagering operators in Australia. Hence, it appears that a person in NSW using an overseas betting exchange to bet on Australian racing may be in breach of section 8(3).

(iii) **NORTHERN TERRITORY**

The *Racing and Betting Act* does not preclude the operation of a bet exchange by a licensed bookmaker.

The operation of a bet exchange may offend provisions of the *Unlawful Betting Act*, in particular section 18 which provides:

A person who bets with a person, other than a person who is-

(a) *a lawful bookmaker; or*

(b) *authorised under the Totalisator Licensing and Regulation Act or any other law in force in the Territory to accept bets,*

is guilty of an offence.

The legal advice advises that the operation of a bet exchange will be classified as an 'excluded wagering service' under section 8A of the *Interactive Gambling Act*.

It further advises that, in relation to the *Corporations Act 2001*, a bet exchange would not appear to fall within the definition of a managed investment scheme, and therefore would not need to comply with relevant provisions of the Act.

(iv) **QUEENSLAND**

The Queensland gambling legislative environment and betting exchanges

Betting exchanges are characterised as providing fixed odds wagering, usually on racing and other sporting events, via the internet. This characterisation is not affected by the manner of setting odds which, instead of being set by the operator like traditional bookmakers, are set by facilitating the computerised aggregation of wagers entered into by the customers.

In Queensland, the provision of gambling services via the internet is controlled principally by the *Interactive Gambling (Player Protection) Act 1998* (IGPPA).

Exceptions were made in the IGPPA where the gambling activity was previously operating under authorising legislation and players participate via telecommunication devices from commercial sites. With relevance to the fixed odds wagering offered via betting exchanges, exceptions were made under s.6(2) of the IGPPA for UNiTAB internet and telephone wagering under the *Wagering Act 1998* (WAct) and on-course telephone betting by bookmakers under the *Racing and Betting Act 1980*.

By conducting an internet-based betting exchange and accepting bets from Queenslanders, Betfair and the Queensland residents betting with Betfair are in breach of s.16 of the IGPPA which prohibits the conduct of an interactive game wholly or partly in Queensland or allowing a person in Queensland to participate in an interactive game unless the game or the operators are specifically authorised.

Consequently, betting exchanges providing fixed-odds wagering via the internet could only operate lawfully in Queensland if the operators obtained licences under the IGPPA. A betting exchange could apply for a licence under the IGPPA. The Minister responsible for administration of the IGPPA has absolute discretion on whether to grant a licence.

However, under the provisions of the WAct, UNiTAB's race wagering and sports wagering licences are held exclusively by UNiTAB until 2014. Any move by a betting exchange to operate within Queensland would appear to be in breach of these exclusivities unless through a commercial arrangement between the betting exchange and UNiTAB.

Section 12 of the WAct exempts persons "carrying on bookmaking under the *Racing and Betting Act 1980* under a racing bookmaker's licence" from the regulatory scope of the WAct. Furthermore, the definition of "bet" in the *Racing and Betting Act 1980* appears to be sufficiently broad to encompass betting exchange operations, e.g: "offers, or agrees or otherwise negotiates to bet or wager or to pay, receive or settle a bet or wager".

However, neither the *Racing and Betting Act 1980* nor the *Racing Act 2002* authorise licensed racing bookmakers to conduct betting via the internet. Further, the rules of betting issued by the Queensland control bodies of racing pursuant to their powers under the *Racing and Betting Act 1980* prevent licensed racing bookmakers from conducting betting exchange operations. These rules include LR131 which compels a licensed racing bookmaker to accept a bet up to a certain limit for each type of bet.

Conclusion

The effect of Queensland's gambling legislation is that, at least until UNiTAB's exclusivity arrangements expire in 2014, the only lawful betting exchange operations within Queensland could be offered either by, or through an appropriate agreement with, UNiTAB.

An internet-based betting exchange accepting bets from Queenslanders without authorisation under the IGPPA is in breach of s.16 of the IGPPA which prohibits the conduct of an interactive game wholly or partly in Queensland or allowing a person in Queensland to participate in an interactive game unless the game or the operators are specifically authorised.

Any Queensland customers of betting exchanges operating without Queensland approval are breaching s.16(2) of the IGPPA by participating in an unauthorised game. However, it would be unusual for investigators to pursue legislative action against any such customer. It is more likely that action would be taken in relation to advertisements as s.164 of the IGPPA prohibits advertising of an unauthorised interactive game in Queensland.

(v) **SOUTH AUSTRALIA**

South Australian legislation in relation to wagering is governed by the *Lottery and Gaming Act 1936* and *Authorised Betting Operations Act 2000*.

The *Lottery and Gaming Act* sets the overall framework for the regulation of wagering in South Australia. This Act prohibits totalisator and bookmaker betting except where permitted by the *Authorised Betting Operations Act*.

A betting exchange can operate in South Australia as it does not constitute a totalisator or bookmaker and therefore does not need to be licensed. In addition, the operation of a betting exchange does not constitute unlawful gaming, which is defined as:

- (a) the playing at or engaging in any game with cards or other instruments or with money, in or as the result of which game any person or persons derives or is intended to derive (other than in his capacity as a player) any part or percentage of any money or thing played for, or wagered; and
- (b) any contravention of or failure to observe any provision of the *Lottery and Gaming Act*, whether that provision relates to unlawful gaming as hereinbefore defined or not.

The South Australian legislation is silent on betting exchanges. As such, an activity that is not unlawful does not require a licence. South Australians can legally wager with betting exchanges irrespective of the location of the exchange. If a person used a betting exchange to effectively operate a book they would commit an offence under section 63 of the *Lottery and Gaming Act 1936*, which provides that no person shall act as a bookmaker. The *Authorised Betting Operations Act 2000* provides for the licensing of bookmakers.

A licensed bookmaker, like any other person in the community, can establish a betting exchange. The licensed bookmaker cannot use that exchange, or any other exchange, to accept (lay) bets unless authorised to do so pursuant to the *Authorised Betting Operations Act*. The licensed bookmaker, if authorised, can only accept bets:

- at or on a racecourse in conjunction with a race meeting; or
- at or in a betting auditorium; or
- at or in a licensed betting shop in the City of Port Pirie; or
- at or in the general vicinity of an approved event.

(vi) **TASMANIA**

Issue 1 – Establishment of betting exchanges within Tasmania

Prima facie, betting exchange operations could be lawfully conducted under licence issued pursuant to the provisions of the *Gaming Control Act 1993*. The regulatory framework allows the Tasmanian Gaming Commission to issue a Tasmanian Gaming Licence to applicants who meet the required regulatory, financial and probity standards for the conduct of approved gaming activities which includes fixed odds wagering and sports betting. It is likely that a new form of gaming licence would be needed to cover betting exchanges if they were to be licensed in Tasmania.

The TOTE could also be authorised to operate a betting exchange through the application of certain provisions of the *Racing Regulation Act 1952*, with the written authority of the Minister and the Treasurer.

The current legislation precludes registered on-course bookmakers from operating a betting exchange.

Issue 2 – Use of betting exchanges by persons in Tasmania

Persons in Tasmania who, by electronic means, place bets on an exchange operating outside Australia do not infringe any Tasmanian law, because the bet is not made until it is placed, and it is not placed until it is received. Such a bet is thus made outside Tasmania. As the law presently stands, there would appear to be no legal impediment to persons in Tasmania betting on an exchange, wherever it is based, but section 114 of the *Racing Regulation Act* would operate to make recovery of winning bets problematic.

(vii) VICTORIA

A party offering betting exchange services in Victoria would be infringing a number of provisions of the *Lotteries Gaming and Betting Act 1966 (Vic)* (L G & B Act) including in particular sections 22, 40 and 66A.

It is unlikely that Victoria residents using a betting exchange in Victoria would be engaging in an unlawful game.

There is an argument that an Internet Service Provider through which an overseas betting exchange site is accessed may also commit offences under the L G & B Act. However, it is considered that a prosecution would be unlikely to succeed.

There is an argument that certain aspects of a betting exchange could constitute a financial market under the Corporations Act and require the operator to hold an Australian markets' licence. However, it is doubted that this is a correct interpretation of the provisions and in any event it is hard to see how such a requirement could be effectively enforced.

(iix) WESTERN AUSTRALIA**Issue 1 – Establishment of betting exchanges within WA**

A person wishing to operate a betting exchange in Western Australia requires a bookmaker licence even though the bet exchange operation does not require the person to make or receive the bet.

The legislation also contemplates that a bookmaker may negotiate a bet as agent for another person without being a party to the bet by stipulating that this type of transaction attracts betting turnover levy.

The rules relating to the type of betting a bookmaker is entitled to undertake (eg betting against a runner to win) are not necessarily relevant as the bookmaker is not a party to the bet.

Issue 2 – Use of betting exchanges by persons in WA

There are presently no provisions dealing with the actions of a punter in placing a bet through an unlicensed-offshore betting exchange. However given the definition of "bets" in the unlawful betting provisions of section 24 of the *Betting Control Act 1954*, it is likely that a punter betting with another person through the medium of an unlicensed exchange located in Western Australia would commit an offence.

4.3 LEGAL POSITION UNDER COMMONWEALTH LAW

The *Interactive Gambling Act 2001* (IG Act), which commenced in August 2001, is essentially the only Commonwealth legislation dealing specifically with gambling issues.

Under the IG Act it is an offence to provide certain interactive gambling services to customers physically located in Australia. This applies to all interactive gambling providers – whether based in Australia or offshore. However, among certain services excluded from these are broad categories of wagering services.

The broad framework within which this is achieved in the IG Act is as follows,

Section 5(1) sets out what is regarded in the Act as an “interactive gambling service”. Prima facie, betting exchanges trading over the Internet would be included.

However, section 5(3) sets out a range of services which are excluded from the operation of section 5(1). These include:

- a telephone betting service; and
- an “excluded wagering service”*.

* This is defined in section 8A(1) as a service to the extent to which it relates to betting on, or on a series of, any or all of a horse, harness or greyhound race or a sporting event.

However, section 8A(2) states that the above exclusion in 8A(1) does not apply to what can broadly be regarded as “in the event betting” or “micro event betting”.

Another important principle is that of the “Australian-customer link”. Section 8A states that this occurs when any or all of the customers of the service are physically present in Australia.

For the purposes of the Task Force review of betting exchanges, the most relevant IG Act offence provisions are those in section 15. It provides that a person is guilty of an offence if they intentionally provide an “interactive gambling service” and the service has an “Australian-customer link”.

It appears highly likely that an Internet betting exchange (on racing or sport) would fall within the section 8A(1) definition of an “excluded wagering service”. On this basis, it is not an offence under section 15 of the IG Act to provide betting exchange services to Australians, from either within Australia or overseas.

However, it would appear technically possible that the IG Act could be amended to wholly or partly remove betting exchanges from the classification as an “excluded wagering service”.

Another section of the IG Act attracting considerable comment as part of the current review of the Act is section 69A. It states,

- (1) *The regulations may provide:*
 - (a) *that an agreement has no effect to the extent to which it provides for the payment of money for the supply of an illegal interactive gambling service; and*
 - (b) *that civil proceedings do not lie against a person to recover money alleged to have been won from, or paid in connection with, an illegal interactive service.*
- (3) *For the purposes of this section, an “interactive gambling service” is an illegal interactive gambling service if, and only if, the provision of the service contravenes a provision of this Act that creates an offence.*

In its call for submissions to the review of the IG Act, the Department of Communications, Information Technology and the Arts states in respect of section 69A,

The Government has not made any regulations under section 69A but has consulted stakeholders on how their intent could best be given effect. The issues are complex and the Government is concerned not to create unintended regulatory effects or to impose undue regulatory burdens.

4.4 SUMMARY

- 1 re: the first issue identified in term of reference 2.1 – the establishment of betting exchanges within Australian States and Territories.

It appears that, in most States and Territories, under the current wagering legislation regimes, it would not be possible to establish a betting exchange against the will of the respective Governments.

Notwithstanding this, it appears possible that several State or Territory Governments could – if they desired – issue a licence or authority for the conduct of a betting exchange on racing and/or sport.

In respect of Commonwealth legislation, under the *Interactive Gambling Act 2001*, the only significant prohibition against Internet wagering operations (which presumably encompasses betting exchanges) relates to in-the-run betting, ie betting after an “event” has commenced.

- 2 re: the second issue identified in term of reference 2.1 – the use of betting exchanges by persons in a jurisdiction.

In the case of most Australian States and Territories the use of a betting exchange by a person physically present in a jurisdiction would not appear to be breaching legislation.

The main exceptions are:

- New South Wales and Western Australia, which have similar legislative provisions making it an offence for a person physically present in the jurisdiction to bet on an Australian race with somebody who is not a licensed wagering operator in Australia. This provision is of most relevance in the case of betting with overseas betting exchanges.
- Queensland, where under section 16(2) of the *Interactive Gambling (Player Protection) Act 1998*, a person in Queensland who uses an Internet betting exchange not licensed or authorised under the Act could be technically in breach as participating in an unauthorised game. Advice from the Queensland membership is, however, that legal action against a player in these circumstances would be unlikely.

5 EFFECTS OF BETTING EXCHANGES

5.1 EFFECTS ON INTEGRITY OF RACING EVENTS AND PARTICIPANTS

Term of Reference 2.2(a)

5.1.1 INTRODUCTION

Much of the global debate over the past twelve months or so on the merits or otherwise of betting exchanges on racing events has centred on possible effects – both positive and negative – on racing’s integrity. At the centre of much of the controversy about betting exchanges has been the novelty, in terms of traditional wagering products, of punters being able to “back a runner to lose” (or “lay” a runner) in a betting exchange.

5.1.2 THE IMPORTANCE OF RACING’S INTEGRITY

Racing legislation and rules

Parliaments in Australia have long recognised the importance of ensuring that races are conducted fairly and honestly. This is reflected in statutes creating the State and Territory controlling bodies of racing.

For example, in respect of New South Wales thoroughbred racing, section 13(1) of the *Thoroughbred Racing Board Act 1996* states,

The Board has the following functions,

- (c) to initiate, develop and implement policies conducive to ... the protection of the public interest as it relates to the horse racing industry,*
- (e) such functions as may be conferred or imposed on the Board by or under the Australian Rules of Racing*

In turn, the Australian Rules of (Thoroughbred) Racing include provisions such as AR 135, which states,

- (a) Every horse shall be run on its merits.*
- (b) The rider of every horse shall take all reasonable and permissible measures throughout the race to ensure that his horse is given full opportunity to win or to obtain the best possible place in the field.*

Similarly, the (Australian) Rules of Harness Racing provide,

147(1) *A driver shall race a horse on its merits.*

148(1) *A person shall not direct, coerce, persuade or assist a driver to race a horse otherwise than on its merits.*

General criminal and consumer protection law

Action by a person designed to ensure a runner is beaten, thus facilitating certain persons making a profit from related wagering can also represent an offence under either general criminal statutes or specific gambling statutes which exist in all Australian States and Territories. Examples of participants being convicted of criminal offences under such circumstances include Mr Danny Hobby, the jockey who alighted prematurely from *Strike Softly* in the 1983 Bunbury Cup and Mr Chris Gleeson, the trainer/driver who experienced hopple malfunction with *Coloresque* at Harold Park in 1995 (refer section 5.1.10).

Separately, there is generic consumer protection legislation at both Commonwealth (*Trade Practices Act 1974* – part V) and State levels. It seems possible that deliberate action by a racing participant aimed at ensuring their runner loses would involve misleading or deceptive conduct.

However, successful action by or on behalf of punters leading to recovery of losing bets in such cases is rare.

5.1.3 PUNTER PERCEPTIONS REGARDING RACING INTEGRITY

In many forms of gaming, the operator bears onerous obligations to ensure that random outcome generation mechanisms inherent in the game are operational. For example, it is essential that keno draws afford each number an equal chance of success. If, hypothetically, a keno operator were found to have the ability to alter the relative chances of numbers being drawn after bets had been placed, regulators would likely take action against the operator for a breach of licence conditions.

As discussed below (section 5.1.5, *Wagering Integrity versus Racing Integrity*) a parallel requirement in racing is that races are run fairly, with all runners endeavouring to win or at least finish in the best possible position. Unlike gaming, wagering involves an independent outcome generation mechanism – such as a horse race or a football game.

Relevant rules of racing covering the conduct of participants in races often involve an element of mens rea (culpability). For example, a jockey who makes a split second decision to stay on the rails and await an opening likely to occur would not usually be held accountable if, through no fault of the jockey's that does not eventuate. Similarly, there are practical limitations on the extent to which trainers can be held accountable in respect of a runner's fitness.

However, by way of example, the fact stewards extend to a jockey a benefit of the doubt does not necessarily mean that punters will view the same incident as favourably. If punters believe there is a significant risk that a runner they back will not be “trying” or that jockeys in a race are attempting to assist the chances of another runner there is a real risk punters will lose confidence in racing and redirect their discretionary expenditure elsewhere.

An example was Sydney harness racing in the mid-1970s. At one point, victories at Harold Park by some leading drivers were routinely greeted by hostile demonstrations by thousands of punters. There was a widespread belief among punters and bookmakers that the driving ranks had been infiltrated by an infamous underworld figure and that races were being “rigged”. The NSW Trotting Club went to great lengths⁸ to enforce a ban against a certain punter attending its harness race meetings.

Notwithstanding that not a single driver was charged by stewards with being involved in alleged race rigging during this period, harness racing in Sydney again became known as the “red hots” and entered a period of sustained decline, with punter and bookmaker numbers and betting turnover falling dramatically. Significant numbers of punters believed some drivers had acted improperly with impunity in that, notwithstanding the strength of evidence that they were involved in improperly influencing the outcome of races and serious breaches of the rules, the drivers concerned were permitted to continue their participation in the sport uninterrupted.

This relevance of punter perception exacerbates the need for the racing industry to minimise opportunities for participants to benefit financially from conduct disadvantageous to their own runner’s chances of success in a race.

The commencement of betting exchange operations on a jurisdiction’s racing – and with it the facility for anybody to lay runners – in the absence of accompanying enhancements to the levels and scope of stewarding functions (eg race surveillance, drug testing) may well lead to a decline in the level of punter confidence in the integrity of that racing.

On this issue of punter perception, the former Chief Steward of the Australian Jockey Club stated the following in a presentation to the 2003 Asian Racing Conference,

The perception of our sport needs plenty of enhancement. Punters love rumours and will listen to and put credence in the most outrageous and improbable street-corner stories and tips. Regrettably, too, many people believe racing is institutionally bent anyway.

⁸ *Forbes v NSW Trotting Club* [1977] 2 NSWLR 515

5.1.4 RACING AND GOVERNMENT WAGERING REVENUES

Licensing of wagering operators

In Australia, all eight States and Territories have a single TAB (each with monopoly rights over totalizator betting in the respective jurisdiction) plus a bookmaker licensing regime. The regimes for the licensing of bookmakers varies markedly among jurisdictions. In some jurisdictions it is primarily the responsibility of the racing industry, whereas in others it is the domain of government or semi-government bodies.

Racing revenue flows from wagering

As an indication of the degree of dependency of the racing industry in Australia on revenue from wagering, out of total TAB totalizator turnover on racing Australia-wide in 2000/01 of around \$10.6 billion, the racing industry received around \$600 million. This translates to State and Territory racing industries earning around 4.5 cents of each dollar bet with their respective TABs.

Revenue flows to the racing industry from total annual bookmaker turnover on racing of around \$2.3 billion are a much smaller proportion of turnover.

Government tax revenues from wagering

As an overall guide, the table below sets out the approximate earnings of each State and Territory Government from totalizator (TAB) betting on racing with respect to 2000/01.⁹

	Off-course	On-course	Totals
	<i>\$mil</i>	<i>\$mil</i>	<i>\$mil</i>
ACT	4.4		4.4
NSW	122.4	8.6	131
NT	5.4		5.4
QLD			26.7
SA	13.9	1.3	15.2
TAS	0.7		0.7
VIC	86.6	6.4	93
WA	42.3		42.3
TOTAL :			318.7

In addition, GST receipts to the Commonwealth Government from TAB operations are around \$150 million per annum.

⁹ Australian Gambling Statistics, 2000/01, Tasmanian Gaming Commission

5.1.5 WAGERING INTEGRITY VERSUS RACING INTEGRITY

In the context of wagering on racing, integrity is relevant in two separate respects:

- The integrity of the wagering itself. For example, in totalizator betting this involves measures such as ensuring that no bets are placed after a race has commenced.
- The integrity of actual races on which the wagering occurs.

This distinction between wagering integrity and racing integrity is significant in this examination of betting exchanges.

The debate on betting exchanges and integrity has focused heavily on racing (as against wagering) integrity. Included among the reasons why betting exchanges tend not to give rise to significant issues or risks in respect of wagering integrity are:

- Customers in betting exchanges enter into bets at fixed odds, determined when the bet is made after punters are “matched”. Contrasted to this, in totalizator betting for example, wagering integrity concerns are far greater because payouts are less transparent to the punter and hence exposed to greater risk of negligent or fraudulent conduct by wagering operators.
- Unlike a bookmaker, (or a TAB betting fixed odds) a betting exchange operator is not exposed to risk associated with the outcome of events on which it operates. Hence, for example, allegations do not occur such as failing to set a punter at a price displayed in accordance with an applicable minimum wager obligation (eg a bet to lose up to \$5,000 in the case of rails bookmakers fielding at metropolitan Melbourne and Sydney thoroughbred race meetings).

Hence, this section focuses on the possible effects of betting exchanges on the integrity of the conduct of racing events.

Importantly, however, this emphasis on racing integrity means that any causative relationship between the existence of betting exchanges and a diminution in the integrity of the conduct of races covered by the betting exchanges results in adverse flow-on consequences for all forms of wagering on the relevant racing events. Punters will likely be less inclined to bet on affected racing events with bookmakers and TABs (as well as the betting exchanges themselves) if they perceive that races covered by betting exchanges are less likely to be run fairly and honestly because, for example, betting exchanges represent an efficient and easily accessible means by which unscrupulous racing participants can illicitly profit from the defeat of their runner.

5.1.6 VIEWS ON HOW BETTING EXCHANGES CAN ADDRESS CONCERNS REGARDING RACING INTEGRITY

As part of its deliberations, the Task Force invited a range of interested parties to make submissions on the terms of reference. Several respondents opined that it may be possible to deal effectively with concerns regarding betting exchanges and racing integrity. It was also argued that betting exchanges actually have an overall positive effect on racing integrity. Following are portions of the submissions to the Task Force from the Australian Racing Board, IASBet (a Northern Territory “corporate” bookmaker) and Betfair (a leading British betting exchange) on betting exchanges and racing integrity.

Australian Racing Board

Betting exchanges are not bookmakers per se, but platforms facilitating bettors to lay and take bets with each other, with the exchange taking commissions from winners. Putting to one side “field against favourite” betting, this form of wagering creates a substantially new type of betting contingency – the capacity to bet that a particular horse will not win.

The integrity concern that is frequently raised in relation to betting exchanges is that the ability to lay bets through exchanges and thereby profit from a horse losing carries a temptation for either racing personnel (owners, trainers, jockeys, stable staff) or an external party to compromise racing integrity. The concern here is the potential damage to racing’s credibility in the minds of customers and the public at large from the perception that someone who has been able to influence the outcome of the race has been set to profit from a laid bet on a beaten favourite.

While some overseas racing jurisdictions are concerned that the integrity issues associated with betting exchanges are ineradicable, in the United Kingdom the body responsible for policing the thoroughbred racing industry has developed a series of measures to address these issues, including prohibitions on the laying of horses by licensed persons and access to betting exchange transactions records.

In this regard it may be of some assistance to note the following statement from the UK Department of Culture, Media and Sport Position Paper: Licensing of Betting Intermediaries: Betting Exchanges¹⁰.

Integrity of betting events

15 Representations have also been made to the Department that betting exchanges involve a new risk to the integrity of betting events. These representations observe that the exchange allow persons with ‘inside knowledge’ to exploit less informed punters. This threat seems to be particularly relevant to events, like horseracing, where there is a

¹⁰ This paper, dated May 2003, is Appendix E.

multiplicity of possible outcomes. Knowledge that one outcome is highly unlikely allows an individual to then offer apparently attractive odds on the exchange. One scenario might involve a user laying long odds on a horse otherwise thought to have a reasonable chance of success, on the basis of knowledge of an injury or illness.

- 16 Of course, the use of inside knowledge for personal profit, however inappropriate, is not new. It existed long before betting exchanges came into being, and the threat of corruption would be present even without the exchange model.*
- 17 The responsibility for tackling it must fall primarily on the sport, and its regulators. Regulators must decide what restrictions to place on the betting activities of participants and other licensed persons. If they regard betting by some participants to be a risk to the integrity of their sport, they must take action to prevent it happening. The Government does not license people involved with sport, and cannot therefore restrain their private activities. Sports regulators can. So, for example, the Jockey Club has recently decided to prohibit licensed trainers from laying horses they train, although it would have been open to the Club to allow them to do so on the condition that the fact that any trainer laying one of his own horses had to make a public declaration to this effect, so that everyone contemplating betting on that horse was aware of the position*
- 18 What the Government, and the Gambling Commission, can do is to give its full support to sporting regulators in their endeavor to maintain the very highest standards of integrity. Where the Commission is alerted to suspicions of wrongdoing, it will be able to conduct an investigation. It will require betting operators to produce specific information on events and / or customers and will be in a position to assess whether an operator has, knowingly or otherwise, accepted a bet from a prohibited person, or has otherwise not acted appropriately. It will be able to publish such findings.*

Our submission is that, while betting transactions conducted by betting exchanges may not conform to the traditional parameters for on-course bookmaker operations, this does not, of itself, establish that new forms of betting transactions which may be facilitated by betting exchanges' lack integrity.

The general experience in Australia has been that incidents of undesirable betting transactions are minimised where the mask of anonymity is removed and scrutiny and disclosure of such transactions is available to controlling bodies. In addition, we note that, as presently provided for in the Australian Rules of Racing, certain categories of licensed persons (for example jockeys) are prohibited from betting. Once it is known that betting transactions can be and are monitored, and there is a real likelihood of being detected, then the incidence of undesirable transactions is likely to decrease.

It may also be noted that the account and debit based nature of betting exchange operations provides an audit trail for regulating associated criminality such as money laundering.

In short, we believe that access by controlling authorities to names and details in relation to betting transactions made on betting exchanges, is critical for the maintenance of racing's integrity. One means of achieving this access could be through binding contractual arrangements between a betting exchange and Australian racing control authorities, provided of course that there was some basis upon which the Australian Racing Industry could insist that betting exchanges enter such an agreement. (If a betting exchange could with impunity refuse access to its records then these integrity issues would become more difficult to address.)

In this regard, annexed to this submission is the Memorandum of Understanding that is proposed between Betfair and The Jockey Club to achieve access by the Club's stewards to names and details in relation to betting transactions on British racing events.

In view of the above observations, it is submitted that the most appropriate response to the integrity issues that may be associated with betting exchanges is to concentrate on achieving the following outcomes:

- gaining access for real time monitoring of betting exchange transactions including access to the identity of all bettors*
- expanding current race supervision and drug testing protocols to place a greater level of scrutiny on losing entrants*
- enhancing controls on the flow of pre-race information about the preparation and expected performance of entrants.*

It is our submission therefore that the integrity issues that may be associated with betting exchanges are not such as to by themselves lead to a conclusion that betting exchanges should be banned. On balance we believe that the better course would be to establish effective means of addressing those integrity issues that are raised by this medium of betting.

IASBet (Australian corporate bookmaker)

Integrity issues

Overview

One of the prime issues confronting the operators of Player-to-Player/Exchange wagering platforms is the issue of integrity. Critics of betting exchanges argue that the nature of P2P applications—that they allow all users to both back and lay bets—is inherently dangerous to the betting process. Also, the mechanisms within P2P applications, allowing users to 'back' losing propositions, also encourage fraud. However, IASbet contends that betting exchanges, because they allow for completely transparent markets, and sure-fire audit trails, are not

encouraging misbehaviour but are actually helping to highlight and prevent fraud.

The current processes within betting exchanges to address integrity issues are detailed and comprehensive. As Betfair (the world's leading provider of exchange wagering) has said: "We conduct tests on a daily basis, not just to look at possibilities such as a trainer laying his own horse, but also to counteract credit card fraud, money-laundering and all the other issues, which are inherent risks within the site unless they are being monitored. We know who has won every bet, how that bet has been placed and exactly when that bet has been placed, arguably in a way which makes us more secure than the conventional cash bookmaker."

IASbet has similar provisions.

The specific integrity concerns are addressed in the questions below:

Aren't betting exchanges inherently unfair and encourage fraud?

Betting exchanges do not suffer from any unique integrity issues in Internet betting. In fact, betting exchanges are the most transparent markets in the betting world. Operators such as Betfair impose strict security procedures, such as:

- Undertaking money laundering procedures such as refusing to accept cash and monitoring betting activity for any suspicious transfers between accounts;*
- Continually monitoring all transactions that take place on the exchange to ensure that any improper activity, whether it be betting related or not, can quickly be identified and prevented;*
- Not permitting any betting exchange employees to bet on the exchange*
- Utilising software that has a secure and scaleable operating environment.*

Don't betting exchanges pose added risks to the integrity of the racing industry?

Transparent markets, audit trails, and monitoring are the only way to combat fraud in horse race betting. Betting exchanges act vigorously in all three regards. Recently, some racing organizations have rightly began addressing the "cause" (and not the affect—the betting) of many integrity issues—those persons that may use betting exchanges to manipulate results:

The UK Jockey Club has introduced a requirement, which makes it an offence for a trainer to lay a horse through a betting exchange account.

Although some critics point to "Field against Favourite" betting, (that this form of wagering creates a substantially new type of betting contingency), this type of wagering is not new. Betting exchanges make it much easier to place such a wager, but within a truly transparent market and controls in place, there is no increased risk.

How can regulators combat fraud within betting exchanges?

Betting exchanges have valid business reasons to ensure their own operations meet stringent security and integrity guidelines. Betting exchanges must answer to their customers, and also to the betting industry as a whole. The exchange operators are in the best position to release information regarding bets, particularly who is making them, and they have an incentive to share this information with the appropriate regulators.

Regulators could consider, for example licence conditions, which include the following provisions:

- 1 bet exchange operators must be subject to stringent probity investigations including criminal history checks;*
- 2 the bet exchange operator may only bet on authorised events;*
- 3 bet exchange operators must make all transactions available to sports (including racing) governing bodies when instructed;*
- 4 bet exchange operators must monitor and report suspicious transactions;*
- 5 bet exchange operators must (a) have knowledge of their customers, and (b) not allow customers to bet in events in which they're involved.*

Betfair (a UK betting exchange)

Betting exchanges represent a major step forward in the fight to maintain the integrity of racing (and other sports). There are, sadly, many participants in the industry who recognise the competitive alternative presented by exchanges and who, as a result, are keen to use any tactics they can to discredit the exchanges. Increasingly they are attempting to portray exchanges as a threat to integrity when in actual fact the opposite is true.

Betfair records the details of every single transaction placed on its website and it keeps these records indefinitely. We record the details of every single deposit and withdrawal, both those that are successful and those that fail. We don't accept cash and thus every single payment in and out of the system is recorded and assigned to a known individual. We record the details of every single bet placed on the system whether those bets be matched, unmatched, voided, lapsed, cancelled, or altered in any way. In short we maintain a 100% audit trail of everything that takes place on the website. It is not possible to keep a more exhaustive audit trail than the one that we keep.

Much has been made about the anonymous nature of betting exchanges. However, while punters are anonymous to each other they are absolutely not anonymous to us. We can link every punter to bank cards, bank accounts etc. When coupled with the comprehensive audit trail it means that we are able to trace the movement of every single penny of cash through the system and assign those movements to known individuals. This is in stark contrast to any cash based system (which includes traditional bookmakers, the TAB's etc) who do not record the identity of the punter when they take his bet. We have already used our audit trail in a couple of investigations with the UK's Customs & Excise and they commented to us that they had never had access to such high quality information in any of their previous enquiries.

The use of the extensive audit trail, as outlined above, will address the concerns about licensed persons using the exchange and laying horses with which they are connected and which they are subsequently ensuring will not win, because the very existence of such a detailed audit trail will be the most powerful deterrent available. Should any licensed person still continue with any activity that breaches the rules of racing, then the audit trail will provide the perfect evidence to investigate that person and thus allow the racing authorities to take whatever action is necessary.

There is, however, another important point to make and that is that any licensed person who wants to profit from a horse not winning has been able to do this for years using existing, traditional, betting outlets. For example, he can use an agent, and "partner" with an unscrupulous bookmaker. While audit checks exist there as well, a skilful bookmaker will always be able to cover his tracks effectively. However, most importantly the same profit can easily be made via the TAB's. Imagine the scenario where you know that your horse, which is an even money favourite for the race, will not win. If you make a conservative assumption that the total book on the race with a TAB is 120% then by effectively removing the 50% shot that you know cannot win you can back everything else in the race on a book of just 70%, guaranteeing a profit of 43% (ie the "under-round" of 30% as a percentage of the total book). In marked contrast with what would happen on an exchange, in this instance it is easy to disguise the trades (eg pay in cash, strike the bets with different organisations etc.)

The bottom line is that it has always been possible for people to profit from a horse losing. With the advent of betting exchanges the likelihood of them doing so without being caught has been dramatically reduced. The positive impact that exchanges bring to the integrity debate is best summarised by The Daily Telegraph's racing correspondent, Richard Evans, who wrote that "Betfair has willingly done more in its short existence than the traditional bookmakers have done in a lifetime to satisfy the regulatory and tax requirements of Government and racing authorities – including establishing a comprehensive audit trail covering all bets."

5.1.7 VIEWS OF AUSTRALIAN RACING ADMINISTRATORS AND STEWARDS

The controlling bodies for each of the three codes of racing in each Australian State and Territory were invited to provide their views on any issues for racing integrity arising from betting exchanges.

	CONTROLLING BODY		DATE
ACT	Canberra Race Club Mr D Foley, CEO	Joint letter from the 3 ACT race clubs	7 April 2003
NSW	RacingNSW, Mr M Hill, CEO	Joint response – 3 NSW controlling bodies of racing	27 March 2003
NT	Darwin Turf Club Mr D Aldred, CEO		2 April 2003
QLD			
SA	Thoroughbred Racing SA Mr G Loch, Chairman of Stewards		7 April 2003
	Harness Racing SA Mr M Carey, CEO		3 April 2003
	Greyhound Racing SA Mr S McQueen, CEO		4 April 2003
TAS	Racing Services Tasmania	Prepared in consultation with stewards from 3 codes in Tasmania	
VIC	Racing Victoria, Mr N Felke, CEO		7 April 2003
WA	WA Turf Club, Mr P Neck, CEO		4 April 2003
	Greyhounds WA Mr K Norquay, CEO		9 April 2003

SUMMARY OF INDIVIDUAL RESPONSES

Australian Capital Territory (Joint submission by the 3 Canberra race clubs)

In general we believe that the racing industry should oppose any move to license Betting Exchanges in this country and request that Governments legislate to prohibit them setting up if integrity concerns can not be addressed and payment of an agreed "product fee" to the racing industry is not a prerequisite of that licence being issued.

More specifically, the integrity issues relating to this form of gambling are of great concern to our clubs. We believe that any avenue that allows people to wager on horses or greyhounds to lose, threatens the integrity and public confidence in the racing industry.

The ACT submission then made the following points:

- People could profit from preventing a runner performing at its best. It is far easier to prevent a runner from winning through the use of illicit drugs than it is to improve performance.
- As a consequence of the facility to back runners to lose in a betting exchange, every runner in a race would become a target for drug administration.
- The single most significant reason for opposing betting exchanges is anonymity. Any inadequacies in information flows from betting exchanges could lead to trainers, jockeys, drivers, etc betting against their own runners without fear of their activities being traced by Government departments, stewards or Police.
- The second major concern regarding betting exchanges on racing is the potential for adverse effects on existing racing industry revenue flows.

In order for both of the concerns listed above to be best managed in circumstances where betting exchanges are permitted, the three Canberra racing clubs would urge the government to consider issuing the racing industry with the exclusive license to conduct a betting exchange. This would allow the racing industry to minimise the integrity and revenue threats that are considered to arise in a wagering environment that includes betting exchanges.

New South Wales (Racing NSW, for the 3 NSW controlling bodies)

The Racing NSW submission focused on several respects in which betting exchanges increase risks to racing integrity:

- Anonymity of “layers” in betting exchanges. At present, bookmakers are the only (legal) “layers” and the betting activities of individual bookmakers are open to scrutiny.
- At present, trends relating to the movement of fixed prices in (bookmaker) betting rings are highly transparent. The existence of fixed prices in “cyberspace” (Internet betting exchanges) decreases this level of transparency.
- In a betting ring, the identity of layers (bookmakers) is easily ascertainable in real time – prior to a race. In a betting exchange, identity is likely to become available only after a race is run.
- Absence of the need for a conspiracy. At present, a rogue trainer seeking to benefit from “laying” his or her horse would need to conspire with a bookmaker. In a betting exchange a participant can lay a horse directly – possibly through the use of a “bowler”. Measures prohibiting the use of betting exchanges by trainers and other categories of participant or licensee are unlikely to be effective.

- The current regime of punters backing runners to win is much healthier than the facility offered by betting exchanges of punters backing runners to lose.
- Notwithstanding betting exchange proprietor claims regarding the benefit of the traceability of all transactions to an identified account holder, this information is more likely to become available after a race. Further the identity of the “real layer” can easily be concealed.

Northern Territory (Darwin Turf Club)

The Darwin Turf Club response raised a number of areas cited by the Northern Territory Chairman of Stewards as giving rise to concerns:

- It would be essential that satisfactory monitoring systems are in place in a betting exchange to enable stewards to identify the source of all backing and laying.
- A risk is that the owner, trainer, etc backs a runner to lose. “This would open a *Pandora’s Box* – particularly if the runner concerned was a favourite.”
- The racing industry relies heavily on wagering turnover. In turn, wagering turnover is dependent upon public confidence in the integrity of racing. If confidence levels decline, wagering turnover will decrease consequentially and the racing industry will suffer.

If betting exchanges are introduced there seems little hope of protecting the integrity of the (racing) industry without stringent controls. Such controls seem unlikely to be and/or extremely difficult to put in place. If this is so, betting exchanges may prove to be extremely detrimental to the racing industry.

South Australia (Thoroughbred Racing SA)

Integrity is a common thread that binds our Industry together. The principle of integrity dictates the actions of all participants from the individuals investing millions of dollars into the ownership, breeding and racing operations to the \$2 punters.

If any individual has reason to believe the process in which they are participating is not operated honestly or is subject to corruption and unfair practices, they will act accordingly. They will seek out other pursuits. TRSA pointed to seven areas of concern:

- Will an exchange be bound by the Rules of Racing?
- Will an exchange be bound by a Probit Code or a Code of Conduct?
- What responsibilities exist for an Exchange to divulge client and transaction information?
- What impact does the Commonwealth Privacy Act on the Industry's ability to access information?
- What ability will the Industry have to track 'the money trail'?
- What ability will the Industry have to prevent disqualified persons or convicted criminals from being active?
- What ability will the Industry have to identify either a layer or a bettor and the ability of persons to 'lay' a runner to lose?

In respect of the last point above, TRSA suggested that, in the case of "layers" operating with some form of edge or knowledge, return becomes guaranteed. The TRSA submission further stated,

It would be impossible for nefarious elements of our society to resist this proposition.

Potentially, a trainer or jockey could or cause others to 'lay' their runner which they consider could 'legitimately' not win an event. They could also 'lay' or cause to have 'laid' a runner to not win an event having interfered with the runner in some way. Without access to an Exchanges records there may not even be a need for such persons to operate in disguise.

More threatening, to my point of view, is the potential to bring out the worst elements of character in a minority of persons presently licensed and the very real potential for criminal elements to become involved, since funds might be readily 'laundered' with no downside whatsoever. Criminals would no doubt respond to the prospect of not only getting full value for their dollar, but profiting from the exercise.

I have provided comment¹¹ on a range of strategies, which would go to bolstering the public's perception and the integrity of the Industry. Generally, however, most processes mentioned involve major expenditure.

Since it would appear that a Betting Exchange would not contribute significantly to such expenditure, I can only form the view that they are parasitic to our Industry and undesirable in view of the concerns expressed above.

¹¹ Possible available measures include pre-race examination of runners, increased racecourse security over runners, greater monitoring of gear changes, greater pre-race monitoring of betting activity, increased video surveillance of races, increased swabbing of runners, increased security measures over licensed persons and stables/kennels.

South Australia (Harness Racing SA)

The concept of betting exchanges goes against the accepted principles of gambling on the traditional forms of racing where betting to win is the principle focus.

In discussion with the Chairman of Stewards regarding this matter the issue of integrity is a major concern. How can Stewards probe the betting transactions on any racing incidents that may require investigation?

In summary there appears three alternatives for Government Racing Offices to consider:

- 1 Outlaw completely, thus making it illegal for an Australian person to bet on overseas betting exchanges.*
- 2 Charge betting exchanges a fee for product plus a percentage of their holdings. With this option the Industry should have availability to see their transaction sheets.*
- 3 All Racing Codes and/or the TAB's start up there own betting exchange in direct competition to the overseas exchanges. In this way the Australian Racing Industry would receive income for wagering on this product.*

South Australia (Greyhound Racing SA)

In relation to the integrity of the racing industry, the fabric of the industry is built upon the premise that significant incentives are provided to participants in the industry to win by way of prizemoney. As the industry has become more professional in terms of the returns and viability to the participants, I am of the firm view that "stings" have substantially decreased in the industry.

A betting exchange provides the opportunity for an anonymous participant in the racing industry to lay a runner and this, in itself, has a serious potential to diminish the confidence in the general wagering public investing wagering dollars through traditional outlets. In the punters' minds, confidence in the integrity of the industry is a foremost consideration, as no one likes to be "taken as a fool" by backing "Dead" runners.

In summary, I am vehemently opposed to the concept of betting exchanges, for the reasons that it exploits the intellectual property of the racing industry without providing product fees by directing wagering funds away from the traditional established networks. Secondly, and equally as important is the damage to the integrity of the racing industry by providing opportunities for participants to gain financial advantage by not performing to the best of their ability. The subsequent loss of confidence that this may generate in the wider wagering population could be catastrophic to the future of the industry.

Tasmania (Racing Services Tasmania, in consultation with stewards from 3 codes of racing in Tasmania)

The Tasmanian response alluded to concerns in six different areas:

- The whole emphasis of the Rules of Racing in general is on winning. The industry is geared to winning and the rules reflect this.
- The ability of persons to gain from a horse or dog losing places considerable pressure on the integrity control mechanisms, particularly stewards' observations of races. Also, the ability to bet on losing runs will potentially damage the image of the industry as some people will invariably perceive wrong doings when favourites fail to win. Such perceptions could lead to loss of confidence in the racing product, with an associated impact on betting turnover.
- Increased exposure of racing and betting to criminal elements. In addition to the risk of participants pulling up animals, there is also the criminal element, ie 'knobbling'. This could also extend to coercion of participants, eg jockeys, drivers, etc. From a public point of view there may be an increased perception that beaten favourites could have been 'pulled up' or 'knobbled'. This will be more likely because of the direct gains to be had by being able to back something to lose.
- Lack of access to (exchange) betting information. Where stewards suspect a horse hasn't been given every opportunity to win, they would look at the betting fluctuations as part of their investigation. Stewards are concerned that they would not be able to obtain information from a betting exchange.
- Resource implications regarding stewards monitoring betting fluctuations on an exchange, particularly in events where betting commences considerably before the event (eg the annual Interdominion harness racing championships).
- Anonymity. For example, a disqualified or unlicensed bookmaker could effectively use a betting exchange to lay horses, particularly through another person's identity.

Overall, (the stewards) have significant concerns over the potential gains that persons will be able to achieve through animals losing. After all, it is easier to get beaten than to win. The stewards note that whatever happens betting exchanges are already accessible although their use may not be as widespread as if they were licensed in this country.

Victoria (Racing Victoria Ltd)

The response from Racing Victoria Limited was generally open to the possibility of betting exchanges becoming part of the Australian racing betting landscape. In response to concerns regarding risks to racing integrity arising from betting exchanges, RVL alludes to a proposed racing industry review focusing on the worth of increased stewarding and betting scrutiny measures as a means of countering such risks.

While RVL notes that betting transactions conducted by betting exchanges may not conform to the traditional parameters for on-course bookmaker operations, this does not of itself per se demonstrate that new forms of betting transactions which may be facilitated by betting exchanges, lack integrity.

In relation to the illustration provided by you, “that the facility to lay runners anonymously may give rise to a real or perceived risk of certain categories of persons “laying” runners”, we appreciate the potential integrity issues which may arise.

However, the general experience of our own Stewards has been that incidents of undesirable betting transactions are minimised where the mask of anonymity is removed and scrutiny and disclosure of such transactions is available to controlling bodies. In addition, we note that, as presently provided for in the thoroughbred Rules of Racing, certain categories of licensed persons, for example, jockeys are prohibited from betting. Once it is known that betting transactions can be and are monitored, and there is a real likelihood of being detected, then the incidence of undesirable transactions is likely to decrease.

In short, we believe that access by controlling authorities to names and details in relation to betting transactions made on betting exchanges, is critical for the maintenance of racing’s integrity. Such access could be achieved through binding contractual arrangements between a betting exchange and Australian racing control authorities.

In view of the above observations, the proposed course of action is that, in liaison with national and interstate racing bodies as well as with Harness Racing Victoria and Greyhound Racing Victoria, RVL will lead a review of the existing integrity framework to minimise the particular risks posed by betting exchanges.

It is anticipated that this review will focus on:

- *gaining access for real time monitoring of betting exchange transactions including access to the identity of all bettors*
- *expanding current race supervision and drug testing protocols to place a greater level of scrutiny on losing entrants*
- *examining controls on the flow of pre-race information about the preparation and expected performance of entrants*
- *identifying options for ensuring the probity of betting exchanges operators.*

Western Australia (WA Turf Club)

The following comments from the Chairman of Stewards were provided:

In my opinion, the impact of betting exchanges on the integrity of racing would be profoundly negative.

I make the following points:

- 1 The Betting Exchange, layer or bettor is not bound by the Rules of Racing.*
- 2 The Betting Exchange is not subject to any probity check.*
- 3 The Betting Exchange is not subject to any criminal record check.*
- 4 The layers or bettors are not required to undergo probity checks.*
- 5 The Betting Exchange is under no compulsion to disclose to the racing authorities the names or either the layers or the bettors.*
- 6 Effectively "the money trail" is non-existent and completely camouflaged.*

Further, in regards to the "layer", consider the following:

- He could be a person disqualified or warned-off racecourses or be a criminal with corrupt practice charges.*
- A layer is unidentifiable and basically hides behind the Exchange.*
- He could be a licensed tainer or jockey who believes his horse, although fancied, has no chance of winning.*
- He could be a licensed trainer or jockey who, under the cloak of his disguise, may be inclined to assist his horse to lose.*
- He could be a person with criminal intent who would be prepared to have a horse doped to lose.*
- He could arrange for deliberate interference to happen throughout a race.*

In conclusion I struggle to see, in the present format, the advantage of Betting Exchanges to the racing industry. They are parasitical in nature and any system which rewards a person for backing a horse to get beaten, is in my opinion a very serious problem for our sport.

Western Australia (Greyhounds WA)

The following comments from the Chief Steward in respect of the racing integrity aspects of betting exchanges were provided:

The style of betting (laying a runner to lose) in itself is a concern and would no doubt inflame the existing perception of connections knowingly supporting an expected winner to lose.

Even if access to betting exchange transactions were unrestricted, it would still fail to reveal the identity of the true bettor, making it extremely difficult for Stewards to make any connection between the horse/greyhound and bettor, if any wrongdoing was suspected.

In view of the above points, I am of the opinion that betting exchanges could compromise the integrity of racing.

5.1.8 THE INTERNET AND POROUS JURISDICTIONAL BOUNDARIES

Two of the traits necessary for a successful betting exchange are the dissemination of timely relevant information to a large group of customers and the ability of customers to interact with the exchange quickly and easily. In both these respects, the World Wide Web provides an ideal vehicle.

However, a possible adverse consequence of the global nature of the Internet is the potential for the integrity of a racing industry to be threatened by a betting exchange operating from outside the borders of the jurisdiction where the racing is conducted. For example, an overseas betting exchange with critical mass betting activity on Australian racing could potentially have similar adverse effects on the actual and perceived integrity of Australian racing as a betting exchange licensed and operating from within Australia.

5.1.9 CONSEQUENCES FOR INTEGRITY OF AUSTRALIAN RACING OF A DECISION BY ANY STATE OR TERRITORY TO PERMIT A BETTING EXCHANGE ON AUSTRALIAN RACING

Australia's status as a federation is relevant in any discussion regarding the licensing of betting exchanges on racing in Australia in the context of the distinction between racing and wagering integrity.

In Australia, licensing and regulation of wagering operators is basically a State and Territory responsibility.

If, hypothetically, TAB X in one Australian jurisdiction were to relax existing totalizator betting rules and permit certain customers to place bets into totalizator pools after race jump, the adverse repercussions flowing from this breach of wagering integrity would adversely affect other punters betting into that TAB's totalizator pools, or into the pools of other TABs with a "pooling agreement" with TAB X.

This contrasts to a situation where, hypothetically, an Australian State or Territory were to licence a betting exchange to operate on all Australian racing events. A feature of the development of wagering on racing in Australia since the 1960s is what has become known as the "Gentlemen's Agreement"¹². Flowing from this, wagering operators in one jurisdiction are basically free to bet on racing events in other Australian States and Territories.

¹² Under the "Gentlemen's Agreement", wagering operators licensed in one Australian jurisdiction are free to accept bets on races in other Australian jurisdictions without the payment of a "product fee" to the jurisdiction in which the race is run.

As discussed in section 5.1.5 above, racing (as against wagering) integrity is potentially at risk as a consequence of betting exchanges on events. Hence, the establishment of a betting exchange in one Australian jurisdiction could “infect” the integrity – or, at a minimum, the perceived integrity – of racing throughout Australia.

Further, it would be ironic if one of the less populous Australian jurisdictions licensed a betting exchange to field on any Australian racing events it chooses. As has already been witnessed in the case of the corporate bookmakers fielding from the Northern Territory and the ACT, the bulk of their Australian racing betting activity is on racing in Victoria, NSW and Queensland. At the other end of the spectrum, there is, for example relatively little interest in telephone or Internet betting on racing at Fannie Bay in Darwin or Pioneer Park in Alice Springs – where several of the corporate bookmakers are housed. It is reasonable to expect that any betting exchange operating on Australian racing would also focus on the racing out of the three most populous States – particularly thoroughbred racing at the metropolitan racecourses. This has certainly been the experience to date in the case of the two global betting exchanges which have to date overtly targeted Australian racing punters – Betfair and Twoflys.

5.1.10 CHALLENGES TO RACING INTEGRITY POSED BY THE BETTING EXCHANGE CONCEPT

“Inside information” that a runner is unlikely to win (or be placed)

In first level racing countries such as Australia, racing has generally been successful in maintaining high levels of actual and perceived integrity in the conduct of races. Notwithstanding this, it is generally accepted that some persons will likely be in a position to possess superior knowledge regarding the chances of runners than most recreational punters. Whilst acknowledging this, there have generally been limited opportunities for persons who possess knowledge that a runner is unlikely to win to benefit directly from that knowledge.

Concerns relating to betting exchanges and racing integrity have tended to be along two lines. Both stem from betting exchanges representing a convenient and readily accessible means to benefit from a runner being beaten.

- That a betting exchange may better facilitate a person with inside knowledge that a runner is unlikely to win benefiting from that knowledge; and
- At the more sinister end of the spectrum, betting exchanges may actually encourage nefarious conduct. This may include a jockey not allowing a horse to run on its merits, a “fence jumper” (doper) nobbling a horse so it will perform below its best or a “fixer” bribing or threatening jockeys to ensure their mounts are beaten.

In the first of the above two categories of conduct, an example such as a trainer who has privileged knowledge that a horse having its first run on a heavy track cannot possibly handle the bad going. Some may argue it is not improper for the trainer to profit through laying the horse (through an associate) on the betting exchange under such circumstances. On the other hand, others may query the fairness and equity of a recreational punter who backs the horse being pitted against the trainer under circumstances where the punter is not permitted to know who they are “betting against”. It may also be relevant that the betting exchange operators themselves would be privy to information regarding the identity of the customer laying the runner.

In the second category, it would clearly be an undesirable scenario from a consumer protection viewpoint for a punter to be pitched, for example, against the miscreants responsible for nobbling a runner in such circumstances.

Supporters of betting exchanges argue that, for example, a person with inside knowledge can profit even in the current Australian wagering environment by entering into an arrangement with a licensed or SP bookmaker to lay the runner concerned. However, this carries with it the generic dangers associated with conspiracy and complicity. The drawbacks of betting into a totalizator under such circumstances are canvassed later in this section.

Punters “laying” runners (backing runners to lose)

Legal wagering on racing with licensed operators has existed in Australia for over a century. Prior to the advent of betting exchanges, legal wagering on racing – both in Australia and throughout the World – has evolved along totalizator or fixed odds lines¹³.

Wagering products offered within these two types of systems have generally¹⁴ been aligned with the racing product in that success is rewarded. That is, prizemoney is generally paid to the placegetters (on a descending scale) and the range of bet forms offered by bookmakers and TABs have revolved around selecting successful outcomes.

The three first-level racing countries which allow fixed odds betting on a large scale are Australia, UK and South Africa. In each case, obtaining a bookmaker licence is a prerequisite to being permitted to offer punters bets at fixed odds – either on the racecourse or to an off-course market. Within these countries bookmaker licensing is conducted by either racing industry regulators or Government/semi-Government bodies (or a combination of the two). These bookmaker licensing regimes are characterised by:

¹³ These forms of wagering are detailed in section 1.4 of this Report.

¹⁴ One exception has been “Field against the favourite” betting – which has been offered on a limited basis by some “corporate” bookmakers.

- Probity requirements (including “fit and proper person” tests); and
- Licence conditions including that bookmakers co-operate with racing industry stewards in terms of disclosing details of betting transactions, providing evidence to stewards’ inquiries, etc.

It is suggested that bookmaker licensing regimes along these lines are at least partly in recognition of the potential risks associated with allowing somebody to profit directly from wagering that runners will be beaten (ie “laying”). For example, rules of racing/betting applying to bookmakers proscribe conduct such as entering into an arrangement with a jockey or trainer to share the proceeds of laying beaten runners.

By their nature, betting exchanges challenge the traditional principle that only licensed persons can wager that a runner will be beaten. Much of the media debate on betting exchanges has focused on this aspect. (The views of Australian racing stewards are summarised in section 5.1.7 above.)

It is also relevant that a bookmaker embarking on nefarious conduct often risks a livelihood and the goodwill associated with a list of clients. In contrast, a miscreant laying runners in a betting exchange may suffer little if found guilty of serious misconduct and prohibited from further betting exchange activity. In a worst case scenario, a betting exchange customer may merely be a “man of straw”, acting as an agent for somebody acting in serious breach of the rules of racing or the criminal law.

Importantly, the facility for punters to lay horses in betting exchanges differs significantly from the principles of (traditional) licensed bookmaking in Australia.

Concomitants of the right to field as a bookmaker at a race meeting have traditionally been the obligation to display a fixed price (odds) about every runner for a standard period leading up to the start of races upon which the bookmaker is fielding and accept bets in accordance with a minimum wager obligation¹⁵. These obligations are integral to the generally recognized qualitative contribution of bookmakers to the racing industry which manifests in higher race meeting attendances and a genuine alternative to totalizator (TAB) betting¹⁶. As a consequence of these obligations, it is not open to a licensed bookmaker to single out a particular runner in a race and offer odds about that runner only.

¹⁵ The minimum wager obligation applies to all bookmakers throughout Australia fielding on racing – the only exception being Northern Territory corporate bookmakers.

¹⁶ Since the mid-1990s, “corporate” bookmakers in the Northern Territory (and later the ACT) have marketed betting products based on TAB dividends (as against fixed odds). This has enabled them to “field” on races without displaying fixed odds about each runner.

Against this background of the Australian licensed bookmaker environment, to suggest that a person laying runners in a betting exchange “is acting as a bookmaker” would be understating the true situation.

This ability to lay a single runner in isolation has given rise to many of the concerns regarding the activities in betting exchanges of those in possession of information not available to punters generally – and the possible adverse repercussions for racing’s (perceived) integrity.

The British experience

Betting exchanges have now been trading in Britain for several years as holders of bookmaker licences. In terms of addressing racing integrity issues, however, it would seem that the regulatory regime there is in a continuing state of flux. Recent developments include:

- The development of a memorandum of understanding between Betfair and the Jockey Club to formalise arrangements for access to Betfair’s betting transactions and customer information.
- Prohibitions against trainers laying their own runners in the betting exchange.

Below are two recent British cases giving rise to concerns regarding the possible effects of betting exchanges on the actual and perceived integrity of racing.

The Royal Insult incident¹⁷

At the Lingfield (England) race meeting on 30 December 2002, the galloper *Royal Insult* was pulled-up 600 metres before the finish of a 2,000 metre flat event. Soon after he was put down because of a broken shoulder.

Racing newspapers quoted a morning line of 6/1 about *Royal Insult* and his final on-course starting price was 10/1. However, on the Betfair betting exchange 49/1 for the win and 9/1 for the place was being offered about *Royal Insult* at race jump. His opening quote on the betting exchange was around 9/2 for the win.¹⁸

Royal Insult’s trainer Karl Burke was quoted, “I’ve no idea about the betting. I don’t get involved with that side of things.”

Betfair spokesman Mark Davies was quoted, “We work closely with the Jockey Club and always report any suspicious betting patterns, but I cannot comment on individual cases.”

¹⁷ Article by John Cobb on www.sport.independent.co.uk 31 December 2002

¹⁸ Article by Seb Vance on www.racingpost.co.uk 1 January 2003

Betfair.com co-founder Andrew Black was quoted, "If no one is backing horses they do then drift but I don't think I've seen one that bad before. You have to put your own interpretation on it, but it does look dodgy".

And then, "To lay a horse at those prices you have to have enormous confidence it won't win."

Kenyon Confronts television episode

Some highly adverse publicity for racing generally and betting exchanges specifically arose from an episode of the BBC TV programme *Kenyon Confronts* which aired in June 2002.

The episode included covert footage of conversations between licensed thoroughbred trainer Ferdy Murphy and an undercover reporter posing as a prospective owner. Mr Murphy boasted that the defeat of one of his runners, *Christiansted*, at Fakenham in February 2002 resulted in a profit of around 1,600 pounds (A\$4,500) through laying the horse on betting exchanges. Further remarks by trainer Murphy included that if owners placed a horse with him it could be "stopped at home" and "to get beat you only have to have it 75 or 80%".

Responding to the incident, the Disciplinary Committee of the racing controlling body, the Jockey Club, fined Mr Murphy 4,000 pounds, for "bringing racing into disrepute".

*Hillside Girl*¹⁹

On Sunday, 15 June 2003 the filly *Hillside Girl* raced at Carlisle, UK. She was pulled-up by her jockey soon after the start and found by the veterinarian to be lame.

Hillside Girl eased from 7/2 to 6/1 (for the win) in on-course bookmaker betting. On the Betfair betting exchange layers were offering 21/1 (win) and 11/4 (place) at race jump.

Berry (*Hillside Girl*'s trainer) rejected claims that anything sinister had occurred, and noted that the filly was lame.

He said. "The horse is lame on her near fore, both vets saw her on the course and in the vets' box - she was grand before the race and went to post all right, it must have happened in the stalls or just after she came out.

"If they have got to look at it then they have got to look at it but I have done nothing wrong. The filly didn't know what price she was - and she didn't hurt herself."

¹⁹ *Berry filly referred to Jockey Club*, article by Seb Vance, Racing Post, 16 June 2003

Facility of betting into a market with a low “over round”

One argument proffered in defence of betting exchanges in the debate on racing integrity consequences is that it has long been possible for an “insider” to effectively “lay” (bet against) a single runner by backing the field in a race, or at least several other runners.

However, the obvious impediment to doing this successfully in the existing wagering environment in Australia is the commission (takeout) in totalizator wagering or the “over round” in bookmaker wagering.

The legislation in each of the Australian States and Territories governing maximum takeouts by totalizator operators is very similar. As a consequence, the commission deducted from win and place totalizator pools around Australia is approximately 14%. Taking into account the effect of roundings, the aggregated percentage of runners²⁰ in win and place totalizator markets is around 118%.

Similarly, bookmaker (fixed odds) betting markets are normally structured to incorporate a reasonable conceptual gross profit margin for the bookmaker. By way of example, Appendix C1 sets out the official starting prices for two Australian thoroughbred races. The aggregate percentage in these cases is 123% and 133% respectively. The reasons for a bookmaker betting to an over round include the need to cover betting levies²¹ and taxes, expenses and net payouts to punters who return a profit over a period.

The existence of commissions and over rounds in totalizator and bookmaker betting respectively means it is not normally possible, for example to choose a runner priced at say, (\$7) 6 to 1, back the field (ie all other runners in the same race individually) and expect to return a profit if the selected runner loses. This is sometimes referred to as the “Dutch Book” approach to punting. A runner priced at \$7 accounts for only about 14%. Hence, a punter betting with a bookmaker displaying a board with aggregate percentage of 120% would still be backing runners aggregating to 106%. Conceptually, if a punter is backing several runners, the prices of which aggregate to 100%, each runner could be backed to collect a uniform amount – so that the punter breaks square regardless which runner wins. Whenever the aggregate is less than 100%, a gross profit is conceptually possible.

In the case of totalizator betting, an additional difficulty of backing several runners in the same race is that the final odds are not known until after the pool is closed – normally at race jump.

²⁰ Approximate dividends for runners can be converted to a percentage, eg \$4.00 (3 to 1) equates to 25%.

²¹ At Melbourne and Sydney metropolitan thoroughbred race meetings, bookmakers pay a levy of 1% of turnover (less bets back)

The situation in a betting exchange contrasts to that above. The absence of an intermediary (a bookmaker or totalizator operator) at the betting face tends to result in aggregate percentages on the punter side significantly closer to 100%. For example, perusal of the Betfair.com website on Saturday, 31 May 2003 pointed to aggregate percentages in markets on Australian thoroughbred races of around 105% to 112% during the final minutes of betting on each race. (Refer Appendix C1.)

Assume that, in this environment there is a punter with “inside knowledge” that an individual runner (*Mr Digby*) which is “in the market” (say, 2 to 1) is unlikely to win. The punter can enter the betting exchange and back the field (ie every other runner) in that race and comfortably return a profit, regardless of which runner outside *Mr Digby* wins. Alternatively, that punter may wish to exercise an element of discretion and back only those remaining runners which are seen to have a reasonable chance of winning.

The possible motives for adopting this approach of backing the field – or several other runners – in a betting exchange, as against simply “laying” *Mr Digby* in the exchange, include:

- The punter may have already laid *Mr Digby* in the betting exchange and be concerned that excessive laying may attract the attention of other punters or even the stewards;
- At sinister end of the spectrum, where the betting exchange customer seeking to profit from the defeat of *Mr Digby* is a participant associated with the horse, by accessing the exchange accounts of several agents (or “bowlers”) the nefarious participant may further reduce the likelihood of stewards identifying a money trail between him and the suspect betting exchange transactions;
- By backing several runners in the race other than *Mr Digby* (but not all the remaining runners) the punter can achieve a greater rate of return than by simply laying *Mr Digby* in the betting exchange.

Benefits of “anonymity” to a well-informed punter

Well-informed racing punters betting in relatively large amounts often prefer fixed odds over totalizator betting. The reasons for this include:

- Well-informed punters are often able to assess that the fixed odds on offer at a certain stage in betting on a race represent good “value”. They often then place their own bets at the “top odds” while other punters who are merely “following the money” receive shorter odds for their bets. Totalizator pools often then follow trends occurring in the fixed odds market.
- Because of the relative size of their bets, the effect of the bets of well-informed punters being placed into totalizator pools is often a dramatic shortening of the odds, often then exacerbated by other TAB punters following the money trail by backing runners which firm. The well-

informed punters receive only the same TAB dividend as the other punters with winning tickets in the pool.²²

However, because bookmakers wear the risk on wagers, an integral skill of the bookmaker is to assess the source of wagers – particularly larger ones. If the wager is from a source close to a stable with a reputation for successful plunges (ie “hard money”), a bookmaker may then trim the punter back in the magnitude of the bet, or reduce the odds on offer or even lay-off part of the bet. This identification process is often facilitated through flagging betting accounts on the basis of past betting patterns or, in the case of cash bets, familiar faces of “bowlers” in the employ of professional punters.

In contrast, an attraction of betting exchanges for well-informed punters is that fixed odds are obtainable without disclosing their identity to the punter with whom they are matched.

At the more sinister end of the spectrum, is the hypothetical example of a jockey wishing to indulge in foul play by engaging in betting activity in a race in which he or she is riding – in breach of the Australian Rules of Racing. He or she may be more inclined to do so in an environment of betting exchanges because of this ability to back or lay runners without alerting whoever is on the other side of the betting equation (ie the person accepting the risk of the jockey’s wagers) regarding the likely source of the bets.

5.1.11 EFFECTS OF ANY DECLINE IN RACING INTEGRITY

Loss of racing’s wagering customers

If a significant number of punters even perceive that races are not being conducted honestly and fairly, with all runners trying their utmost to win, there are very real concerns that punters will abandon racing and be lost altogether as wagering customers.

Also, a consequence of certain punters with “inside information” winning disproportionate amounts from punting, is that the bets of recreational punters (who generally lose over a period) are circulating (“churning”) fewer times before being lost. In a qualitative sense, these punters may tend to derive less satisfaction from betting on racing and reduce their expenditure on racing betting. The quantitative effects of greater rates of success by winning punters are explored in section 5.2.13.

²² Some larger punters may enjoy a partial advantage through the payment by TABs to punters of inducements or rebates. These may be camouflaged as “reimbursement of punter expenses” or a share in the commission wagers payable to TAB agents such as publicans.

Unlikelihood of recovering aggrieved punters' funds

Wagering on racing gives rise to some difficult consumer protection issues because of the virtual impossibility of recompensing punters aggrieved by foul play or breaches of the rules associated with a runner "not trying". This contrasts to situations where, for example, a jockey is found to have unduly interfered with another runner and the placings are altered by the stewards following a successful protest. This invariably occurs prior to the declaration of "correct weight" and the settlement of winning bets.

If stewards find a jockey guilty of not allowing a horse to run on its merits (in the vernacular, "not trying") this constitutes a serious breach of the rules of racing. However, punters who backed the winner of the race collect nevertheless. Conversely, bookmakers or layers in a betting exchange who accepted bets on the "non-trier" still retain their winnings. On the other hand, punters who were unfortunate enough to have backed the non-trier do not – if past instances are any guide – have any realistic chance of recouping their losses from the guilty jockey or trainer concerned.

An example of punters falling victim to foul play by racing participants was the *Coloresque* case. On 14 November 1995 a leading harness racing trainer/driver, Mr Chris Gleeson produced a short-priced favourite (*Coloresque*) in a race at Harold Park Sydney where there was a large Superfecta (first 6 runners in correct order) jackpot pool. *Coloresque* eased alarmingly in the betting (1/3 on to evens) and took no competitive part in the race after being pulled out by Mr Gleeson with broken hobbles. Mr Gleeson's brother collected \$22,708 after boxing the field (minus *Coloresque*) in the Superfecta. Stewards convicted the Gleeson brothers and disqualified them for life after finding that the hobbles had been deliberately sabotaged. The Gleesons were also convicted by a Local Court of false pretences following guilty pleas and ordered to repay to TAB Limited their \$12,628 profit from the Superfecta. Unfortunately, the punters who backed *Coloresque* "did their money cold" and received no recompense.

An anomaly of sorts also exists where a runner first past the post subsequently returns a positive drug test. Although the runner concerned is often disqualified, that runner is still considered the winner for wagering purposes. Punters who supported the runner eventually declared the winner lose their money.

In contrast, under consumer protection law generally (eg *Trade Practices Act 1974*, Part V) consumers who do not receive goods or services in accordance with their reasonable expectations are entitled to a refund.

In light of this disadvantaged position of punters aggrieved by actual foul play in terms of their inability to seek retribution from the guilty participants, it is additionally important that opportunities within the wagering environment for foul play on the part of racing participants are minimised.

Proponents of betting exchanges point to some mechanisms in exchanges they believe assists in identifying foul play, eg forensic audit trails of the source of laying and backing (refer section 5.1.6 above). It is noted however, that the relevant nefarious conduct tends to come to light after the race is run, by which time innocent aggrieved punters realistically have little prospect of recouping their funds.

In fact, the legislation governing the operations of the various State and Territory TABs protects TABs from actions for recovery of funds by aggrieved punters in such circumstances. Such legislation is required to protect TABs from exposure to unquantifiable claims in circumstances where they normally distribute dividends to winning punters, forthwith following the running of races.

Costs and difficulties of stewarding

Racing events in Australia in 2003 are arguably subject to greater scrutiny than at any stage in the past – in aspects such as the sophistication of stewards' video patrol footage, drug testing and the monitoring of betting²³.

Notwithstanding this, it is often a quantum leap between stewards suspecting, for example, that a jockey has not permitted a horse to run on its merits to mounting a successful prosecution. As in many other spheres of activity, racing participants are becoming increasingly litigious and the racing industry often faces considerable legal costs in attempting to enforce its rules.

Separately, there is also the issue of the difficulties faced by stewards in convicting participants of foul play associated with the running of races and ensuring such convictions withstand relevant appeal processes. Primarily as a consequence of the gravity of the repercussions for a participant who is disqualified, the applicable standard of proof is generally held to be higher than that which normally applies in civil cases (balance of probabilities)²⁴.

Again, these factors point to the importance – this time from a racing industry viability viewpoint – of minimising opportunities in the wagering environment for participants to benefit from breach of the rules.

In submissions to the Task Force, it has been suggested that increased stewarding activity would mitigate the potential risks to racing integrity posed by betting exchanges. For example, the ARB submission (refer section 5.1.6) alludes to,

expanding current race supervision and drug testing protocols to place a greater level of scrutiny on losing entrants.

²³ A system has recently been introduced at some metropolitan thoroughbred race meetings where bets transacted by bookmakers on the course are transmitted directly to a central computer accessible by stewards.

²⁴ *Briginshaw v Briginshaw* (1938) 60 CLR 336

Such measures would likely involve considerable additional costs to the racing industry. Such increased costs may burden the racing industry – particularly the harness and greyhound racing codes. This increased costs burden may also be exacerbated by the fact that races offering relatively lower prizemoney may suffer greater exposure to foul play related to wagering by participants.

In the case of overseas betting exchanges, stewards around Australia would foreseeably incur considerable technology-related costs to facilitate their timely access to betting exchange transactional data for monitoring and query purposes.

5.1.12 RACING STEWARDS' ACCESS TO BETTING EXCHANGE WAGERING AND CUSTOMER INFORMATION

In Australia, the ability of a wagering operator (including a betting exchange) to provide “personal information relating to an individual” to Australian racing stewards is primarily governed by the *Privacy Act 1988* (Cth). The legislation is outlined in Appendix B.

In the hypothetical case of a betting exchange licence issued in Australia, it would be possible through legislation, licence conditions on an operator and the compulsory consenting of customers to ensure that stewards have adequate access to the account and betting details of betting exchange customers.

A recent UK development²⁵ involves the signing on 12 June 2003 of a memorandum of understanding between some betting exchanges (including Betfair) and the Jockey Club (British racing's regulator). However, even with the memorandum in place, stewards' access to personal information differs markedly from the current situation in Australia regarding bookmakers, for example. In Britain, even in the case of betting exchanges who are signatories to the new memorandum:

- stewards must have specific grounds that either there has been a breach of the rules of racing or the integrity of racing is at risk; and
- even following a request under such circumstances, it is still optional for betting exchanges to comply with any request from stewards for the names of account holders behind transactions.

In the event that, hypothetically, racing stewards are able to gain timely access to all available information regarding betting exchange transactions along with names, addresses, etc of the relevant account holders, stewards would still experience major difficulties in areas such as:

- Identifying parties behind the laying (or backing) of a runner.

²⁵ *Jockey Club disappointed by Betdaq decision on info*, article by Howard Wright in Racing Post 13 June 2003

- Seeking the attendance of betting exchange customers of interest at stewards' inquiries at which evidence regarding the laying of a runner is considered relevant.
- Requiring betting exchange customers to provide sworn evidence and submit to cross-examination, etc.

The bookmaker (and TAB) licensing regimes in all Australian States and Territories overcome these issues in the case of persons currently permitted to lay runners in racing events. By way of example, the interrogation of licensed bookmakers in multiple Australian States was central to stewards' investigations into the Fine Cotton ring-in at Eagle Farm racecourse in 1984.

The difficulties faced by stewards in following money trails in betting exchanges may also be exacerbated when a punter seeking to benefit from "inside knowledge" that a well-fancied runner is unlikely to win enters the exchange as a punter – rather than a "layer" – of the horse in question. This scenario is canvassed above in section 5.1.9 under the sub-heading *Facility of betting into a market with a low "over round"*. If such a punter were to back several other runners in the race through the accounts of various unrelated agents (or "bowlers") it could foreseeably be quite difficult for stewards to trace the bets to their end source.

5.1.13 VIEWS OF FORMER AUSTRALIAN CHIEF STEWARD

In a paper presented to the 2003 Asian Racing Conference in New Zealand, former Australian Jockey Club Chief Steward Mr John Schreck, now a consultant for the Hong Kong Jockey Club, addressed the issue of betting exchanges and integrity.

Following are some quotes from Mr Schreck's speech on the subject of the likely effects of betting exchanges on racing integrity,

Now let us put the spotlight on the intentions and connections of the Layer, whose identity is hidden from the supervisors of the racing contests in which he lays out large amounts of hard cash in the near-certain belief that a favoured horse cannot win. Consider the following nefarious circumstances that could arise from this form of unregistered and unsupervised betting:

- *He is unidentifiable, and hides behind the exchange operator.*
- *He could be a licensed trainer or jockey who believes that his horse, although fancied by the public, has no chance of winning.*
- *He could be a licensed trainer or jockey who, under the cloak of his disguise, may be inclined to assist his horse to lose.*
- *He could have a close connection with a trainer, rider or stablehand, and therefore be privy to some undisclosed*

information relating to say, a last-minute fitness problem or some other shortcoming of the horse that would justify his laying the horse at above the existing published odds.

- *He could have a criminal record in relation to corrupt practices.*
- *He could be a person warned-off racecourses, or a person disqualified or suspended by the racing authorities.*
- *Finally, he could have connections with, or be in cahoots with, criminals who were prepared to arrange for a horse to be doped with a "downer", or even to arrange for physical interference to fancied horses in their boxes, or even arrange for deliberate interference to fancied horses at barrier-rise or during the running of a race.*

5.1.14 FAVOURITE VERSUS FIELD BETTING

Some submissions to the Task Force refer to a wagering product already available in Australia closely aligned with the concept of punters laying runners in a betting exchange (eg refer to the submission of IASBet in section 5.1.6). Following is a May 2003 download from the website of IASBet (a Northern Territory corporate bookmaker).

Favourite Vs The Field (Online & telephone)

We will quote you a fixed price for the favourite and a fixed price for the field, it becomes a two horse race you take your pick.

This market will generally be set between 106 - 108%, while the total race market is more likely to be over 120%, so backing against the favourite puts you in a position of far greater value than backing every other runner at the best odds on offer. For Example "Favourite 6/4, Field 1/2" (or "Favourite \$2.50, Field \$1.50") means that you can either back the favourite at 6/4 (\$2.50) or back any horse to beat the favourite at 1/2 (\$1.50). In effect you are laying the favourite at 2/1 (\$3). The only proviso is that if you call upon us to quote a market - you must have a bet, on or against the favourite.

It is relevant that IASBet does not publish a price for the "field" and invite allcomers to place bets at that price. Rather, IASBet avails itself of the opportunity to identify the accountholder who is seeking a quote before providing same. In this respect, IASBet differs from punters "offering" to lay a runner in a betting exchange. Under those circumstances the punter seeking to lay a runner is required to state up front what odds are being offered and what amount they are prepared to accept at those odds. Further, the betting exchange layer is precluded from identifying the accountholder who accepts the odds offered.

Proponents of betting exchanges argue that the ability to lay runners in a betting exchange with anonymity from punters on the other side of the wagering equation does not give rise to insurmountable risks in terms of racing integrity and consumer (punter) protection. It is noteworthy, however, that a corporate bookmaker requires knowledge of the identity of the punter seeking to “lay” a runner with it before quoting a price and accepting the risk of such a wager.

5.1.15 DIFFICULTIES OF REVERSING ANY DECISION TO PERMIT BETTING EXCHANGES ON AUSTRALIAN RACING

The Task Force is also conscious that any “decision” to allow the (further) encroachment of betting exchanges into the Australian wagering environment could be high risk in that it could prove irreversible.

Such a “decision” could involve:

- A positive act, such as the licensing of a betting exchange to operate in Australia, or
- Mere inaction in respect of overseas betting exchanges already operating on Australian events and/or targeting Australian punters.

In the event significant numbers of Australian punters become comfortable and conditioned to using betting exchanges on racing, it would foreseeably be difficult to later deprive them of access to the betting medium.

5.1.16 SUMMARY OF CHAPTER 5.1

- 1 State and Territory racing and betting legislation, the rules of racing and betting in the three codes and generic consumer protection legislation together recognize the public interest in ensuring races are run honestly and fairly. (*section 5.1.2*)
- 2 In terms of maintaining wagering turnover levels, and hence racing industry and government revenue flows from wagering, punter perception of racing integrity is critical. (*section 5.1.3*)
- 3 Betting exchanges on racing potentially give rise to racing – as against betting – integrity issues. Any diminution in overall punter perceptions of racing integrity would likely have an adverse effect on the turnover levels of all wagering operators fielding on that racing (viz TABs, bookmakers and betting exchanges). (*section 5.1.5*)
- 4 Several stakeholders submitted to the Task Force that betting exchanges on racing would be unlikely to give rise to additional concerns regarding racing integrity. One aspect highlighted was the facility inherent in betting exchanges to monitor closely all transactions and betting patterns/trends and produce detailed audit trails. Timely relevant information can then be provided to racing authorities – in real time if desirable. (*section 5.1.6*)

- 5 Racing controlling body chief executives – in consultation with their respective racing stewards – from a majority of Australian States and Territories opined that betting exchanges on Australian racing would give rise to a range of serious concerns for racing integrity. Overall, they also expressed doubts as to the availability of cost-effective measures to satisfactorily address these concerns. Racing Victoria Ltd expressed a generally contrary view and spoke favourably of the likely opportunities to arise from betting exchanges on Australian racing. (*section 5.1.7*)
- 6 Racing integrity (or perceived integrity) in any Australian jurisdiction could potentially be affected by the establishment of a betting exchange operating on its racing from overseas or interstate. (*section 5.1.8, 5.1.9*)
- 7 Risks to racing integrity can potentially arise as a consequence of betting exchanges providing an accessible, efficient and convenient mechanism for punters to profit from information that a runner will likely be beaten. This can take the form of laying a runner or backing several other runners in a market with a low “over round”. (*section 5.1.10*)
- 8 Unlike bookmaker betting, both parties to a betting exchange wager are anonymous with respect to each other. This aspect advantages “hard money” punters (who win over a period) who have access to valuable information regarding the prospects of runners and who may otherwise experience difficulties placing bets at fixed odds with bookmakers. (*section 5.1.10*)
- 9 Any potential risks to racing integrity posed by betting exchanges are exacerbated by the fact nefarious activity is often not revealed – if at all – until after a race is run. Aggrieved punters then have little prospect of recovering any losses. Any proposal to balance increased risks to racing integrity posed by betting exchanges with increased stewarding measures will likely involve significant additional cost to the racing industry. (*section 5.1.11*)
- 10 It would foreseeably be possible to ensure information regarding betting exchange transactions and the customers involved are able to be legally conveyed to racing stewards. One available measure would be to have betting exchange customers (at the time of opening accounts) agree in writing to the provision of “private information” to stewards, police, etc. However, whereas a bookmaker (basically, in Australian jurisdictions at present, the only persons legally permitted to lay runners) is licensed and, as such, can be required to attend stewards’ inquiries and provide sworn testimony, it would seem unlikely that stewards would enjoy similar coercive powers in respect of all betting exchange layers. The fact stewards have “private information” regarding the holder of the betting exchange account through which transactions have occurred does not necessarily assist in identifying the party behind the transactions. (*section 5.1.12*)
- 11 If betting exchanges on racing establish a firm foothold in Australia – by whatever means – there would be difficulties in implementing any

subsequent decision to deprive Australian punters of access to this wagering medium. (section 5.1.15)

5.1.17 FINDINGS ON CHAPTER 5.1

The Task Force is of the view that:

- 1 The preservation of racing integrity is a threshold issue in the consideration of betting exchanges.
- 2 The perception of punters regarding racing's integrity is a key ingredient in their willingness to wager on racing. Any decline in punter perceptions of racing integrity impacts adversely on the wagering turnover levels of all wagering operators on racing (TABs, bookmakers and betting exchanges). In turn, any decline in wagering levels results in reduced:
 - (a) Racing industry revenues from wagering and hence threatens the viability of the Australian racing industry; and
 - (b) State and Territory betting tax revenues and Commonwealth GST receipts from wagering operators.
- 3 Betting exchanges on Australian racing (whether based here or overseas) could give rise to real risks of serious adverse effects on racing's actual and perceived integrity. Senior racing stewards in the majority of Australian States and Territories have attested to the validity of concerns in this area. (refer section 5.1.7)
- 4 Several parties (refer particularly to section 5.1.6 for relevant portions of submissions by the Australian Racing Board, Betfair and IASBet) are promoting the merits of various proposed measures to counter concerns regarding the possible adverse effects of betting exchanges on racing integrity.

The only first level wagering regime incorporating licensed betting exchanges is Great Britain. From the observations of the Task Force, the development and implementation of measures in response to concerns regarding the effects of betting exchanges on racing integrity (refer particularly section 5.1.10, *The British Experience*) has seemingly involved ad hoc suggestions developed "on-the-run", rather than as integral aspects of a methodical and balanced strategy developed in consultation with recognised experts such as racing stewards and suitably qualified lawyers. A case in point has been the treatment of the issue of the use of exchanges by participants and owners to lay their own runners.

As a consequence, no established regime presently exists by which to gauge the effectiveness or otherwise of the proposed measures in an actual racing environment. Further, such measures are not accompanied by detailed costings or firm indications as to which parties would properly

shoulder any incremental stewarding cost burdens resulting from betting exchange operations on racing.

Against this background, presently no cost-effective, practical package of tested measures has been identified to deal comprehensively with racing integrity concerns arising from betting exchange operations on races.

- 5 If betting exchanges on racing establish a firm foothold in Australian mainstream wagering it would likely be difficult to implement any subsequent decision to deny Australian punters access to betting exchanges. In other words, any “decision” to allow betting exchanges to develop a greater presence in Australia will likely involve an element of irreversibility.

5 EFFECTS OF BETTING EXCHANGES (continued)

5.2 EFFECTS ON LICENSED AUSTRALIAN WAGERING OPERATORS AND ON RACING INDUSTRY AND GOVERNMENT REVENUE STREAMS

5.2.1 INTRODUCTION

The Australian wagering environment is relatively complex compared with most first level racing countries.

At present there are two types of wagering operators in Australia – TABs (totalizator) and bookmakers. Since the mid-1990s, bookmakers can be broken down into two sub-categories: “traditional” and “corporate”. Betting exchanges – none of which are yet licensed in Australia – would represent a completely new type of operator.

This chapter will focus primarily on the effects of betting exchanges on racing wagering. Wagering on sports (ie other than racing) is dealt with separately in Chapter 5.7.

Australian racing, in its current form, is very heavily dependent on revenue streams from wagering on its product – particularly totalizator (TAB) wagering. In this respect, Australian racing differs significantly from Britain – where wagering on racing is dominated by bookmaker fixed odds betting.

This chapter will examine the possible effects on Australian TABs and licensed bookmakers (traditional and “corporate”) of overseas and local betting exchanges (further) penetrating the Australian market.

For simplicity, in references to betting exchanges, this chapter will allude to the Betfair model, the nature and workings of which are set out in chapter 1.4 (*Key concepts*). Betfair is by far the World's largest betting exchange in terms of activity levels.

This chapter is in two portions:

- Sections 5.2.2 to 5.2.10 examine the effects of betting exchanges on existing licensed Australian wagering operators
- Sections 5.2.11 to 5.2.20 examine the effects of betting exchanges on racing industry and Government revenue streams from wagering.

EFFECTS ON LICENSED AUSTRALIAN WAGERING OPERATORS [sections 5.2.2 to 5.2.10]

5.2.2 WAGERING IN AUSTRALIA – AN OVERVIEW

TABs and licensed bookmakers

The totalizator bets of Australia's eight State and Territory TABs are aggregated into three pools – TAB Limited, SuperTAB and UniTAB.

Additionally, all TABs offer fixed odds betting on sporting events and the majority offer fixed odds betting on feature racing events. Legal sports betting on a significant scale commenced in Australia in mid-1990s.

Throughout Australia there are around 900 licensed “traditional” bookmakers – who generally field at race meetings. Around a dozen of these traditional bookmakers also conduct large-scale sports (ie other than racing) betting operations from racecourse offices.

Also, there are six “corporate” bookmaker licensees in the ACT and five in the Northern Territory. They generally operate from offices and accept the vast bulk of their bets “remotely” – by telephone or Internet. Of these corporate bookmakers, four offer racing betting on a significant scale. In the case of several of the corporate bookmakers their major focus is on the overseas sports betting market.

5.2.3 APPEAL OF BETTING EXCHANGES TO CUSTOMERS

The customer appeal of betting exchanges can be examined from the perspective of four customer categories – the recreational punter, the professional punter, the “trader” and the bookmaker. The headings (relating to traits of betting exchanges) under each customer category following are not intended to be prioritised or comprehensive.

The recreational punter²⁶

- Fixed odds

Win and place betting patterns on licensed Australian racecourses point to a marked preference for fixed odds betting over totalizator betting where choice is readily available – particularly in the case of a competitive betting ring with relatively low “over rounds” (the portion of aggregate percentage on bookmakers' boards in excess of 100%)²⁷. For example, at Randwick (Sydney) Saturday thoroughbred race meetings, the ratio of bookmaker to totalizator win and place betting by on-course patrons is around 75:25.

²⁶ For the purposes of this paper, a “recreational” punter is defined as one who returns a loss from betting over a period and who mainly seeks to derive entertainment value from wagering, rather than an income stream.

²⁷ The concept of an “over round” is set out in chapter 1.4 (*Key concepts*)

- Interactivity (entertainment)

Under the current Australian race wagering environment, for the majority of recreational punters betting off-course, little entertainment value is extracted from the actual placement of a wager. By its nature, totalizator (TAB) wagering tends to be mono dimensional in that, for the majority of punters, once they have made a selection, timing of wager placement has no effect on the payout received or wagering operator (TAB). The bulk of the entertainment value then arises from observing the race itself – the unfolding of the successful outcome.

In contrast, a betting exchange injects entertainment value into the wagering process in that – similar to a vibrant on-course bookmaker betting ring – the timing of bet placement affects profitability. Further, by its very nature, a betting exchange involves a great number of “layers” (de facto wagering operators).

- Facility to “lay” (back against) runners

The ability to selectively “lay” (or back against) runners in a race would likely represent an attractive wagering option for many recreational punters, as well as increasing the entertainment value of betting.

Further, the attraction of laying runners is exacerbated because, unlike a traditional bookmaker fielding at a race meeting, a betting exchange “layer” is not required to display a price about every runner in a race or bet to a “minimum wager obligation”²⁸. Layers in betting exchanges are also not required to make direct payments to the racing industry by way of levies (in Australia, normally based on turnover) or stand fees.

- Better odds

Betting exchanges on racing tend to offer better odds than licensed bookmakers or TABs. As a guide, the aggregate percentage in the “to back” side (see example in section 3.2.4) of a betting exchange with critical mass is usually around 105%. Punters are normally subject to a commission on their net winnings in an event.

Compared to bookmakers, betting exchanges tend to offer better prices because a betting exchange breaks a race down into a series of mutually exclusive binary events (viz each runner will either win or lose). In contrast, normally inherent in a bookmaker market is an “over round” (refer section 3.4.3). This is a conceptual gross profit margin designed to cover a bookmaker’s liability for a racing industry levy (in Australia, based on turnover) and various fixed costs (eg stand fees, clerks’ wages, telephone bills, etc), all of which are incurred regardless of whether a bookmaker wins or loses. It is also aimed at ensuring a bookmaker (who is conducting a business) returns a profit over a

²⁸ Almost all Australian racing bookmakers are required – under rules of racing/betting – to set a punter, on demand, to win a minimum amount at the odds posted about any runner.

period. As a guide, the aggregate percentage across a bookmaker betting ring at a metropolitan thoroughbred Saturday race meeting in Melbourne or Sydney tends to be approximately 118% to 122% (at race jump) for an average size field of 10 horses (refer Appendix C1).

In the case of totalizator betting with TABs, the extraction of a commission (or takeout) from an investment pool prior to calculating a dividend plus the practice of rounding down dividends effectively reduces the odds about each runner. In Australia, with TAB commission rates of around 14% on win and place pools, the aggregate percentage equates to around 118% (regardless of field size).

In a microeconomic evaluation of prices in any market, key factors tend to be the level of competition among sellers (“layers” or “against backers”) and the access of buyers (“backers”) to information regarding the prices on offer. An Internet-based betting exchange with a critical mass of customers – particularly one with considerable “depth and liquidity” – fulfils both criteria.

Specifically, factors relating to a betting exchange affecting the extent to which the odds available in the exchange exceed those available from a licensed bookmaker or TAB include:

- the level of activity and funds circulating in the betting exchange.
- the exposure of the betting exchange to racing industry levies and Government taxes, which translate into a “cost” of placing a bet. This incorporates the issue of the levy/tax framework, eg whether calculated on turnover or the betting exchange’s gross margin.
- the betting exchange’s customer commission arrangements.

On the empirical evidence to date, the odds obtainable at Betfair on Australian racing compare more than favourably with the odds of Australian licensed bookmakers and the dividends declared by TABs. Appendix C1 is a comparison of odds offered by TABs, bookmakers and Betfair. The Betfair odds obviously need to be adjusted downward to take into account the commission payable on net winnings, at an advertised rate of 5% down to 2%.

The professional punter²⁹

- Fixed odds

As a general rule, professional punters tend to bet in larger amounts than their recreational counterparts. For this reason, fixed odds (rather than totalizator) betting is particularly attractive to professionals

²⁹ For the purposes of this paper, a “professional” punter is defined as one who expects to return a gross profit from race betting over a period.

because they avoid the effect of “crushing” the approximate dividend³⁰ of horses they back.

- Anonymity (viz-a-viz other betting exchange customers)

A well-recognized hindrance for successful punters is the tendency of bookmakers to cut back (or attempt to decline) their bet offers.

In contrast, one of the hallmarks of a betting exchange is the anonymity of “backers” and “layers” viz-a-viz each other. Hence, somebody laying a runner would be hard-pressed to differentiate between “hard” money (bets from professional punters) and “soft” money (bets from recreational punters).

Against this background, a professional punter locating an available bet on an exchange (eg a “layer” is willing to accept \$1,000 on *Teramby Lass* at \$6.00) would be free to claim that bet. In contrast, that same professional punter attempting to claim a bookmaker (who has \$6.00 displayed for *Teramby Lass*) for the same bet might find that the bookmaker trims the punter’s bet to the level required in accordance with the applicable minimum wager obligation. Further, placing this initial bet on *Teramby Lass* in the anonymous environment of a betting exchange will not unduly prejudice that punter’s chances to place further bets on that horse in that race – either in the exchange, a bookmaker betting ring or on a totalizator. In other words, the available odds will not shorten disproportionately in response to the smart punter’s lead, as often happens in a bookmaker ring.

- Customer-friendly commission structure

In the current British betting exchange regime, exchanges normally charge customers a commission on net winnings per event. Therefore, a punter who backs several runners in one race, for example, enjoys a considerable benefit. The rate of commission is usually no higher than 5%. Several exchanges offer a variable rate structure, whereby high turnover customers are charged commission at discounted rates.

In a true comparison with the odds on offer from other wagering operators, the raw odds obtained by a betting exchange customer obviously need to be adjusted downward to take into account the commission payable.

³⁰ Totalizator wagering is set out in chapter 1.4 (Key concepts).

Betting exchange commission structures along the above lines are particularly attractive for professionals in two separate respects.

- 1 The reducing rate of commission. It is not uncommon for totalizator operators (TABs) to offer inducements to high turnover customers. Such inducements range from the explicit (eg in Ontario, Canada a structured table of rebates is available to all account punters) to the illicit (eg “reimbursement of expenses” or “gifts” to favoured high value customers).

In contrast, fixed odds operators (bookmakers) are generally reluctant to give a “roll of the board” (ie a slightly better fixed price) to successful professional punters.

The principle underpinning the Betfair commission structure is that larger-scale punters (whether they win or lose on individual races) are able to earn a lower commission rate. “Commission points”, which lead to a lower commission rate during the following period are earned even when a punter returns a net loss on an event – even though liability to pay commission does not arise in such cases.

Betting exchanges also enjoy a discretion in terms of the rate of commission imposed on individual customers.

- 2 Second, the basis of calculation of commission payable – in the case of Betfair, on a customer’s net winnings per event. As a general rule, a professional punter is more likely than a recreational punter to back several mutually exclusive outcomes (ie different runners) to win an event. If the selections include a winner the commission payable on that successful bet is effectively reduced by the losing bets in the same race.

- Better odds

Similar issues tend to arise here as set out above in the context of recreational punters. However, the professional punter probably attaches even greater importance to the pursuit of better odds. For example, if a professional punter assesses a runner’s true price at \$4.00 (ie the probability of it winning is 25%), he would be prepared to back it in a betting ring if, say, \$4.50 were on offer. However, if bookmakers and TABs were offering only \$3.80 the professional would normally decline to back it there. In this respect, the mechanics of a betting exchange also suit professionals. At any time an “offer” can be posted to back a runner at a certain price for a nominated amount (eg \$4.00). A bet will not be struck until a “layer” enters the exchange and accepts all or part of the offer.

The “trader”

- “Punters” who cannot lose

There is an argument that betting exchanges facilitate a new and vibrant form of wagering, classified as “trading”.

... as far as racing is concerned, wagering is about heightening the entertainment experience of the race – but the trader’s philosophical approach is not to be “in the market” when the event is run. From a racing purist’s perspective then, it is questionable whether or not bet exchanges should be permitted {finish off}...³¹

In punting with bookmakers or TABs, an ingredient of returning a profit over a period is the punter’s ability to select winners and locate “value”³². That is, success remains dependent on the outcome of races. However, betting exchanges may theoretically give rise to a new breed of successful “punters” who merely, for example, back a horse on a betting exchange then subsequently lay it at a lower price, or vice versa. To the trader who has successfully worked a race, the result of that race is irrelevant.

Traders returning a gross profit over a period represent a leakage or a drain on the “circular flow” of wagering dollars in the betting exchange. The circular flow concept is discussed below at 5.2.13.

From another angle, the possibility of lower over rounds (the aggregate market percentage beyond 100%, which tends to disadvantage the punter) and hence relatively better odds on offer at betting exchanges may give rise to more professional punters successfully constructing “Dutch books” – where they are able to back all runners, returning a gross profit regardless of which runner is successful.

The bookmaker

The use of betting exchanges by licensed Australian bookmakers is canvassed in detail in chapter 5.3.

- Viable lay-off facility

Where, for example, an individual bookmaker’s “board” is set to, say, 120% (and hence includes a reasonable “over round”) a bookmaker may be able to lay-off (bet back) into a betting exchange at a significantly better price than that at which the bookmaker wrote the original bet.

³¹ Data Channel Discussion Paper for Task Force, 3 December 2003, page 6

³² The concept of “value” in punting is outlined in section 3.4.4

- Separate betting market

While there will logically often be broad similarities in prices offered in an on-course bookmaker betting ring and a betting exchange on the same event, a bookmaker may be able to improve the chances of “building a book” by laying horses in both places.

- Bookmaker-friendly commission structure

Again, the Betfair commission structure would likely be to the advantage of a bookmaker. On most Australian racecourses where there is significant betting turnover, racing industry levies are calculated on betting turnover. In contrast Betfair charges commission on the net result per event. Again, if a bookmaker is laying several runners (mutually exclusive outcomes) in one race it would likely be to his advantage to be levied on the basis of overall net result on that race – particularly where the rate of levy is relatively modest (as low as 2% in the case of Betfair). Further, larger-scale bookmakers would likely benefit from the Betfair “commission points” structure.

5.2.4 EXPOSURE OF LICENSED AUSTRALIAN WAGERING OPERATORS TO BETTING EXCHANGES

Exposure resulting from threats to racing integrity

Chapter 5.1 examined the possible repercussions for racing integrity and perceived integrity of the (further) encroachment into Australia of betting exchanges on racing.

If adverse effects on racing integrity or perceived integrity were to result, it is foreseeable that all forms of wagering and bet types on racing would suffer. For example, if punter confidence in racing integrity declines, turnover on even TAB exotic bet forms (eg quinella and trifecta) may suffer.

At this stage, it would be difficult to quantify this aspect of the exposure of established Australian wagering operators on racing to betting exchanges. The degree of exposure would obviously be dependent upon the extent of any decline in punter perceptions regarding racing integrity together with the degree to which such decline is reflected in reduced betting activity.

Exposure resulting from likely transfer of betting activity

Separate to any racing integrity issues, there would almost certainly be a transfer of racing betting turnover from TABs and licensed bookmakers to betting exchanges.

As discussed in section 5.2.3 above, betting exchanges on racing – objectively viewed – would likely prove attractive to many Australian racing punters. However, different categories of punters would likely be inclined to differing degrees to shift their punting activity away from licensed bookmakers and TABs to a betting exchange. Within section 5.2.3 is an attempt to broadly categorise Australian racing punters and their likely responses to the option of a betting exchange on Australian racing.

Precise form of any challenge to Australian racing wagering operators by betting exchanges

The extent of the threat posed by betting exchanges to existing Australian wagering operators on racing would be at least partially dependent upon the precise form of any betting exchange operations on Australian racing. Foreseeably, betting exchanges could operate under various guises:

- 1 Operating from an overseas base without the “permission” of the Australian racing industry to operate on Australian racing. This is the current situation with the two British betting exchanges currently operating on Australian racing – Betfair and Twoflys.
- 2 Operating from an overseas base while in receipt of some form of “permission” from the Australian racing industry.
- 3 Operating from an Australian base but without the “permission” of the (national) racing industry. Examples of this scenario might involve a decision by a lone State or Territory Government to grant a betting exchange licence or bookmakers being permitted to provide “white label”³³ access to an overseas exchange.
- 4 Operating from an Australian base, with the full “permission” of the (national) racing industry.

In the case of scenarios 3 and 4 above, there would likely arise “legal issues” in one or more Australian jurisdictions in areas such as cross-border betting into an exchange.

A movement from scenario 1 toward scenario 4 above would logically involve a progressively greater threat of transfers of wagering activity from TABs and licensed bookmakers to betting exchanges. Under scenarios 3 and 4, Australian punters would likely feel relatively more comfortable betting with an exchange which is licensed and regulated in Australia – in

³³ The “white label” concept, applied to betting exchanges, might involve an Australian licensed bookmaker having a link to a British betting exchange from the Australian website.

areas such as security of credit card details, dispute resolution, certainty of collecting winnings and security of funds. Additionally, some legal impediments – such as the “overseas betting offence provision” in NSW and Western Australian legislation – do not apply.

While some of Betfair’s wagering activity on Australian racing events is undoubtedly sourced from Australia, Betfair has yet to achieve “mainstream” penetration into the Australian race wagering market. This is attributable, at least in part, to factors such as:

- Betfair’s inability to (legally) advertise throughout Australia – particularly in the more populous jurisdictions such as New South Wales and Victoria.
- The reluctance of many Australians to transfer funds via credit card to an overseas entity.
- The illegality in some States (eg New South Wales, Western Australia) of placing a bet on an Australian race with a wagering operator not licensed in Australia.

5.2.5 EXPOSURE OF TABs

Totalizator betting on racing

Totalizator betting turnover on racing with Australia’s TABs is currently around \$10.6 billion per annum.

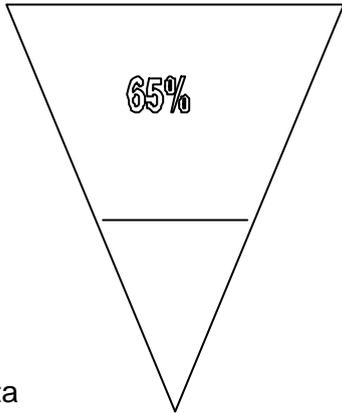
Clearly, this entire amount would not be at risk of transfer to betting exchanges. At the low-risk end of the spectrum is a \$1.00 bet by a PubTAB punter in a maiden greyhound race at Launceston. On the other hand, the \$5,000 win bets with UniTAB via the Internet of a big punting Brisbane thoroughbred owner who often has runners at Melbourne metropolitan meetings may well be at much higher risk.

One means of assessing the possible exposure of totalizator racing bets of the Australian TABs is to present every bet as an inverted pentagonal pyramid. Each side represents a different characteristic of bets. In the case of every side, the further up the inverted pyramid the bet sits, the greater the theoretical risk, all other things being equal, of transfer to a betting exchange. The percentages represent the proportion of total betting turnover (as against individual bets).

For example, side one represents the “bet complexity”. By their nature, betting exchanges (based on fixed odds) are not suited to offering exotic bet forms with large numbers of outcomes. It is also relevant, however, that over 65% of TAB turnover is on the win, place and doubles bet forms which are available through betting exchanges.

SIDE 1 – BET SIMPLICITY

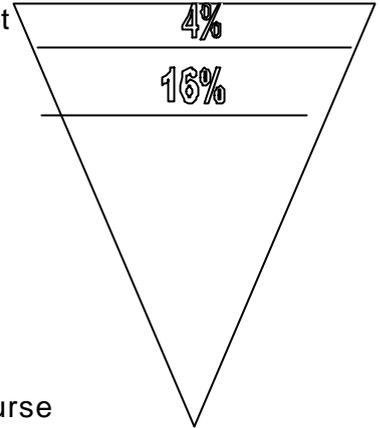
Win
Place
Doubles



Quinella
Exacta
Trifecta
Superfecta

SIDE 2 – BET REMOTENESS

Internet
Phone



Cash
On-course

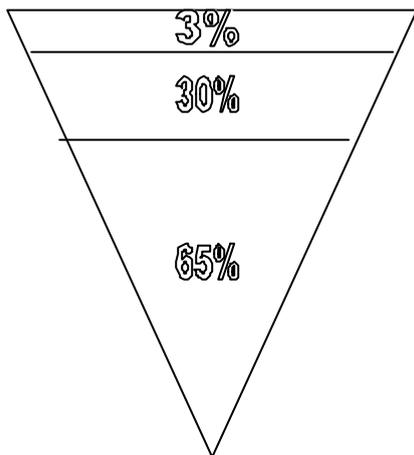
TAB EXPOSURE

SIDE 3 – BET SIZE

\$1,000

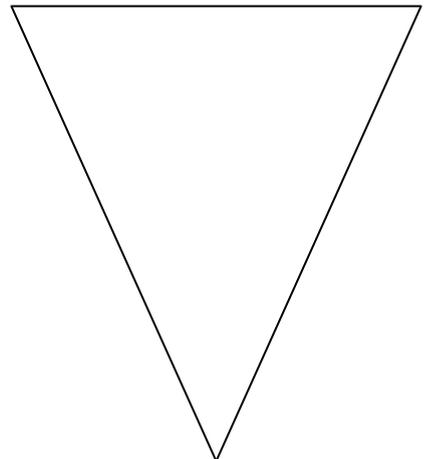
\$100

\$1



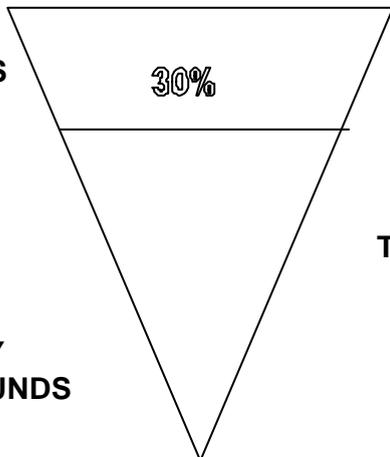
TAB EXPOSURE

SIDE 4 – PUNTER PROFESSIONALISM



SIDE 5 – RACE STATUS

METROP
GALLOPS



COUNTRY
GREYHOUNDS

TAB EXPOSURE

Some additional comments on the above inverted pyramid:

- *Side 1 (above)* – while TABs have diversified their betting product range over the past twenty years or so, around two-thirds of their turnover continues to be on win, place and doubles. This turnover is heavily exposed to the risk of transfer to betting exchanges.
- *Side 2* – developments in communications technology – particularly hand-held devices – may increase the accessibility of betting exchanges over the medium term. For example, as java and third generation mobile phone technology achieve greater penetration in Australia, betting exchanges may increasingly use mobile phones as a vehicle for disseminating betting information and processing transactions. Ironically, by steering more of their customers toward low cost bet processing options such as Internet and voice recognition telephone betting, TABs may be inadvertently herding customers into the higher risk area of *Side 2* in that customers using those media may find the jump to betting exchanges relatively shorter and easier.
- It is emphasized that *Side 3* above represents the dollar value of bets, not the number of bets. It is noted that a relatively larger proportion of bets could be exposed to transfer to betting exchanges than appears on face value to be the case. This is because many “serious” punters, who are potentially highly price sensitive, back multiple runners to win a particular race. Hence, they may place \$60 on a runner at 50/1 as part of a total outlay on a race of \$1,500. In other words, a significant proportion of bets of ostensibly relatively modest size could effectively form part of a much larger investment on a race by an individual – and hence be at high risk of transfer to a betting exchange.
- *Side 4* – professional punters, by definition are highly price-sensitive (refer discussion in section 5.2.3) in their relentless pursuit of “value”. A significant proportion of TAB win and place turnover from professionals win (and place) could foreseeably be at risk.
- *Side 5* – the evidence to date is that betting exchanges targeting the Australian wagering market have focused on metropolitan thoroughbred racing. This is reflective of the need for a successful betting exchange to achieve critical mass from virtually the outset and have adequate depth and liquidity to attract punters to the website and open an account.

Additional factors tend to exacerbate TABs’ exposure to the risk of turnover transferring to betting exchanges. These include:

- In contrast to fixed odds (bookmaker) betting, the attractiveness of totalizator betting is critically dependent upon the volume of bets placed by other punters, ie the size of the totalizator pool. For example, a punter would be highly unlikely to place a \$2,000 bet into a totalizator investment pool of \$4,000 – for fear of “crushing” the dividend of the runner they wish to back. This trait of totalizator betting which gives rise

to a multiplier effect on any decreases (or increases) in pool size. Hence, the effect of any significant transfer of turnover to betting exchanges would likely be magnified.

- In some respects, the bets identified as being at relatively greater risk on the inverted pyramid above are those which contribute more to TAB net profits. For example,
 - . By reference to side 2 above (*Bet remoteness*), TAB bets placed over the Internet or by telephone (many TABs now utilize computer voice recognition technology) involve negligible variable processing costs for TABs. In contrast, bets processed at TAB agencies in cities tend to be labour and resource intensive for TABs.
 - . By reference to side 3, TABs basically incur many of the same costs to process a \$1 bet as they do a \$1,000 bet. It is the latter bets which are more susceptible to transfer to betting exchanges, as punters making those bets recognize that even a slightly higher dividend (often available from a betting exchange) is reflected in a materially higher collect on a winner.

A quantitative forecast of the possible transfer effect of betting exchanges on TAB betting turnover on racing is in section 5.2.10.

TAB fixed odds betting on racing

While the bulk of TAB betting on racing is totalizator, most Australian TABs now also offer fixed odds betting products on feature races. In many respects, the risk factors in respect of transfer of this betting activity to betting exchanges are similar to the situation applying to bookmakers (refer section 5.2.6 following).

5.2.6 EXPOSURE OF BOOKMAKERS

“Traditional” bookmakers

“Traditional” bookmakers field at race meetings and in betting auditoria on licensed racecourses. They are permitted to accept bets by telephone under certain conditions. Traditional bookmakers play an important role in the racing industry in attracting punters on-course to race meetings. As a guide, total turnover on racing betting with traditional bookmakers throughout Australia is currently around **\$1.3 billion per annum**.

Resorting to the inverted pyramid analysis in section 5.2.5 above, betting exchanges also pose significant cannibalization risks to the turnover of traditional bookmakers, for the following specific reasons:

- 1 In respect of *Side 1* (bet simplicity), virtually 100% of traditional bookmaker turnover is on win or each way bets. This stems from the fact that the vast majority of bookmakers are limited to offering win and each way (win/place) fixed odds betting. As a consequence their betting product is, in a qualitative sense, homogeneous with that offered by betting exchanges. Hence, traditional bookmakers would be pitched against bet exchanges on the basis of price alone. The comparison of bookmaker and betting exchange odds in appendix C1 suggests that, under the operating conditions currently enjoyed by betting exchanges in Britain, bookmakers would find it difficult to compete against exchanges on price.
- 2 *Side 2* (bet remoteness) – as a guide, around 20% of total racing betting turnover with traditional bookmakers is now by telephone. However, this is under circumstances where, for many punters, the main incentive to attend racecourses is the unfettered access to bookmaker fluctuations. The increased presence in Australia of betting exchanges on racing could well remove much of the incentive for punters to attend racecourses and bet with bookmakers.
- 3 *Side 5* (race status) – in many Australian States and Territories, traditional bookmaker turnover is heavily focused on the metropolitan race meetings. For example, in harness and greyhound racing many non-metropolitan race meetings covered by TABs are conducted in the complete absence of bookmakers on-course.

A quantitative forecast of the possible transfer effect of betting exchanges on traditional bookmaker betting turnover on racing appears in section 5.2.10.

“Corporate” bookmakers – circa \$1 bil

“Corporate” bookmakers in the Northern Territory and the ACT are licensed by the respective governments. They transact the vast bulk of their turnover by telephone and Internet – with negligible face-to-face turnover at race meetings. As an approximate guide only, the total turnover of the four corporate bookmakers in Australia who transact significant betting volumes on Australian racing is **around \$1 billion per annum**.

Again resorting to the inverted pyramid analysis in section 5.2.5 above, betting exchanges also pose significant cannibalization risks to the turnover of corporate bookmakers. In some respects it is arguable that the corporate bookmakers are the most exposed of the three categories of wagering operator. Specifically,

- 1 In respect of *Side 1* (bet simplicity), corporate bookmakers are similarly exposed as traditional bookmakers in that much of their focus is on fixed

odds win and each way betting. One line of betting products in the corporate bookmaker range which may, however, be shielded to an extent from betting exchange competition is that based on TAB-odds. This involves bets being taken, not at predetermined prices, but under circumstances where the dividend is not known until after the event, when it is declared by a TAB. Some corporate bookmakers have already extended this line to “exotic” bet types such as quinella and trifecta. TAB-odds betting by bookmakers is the subject of extensive analysis in the report of the Cross-border Betting Task Force, delivered to the Australasian Racing Ministers’ Conference on 1 November 2002. A majority of that Task Force recommended to Ministers that action be taken to prohibit the practice across Australia – primarily on the grounds of risks to wagering integrity.

- 2 *Side 2* (bet remoteness). It is this aspect of their betting in respect of which corporate bookmakers are most exposed to betting exchanges. Virtually 100% of corporate bookmaker betting is currently “remote”, in that bets are transacted by either telephone or Internet.
- 3 *Side 5* (race status). Ironically, notwithstanding the location of corporate bookmakers in the Northern Territory and the ACT, on the information available to the Task Force, virtually all corporate bookmaker turnover on racing is on meetings conducted outside the two Territories – with particular focus on thoroughbred race meetings in Melbourne, Sydney and Brisbane. Experience to date suggests that these race meetings will also attract the bulk of business in the case of betting exchanges fielding on Australian racing.

A quantitative forecast of the possible transfer effect of betting exchanges on corporate bookmaker betting turnover on racing appears in section 5.2.10.

5.2.7 OFF-COURSE DISSEMINATION OF FIXED ODDS ON RACING

The role of betting exchanges (particularly those operating over the Internet) as a vehicle for the off-course display of fixed odds on racing events itself gives rise to issues on two related fronts:

- 1 Several jurisdictions (including NSW, Victoria, Queensland, South Australia and Tasmania) have longstanding legislative prohibitions against the dissemination off-course of bookmaker odds on racing events.

Part of the rationale for this prohibition is to hinder illegal (SP) bookmaker activity. In this respect, a possible adverse effect of the (further) encroachment into Australia of betting exchanges on Australian racing is the growth of criminal activity in this sphere and a consequent loss of business for TABs and licensed bookmakers.

The decision of the Full Bench of the High Court on 10 December 2002 in *Gutnick v Dow Jones* (refer Appendix A) gives rise to issues regarding whether betting exchanges – even those based overseas – are breaching these laws.

- 2 Prohibitions in the Rules of Racing (eg Australian Thoroughbred Rule of Racing 160B) proscribing the dissemination of fixed odds from licensed racecourses unless properly authorized.

5.2.8 RELEVANCE OF EXCHANGE COMMISSION STRUCTURES

In discussions on the positive effects of any proposed new wagering products, it may be argued that existing wagering operators could also benefit from new wagering custom. For example, it could be argued that if new wagering customers are attracted to betting exchanges, those customers may also bet with TABs and licensed bookmakers.

It is notable, however, that the current commission structures of betting exchanges such as Betfair and Twoflys may not be conducive to this. Customers are charged commission on their net winnings per event. Take the example of a “Dutch book” punter who wishes to back five runners in one event and better odds are available from Betfair in the case of four of those, but a licensed bookmaker is offering a slightly better price about the fifth horse. Instead of backing the fifth horse with a bookmaker, the punter may instead still choose the betting exchange, in the knowledge that if it loses but one of the other four horses wins, the losing stake on the fifth horse will reduce the winning amount upon which commission is payable by the punter.

5.2.9 POSSIBLE ADVERSE FINANCIAL EFFECTS OF ANY NEGATIVE CONSEQUENCES FOR RACING INTEGRITY

Chapter 5.1 focused on the possible adverse effects of betting exchanges on racing integrity mainly from a public interest and consumer protection viewpoint.

There could also be adverse financial effects for all wagering operators.

As discussed below in section 5.2.13, leakages from the wagering “circular flow” occur in two forms – the gross earnings of the wagering operator and the profits of well-informed punters who win over a period. An example of increased leakage might arise if the facility to lay runners in betting exchanges leads to instances of nefarious behavior such as jockeys/drivers not allowing horses to run on their merits. In other words, if there arises a causative relationship between betting exchanges operating on racing and instances of certain runners having greatly reduced chances of winning.

If somebody who was privy to such knowledge laid the runner concerned in a betting exchange at, say, \$3.00 (2 to 1) they would be doing so under the luxurious circumstances where the runner's "true odds" are probably closer to 100 to 1. The punters who have backed that runner in the betting exchange would not only lose but would be accepting "bad value" in the extreme. On the other side of the equation, the layer (if consistently a recipient of inside information of this nature) would likely be a winner over a period. The rate of leakage from the wagering circular flow would thus be exacerbated.

5.2.10 CONCLUSIONS ON LIKELY IMPACT OF BETTING EXCHANGES ON RACING ON EXISTING LICENSED WAGERING OPERATORS

On the basis of the information available to the Task Force (including the submissions received from various stakeholders) and the above analysis, the Task Force estimates that, in respect of the three categories of Australian wagering operator on racing, in the medium term (around 5 years hence), there is a risk of transfer of annual turnover to betting exchanges as follows:

TABs (jointly) – turnover currently around \$10.6 billion p a

SCENARIO <i>(The scenarios are those set out in section 5.2.4)</i>		AT RISK OF TRANSFER	
		\$	% of \$10.6 bil
1	Operating from o/s without permission of Australian racing industry (eg current situation with Betfair, Twoflys.	\$0.5 bil	5%
2	Operating from o/s with some form of permission from Australian racing industry.	\$0.75 bil	7.5%
3	Operating from Australian base without permission from Australian racing industry.	\$1 bil	10%
4	Operating from an Australian base with full permission of Australian racing industry.	\$2 bil	20%

"Traditional" bookmakers – turnover currently around \$1.3 billion p a

SCENARIO <i>(The scenarios are those set out in section 5.2.4)</i>		AT RISK OF TRANSFER	
		\$	% of \$1.3 bil
1	Operating from o/s without permission of Australian racing industry (eg current situation with Betfair, Twoflys.	\$65 mil	5%
2	Operating from o/s with some form of permission from Australian racing industry.	\$98 mil	7.5%
3	Operating from Australian base without permission from Australian racing industry.	\$130 mil	10%
4	Operating from an Australian base with the full permission of Australian racing industry.	\$260 mil	20%

“Corporate” bookmakers – turnover currently around \$1 billion p a

SCENARIO <i>(The scenarios are those set out in section 5.2.4)</i>		AT RISK OF TRANSFER	
		\$	% of \$1 bil
1	Operating from o/s without permission of Australian racing industry (eg current situation with Betfair, Twoflys.	\$75 mil	7.5%
2	Operating from o/s with some form of permission from Australian racing industry.	\$110 mil	11%
3	Operating from Australian base without permission from Australian racing industry.	\$150 mil	15%
4	Operating from an Australian base with the full permission of Australian racing industry.	\$300 mil	30%

The above estimates are based on betting exchanges operating according to the current Betfair model – with the sole impost on customers being the payment of a commission (at between 2% and 5%) on net winnings per event. Under a betting exchange model involving higher contributions to the racing industry and Government taxes, it follows that the risk of transfer would be lower – as the odds available to backers and layers (net of commissions, etc) would be less attractive.

In any assessment of the risks posed by betting exchanges to current operators, the appeal of Internet betting exchanges to the next generation of technology savvy punters should be borne in mind.

The above analysis relates only to reductions in the turnover of existing wagering operators resulting from transfers to betting exchanges. Additionally, there are the risks to wagering turnover resulting from possible damage to racing’s actual and perceived integrity (refer sections 5.1.7, 5.1.10).

EFFECTS OF BETTING EXCHANGES ON RACING INDUSTRY AND GOVERNMENT REVENUE STREAMS FROM WAGERING **[sections 5.2.11 to 5.2.20]**

5.2.11 CONCEPTS OF “NEW MONEY” AND “PLAYER LOSS”

“New money”

In discussions on any new wagering initiative, the concept of attracting “new money” or “increasing the size of the Australian race wagering pie” tends to arise. Basically, new money is betting activity other than which merely involves a transfer from existing licensed wagering operators.

In the context of local betting on Australian racing, sources of new money might include:

- Australians who do not currently bet on racing becoming racing punters.
- Existing Australian racing punters to bet more (or more often) on Australian racing.
- More overseas punters betting on Australian racing with Australian wagering operators.

In any examination of the likelihood of “new money”, responsible wagering issues are likely to arise also. Chapter 5.4 examines responsible wagering in the context of betting exchanges.

“Player loss”

Another relevant concept is that of “player loss”. If a bookmaker’s turnover (sales) increases, this does not necessarily mean an increase in gross revenue. Basically, it is only through an increase in customer expenditure (player loss) that the bookmaker’s gross revenue increases. “New money” gives rise to the possibility of increases in gross revenue.

5.2.12 OPPORTUNITIES FOR “NEW MONEY” ARISING FROM BETTING EXCHANGES

In submissions to the Task Force, some proponents of betting exchanges argued that the money wagered through exchanges will be “new”. Following is an extract from Betfair’s submission³⁴,

A further area that has conveniently not been explored by the TAB’s in their submissions to date is the huge potential that betting exchanges offer to bring in international punters to the Australian market. Betfair’s

³⁴ Betfair submission dated 13 May 2003, page 7

client base is predominantly UK based at present, and yet Australian racing has already established itself as one of our five most popular categories. The advent of Betfair in the Australian market will create a purely additive revenue stream for the industry. Curiously, Tab Limited have sought to use one of our own arguments to defend their position, not realising where the figures actually come from. We have put it to the ARB that, on current projections, Betfair will match an estimated \$10million in bets on the Melbourne Cup this year from our existing (non-Australian) userbase. We have suggested that it would be a travesty if Australian racing did not see some benefit from that. It may well be suggested that bets made by these users will come from current customers of the TAB's. It will not. It is money that will be entirely new to Australia.

Overall, the more successful betting exchanges become in the Australian market, the more they will grow the market and thus the more the industry will benefit in terms of revenue. It must be stressed that exchanges will grow the market in the most responsible of ways – they will safeguard the integrity of sport by using their unsurpassed audit trails; they will ensure that all gambling is conducted in a responsible way, as outlined in section 5 below; and they will protect the punter to a degree never seen before.

On the other hand, submission makers opposed to betting exchanges suggested that much of the turnover of betting exchanges will involve a transfer from existing licensed operators. For example,

Any competitive activity will always seek out the lowest cost regime. This search becomes easier where an internet capability suits the style of betting. The combination of display systems and credit card transactions is suited perfectly to internet operators.³⁵

The ABA argues that any offer of a 10% payment (0.2 – 0.3% of commission/punter winnings) to the Racing Industry (nothing to Governments) would provide little revenue and carry the enormous risk of substantial transfer of betting turnover from existing traditional forms of wagering.³⁶

It is not unreasonable to expect that the arrival of a new genus of wagering would result in some new money into the Australian racing wagering environment. It is suggested, however, that recent experience in Australia points to it being prudent to adopt a conservative approach in this regard. For example, the arrival of a full-time racing channel on payTV during the late 1990s did not result in any great volumes of “new money”. In this respect, it transpired that some estimates were wildly optimistic.

³⁵ UniTAB submission dated 23 April 2003, page 3

³⁶ Australian Bookmakers' Association submission dated 8 May 2003, page 4

Currently, player loss (expenditure) on racing wagering in Australia is around \$2 billion per annum. Any estimate of the “new money” likely to be generated by a hypothetical Australian betting exchange offering attractive odds on Australian racing is highly speculative. The Task Force is of the view that only modest volumes³⁷ of “new money” (incremental player loss) could be generated in the medium term (next five years).

5.2.13 CONCEPT OF THE WAGERING “CIRCULAR FLOW”

In wagering analysis it is sometimes argued that reducing the takeout or commission of a wagering operator necessarily leads to a proportionate increase in the rate of “churn” (ie the average number of times a dollar bet by a punter circulates in a wagering system before it is lost). For example, in a submission to the Task Force, Betfair argues,

It is proven that turnover increases due to a lower retention rate as more money is available to be re-circulated around the market. In 1999, the ARB established a working party to analyse bookmaking in Australia. That report concluded several things:

- *Totalisator retention rates are higher than those of traditional bookmakers (c. 16% vs. c. 5.5%)*
- *Investments channelled through bookmakers with the lower retention rate equate to almost 3 times the turnover generated by the same investment when it is channelled through the totalisator with its higher retention rate*
- *The direct financial value of the bookmaking industry (with its lower retention rate) is considerably more than is often assessed*

The report concludes by saying “In fairness, what must be debunked is the notion that a \$1 spend with TAB produces 5 cents for the industry, whereas the same spend with a bookmaker would produce 1 cent or less – this is not correct.”

This report was focusing on the relative merits of the TAB’s and the traditional bookmaking industry. However, the same arguments are equally valid today when applied to the nascent betting exchange market. Betfair acknowledges that betting exchanges retain less than either traditional bookmakers or the TAB’s. However, as a result, the turnover that is generated by betting exchanges is significantly higher than either of the other forms of betting and, as a result, betting exchanges are in a position to make very significant contributions to the industry. Consider a punter with \$100 to spend. On an exchange that retains, on average, 2.5% that \$100 will generate a total betting volume of \$4,000. The same \$100 bet on the TAB with a retention rate of 16% will generate a total turnover of \$625. In this example, the exchange generates 6.4 times as much turnover as the TAB does. Thus, the TAB

³⁷ It is useful to note that research by some TABs has disclosed that only around 7% of the adult population in Australia are regular punters on racing.

*must contribute 6.4 times as much of its turnover to racing as the exchange does before it contributes the same amount in absolute terms.*³⁸ (emphasis added)

The Task Force is not convinced of the universality of the above statement that *“It is proven that turnover increases due to a lower retention rate as more money is available to be re-circulated around the market.”*

This statement does not attempt to factor in the effect, in a wagering environment, of the “hard (informed) money” bet by professionals. The winnings – over a period – of professionals reduce the degree of “re-circulation” of money in a wagering market.

It is further relevant that professional punters are logically attracted to fixed odds betting (such as with bookmakers and betting exchanges). This emanates from their ability to identify “value”. As a result many of the winners they back tend to firm in the bookmaker betting market – meaning the professionals receive better odds than their recreational counterparts who tend to “follow the money” (betting trends).

In an example of pure gaming (ie no skill element) such as Roulette, a wheel with both a zero and a double-zero (as in American Roulette) provides a house (casino) edge of around 5.4% (2/38). In contrast, the Roulette generally available in Australia has a single zero only, providing a house edge of around only 2.7% (1/37). Hence, over a large enough sample of spins, the US casino will return a gross profit of around 5.4% of the total bet by players, while the parallel figure for an Australian casino will be only 2.7%.

A US and an Australian Roulette player each commence with \$10,000 and continue betting \$100 per spin until both have nothing left. As a consequence of the lower house edge, the Australian player betting will theoretically continue playing for longer than his or her American counterpart. Across and adequate sample, the additional playing time (and turnover) will be directly in proportion to the lower house edge. Although both players eventually “spend” (lose to the casino) their \$10,000, the turnover of the Australian player will be much larger.

However, it is dangerous to extrapolate this reasoning to wagering.

In Roulette, over a sufficient number of spins, all players will lose their entire gambling bank to the casino. In wagering, the presence of “hard money” bets by well-informed and/or professional punters means they win over a period. Together with the wagering operator, for example a TAB, they effectively “share in the spoils” in the form of the losses of recreational punters.

Hence, in a hypothetical scenario where the TAB commission rate is reduced from say, 14% to 7%, over a sufficient sample of races,

³⁸ Betfair communication to Task Force, dated 13 May 2003

recreational punters will still eventually lose their entire gambling bank. However, the lower commission rates also means additional opportunities for professionals to identify and back “value” runners. As a result their win rate increases.

In summary, the only source of injections to the wagering circular flow is the expenditure of punters who lose over a period. In totalizator betting, leakages flow to the TAB (in the form of commissions) and winning punters. Similarly, in fixed odds (bookmaker) betting, leakages are the gross profits of (winning) bookmakers, racing industry levies and Government taxes and again, the gross profits of winning punters.

In précis, the major consequence of the “skill” and “inside knowledge” factors in wagering is that a reduction in commission (in a totalizator environment) or a reduction in the over round (ie better odds) in a bookmaker environment does not lead to an increase in betting turnover in direct proportion to the lower commission rate or over round.

Extrapolating this to the current situation in Australia, the availability of better odds in a betting exchange does not necessarily mean there will be proportionate increases in punter turnover. The shortfall in turnover is attributable to the increased winnings of professional punters – which represents a leakage from the circular flow.

Of additional relevance in the betting exchange situation is the anonymity of layers and backers viz-a-viz each other (refer section 5.2.3 – *the professional punter*). Professional punters in a betting exchange do not risk being “identified” by the other parties in their betting transactions – as tends to occur when they bet with a bookmaker. Consequently, they are able to win relatively more in a betting exchange situation.

5.2.14 REVENUE STREAMS FROM EXISTING FORMS OF WAGERING

As indicated in section 5.1.4, the Australian racing industry currently derives around \$600 million per annum in total wagering revenues – the vast bulk stemming from off-course totalizator betting with TABs. Metropolitan thoroughbred

State and Territory Governments around Australia currently derive around \$320 million per annum in total betting taxes, again mostly from off-course TAB turnover on racing. Additionally, the Commonwealth Government receives around \$150 million per annum from TABs in respect of their racing betting.

5.2.15 FINANCIAL ASPECTS OF BETTING EXCHANGE OPERATIONS

It is fair to say that Australian racing punters, overall, prefer to bet on the Australian racing product. This is of course primarily attributable to the telecasts and broadcasts of Australian racing events into racecourses, TAB agencies, clubs, pubs and homes. Against this background, to date the only overseas betting exchanges with material relevance to Australia are two which have commenced operations on Australian racing (and sport) – Betfair and Twoflys. Betfair is widely reported to have over 75% of the global betting exchange market. Both operate under UK bookmaker licences.

Under current arrangements Betfair pays nothing to the Australian racing industry for the use of its product as a betting medium. In this respect, the Task Force is aware that Betfair has stated publicly it is prepared to backdate (to mid-February 2003) the commencement of any funding arrangement it may arrive at with the Australian racing industry in the future. In a further touch of irony, coverage of Australian and other non-UK racing is additionally lucrative for Betfair because it is not required to make any levy payment to the UK racing industry (refer section 5.2.20 for details of the 42nd Levy Scheme).

Betfair currently pays no betting taxes to Australian State and Territory Governments or GST to Commonwealth despite transacting with Australian punters.

5.2.16 “TURNOVER” IN A BETTING EXCHANGE

In correspondence to the Task Force, Betfair highlighted the major disparity between the regimes for payments by wagering operators to the racing industry in each of Britain and Australia.

The British system of payment for both GPT and product fees is calculated on a Gross Profits basis. I am aware, however, that the Australian system is more usually calculated on a turnover basis. As a result it is difficult for me at this stage to forecast what revenues we could generate for the industry and I think it would be wrong for us to suggest that the model that we have in the UK is automatically the best one to use in the Australian market. As you know, we are in discussions with the Australian Racing Board (“ARB”) with a view to structuring a deal that is good for both racing and for Betfair.³⁹

A relevant aspect in attempts to align betting exchange activity with that of existing operators is defining what constitutes “turnover” in a betting exchange.

³⁹ Betfair submission to Task Force, 25 May 2003, page 5

For example, turnover with a bookmaker on a particular race is simply the total amount of punters' stakes (ie bets placed with the bookmaker). For purposes of calculating the turnover levy payable to the racing industry, bookmakers are permitted, in some jurisdictions, to net-off bets back with other licensed bookmakers.

Similarly, in totalizator wagering, turnover in a pool on a particular race is the total of all bets of a certain type (eg win) placed with a TAB – often also referred to as the “investment pool”.

This issue is of such significance because currently the financial contributions to the racing industry and taxes paid to State and Territory Governments of both TABs and bookmakers can effectively be measured as a percentage of their respective turnover.

What constitutes “turnover” in a betting exchange is less clear-cut. Below is an excerpt on this issue from the 8 May 2003 submission to the Task Force of the Australian Bookmakers' Association (at page 1)

It should be noted from the attached material that there are two poles - or end points on a pendulum - that describe wagering activity, or "turnover" in a Betting Exchange.

Firstly, on the Betting Exchanges' own definition of "no Bookmakers" viz. only punters betting between each other, turnover is simply the sum of all users stakes. Therefore two punters, one betting \$10 (or "backing") Nags at 3/1 with another betting \$30 against Nags (or alternatively "backing" all other runners to beat Nags) at 1/3 - or as is sometimes said "laying" Nags for \$10 at 3/1 (with a liability of \$30). The bottom line is that there has been \$40 staked, despite Betfair's use of \$20 "matched bets" meaning \$10 "bet" and \$10 "layed".

Secondly, it is argued (primarily to lift the ratio of commission receipts to 'turnover') that to compare "Betting Exchange turnover" with "Bookmaker turnover" one should only consider the "backers stakes" (as against those "laying" the bet). This fallacious argument is perpetuated by Betfair's persistence in using the meaningless "matched bets" as a means of recording its 'activity'.

The truth of course is somewhere in the middle.

It will no doubt be argued that this approach seems to let "licensed Bookmakers" off paying tax on their liabilities - but it needs to be remembered that "licensed Bookmakers" have other obligations (e.g. minimum "lay to lose" obligations, and the requirement to display a price about all runners. In this regard a "Betting Exchange" is more akin to a "virtual betting ring" where a licensed Bookmaker is using it as an additional distribution channel.

From the analysis of Betting Exchange activity it has been shown that the majority of betting (and hence exchange liquidity) is confined to betting for, or against, favoured runners.

Some figures can be assumed accurate for broad analysis.

Firstly the weighted average bet is struck at about 3/1 (4.00) meaning that total turnover (with no Bookmakers present) is 4 times "backers' stakes" (or double matched bets).

Secondly, Betting Exchanges gross commissions are something less than 1% (estimated at 0.75%) of true turnover – out of which Betting Exchanges (notably Betfair) only want to pay 10% to Racing (or put another way 0.075% of turnover) for the right to wager on that product.

As set out in the above ABA submission, the polar views of what constitutes "turnover" in a betting exchange are:

- **The "backers' stakes" option** – where (only) the stakes of individual bets by "backers" is considered turnover (ie activity by layers is excluded altogether); and
- **The "comprehensive" option** – where turnover is the total of backers' stakes PLUS the exposure of layers on all individual bets. An example in favour of the validity of this approach is the punter who currently seeks to "back the field" on a totalizator to beat an odds-on favourite. The punter would place various amounts on each of the other runners (which comprise the "field") in the expectation of collecting an approximately uniform amount whichever of the runners other than the favourite wins. Clearly all the bets are turnover with the TAB. If, instead, the same punter enters a betting exchange and simply "lays" the favourite (ie backs the "field" to beat the favourite), it appears a valid argument that this should also constitute "turnover".

A useful comparison is a betting exchange operating on the handicap option on a football match – Carlton versus Essendon. There are only two outcomes. Backing Carlton is identical to "laying" Essendon. On this basis, it would seem reasonable to regard both the stakes of backers and the exposure of layers as "turnover". Extrapolating this to a betting exchange on racing lends support to the comprehensive option.

Clearly, the second of the above two approaches (the "comprehensive" option) results in a much higher figure for "turnover". This is relevant if, for example, a betting exchange operator offers to pay a racing industry a percentage of its commissions earned from winning customers on each event.

The amount paid by the exchange to the racing industry, when expressed as a proportion of turnover calculated in accordance with the comprehensive option (rather than as a proportion of backers' stakes) will obviously appear much lower.

5.2.17 “MATCHED BETS” IN A BETTING EXCHANGE

As also mentioned in the above excerpt from the ABA submission, a common measure of betting activity levels in a betting exchange is that of “matched bets”. This figure is displayed progressively on the Betfair website while betting is taking place on a race.

To reiterate, under the Betfair methodology, if a backer places \$10 on a runner at \$5.00 (4 to 1) “matched bets” is \$20. This comprises the \$10 from the backer and the \$10 the corresponding “layer” stands to win if the runner is beaten.

5.2.18 REPERCUSSIONS FOR RACING INDUSTRY AND GOVERNMENT REVENUES FROM TRANSFER OF TAB TURNOVER TO BETTING EXCHANGES

Betfair has argued that betting exchanges have the potential to create healthy revenue streams to the Australian racing industry,

There has been much talk, particularly from the TAB's, saying that betting exchanges will automatically contribute less to racing (and potentially to tax revenues) on account of the fact that they retain a lower margin than the TAB's do. This is incorrect, just as it was when the same argument was used by the TAB's against the established bookmaking industry in Australia several years ago.

Any quantification of the likely effect on racing industry revenues from wagering of a transfer of TAB turnover to betting exchanges is clearly an imprecise science – particularly at this nascent phase of betting exchange activity on Australian racing. However, in developing a model for analysis, some assumptions are useful:

- Assume a transfer from Australian TABs to the “Oz Racing Betting Exchange” of \$1 billion during the first full year of the exchange’s operations. Assume that the racing industry and Governments would have otherwise each received around \$40 million from TABs on that \$1 billion turnover (ie around 4.0% each).
- Assume that the Oz Racing Betting Exchange contracts to pay 10% of its gross commissions to each of the Australian racing industry and State and Territory Governments.
- Assume that the Oz Betting Exchange imposes commissions at an average of 3% on net winnings of customers on each event. (Betfair’s current commission structure uses a publicised sliding scale from 5% down to 2%.)

- Assume that the average weighted price at which matched bets are struck is \$4.00 (3 to 1). On this basis, the inverse from the layers' side is \$1.33 (1 to 3).

Based on the Betfair definition, "matched bets" on a \$10 bet matched at \$4.00 = \$20 and "backers' stakes" = \$10. However, under the "comprehensive" option, "total turnover" = \$40 (refer section 5.2.14 above).

At the assumed average weighted price of \$4.00 (3 to 1) over a period the backer can be expected to win in 25% of races and layer the other 75%. Therefore, the Oz Betting Exchange's average expected commission from such a bet would be:

$$(\$30 \times 0.25) \times 3\% + (\$10 \times 0.75) \times 3\% = \$0.45$$

ie \$0.45 from the \$10 bet at 3 to 1. This \$0.45 equates to 1.125% of the \$40 "total turnover".

With the Oz Betting Exchange earning gross commissions of 1.125% of total turnover, the offer of 15% of gross commissions to each of the racing industry and State and Territory Governments would represent 0.1687% of total turnover.

Hence, to deliver the same return to each of the racing industry and Governments following a transfer of \$1 billion from TAB turnover (assume \$40 million each), the betting exchange would require "total turnover" of around \$24 billion (\$40 million divided by 0.1687%).

Three further observations are relevant:

- 1 The above analysis is predicated on the application of an average commission rate of 3%. However, in terms of the parameters within which the Betfair and Twoflys betting exchanges operate in Britain, there is currently no compulsion for betting exchanges to charge favoured clients any minimum commission rate.
- 2 It should be remembered, that some of the markets displayed in a betting exchange ("To back") which have aggregate percentage equivalents at around 105% may involve quite small dollar amounts, eg \$3.50 may be on display about a runner but the "offer" may be for only \$10. It may not be until a prospective backer reduces his expectations to \$3.30 is he able to get set for a reasonable amount. This "hidden over round" is likely where many professionals, acting as layers in betting exchanges, extract significant proportions of their winnings.
- 3 Another factor underpinning the seemingly high figure arrived at in the above analysis is the use of "profit" as a basis for imposing levies and/or taxes. A consequence of this approach is that "stakes" escape the levy and tax nets. This differs from the current situation (where applicable) in Australia with respect to both totalizator and bookmaker betting. For example, in the current bookmaker levy environment, a punter placing \$100 on a runner at Flemington is effectively exposed to a levy of \$1.00

(1% of stake – payable by the bookmaker) regardless of whether the runner wins or loses. The situation is similar in the case of TAB betting throughout Australia – where the levy and State/Territory betting tax is effectively calculated as a percentage of total pools.

In contrast, under the Betfair model (where the impost on punters is calculated on net winnings), punters need not hurdle this “levy/tax on stake impost” to return a profit over a period. The Betfair model is particularly attractive to professional punters – who often back several runners in one race, ie “outlay a lot to win a little”.

5.2.19 LATEST DEVELOPMENTS IN BRITAIN

It has been reported that in Britain, where betting exchanges have to date had the greatest impact on racing wagering, a considerable decline in wagering revenue streams is anticipated. Following is an excerpt from a recent article in the *Racing Post*,

British racing is facing a massive shortfall in the amount of money the sport will receive in levy from bookmakers this year, with the stark prospect of as much as £20 million having to be trimmed from the original forecast.

Only a month ago, the Levy Board was forced to accept a revised forecast yield for 2003-4, from £92m to £80m, on the basis of returns and advice from bookmakers.

This estimate was double the £6m write-down accepted in September last year, but the position has grown even worse since March, and now the total return available to racing is expected to be around £72m, a 22 per cent drop from the original forecast.

Even then there could be even more bad news on the horizon. The bookmakers, led by Ladbrokes chief executive Chris Bell and William Hill chairman John Brown, are said to suggesting that the yield for 2003-4, which had been forecast at around £100m, will be lucky to reach £80m, if the squeeze on their margins exerted by betting exchanges is not loosened.

The traditional betting industry has blamed the exodus of punters to betting exchanges such as Betfair for dramatically lowering their gross profits from UK horseracing bets, on which levy is now paid.

The Levy Board has accepted this as a reasonable explanation for the depressed levy yield, though it is also being suggested that the popularity of the highly successful but legally controversial fixed-odds terminals in betting shops, with their emphasis on non-levy-producing games such as roulette, is also biting into horseracing's returns. A test case about the legality of fixed odds betting terminals in betting shops has been initiated by the Gaming Board.

Levy Board members including representatives from the BHB will be given the grim news at their monthly meeting on Wednesday, when they are expected to take the first steps to making the necessary, huge expenditure savings.

Prize-money for the second half of this year is likely to take the biggest hit, and a cut of £7m, from the promised £50m funding pool for 2003, has been suggested. The cuts could come as a shock to an industry relatively buoyant from the £307 million media rights deal struck with Attheraces.

The daily basic rate of prize-money paid to each racecourse – the amount of which varies according to the position in a merit table - is expected to be slashed, and since the amount goes straight out in prize-money, racehorse owners are likely to be affected across the board. Trainers, jockeys and stable staff will also feel the draught through the lower returns.⁴⁰

5.2.20 POSSIBLE ALTERNATIVE APPROACHES TO IMPOSING RACING INDUSTRY LEVIES AND GOVERNMENT TAXES ON BETTING EXCHANGES

One of the most notable differences between the wagering environments in Britain and Australia is the basis for calculating levies and taxes payable by wagering operators to the racing industry and Governments respectively. In Britain, bookmakers are liable to pay 10% of their gross margin as racing industry levy.

However, as of 1 April 2003, under the 42nd Levy Scheme, betting exchanges (known as “bet brokers”) are liable to pay an amount equivalent to 10% of “layers”⁴¹ gross profits (on British racing only).

In correspondence to the Task Force, Betfair made the following comments,

It is very difficult to equate this to a percentage of our own revenue (and as a result the scheme is being challenged and is likely to change, if not this year then definitely next year). However, our best estimate is that it will probably be between 15% and 20% of the commission we earn on British racing. Again, on current run rates this is likely to be in excess of £500,000 per month although as with the overall business we are expecting significant growth over the coming months and that number, too, will rise.

⁴⁰ *Racing faces massive shortfall in levy*, Racing Post 22 May 2003, by Howard Wright

⁴¹ For the purposes of the 42nd Levy Scheme, the “layer” is the betting exchange customer who “offers” the odds initially

*The British system of payment for both GPT and product fees is calculated on a Gross Profits basis. I am aware, however, that the Australian system is more usually calculated on a turnover basis. As a result it is difficult for me at this stage to forecast what revenues we could generate for the industry and I think it would be wrong for us to suggest that the model that we have in the UK is automatically the best one to use in the Australian market.*⁴²

Against a background of the current Australian wagering environment, there are strong grounds for adopting three principles in the levying and/or taxing of any betting exchange on Australian racing:

1 Turnover basis

It is suggested there is strong rationale for any levy or tax on betting exchanges being based on wagering “turnover”, ie the amount outlaid by the party(ies) to bets. This rationale relates, in part at least, to removing any discretion of a betting exchange operator to effectively offer discounted wagering on the racing industry’s product under circumstances where the industry and Governments are forced to bear part of the “cost” of that discounting. In the case of a regime where the levy or tax are based on a betting exchange operator’s discretionary commissions from customers, levy and tax revenues are at the mercy of decisions by the operator to introduce variable commission rates or to allow some customers to use the exchange at reduced rates of commission – or no commission at all.

The levying (by the racing industry) and taxing (by State/Territory Governments) of betting exchanges on the basis of turnover would also align the treatment of betting exchanges with the regimes effectively applying – at least partially – to TABs and bookmakers in most Australian jurisdictions.

2 Applicability of comprehensive approach to defining betting exchange “turnover”

The varying approaches to the calculation of “turnover” in a betting exchange are discussed in section 5.2.16.

If the “layers” in a betting exchange are regarded as punters backing the field to beat a particular runner, it is appropriate that the exposure of the layer on each bet should be levied/taxed as turnover.

Issues arise in this context in respect of runners being laid at longer odds. Take the example of a racing industry levy and Government tax on a betting exchange each imposed at 2% of “comprehensive” turnover (for a total of 4%). A customer lays a runner at 50 to 1, the bet being \$10 to \$500 on. The betting exchange would be liable for levy and tax of \$20 (4% of \$500) on the layer’s portion of the bet. It would obviously

⁴² Betfair letter dated 13 May 2003, page 5

be difficult for the betting exchange to recoup \$20 from the layer under circumstances where the layer's potential profit on the bet is only \$10. In light of this, in the event that turnover (in the "comprehensive" sense) is identified as the appropriate basis for levying and taxing, it may be necessary to introduce some form of sliding rate scale in respect of the layer's side of bets.

3 *Appropriate rates of turnover levy and tax*

As a general guide only, Australian TABs pay:

- Around 4 to 6 cents per \$ of racing wagering turnover to the racing industry by way of what may loosely be described as "product fees".
- (In several States and Territories) around 2.5 to 3.5 cents per \$ of racing wagering turnover to State and Territory Governments by way of betting tax. They are also liable for GST to the Federal Government at the standard rate of 9.09% of gross profit.

Noting that betting exchanges, like TABs, are not exposed to risk on their wagering transactions and are not required to operate under minimum wager obligations similar to most Australian licensed bookmakers, it could be argued that betting exchanges should be subject to rates of levy and State tax similar to TABs. This is subject to the qualifications above regarding the need for a sliding scale with respect to layers.

Finally, the Task Force is conscious that if betting exchanges are permitted to establish in Australia in the absence of a nationally co-ordinated licensing regime incorporating a structured approach to the imposition of racing industry levies and Government taxes along the lines canvassed above, the recurring threat of a "race to the bottom" by Australian States and Territories will manifest, as some jurisdictions compete to offer more attractive (viz operator-friendly) levy and tax regimes for betting exchanges.

In any event, the establishment of betting exchanges in Australia will likely expose the local wagering industry to familiar risks such as:

- The future relocation offshore of betting exchanges with the primary aim of avoiding fiscal obligations to the Australian racing industry and Governments.
- Australian punters (further) exposed to the betting exchange concept seeking a "better deal" from overseas betting exchanges on Australian racing.

Following is a sample levy and tax regime for a betting exchange on Australian racing based on the principles set out above.

BETTING EXCHANGE(S) ON AUSTRALIAN RACING

SAMPLE LEVY AND TAX REGIME

Basic principles:

- 1 A levy and State betting tax is imposed on both sides of every bet.
- 2 On the backer side, a levy of 1.5% and a tax of 1% (rate is reduced in recognition of liability of betting exchange operator for GST) is imposed on the backer's stake.
- 3 On the "against backer" (layer) side, a levy and a tax are each imposed on the stake (layer's "exposure") at a sliding rate scale (below), depending on the odds at which the bet is struck. For example, if an against backer lays a bet of \$100 at \$4.00 (ie 3 to 1), the against backer's stake (layer's exposure) on the bet is \$300. The scale is intended to be indicative only, as an illustration of the general principle of a sliding scale.

ODDS	RATE	
	LEVY (%)	TAX (%)
Up to \$3.00	1.5	1.0
\$3.10 to \$5.00	1.0	0.66
\$5.10 to \$10.00	0.5	0.33
\$10.10 to \$25.00	0.4	0.25
\$25.10 to \$50.00	0.3	0.2
\$50.10 to \$100.00	0.2	0.1
\$100.10 and over	0.1	0.05

SAMPLE LEVY AND TAX REGIME FOR BETTING EXCHANGE ON RACING

BET	BACKER			AGAINST BACKER (LAYER)			TOTAL LEVY + TAX	% of BACKER'S STAKE	% of TOTAL STAKES
	STAKE	LEVY (to racing industry)	TAX (to State Govt.)	STAKE	LEVY (to racing industry)	TAX (to State Govt.)			
\$100 at \$1.50 (\$100 to \$50 on)	\$100	\$1.50	\$1.00	\$50	\$0.75	\$0.50	\$3.75	3.75%	2.5%
\$100 at \$3.00 (\$200 to \$100)	\$100	\$1.50	\$1.00	\$200	\$3.00	\$2.00	\$7.50	7.50%	2.5%
\$100 at \$8.00 (\$700 to \$100)	\$100	\$1.50	\$1.00	\$700	\$3.50	\$2.30	\$8.30	8.30%	1.0%
\$100 at \$51.00 (\$5,000 to \$100)	\$100	\$1.50	\$1.00	\$5,000	\$10.00	\$5.00	\$17.50	17.50%	0.3%

Note:

The stake of the “against backer” (layer) is the amount they stand to lose on the bet if the runner wins

5.2.21 SUMMARY OF CHAPTER 5.2

- 1 The appeal to punters of betting exchanges on racing lies mainly in:
 - The fact bets are struck at fixed odds – in contrast to totalizator (TAB) betting.
 - Availability of better odds – relative to bookmakers and TABs. These attractive odds are available partly because punters are able to transact directly with each other (no intermediary required to bear the risk of the wager) and, as is currently the case with Betfair's London-based operations on Australian racing, for example, betting exchanges benefit from operating in regimes characterised by low (or nil) contributions to the racing industry and betting taxes.
 - The facility for punters to bet against (“lay”) runners.
 - Punter-friendly commission structures.
 - Punters' anonymity viz-a-viz each other (in contrast to betting with bookmakers) (*section 5.2.3*)

- 2 If betting exchanges are allowed to (continue to) operate on Australian racing under circumstances where they are able to operate profitably while charging customers an advertised commission rate ranging from 5% down to 2% (on net winnings per event), betting exchanges will likely prove a popular alternative to betting on Australian racing with TABs or licensed Australian bookmakers. This will likely be at significant expense to these existing operators – and hence to racing industry and State/Territory revenue streams from wagering.

The extent of betting exchanges' future popularity among Australian punters will depend to a degree upon whether one or more betting exchange operators are able to acquire an “authorisation” from the Australian racing industry and/or Australian Governments to operate on Australian racing (or sport) and accept bets from Australian punters. (*section 5.2.4*)

- 3 The exposure of existing licensed wagering operators on racing regarding the transfer of their wagering turnover to betting exchanges will likely be linked to the characteristics of individual bets placed with them, namely:
 - Bet simplicity – win and place bets are more exposed than exotic bets)
 - Bet remoteness (Internet and telephone bets are most at risk). This aspect is likely to increase in relevance, as a new generation of technologically savvy punters emerges.

- Bet size – smaller bets from recreational punters are likely to be at lower risk.
 - Punter professionalism – the more professional punters will tend to seek out the best deal available.
 - Race status – the higher profile race meetings are likely to be the focus of betting exchange activity, making them relatively more attractive to punters. (*section 5.2.5*)
- 4 Hypothetically, if a betting exchange in Australia were subject to significant levels of racing industry levies and betting taxes (as opposed to Betfair’s current UK impost which enables it to operate under such a low commission structure) the attractiveness of using betting exchanges on racing would likely be decidedly less attractive than currently. (*sections 5.2.8*)
 - 5 Particularly in light of the newness of the betting exchange concept, forecasts of their likely financial effects on existing wagering operators are difficult. In the extreme hypothetical scenario of a national, fully “authorised” betting exchange operating in Australia under conditions similar to that currently enjoyed by Betfair the Task Force estimates that, in the medium term (5 years or so), the annual racing turnover of existing wagering operators in Australia could be threatened to the following extent:

	%	\$
TABs	20%	\$2 billion
“Traditional” bookmakers	20%	\$0.25 billion
“Corporate” bookmakers	30%	\$0.3 billion

(*section 5.2.10*)

- 6 Any estimate of the volume of “new money” an attractive and competitive local betting exchange on Australian racing may generate is highly speculative. Subject to this qualification, the Task Force estimates that “new money” (incremental “player loss”) of up to 4% could be generated over the medium term (5 years). (*section 5.2.12*)
- 7 Under wagering “circular flow” theory, it should not be assumed that lower retention rates by a wagering operator such as a betting exchange will axiomatically lead to proportionately higher rates of churn of punters’ money. (*section 5.2.13*)
- 8 Currently the Australian racing industry receives around \$600 million per annum in revenue streams from wagering. Additionally, State and Governments receive betting tax revenues of around \$320 per annum and the Commonwealth around \$150 million in GST. In all three cases, the vast bulk of the revenue relates to TAB off-course totalizator turnover (*section 5.2.14*)

- 9 In Australia, the most common measure of activity in totalizator (TAB) and bookmaker wagering is turnover. There is much debate regarding the correct measure of “turnover” in a betting exchange. There is strong reasoning in favour of adopting the comprehensive approach to defining betting exchange turnover, ie “total turnover” is the aggregate of the stakes of the “backer” and the “against backer” (layer). (*section 5.2.16*)
- 10 The Task Force performed some modelling based on assumptions that a hypothetical Australian betting exchange model would involve similar conditions to those under which betting exchanges such as Betfair and Twoflys currently operate in Britain. For example, an Australian betting exchange was offering to pay each of the racing industry and Governments 15% of its gross commissions. It was also assumed that the racing industry and Governments each receive around 4 cents per dollar of TAB turnover. Under this model, the transfer of \$1 billion of TAB totalizator turnover on racing to a betting exchange would require “total turnover” (refer section 5.2.16) of \$24 billion to provide the same return to the racing industry and Governments. (*section 5.2.18*)
- 11 The Task Force explored possible suitable regimes for the imposition of racing industry levies and State/Territory Government betting taxes on a betting exchange in Australia. It was concluded that a turnover-based approach was appropriate, with “turnover” comprising the aggregate of the stakes of both the “backer” and “against backer”. (*section 5.2.20*)

5.2.22 FINDINGS ON CHAPTER 5.2

The Task Force is of the view that:

- 1 A significant proportion of Australian racing punters would find a betting exchange (operating under conditions similar to those currently applicable to person-to-person betting exchanges in the UK) sufficiently attractive to result in a transfer of significant volumes of racing betting from existing licensed Australian operators.
- 2 In the event that betting exchanges on Australian racing (along the lines of the Betfair model) are able to penetrate the mainstream Australian wagering market, over the medium term (5 years or so hence) all three categories of licensed wagering operator in Australia – TABs, traditional bookmakers and corporate bookmakers would likely suffer significant transfer of wagering activity to betting exchanges operating on Australian racing. The effects will be reflected in a significant decline in wagering revenues from TABs and bookmakers to the racing industry and Australian governments from TABs and bookmakers.

- 3 The degree of impact on existing wagering operators would be primarily a function of two factors:
 - (a) Whether, at one end of the spectrum, betting exchanges are operating from overseas without “authorisation” from the Australian racing industry and Governments (such as the current situation with Betfair) or, at the other end, a fully “authorised” betting exchange(s) is operating within Australia.
 - (b) The impost on a racing betting exchange(s) in terms of racing industry levy and Government betting tax. The higher this impost, the less attractive a betting exchange is likely to be on the basis of price (odds on offer), relative to TABs and licensed bookmakers.
- 4 The hypothetical formal arrival of a fully authorised and licensed betting exchange on racing in Australia offering attractive and competitive odds could lead to some modest growth in the race wagering “pie”. However, the “new money” generated in the medium term would likely be only modest.
- 5 The threats to existing Australian wagering operators of transfer of racing turnover to betting exchanges is in addition to any threats posed by a decline in racing integrity and perceived integrity as a consequence of betting exchanges providing a facility for profiting from an advantageous position relative to other punters – ranging from “inside information” that a runner will likely be beaten to nefarious activity causing an individual runner to perform poorly.
- 6 It is being argued that, because betting exchanges such as Betfair have low “retention rates” relative to TABs, “churn” rates will be proportionately higher. For example, that one dollar of punter expenditure is churned a proportionately greater number of times before being lost. It is suggested this view of the wagering “circular flow” does not take into sufficient account the effect of “hard money” and the fact that a proportion of any reduction in retention rates by wagering operators will often be absorbed as additional winnings by professional punters. Such winnings over a period are also a leakage from the circular flow.
- 7 The most accurate definition of wagering “turnover” in a betting exchange is a comprehensive one. Turnover on each bet is the total of “backer’s stakes” + “against backer’s stakes” (ie layer’s exposure on the bet). For example, if a backer places a bet of \$100 at \$3.00 (\$200 to \$100) turnover is \$100 (backer’s stake) + \$200 (against backer’s stake) = \$300. The against backer is essentially placing a bet of \$200 on the “field” to beat the runner the subject of the bet.

Any levy or tax regime on betting exchanges should be based on this comprehensive approach to “turnover” – with both “backers’ stakes” and “against backer’s stakes” subject to levy and tax.

- 8 Based broadly on the operating conditions of betting exchanges under the current UK regime, if a betting exchange were to offer each of the racing industry and State and Territory Governments in Australia 15% of its commissions earned on each Australian race covered, for each \$1 billion transferred from TAB totalizator turnover on racing, the betting exchange would require “total turnover” (in comprehensive terms) of around \$24 billion for the racing industry and governments generally to be in a similar financial position.
- 9 If betting exchanges on racing are permitted to establish a greater presence in Australia in the absence of a nationally co-ordinated licensing regime (incorporated standard arrangements for levies and taxes), the recurring threat of a “race to the bottom” by Australian States and Territories will manifest, as jurisdictions compete to offer more attractive (viz operator-friendly) levy and tax regimes for betting exchanges.

In any event, the establishment of betting exchanges in Australia will likely expose the local wagering industry to familiar risks such as:

- The future relocation offshore of betting exchanges with the primary aim of avoiding fiscal obligations to the Australian racing industry and Governments.
- Australian punters – who have been (further) exposed to the betting exchange concept – seeking-out a “better deal” from overseas betting exchanges on Australian racing.

5 EFFECTS OF BETTING EXCHANGES (continued)

5.3 USE OF BETTING EXCHANGES BY AUSTRALIAN LICENSED WAGERING OPERATORS

Term of reference 2.2(c)

5.3.1 INTRODUCTION

Since the commencement of betting exchanges on racing on a significant scale in Great Britain in around mid 2001, an issue attracting considerable attention is whether British bookmakers – particularly those fielding on-course – should be permitted to access betting exchanges.

The only three first level racing countries in which this issue arises are Britain, Australia and South Africa. In other major racing countries of Japan, USA, Hong Kong, France and New Zealand, legal wagering on racing is almost exclusively via totalisators. The practice of laying-off (betting back) with another wagering operator is of no relevance to a totalizator operator.

It is noted at the outset that the situation regarding the licensing and regulation of bookmakers varies markedly among Australian States and Territories, particularly in respect of the roles of the racing industry and the relevant State or Territory Government. In some Australian jurisdictions, this matter could be dealt with through the imposition by the racing industry of appropriate conditions on bookmaker licenses or amendments to the rules of racing/betting. However, in other jurisdictions, bookmaker licensing and regulation is primarily the responsibility of Government.

5.3.2 RECENT DEVELOPMENTS IN GREAT BRITAIN

Up until April 2003, on-course bookmakers in Britain were prohibited from “hedging” (laying-off) bets with other than another on-course bookmaker.

On 23 April 2003, the British Horseracing Levy Board resolved to expand the range of wagering operators with whom on-course bookmakers are permitted to hedge (lay-off) to include betting exchanges and off-course (corporate) bookmakers.

Some stakeholders spoke against the decision. Mr John Brown, Chairman of William Hill (one of the four large off-course corporate bookmakers in Britain) was quoted,

(In using his casting vote, the Chairman of the Levy Board) has forced through a rule that means the starting price will be affected by people who are not licensed⁴³, who are not resident in this country and who are not paying gross profits tax or levy.⁴⁴

⁴³ A reference to “layers” (against backers) in betting exchanges

⁴⁴ *Hughes uses casting vote*, article by Howard Wright in Racing Post, 23 April 2003

5.3.3 RELEVANT DIFFERENCES BETWEEN THE AUSTRALIAN AND BRITISH WAGERING ENVIRONMENTS

The major opposition to the decision in Britain to permit on-course bookmakers to hedge with betting exchanges came from the large off-course corporate bookmakers. The British off-course wagering market is dominated by betting shops owned by several large bookmaker firms – William Hill, Ladbrokes and Corals.

It appears that the concerns of the off-course bookmaking firms relate primarily to the effect hedging with betting exchanges by on-course bookmakers will have on starting prices – which currently are a composite of those offered by on-course bookmakers fielding at the relevant race meeting.

Specifically, the off-course bookmaking firms appear to be concerned that on-course bookmaker access to betting exchanges will result in overall “better” starting prices, ie better for punters. This could be expected to have an adverse impact on the gross profit margins of the off-course bookmakers.

The off-course betting situation in all Australian jurisdictions differs to that in Britain – with off-course betting being dominated by TABs offering mainly totalizator betting. Further, the bulk of bookmaker activity in Australia is at fixed odds, with the odds being agreed at the time the bet is struck, rather than at starting price.

5.3.4 LIKELIHOOD OF BETTER ODDS AT BETTING EXCHANGES

It has long been the case in Australia that Saturdays are the focus of quality thoroughbred racing around Australia. Generally speaking, these race meetings also account for a large slice of racing wagering activity – and attract the highest levels of activity on (the “unauthorised”) overseas betting exchanges currently operating on Australian racing.

Appendix C1 is a comparison of the odds available from TABs, bookmakers and the Betfair betting exchange on a sample of Saturday races.

As could be expected, the odds available in Betfair are superior overall to the other two wagering operators. This generalisation should, be qualified in two important respects:

- The odds in Betfair are expressed in gross terms. A commission would normally be payable to Betfair on net winnings per event.
- The prices available in a betting exchange at a point in time during betting on a race may, on face value, appear generous. However, in many instances the size of the bets on offer at the best price quoted in

Betfair is quite modest⁴⁵. In contrast, on metropolitan “rails” betting rings at Melbourne and Sydney thoroughbred race meetings, for example, a punter is entitled to claim a bookmaker for a bet to win at least \$5,000 at any price displayed.

5.3.5 ARGUMENTS IN FAVOUR OF THE USE OF BETTING EXCHANGES BY LICENSED AUSTRALIAN RACING BOOKMAKERS

Better deal for punters from bookmakers (at least in short term)

To quote from the Chairman of the British Horseracing Levy Board at the time it voted to allow on-course bookmakers to lay-off into betting exchanges,

I used my casting vote to ensure that it was approved in the belief that it is in the interest of punters and, therefore, in the long-term interests of the racing and betting industries. (emphasis added)

It follows that if bookmakers are confident they will be able to lay-off into a robust betting exchange in respect of runners representing a disproportionately poor result for them, bookmakers may offer better prices and more readily accept bets. This might be so particularly if bookmakers can obtain better odds from a betting exchange than those at which the bookmaker has already struck bets.

It should be noted, however, that bookmakers at metropolitan thoroughbred race meetings in several States pay a 1% turnover levy to the racing industry. In circumstances where they bet back with a betting exchange (particularly an overseas exchange) these bookmakers would presumably not receive “bet back relief”, which is currently the case in some Australian jurisdictions (including New South Wales and Victoria) where they bet back within the ring they are fielding.

It may also be arguable that, in theory, the competition from betting exchanges may prompt on-course bookmakers to offer better odds to punters in order that bookmakers remain attractive to punters relative to betting exchanges. Bookmakers may also be in a position to negotiate a lower commission rate as a result of combining with other Australian bookmakers to transact with a betting exchange through a single account.

The Task Force regards it as important, however, that these possible short-term advantages for punters be weighed against the possible negative consequences for punters of any significant decline in the strength of Australian bookmaker rings if betting exchanges adversely affect the longer-term viability of Australian bookmaking. It is generally accepted that one of the major attractions for punters attending race meetings is the availability of choice between bookmakers and TAB.

⁴⁵ This would be less likely in the hypothetical case of a betting exchange on Australian racing which is fully licensed and authorised – presumably then attracting a large client base and considerable depth and liquidity.

May assist bookmaker viability (at least in short term)

In many situations, the ability to lay-off into a betting exchange may assist bookmakers to reduce their exposure on certain runners.

Bookmakers may, on occasions, be able to access significantly better odds about some runners in a betting exchange than the odds at which they strike bets with punters. From a bottom line perspective, access to betting exchanges would prove particularly attractive where a bookmaker is fielding in a regime where bookmaker variable payments by way of racing industry levies or taxes are minimal and he also enjoys an arrangement with a betting exchange in terms of the rate of commission payable on net winnings per event.

The ability to lay-off into betting exchanges may also improve a bookmaker's capacity to accept disproportionately large bets from valued clients.

From solely a bookmaker viability perspective, risk-free bookmaking (accepting bets at one price and laying-off at a significantly better price) has obvious appeal.

5.3.6 ARGUMENTS AGAINST THE USE OF BETTING EXCHANGES BY LICENSED AUSTRALIAN RACING BOOKMAKERS

The Task Force is of the view that this issue of Australian bookmakers accessing betting exchanges should be examined against a background of its findings in respect of the threats posed to the integrity of Australian racing (refer chapter 5.1) by betting exchanges.

Assisting offshore "unauthorised" betting exchanges to attain critical mass in their Australian racing operations

A notable feature of betting exchanges is their need for critical mass. In this respect they are not unlike totalisators. To readily accommodate punters – particularly those seeking to place larger bets – betting exchanges require reasonable levels of genuine betting activity dispersed across a field of runners. This represents a substantial hurdle to (more) prospective overseas betting exchanges operations on Australian racing establishing and enjoying sustained viability.

The ability of licensed bookmakers in Australia to legally accept bets on Australian racing from punters places them in a position of advantage in terms of their ability to participate in betting exchanges on racing without necessarily exposing themselves to risks associated with the outcome of races. This would involve accepting bets from punters and then simply laying-off all or part of the bet on offshore betting exchanges at significantly better odds. In an indirect sense, this is a means by which "unauthorised" overseas betting exchanges can illicitly further penetrate the Australian market.

Licensed Australian bookmakers also have the opportunity of assessing whether bets placed with them represent “hard” or “soft” money⁴⁶ and factoring this into decisions as to whether or not bets should be laid-off into a betting exchange.

Consumer protection issues – lack of (perceived) fairness of bookmakers taking advantage of punters’ lack of access to or knowledge of betting exchange activity

In most racecourse environments, run-of-the-mill punters generally do not have access to the Internet, etc. However, bookmakers could possibly make arrangements to access overseas betting exchanges through on-course “commission rooms” or via agents or employees off-course contactable from racecourses by mobile telephone.

“Corporate” bookmakers in the Northern Territory and ACT offering racing betting from racecourse offices currently have very few impediments on outside access.

A situation where bookmakers having timely access to betting exchange information along with access to betting exchanges for the purpose of placing bets under circumstances where (on-course) punters do not could be viewed as inherently inequitable in some respects.

Further inherent unfairness arises in this situation as a result of the disparity in racing industry contributions and tax liability between betting exchanges such as Betfair and Australian bookmakers. The overround (ie aggregate percentage in excess of 100) in bookmaker markets is at least partly attributable to the 1% racing industry levy imposed on bookmakers plus stand fees, etc. In backing a runner with an Australian bookmaker a punter is, on face value, accepting a shorter price than otherwise because of this liability for a levy. If the bookmaker then lays-off into an overseas betting exchange at a better price, the bookmaker is taking advantage of accessing a wagering vehicle which currently makes no contribution to a racing industry.

Legal issues – offence provisions in NSW and WA legislation

The legal position regarding bookmakers in Australia transacting with overseas betting exchanges varies among States and Territories (refer chapter 2).

However, at least in the case of bookmakers licensed in New South Wales and Western Australia it would appear likely that any bookmakers dealing with an overseas betting exchange would be in breach of legislation in each of these two States which makes it an offence to place a bet on an Australian race with an overseas wagering operator.

⁴⁶ The concepts of “hard” and “soft” money are discussed in section 3.4.2.

Views of representative bookmaker bodies

The Task Force received formal advice from some State bookmaker bodies, including the NSW Bookmakers' Co-Operative Ltd and the South Australian Bookmakers' League, that a temporary moratorium on bookmaker members using betting exchanges had been implemented – basically for the duration of this Task Force exercise.

5.3.7 DESIRABILITY OF A LEVEL PLAYING FIELD FOR AUSTRALIAN BOOKMAKERS (AND TABs) REGARDING THE USE OF BETTING EXCHANGES

The Task Force is conscious of existing disparities in the operating conditions of bookmakers across Australian jurisdictions and within jurisdictions. For example,

- Corporate bookmakers at Fannie Bay (Darwin), Pioneer Park (Alice Springs) and Canberra Racecourse are permitted to base payouts on TAB odds whereas “traditional” bookmakers fielding on the same racecourses are not. Also, in several other Australian States and Territories, there is a blanket prohibition, imposed by either statute or the rules of racing, against TAB-odds betting.
- “Traditional bookmakers” fielding at Fannie Bay and Pioneer Park Racecourse are required to set racing punters, on demand, in accordance with predetermined minimum wager obligations. However, “corporate” bookmakers fielding on the same racecourses are allowed to exempt themselves from these obligations. Such obligations are also imposed on all racing bookmakers licensed in every Australian jurisdiction other than the Northern Territory.

With the relatively recent impact on Australia of betting exchanges, a “green fields” situation currently exists here with respect to the specific regulation of conduct in the sphere of betting exchanges. In light of this, it is arguably desirable to have all Australian wagering operators being on a level playing field in respect of the legality of accessing betting exchanges.

If a situation were to evolve whereby some Australian bookmakers are permitted to access/bet back into betting exchanges operating on Australian racing and others are not, this could potentially give rise to further inconsistencies across and within the wagering operator regimes in Australian States and Territories. This could contribute to an imbalance in the ability of bookmakers to compete against each other and thereby threaten the viability of some bookmakers.

Inequities could also arise if punters in some Australian jurisdictions are prevented by statute from legally accessing betting exchanges on racing but bookmakers in other jurisdictions with whom they place bets are then able to access betting exchanges to lay-off.

Whatever decision is taken regarding Australian bookmakers accessing betting exchanges, from a bookmaker equity viewpoint, there is merit in all Australian bookmakers being in a similar position.

5.3.8 TABs USING BETTING EXCHANGES ON AUSTRALIAN RACING

Most Australian TABs now offer fixed odds betting on a range of feature racing events. These same events tend to attract the highest levels of betting exchange activity on Australian racing.

In general terms, the issues raised above in section 5.3.7 against the use of betting exchanges by licensed Australian bookmakers apply similarly to TABs in respect of their fixed odds operations.

5.3.9 BOOKMAKER USE OF BETTING EXCHANGES ON SPORTS BETTING

As discussed in chapter 5.7, betting exchanges on sport generally do not give rise to integrity concerns of similar magnitude as betting exchanges on racing.

The bulk of sports betting in Australia is transacted remotely – by telephone or Internet. Against this background, consumer protection issues of similar magnitude tend not to arise in the case of sports betting. In general terms, punters have the opportunity to access similar types and levels of information to sports bookmakers.

5.3.10 SUMMARY

- 1 The situation across Australian States and Territories with respect to the role of the racing industry and Government in the licensing and regulation of bookmakers varies markedly. (*section 5.3.1*)
- 2 In Britain, longstanding rules prohibiting on-course bookmakers hedging (laying-off) with anybody but fellow on-course bookmakers were relaxed in April 2003 to permit them to hedge with betting exchanges and off-course bookmakers. (*section 5.3.2*)
- 3 To date, the most vocal opponents to British on-course bookmakers being permitted to hedge with betting exchanges have been the off-course corporate bookmakers – with whom a significant proportion of bets on racing are struck at “starting price”. Their objections appear to relate to the likelihood of starting prices (which are based on the on-course bookmaker rings) improving (ie being better for the punter) and, as a consequence, off-course bookmaker gross profit margins shrinking. (*section 5.3.3*)

- 4 Generally speaking, the odds available on racing events in a betting exchange (at least before allowance is made for any commission payable to the exchange operator) tend to be superior to those available from TABs or bookmakers. (*section 5.3.4*)
- 5 Arguments in favour of allowing access to betting exchanges by Australian racing bookmakers include:
 - It may result (at least in the short term) in punters being able to obtain relatively better prices and being able to get set for larger bets from bookmakers.
 - May assist in improving the viability of bookmaking on racing (at least in the short term). (*section 5.3.5*)
- 6 Arguments against allowing access to betting exchanges by Australian racing bookmakers include:
 - Australian bookmakers using overseas betting exchanges contributes to those exchanges attaining critical mass.
 - A lack of perceived fairness in bookmakers taking advantage of some punters' (particularly those on-course) lower level of access to betting exchanges and access to timely information regarding betting exchange transactions.
 - If the betting exchange is not licensed in Australia, bookmakers in several Australian jurisdictions transacting with it would likely be in breach of State legislation. (*section 5.3.6*)
- 7 At present bookmakers in some Australian States are prevented by statute from betting or laying-off with overseas betting exchanges on Australian racing events. It is arguably inequitable that some Australian bookmakers can access betting exchanges while others cannot. TABs – in their fixed odds racing betting operations – should be bracketed with bookmakers on this issue of accessing overseas betting exchanges. (*section 5.3.7, 5.3.8*)
- 8 Some of the arguments against Australian bookmakers being permitted to access betting exchanges on racing do not apply – at least to the same extent – to sports betting. (*section 5.3.9*)

5.3.11 FINDINGS ON CHAPTER 5.3

The Task Force is of the view that:

- 1 Because of the variation in bookmaker licensing and regulation regimes across Australian States and Territories, particularly in respect of the roles of the racing industry and Governments, it would not be possible for the racing industry to implement a uniform national approach to this issue of wagering operator use of betting exchanges without the involvement of State and Territory Governments.
- 2 The appropriate course of action on the issue of whether licensed Australian wagering operators on racing should be permitted to access betting exchanges for the purpose of laying-off and placing their own bets depends primarily upon whether the future impact of betting exchanges on Australian wagering involves:
 - (a) The status quo, with offshore betting exchanges continuing to operate on Australian racing without “authorisation”, but no betting exchanges licensed in Australia to bet on racing, or
 - (b) A future scenario where, for example, a betting exchange on racing is operating in Australia, with “authorisation” from the racing industry and/or State and Territory Governments.

The Task Force is of the majority view (the sole dissent being the Northern Territory membership) that:

- 3 In the event that overseas betting exchanges, such as Betfair, continue to operate on Australian racing without formal authorisation from the Australian racing industry and/or State and Territory Governments [2(a) above], all licensed wagering operators in Australia (bookmakers and TABs) should be prohibited from using betting exchanges on Australian racing events.

The Task Force notes that a key underlying reason for this finding is the potential for damage to the integrity of Australian racing as a consequence of betting exchanges operations on its product (refer chapter 5.1 generally). The use of overseas betting exchanges by licensed Australian wagering operators will likely contribute to the depth and liquidity of such operations.

The stated position of the Northern Territory membership is that,

“The prohibition model will not work (similar view to the ARB) and that regulation is a better option. The Northern Territory is concerned that 'licensed wagering operators' are being discriminated against whilst 'punters' will still have access - it appears incongruous. There may also be *Trade Practices Act* implications restricting them using a legal avenue for business purposes (risk management).”

The Task Force is of the view that:

- 4 In the event a betting exchange(s) on racing is authorised to operate in Australia [2(b) above], it would then be appropriate to reconsider this issue of the use of betting exchanges by licensed Australian wagering operators in light of the precise circumstances under which the betting exchange is permitted to establish and operate in Australia.
- 5 There are no cogent reasons for limiting the access of Australian wagering operators to betting exchanges on sport (ie non-racing events). This would extend to betting exchanges on sport operating:
 - from an Australian or overseas base; and
 - on Australian or overseas sporting events.

5 EFFECTS OF BETTING EXCHANGES (continued)

5.4 EFFECTS OF BETTING EXCHANGES IN TERMS OF RESPONSIBLE WAGERING PRACTICES

Term of reference 2.2(d)

5.4.1 INTRODUCTION

Prior to the recent arrival of betting exchanges on the Australian wagering scene there was only moderate incentive for Australians to open accounts and bet with overseas wagering operators. This stems primarily from the myriad of choices to bet with licensed Australian operators (bookmakers and TABs) on racing and sport, via Internet, telephone and also face-to-face.

However, overseas-based betting exchanges have now altered the Australian wagering landscape considerably.

The combination of:

- The unavailability of betting exchange services from licensed Australian wagering operators; and
- The targeting of Australian racing and sporting events by overseas betting exchanges

has increased the incentive for Australian punters to venture overseas to place bets.

As a consequence, potential concerns arise regarding:

- Betting with wagering operators who are not bound by the responsible wagering codes of practice, etc of Australian States and Territories; and
- The novel nature of the betting exchange concept – particularly in the context of “laying” runners.

5.4.2 CURRENT SITUATION REGARDING BETTING EXCHANGES IN BRITAIN

In response to a request for information from the Task Force, Betfair provided the following response, dated 13 May 2003, regarding responsible wagering aspects of its operations,

Betfair has been working with Gamcare over the past few months to introduce new ways of ensuring that everyone who uses the system does so in a responsible manner. We have an enormous advantage in

that we are a technology-based company and are thus able to use technology to help this cause. Again this is something that can be much better done online than it can in an offline, cash-based, environment.

Currently, our system incorporates an “exposure” limit. This limit is set by Betfair and can only be changed by contacting us and asking for it to be changed. Our system will not allow any user to exceed this exposure limit at any time, regardless of how much money they have in the account at the time.

We have discussed many other initiatives with Gamcare which include allowing punters to reduce their exposure limit themselves but only raise it by contacting us; limiting the number of deposits that any punter can make in a set period of time; limiting the amount of money that a punter can lose in a set period of time; and restricting the times when a punter can access the system (eg to prevent them coming home from the pub late at night having had too much to drink and then betting recklessly). All of these enhancements would be implemented with the use of technology.

We are very aware of the important focus on responsible wagering and are keen to work with all of the relevant bodies, in each country where we operate, to ensure that we are doing all we can to ensure that our systems are only ever used in the appropriate manner.

5.4.3 RESPONSIBLE WAGERING IN AUSTRALIA

State and Territory-based regimes

Each Australian State and Territory has in place a responsible wagering regime compulsorily applying to all wagering operators licensed within a jurisdiction.

In the case of overseas betting exchanges providing betting services to Australians, it is a potential weakness in these regimes that the overseas operators do not necessarily comply with the applicable regime in the jurisdiction of the punter.

The AUS Model

A National Working Party on Interactive Gaming has developed a set of *Uniform Standards for the Regulation of Interactive Gaming*, known as the *AUS Model*. The latest version was released on 5 April 2001. Key aspects involve player protection measures such as:

- warnings relating to the risks of gambling
- links to providers of problem gambling support services
- self exclusion

- advertising
- player verification and registration
- prevention of access by minors.

While the AUS Model relates to gaming (as against wagering), the fact that its focus is on interactive (eg Internet) gambling activity renders the model relevant to Internet betting exchanges.

5.4.4 ASPECTS OF BETTING EXCHANGES WHICH TEND TO STRENGTHEN THEIR POSITION REGARDING RESPONSIBLE WAGERING

All wagering is through accounts

The account-based nature of exchange betting presents opportunities for operators to implement a range of responsible wagering measures. (Refer section 5.4.2 above)

In this respect, betting exchanges contrast to TAB betting, for example, where retail networks (including Pub and ClubTABs) render it difficult to fully enforce restrictions on access by certain punters.

Absence of provision of credit facilities by exchange operators

At present, bookmakers in all Australian jurisdictions are permitted to extend credit to customers.

The fact that a betting exchange operator is required to settle winning bets immediately a result is declared would render the provision of credit a high risk business practice.

Nevertheless, a key element in any betting exchange regulatory regime would be a blanket ban on the provision of credit – similar to that applying generally to Australian TABs.

Hence, subject to the comments on credit card usage in section 5.4.5 following, it would foreseeably be possible to minimise credit betting risks in betting exchanges.

5.4.5 ASPECTS OF BETTING EXCHANGES WHICH TEND TO WEAKEN THEIR POSITION REGARDING RESPONSIBLE WAGERING

Expansion of gambling opportunities

The arrival of betting exchanges heralds the arrival in Australia of the first completely new form of wagering in over seventy years. Further, some parties have claimed that betting exchanges will lead to significant increases in “new money” (increased punter expenditure) in the Australian wagering environment.

Against this background, betting exchanges represent an expansion of gambling opportunities for Australians, particularly if they become established as part of the mainstream Australian wagering environment.

Deposits to betting accounts using credit cards

As discussed above in section 5.4.4, the fact that all wagering with betting exchanges is through accounts provides operators and regulators with considerable scope for implementing a range of harm minimisation measures.

However, the fact credit cards are a popular means for depositing funds into accounts potentially gives rise to issues that punters are wagering with “borrowed” funds. It is noted that bookmakers and TABs in Australia are generally permitted to accept account deposits from credit cards.

Potential for inordinate sized losses

Betting exchange customers are permitted to only lay runners up to the point where their net exposure on a race or other event equals the balance of funds held on account. This limitation is of course necessary to ensure that, in the event the runner wins, the exchange customer on the other side of the wager is assured of payment.

Nevertheless, three factors may give rise to problems associated with the facility to lay runners in exchanges:

- The inexperience of most recreational punters with the concept of outlaying a relatively large sum to win a much smaller sum – which is what is involved in laying a runner at, say, 20 to 1.
- Generally speaking, while modern bookmakers may seldom have the opportunity to make a perfect “book” on a race, they would usually lay more than one runner. In win betting, because each runner in a race represents a mutually exclusive outcome, a bookmaker’s exposure to one runner winning is mitigated by stakes held on other runners. This is not the case where a punter lays a single runner in a betting exchange.
- In contrast to a bookmaker operation, in a betting exchange, customers are anonymous viz-a-viz each other. Hence, a customer in a betting exchange does not enjoy the luxury of making an assessment of the backer’s skill and knowledge. As a consequence, a layer in a betting exchange may be blissfully unaware that the person seeking to make the bet is a well-known punter for a major stable. A betting exchange layer may be boldly laying a horse on their personal assessment “it cannot possibly win” when the trainer or jockey clearly thinks otherwise. The fact that

the layer may be backing their opinion at odds of, say, 10 to 1 on (1 to 10) may be exposing them to much greater losses than normal betting with a bookmaker or a TAB.

5.4.6 ACCESSING BRITISH BETTING EXCHANGES FROM AUSTRALIA

Absence of customer verification regime

Notwithstanding Betfair's commitment to responsible wagering outlined above in section 5.4.2, a Betfair customer indicated to the Task Force that opening an account, placing a deposit into that account almost immediately via a credit card and then betting against that account did not appear to involve any crosschecking or subsequent verification procedures.

On this basis, Betfair does not appear to have any rigorous measures in place to hinder a minor in Australia, for example, opening an account using an older person's details and credit card and continue to use the betting exchange undetected – at least until the owner of the credit card receives their next statement. The minor could easily use a “hot mail” e-mail address to avoid communications from Betfair reaching the true owner of the credit card.

It would be open to an overseas exchange operator to stipulate that new Australian customers physically present themselves at an Australian agency of Betfair within a set period of time to facilitate verification via, for example, provision of 100 points worth of identification documents.

On this important area of player verification and registration the AUS Model (refer 5.4.3 above) states,

All systems must incorporate a method to confirm identity, age and location of the player which complies with the legislation in the licensing jurisdiction.

This must include:

- *players to hold an account and/or be registered by the licensed provider;*
- *in order to open an account and be registered, players will be required to provide proof of identity, age and place of residence;*
- *licensed providers are to require the identification of players each time a player attempts to access the site, using such methods as a personal identification number or password and challenge questions.*

A licensed operator is not to accept registrations from players located where it is illegal for the player to engage or participate in interactive gaming under any Australian State or Territory law.

Absence of “default” activation of customised harm minimisation mechanisms

Betfair alludes to discussions with Gamcare regarding possible measures to promote harm minimisation,

We have discussed many other initiatives with Gamcare which include allowing punters to reduce their exposure limit themselves but only raise it by contacting us; limiting the number of deposits that any punter can make in a set period of time; limiting the amount of money that a punter can lose in a set period of time ...

However, it has been reported to the Task Force by an Australian customer of Betfair that, during the process of opening an account over the Internet recently, there was an absence of any prompting to establish customised parameters such as “limiting the number of deposits that any punter can make in a set period of time”. A proactive approach at the time an account is opened would likely encourage the use of potentially worthwhile measures such as this.

Possible ramifications of Internet medium

The fact transactions occur via the Internet of course means that a wagering operator does not have the opportunity to assess the accuracy of a stated age through personal contact, as is the case with telephone betting.

Further, the Internet aspect of betting exchanges is likely to represent additional appeal to computer savvy young people.

5.4.7 SUMMARY

- 1 Overseas-based betting exchanges targeting Australian racing and sport have significantly increased the incentive for Australian punters to seek out overseas wagering operators, who are not bound by the responsible wagering regimes applicable in Australian States and Territories. (*section 5.4.1*)
- 2 Licensed wagering operators throughout Australia are subject to responsible wagering regimes at State and Territory level. Separately, the *AUS model*, developed by a National Working Party on Interactive Gaming, includes a range of responsible gambling measures, some of which could have applicability to an Internet betting exchange. (*section 5.4.3*)

- 3 The customer account-based nature of betting exchange operations represents a foundation for the potential implementation of a range of worthwhile harm minimization initiatives by a betting exchange operator. (*section 5.4.4*)
- 4 In the case of British-based betting exchanges currently impinging upon Australia, several aspects of their operations tend to heighten concerns regarding responsible wagering issues. These include:
 - the fact betting exchanges represent an expansion of gambling opportunities;
 - the use of credit cards as the primary means of transferring funds to accounts;
 - the potential for punters to expose themselves to inordinate losses through laying single runners at long odds. (*section 5.4.5*)
- 5 The experience of Australian customers with British betting exchanges relayed to the Task Force pointed to an absence of any verification procedures regarding the identity and age of (Australian) customers. (*section 5.4.6*)

5.4.8 FINDINGS ON CHAPTER 5.4

The Task Force is of the view that:

- 1 The current arrangements by which Australians can establish accounts, make credit card deposits and place bets with overseas betting exchanges (eg in Great Britain) are generally unsatisfactory from a responsible wagering perspective.
- 2 In the event a betting exchange is permitted to operate in Australia, the betting exchange operator must be required to comply with existing responsible wagering regimes – similar to those applicable to TABs. Additionally, consideration should be given to imposing a range of specific responsible wagering measures as conditions of a licence.

These would include, but not be limited to:

- Strict identification and verification procedures relating to the opening of accounts and depositing by credit cards – similar to those generally required of TABs.

- Default parameters relating to aspects of account activity such as the number of deposits in a period, the amount of net exposure as a layer in any one event and the maximum loss in a period. At the time of account opening, and at regular intervals, the customer should be prompted to choose whether to set a lower level (than the default) on each of the above parameters. There would then be time constraints on the easing of any of these self-imposed levels.
- Prohibitions on the provision of credit.
- Strict prohibitions on the opening of accounts or betting by minors.
- Provisions for self-exclusion.

5 EFFECTS OF BETTING EXCHANGES (continued)

5.5 EFFECTS IN TERMS OF CRIME, PRINCIPALLY MONEY LAUNDERING

Term of reference 2.2(e)

5.5.1 INTRODUCTION

Recent global events have of course greatly heightened awareness levels of the need for vigilance regarding money laundering by criminals and terrorists.

An example of high-level action is a recently concluded 18 month review by the 31-nation *Financial Action Task Force*, of which Australia is a member.

On 27 June 2003, the FATF issued a new set of 40 recommendations which “shift more responsibility to businesses to have anti-money laundering systems in place.”⁴⁷

The new recommendations “extend anti-money laundering measures to non-financial businesses such as casinos.”

5.5.2 POTENTIAL FOR MONEY LAUNDERING IN BETTING EXCHANGES

There are suggestions that betting exchanges are at high risk in this area,⁴⁸

Theoretically, at least two characteristics of betting exchange operations render them potentially vulnerable to money laundering:

- The low “over rounds” (refer section 3.4.3) and commissions in betting exchanges. In this respect, one of the drawbacks of attempting to launder money through a TAB, for example, is the 14%+ commission extracted from betting pools – representing an effective “charge” on anybody seeking to launder funds.
- The “matching” of individual punters. In this sense, betting exchanges differ from totalisators – where bets are “pooled” in a genuine sense. It is technically possible, for example, that a customer could enter a betting exchange well before a race is due to jump (when betting activity in the exchange on the race is at low levels), and offer to lay (bet against) a horse, at unrealistically poor odds. The customer could have “insider information” that the horse is highly unlikely to win. An

⁴⁷ *Dirty money purge hits professions*, Australian Financial Review, 26 June 2003. Quote from Mr Tim Phillips of Deloittes.

⁴⁸ *Is P2P betting a hotbed for money laundering?*, Kevin Smith, International Gaming News Weekly

associate could then enter the exchange with “dirty” money and accept the bet at the poor odds on offer (as the backer), resulting in a matched bet between two customers not at arms’ length from each other. When the horse is beaten, the first party can claim to have won the money legitimately – with a printout of account transactions with the licensed betting exchange as evidence.

- The absence of probity checks on layers. Obviously, in a fixed odds situation, money laundering requires two parties – the backer and the layer. Currently, in all Australian jurisdictions, bookmakers are required to pass probity before becoming licensed and acting as the layer in betting transactions. This provides regulators with some level of assurance regarding standards of conduct of one party to bets. In a betting exchange environment, neither of the two parties to the wager is subject to probity testing.

5.5.3 NEW RULES TO THWART MONEY LAUNDERING

The Financial Action Task Force (refer section 5.5.1 above) has devised a number of rules applicable to “non-financial businesses” such as casinos. The rules include⁴⁹ requirements that businesses:

- Carry out detailed identity checks on their customers when they establish business relations.
- Establish the identity of the third party, if a customer is acting on behalf of a third party.
- Pay special attention to any transactions involving senior representatives of foreign governments.
- Maintain detailed records on transactions for five years and make these records available to law enforcement authorities.
- Pay special attention to complex, unusual large transactions and unusual patterns of transactions.
- Report any suspicious transactions to the relevant law enforcement agency or financial intelligence unit.
- Develop internal anti-money laundering and terrorist financing policies and controls including employee training programs and audit systems.

⁴⁹ *Dirty money purge hits professions*, refer section 5.5.1

5.5.4 BETTING EXCHANGE INPUT ON THIS ISSUE

The Task Force received input from the Betfair betting exchange on the specific issue of money laundering:

Betfair is better placed to combat money laundering and other criminal practices than any other bookmaker.

First, we don't accept cash from punters so we are immediately able to account for every penny in our system. This is in stark contrast to traditional bookmakers, and the TAB's, whose main currency (in the UK at least) is cash. Only last week a punter was rumoured to have walked into a Ladbrokes shop in London and had a £54,000 bet, all of which was in cash. I doubt very much if proper money laundering checks were carried out by the betting clerk on duty.

All of our funds come via the banking system, either direct from a bank account or through the Visa and Mastercard system. As a result, a high level of money laundering checks have already taken place before the funds reach us. However, we add significant checks of our own as well. First and foremost we operate a predominantly "closed loop" payment process. This means that any winnings, together with the original deposit, are returned to the original source of funds. This prevents laundering (as money has to change account for laundering to occur). Second, any account that attempts to withdraw winnings of more than £100 (ie total withdrawals exceed total deposits by more than £100) is subject to manual checks to ensure that there is no suspicious betting activity. The only card payment method where we are not able to apply this closed loop system fully is for deposits made on Mastercard (as they do not allow any returns to the card at all). In these circumstances we do a "know your client" ("KYC") check on the client. This check involves seeing a copy of a piece of recognised photo-id together with proof of address. In addition we will also perform KYC checks on significant transactions.

We keep a record of every single card number that has ever been used on the system and will not allow any card to be registered to more than one account – if an account is closed for any reason the card(s) registered to that account cannot be used on the system again. Thus in the highly unlikely event that a money launderer could get money into the Betfair system, he would find it impossible to get it back out.

Finally (on this first point), we audit our client account (which is kept in a wholly ring-fenced subsidiary account with the Royal Bank of Scotland and cannot therefore be mixed with our corporate funds) on a monthly basis, and reconcile the account daily.

Secondly, we have, as outlined above, a perfect audit trail allowing us to monitor the movement of all funds through our system. For any account, we can produce a report showing exactly who the punter has won money from and lost it to, at the touch of a button. This means that we can immediately spot any suspiciously large flows of money

from one account to another. Furthermore, the mechanics of the exchange make it virtually impossible to knowingly route bets to a specific counterparty (not only are all bets anonymous on the system but there is also a “best execution” feature that automatically routes bets to the best price, rather than to a nominated price on the exchange). In the UK, unlike in Australia, we do not allow transfers to be made between betting accounts other than in exceptional circumstances, and then only when we have written authorisation from the parties involved, and have verified their identities – again this makes it impossible for money to be specifically routed from one account to another. We also include a number of security features, such as delayed withdrawals back to bank cards, to allow us to use the audit trail most efficiently.

The threat of money laundering is an argument that is, again, often used by the opponents of betting exchanges. It is used because it is a highly emotive argument, not because of evidence. Of course it is imperative that no betting operator (exchange or otherwise) becomes complacent about the issue but it is also worth noting that attempting to launder money through any well-run betting operation would be highly impractical. This is especially the case with Betfair, which raises the bar when it comes to eliminating the potential for money laundering and fraud and which sets significantly higher standards than are seen in the rest of the industry.

5.5.5 BRIEF EXAMINATION OF MONEY LAUNDERING RISKS IN BETTING EXCHANGES

Some aspects of Internet betting exchanges represent sound platforms for reducing the risks of money laundering, including:

- The requirement that 100% of transactions occur through customer accounts; and
- The automated nature of operations, thereby enabling operators to install software which facilitates the establishment of detailed audit trails.

It is then in the hands of individual licensing and regulatory regimes as to what additional measures are installed and implemented.

For example, the scenario highlighted in section 5.5.2 above, involving two parties not at arms length conniving to match bets with each other, could go undetected unless there are rigid requirements (modified in response to the specific traits of betting exchange operations) for the monitoring and reporting of all “unusual” transactions. The mere presence of a “best execution” feature (refer section 5.5.4 above) does not necessarily totally extinguish the risks of the matching of bets between parties who are not anonymous and not at arm’s length from each other.

Also, as was discussed in chapter 5.4, in the context of responsible wagering, there would appear to be merit in the imposition on betting exchange operators of a standard licence condition requiring that all account holders physically attend an agency and provide adequate identification documents to pass the “100 points” identification test.

Other generic measures, applying to all forms of wagering operations, such as rigorous probity testing of principals and key employees of betting exchanges are also critical elements of an adequate regulatory regime.

5.5.6 SUMMARY

- 1 Theoretically, some aspects of betting exchange operations tend to render them potentially vulnerable to money laundering – including the relatively low “over rounds” in markets; the risk of non-arm’s length parties conniving to transact with each other; and the lack of any probity testing of “layers”.
- 2 On the other hand, some aspects of betting exchange operations tend to reduce their vulnerability as a vehicle for money laundering – including the fact transactions are invariably account-based and the fully automated nature of Internet betting exchange operations.
- 3 On balance, it would appear that most of the risks of money laundering arising from the nature of betting exchange operations could be satisfactorily dealt with in a rigorous customised regulatory regime. In the absence of such measures, however, a betting exchange could potentially be a haven for money laundering.

5 EFFECTS OF BETTING EXCHANGES (continued)

5.6 OVERSEAS EXPERIENCE WITH BETTING EXCHANGES

5.6.1 INTRODUCTION

The issue of betting exchanges accepting wagers from outside the jurisdiction in which they are licensed is part of the broader debate of cross-border betting.

The countries at the forefront of opposition to the practice of offshore wagering operators offering betting on their racing without first obtaining the permission of the racing industry and government tend to be, not surprisingly, those with a first-level racing industry heavily reliant on off-course totalizator betting revenues for survival.

Three countries to which this applies particularly are France, Hong Kong and Japan. In all three cases, legal betting on racing is exclusively totalizator-based. The high rates of totalizator commissions – particularly in France and Japan – make them prime targets for unauthorised overseas wagering operators betting on their racing with their own residents.

5.6.2 FRANCE

French racing's most recent attempts to "internationalise" its racing product comprised a partnership with racing telecaster *Attheraces* to telecast races into Great Britain (commencing 11 May 2003) and in return direct bets into French totalizator pools.

Simultaneously, however, the betting exchange Betfair commenced operations on the French races – without permission from French authorities.

France has signalled its stern objections to Betfair's conduct. Mr Louis Romanet, Director-General of France-Galop (loosely the equivalent of TABs in Australia) was quoted,⁵⁰

We have sold the pictures to Attheraces, and have a partnership with them but we have no deal with Betfair.

We are not going for the small percentage as it would give the impression we are encouraging a foreign betting organisation to launch illegal betting in France. We must not give the impression that France Galop is encouraging French punters to bet between themselves outside of the Pari-Mutuel. We have to be very clear - this sort of business is against the law in France, so far.

⁵⁰ Romanet describes Betfair move as "against the law" Graham Dench, Racing Post, 13 May 2003

In a separate development, it has been reported⁵¹ that the national French credit card organisation is moving to block all on-line gambling transactions. Effective 29 June 2003, all French banks would be forced to terminate any relations with the online gambling industry. The reference to “gambling” (as against gaming) suggests this would encompass credit card transfers by French residents to Internet betting exchanges.

5.6.3 HONG KONG

On 31 May 2002, the new *Gambling (Amendment) Ordinance* came into force in Hong Kong. In terms of timing, the new legislation took effect just prior to the 2002 Soccer World Cup.

Two key elements of the provision are⁵²:

- 1 The outlawing of all forms of “bookmaking” with residents of Hong Kong.

An important aspect of the amendment is its extra territoriality. For example, a “bookmaker” outside Hong Kong who accepts a bet from a person in Hong Kong is in breach.

- 2 The creation of the offence of advertising on-line bookmaking services.

It is an offence to promote or facilitate on-line bookmaking in Hong Kong – including, for example, advertisements by a bookmaker outside Hong Kong “published” via e-mail to persons in Hong Kong.

The ordinance even has an element of retrospectivity – outlawing bets placed before 31 May 2002 (eg “futures” bets), making them illegal to collect or pay out.

Specifically in respect of betting exchanges, former Australian Jockey Club Chief Steward John Schreck (now a consultant for the Hong Kong Jockey Club) presented a paper to the 2003 Asian Racing Conference in New Zealand. Following is a portion of his speech,

Betting exchanges have not been around for long, but already rumours are rife that many jockeys and trainers have been earning plenty from laying odds on their horses to lose or getting someone close to them to lay odds. This is easily arranged given the anonymity of betting exchanges.

⁵¹ *France feels the credit card squeeze*, Interactive Gaming News, 27 June 2003

⁵² *A close look at the Gambling (Amendment) Ordinance*, Interactive Gaming News, 4 June 2002

This is just one of the reasons racing authorities are so deeply concerned over the advent of these parasitical and ruinous betting exchanges. Indeed, Mr Winfried Engelbrecht-Bresges, the Executive Director of Racing of The Hong Kong Jockey Club recently stated: "For me, this is the biggest threat to racing integrity, and it is a worldwide threat." He appreciates that the concept of betting exchanges is a clever one, and he has not questioned the integrity of the people running the sites. But he agrees that the anonymity of the players could place in an impossible position those who control and supervise racing wherever it takes place. And, of course, the bigger and more lucrative a club's operations, the more susceptible it is to attack from these rapacious predators.

My view is that the only way horseracing can survive this threat to racing integrity is for it to be made illegal for anybody to have transactions with betting exchanges, the same way as the Hong Kong Government legislated against its citizens betting with overseas bookmakers.

Further excerpts from Mr Schreck's speech – setting out his views on the likely effects of betting exchanges on racing integrity – are contained in chapter 5.1.

5.6.4 JAPAN

Dr Terry Imahara of the Japan Racing Association (JRA) provided a paper titled *Countermeasures against illegal wagering operations* to the Asian Racing Conference in 2003. Salient points included,

- All wagering activities, unless authorised by the (Japanese) Government are clearly in breach of the Japanese Criminal Code. Further the Horse Racing Law recognizes JRA as the sole entity permitted to operate wagering activities on Japanese racing.
- No person in Japan is permitted to use a foreign wagering Internet site – regardless of the legality of those sites in the jurisdiction they are located.
- As at early 2003, there were three identified overseas websites offering wagering on Japanese racing in the Japanese language. The JRA indicates it is losing US\$120 million per annum in racing betting turnover to these overseas sites.
- One of the measures identified by the JRA as being most effective against overseas Internet wagering is that of blocking financial transactions carried out by credit card, which account for the vast bulk of Internet wagering transactions.
- Some credit card companies already have in place a policy of not dealing with wagering operators.

- The JRA then proceeded to raise awareness among other credit card operators of their responsibilities to preclude their customers from becoming involved in illegal activities. This led to some credit card operators clamping down on the practice of Internet wagering operators to register themselves merely as “merchants” – thereby avoiding having to code transactions ‘7995’ (gambling).
- Dr Imahara indicated that negotiations were continuing with remaining credit card companies – with a view to achieving an across-the-board block on any credit card transactions between Japanese punters and offshore wagering operators.

5.6.5 THE NETHERLANDS

The Dutch firm *DeLotto* holds monopoly rights over sports betting in The Netherlands. It offers online gambling to Dutch residents.

In March 2003, *DeLotto* won a Dutch Court action against the British bookmaker firm Ladbrokes. In what was essentially a test case, the Court ruled that Ladbrokes had to desist accepting (online) bets from Dutch punters.⁵³ The matter is listed for appeal on 28 July 2003.

Subsequently, *DeLotto* initiated proceedings in the Dutch Court against 85 online gambling providers – seeking orders that the defendants stop targeting Dutch punters.

On 18 June 2003, *DeLotto* indicated to the Court that 62 of the 83 defendants had agreed to block Dutch punters electronically. The remaining 21 had not responded satisfactorily. On 1 July 2003, the Court entered a judgment in favour of *DeLotto* against the 21 online wagering operators *in absentia*. Wagering operators who accept bets from Dutch citizens are liable for a penalty up to 10,000 Euro per day.

5.6.6 DENMARK

Denmark has been expressing concerns regarding what it sees as the downsides of the UK Government’s attempts at globalisation of gambling.

An April 2002 Danish paper⁵⁴ highlights what Denmark perceives as the dangers of the UK stance,

In the international community, though, one can detect clear signs of the formulation among the majority of OECD countries of a clear norm that it is unacceptable for states not to hinder national gambling

⁵³ *Dutch gaming monopoly successful in Court against online sports books*, article by Rob van der Gaast in Interactive Gaming News

⁵⁴ *Gambling over the Internet: An international regulatory challenge with important fiscal implications*, Danish delegation, Copenhagen, April 2002, page 6

companies from providing games to citizens of other countries unless special arrangements exist.

The gambling policy currently under consideration in UK, however, risks exposing this consensus to severe pressure. The outcome of the political process in the UK could very well be decisive for the possibility to maintain state control over the gambling market in the future.

Today, one can identify three different Internet policies with regard to gambling within the OECD community,

- *prohibition (eg USA)*
- *globalisation (eg UK)*
- *national regulation (eg Denmark)*

Although the policies of prohibition and national regulation are pursuing differing goals, they are not incongruous: They both agree on the idea that the gambling market on the Internet must be regulated according to the principle that national gambling companies can only direct their offers at each country's own citizens. The policy of globalisation, on the contrary, is basically opposed to the other two policies, as it accepts the idea of one global market on the Internet.

5.6.7 SUMMARY

- 1 A growing list of countries is enacting legislation to make it illegal for:
 - their residents to bet with (unauthorised) overseas gambling operators; and/or
 - overseas wagering operators to accept bets with their residents – regardless of the operator's legal status in their home country.
- 2 Several countries (eg France and Japan) have already experienced some success at severing the financial link between their residents and overseas wagering operators through action against and/or negotiation with credit card companies.
- 3 There is a groundswell of support among some OECD countries for restrictions on gambling operators, limiting them to accepting bets from customers within their own country or from countries with whom acceptable arrangements are in place.

5 EFFECTS OF BETTING EXCHANGES (continued)

5.7 BETTING EXCHANGES ON SPORTING EVENTS (OTHER THAN RACING)

5.7.1 INTRODUCTION

Overseas Internet betting exchanges operating on sporting events were essentially the precursor of today's betting exchanges on racing.

For two main reasons, sporting events are well suited to betting exchange principles:

- 1 The bulk of sports betting tends to occur on two or three outcome contingencies – such as head-to-head or handicap betting on football matches. The application of the betting exchange concept to these bet forms is relatively simple and straightforward.
- 2 As a consequence of (1) above, it is generally relatively easier for a betting exchange operator to achieve depth and liquidity on sporting events. In a betting exchange operating on a 16 horse race, the betting action by the backers and layers in the exchange is spread over 32 possible betting choices (back each runner to win or lose). In contrast, in a betting exchange offering head-to-head betting on an Australian Rules game, for example, the betting action by the participating punters is essentially on two outcomes only. Hence, a prospective head-to-head backer or layer entering the exchange during betting on a sporting event will more likely be able to “get set”.

It should also be noted, however, that many betting exchanges also offer a wide range of sports betting options other than the traditional head-to-head and handicap. In this respect, betting exchanges are similar to bookmakers and TABs in their fixed odds sports betting. Perusal of well-known sports betting websites reveals betting options such as winner of a premiership, first goal scorer, margin betting, etc. On sporting events with widespread global appeal such as European football (soccer) matches, levels of activity at the leading betting exchanges on these “exotic” bet options are often very high.

5.7.2 SPORTS BETTING IN AUSTRALIA

Legal sports wagering is now firmly entrenched in all Australian States and Territories.

All TABs offer fixed odds sports betting on a range of higher profile sporting events. Sales are through their normal range of distribution channels.

In the case of licensed bookmakers the Australian sports betting market is heavily dominated by the “corporate bookmakers” in the two Territories and a handful of larger-scale bookmakers operating from offices on racecourses in each State. In all cases, the bulk of transactions are processed “remotely” (via telephone and Internet).

Some corporate bookmakers (eg Centrebet in Alice Springs) specialise in servicing overseas clients on overseas sporting events.

While in general terms, the revenue flows to the racing industry from sports betting are minor compared to revenue flows from racing, in the case of some jurisdictions, revenues from TAB fixed odds betting are still significant.

Also, in several jurisdictions, while Governments do not receive a tax stream from bookmaker sports betting they receive a reasonable percentage of TAB gross profit from sports betting.

5.7.3 RACING INDUSTRY REVENUES FROM SPORTS BETTING

While sports betting obviously does not have the same link to the racing industry’s product as racing betting, under various long-term arrangements in place in many Australian States and Territories, the racing industry enjoys significant revenue streams from sports betting.

For example, under contractual arrangements between TABCorp and the Victorian racing industry and TAB Limited and the NSW racing industry the racing industry is entitled to a 25% share of total TAB net profits – to which sports betting revenues contribute.

Hence, any significant transfers of sports betting turnover from TABs to betting exchanges could adversely affect racing industry distributions from TABs. Additionally, the Task Force is aware that some TABs regard sports betting as an aspect of their betting operations with significant growth potential.

A separate, but related, issue is that of the possibility of TABs being granted licenses to conduct sports betting exchanges. Under these circumstances, this could represent a future compensatory revenue stream for the relevant racing industry(ies).

Separately, several race clubs around Australia enjoy revenue streams from sports bookmakers located in premises on their racecourses – particularly those housing corporate bookmakers.

5.7.4 CHARACTERISTICS OF SPORTS BETTING

In contrast to betting on racing, the bulk of sports betting in Australia (with both bookmakers and TABs) is fixed odds, rather than totalizator.

In the case of Australian bookmakers and TABs offering fixed odds sports betting, the smaller number of outcomes on most of the bet forms with high levels of punter interest (eg head-to-head and handicap betting on the result of AFL and Rugby League games) means they tend to bet relatively more attractive odds than they do on racing events. That is, the “aggregate percentage” in sports betting markets is generally much closer to 100%. Hence, betting exchange operations on many sporting events tend to have relatively less scope for compression of percentages (and, inversely, better odds available to backers) relative to a betting exchange on racing.

It is also relevant that Australian bookmakers and TABs, in respect of their betting on sporting events, are (at present) generally not saddled with financial obligations to the relevant sports – as is the case with their racing betting. Hence, in setting odds for sporting events, most Australian wagering operators need not factor in payments to the body responsible for producing the event on which the betting is taking place.

There is nothing to prevent, however, a prospective Australian betting exchange on sport offering to provide a revenue stream to sporting bodies responsible for events upon which the betting exchange operates.

5.7.5 ISSUES FOR INTEGRITY OF SPORTING EVENTS

As discussed in section 5.1.5, betting exchanges on racing tend to give rise to potential integrity concerns in respect of the conduct of the racing itself – as against betting integrity. Similarly, it would seem unlikely that a well-regulated betting exchange on sport would give rise to major concerns regarding betting integrity.

The question then arises as to the extent to which a betting exchange on sporting events could potentially give rise to integrity concerns in respect of the actual conduct of the relevant sporting events. It is noted that, even under the current legal sports betting regime in Australia (involving bookmakers and TABs), specific allegations regarding possible nefarious conduct and links to sports betting occasionally surface in the media.

For three main reasons, the Task Force regards the risk to the integrity of sport as relatively lower than in the case of racing:

1 Sports betting focus on two outcome bet forms

Much of sports wagering involves forms of betting with essentially two outcomes. Examples include the winner of a Rugby League game or a tennis match. In such circumstances “laying” one outcome in a betting exchange is the equivalent of backing the opposing outcome(s) with the betting exchange, or a bookmaker or TAB. For example, in an AFL game, backing Carlton to win with a bookmaker is essentially the same bet as “laying” Richmond in a betting exchange. This tends to be reflected in the odds available in betting exchanges – where the odds on offer for backing one outcome are very close to the inverse of the odds for laying the opposing outcome.

Notwithstanding that betting options involving a small number of outcomes tend to account for a significant proportion of sports betting, options involving a larger number of outcomes – for example, the winner of a golf tournament with 90 players – could potentially give rise to similar integrity issues as racing events.

2 Integrity at reduced risk where only two outcomes

Section 5.1.10 canvassed the risks to racing integrity stemming from betting exchanges providing a facility to bet fixed odds in a market with an aggregate percentage close to 100%. An example of the specific nature of the risk is the case of somebody taking nefarious measures to ensure that a runner at say, \$4.00 (3 to 1) is defeated. The person is then able to back each of the remaining runners in a betting exchange for a level collect and return a profit. In contrast to a race (where field sizes are normally eight or more runners) head-to-head and handicap betting on an AFL or Rugby League match basically involves only two outcomes. Logically, it would be relatively more difficult to act – without detection – in a manner detrimental to the winning chances of a team playing in a two outcome situation than a runner in a race with ten or so runners.

3 Existence of sports is separate to wagering

Major sports in Australia were of course established well before the arrival of legal fixed odds wagering on them in the early 1990s. As such, unlike racing, wagering is not an integral aspect of most major sports. An example of acknowledgment of the nexus between racing and wagering, is that racing participants such as trainers and harness racing drivers are permitted to bet on races in which they are competing. In contrast, many high profile sports in Australia (eg cricket and Rugby League) have introduced strict prohibitions against betting by participants.

In a general sense, the higher profile national and international sporting events tend to attract most sports betting activity. It would seem improbable that events such as, for example, matches in the FA Cup, the AFL or the NRL would be at widespread risk of foul play linked to betting. In this respect, sport differs – in a general sense – from racing in terms of public perceptions regarding inherent risks to integrity arising from wagering on events.

5.7.6 INTEGRITY OF SPORTING EVENTS – MULTI- OUTCOME BETTING

As discussed above in section 5.7.5, there are valid reasons for suggesting that sport's exposure to integrity concerns from betting exchanges is relatively less than racing.

However, in broad terms, the Task Force still acknowledges that (additional) concerns regarding risks to the actual and perceived integrity of some sporting events may well arise as a consequence of coverage by betting exchanges. This is particularly so in betting options which involving multiple outcomes – such as the first try scorer in the Rugby League match or “wooden spoon” betting on a premiership.

As was discussed in chapter 5.1, at the heart of these concerns is the facility offered by a betting exchange for competitors to “lay” (bet against) themselves.

It is also relevant that, unlike racing, sports generally do not employ stewards with the specific role of monitoring betting and examining whether competitors are “running on their merits”. As a consequence, perceptions could arise among some fans that less scrupulous competitors may be able to bet against themselves on a betting exchange with minimal risk of detection.

On this issue of possible risks to the integrity of sporting events arising from multi-outcome betting exchange operations, the former Chief Steward of the Australian Jockey Club stated the following in a presentation to the 2003 Asian Racing Conference,

Fixing the outcome of a match may require a considerable degree of collusion, possibly involving players on both sides, but some events may be in the hands of an individual player. Examples which spring readily to mind are the soccer player taking his penalty kick in a deciding shoot-out or the number of wickets bowled in an over.

5.7.7 EXPOSURE OF EXISTING LICENSED SPORTS BETTING OPERATORS TO BETTING EXCHANGES

Chapter 5.2 (sections 5.2.5 to 5.2.6) assessed the degree of financial exposure – in terms of racing betting – Australian TABs and bookmakers would face as a consequence of the (further) encroachment of betting exchanges into the Australian wagering market.

Similar issues to those considered there tend to arise regarding sports betting by TABs and bookmakers.

In some respects, the degree of exposure is greater:

- The bulk of sports betting in Australia is fixed odds – as against totalizator. In this respect, the betting exchange product is homogeneous.
- A high proportion of sports betting in Australia is essentially on two outcome contingencies – which are especially suited to the betting exchange mode of operation.
- In the case of bookmaker sports betting particularly, virtually all transactions are conducted “remotely” – via telephone or Internet – through accounts. This of course, is the basic means by which betting exchange transactions occur.
- Unlike racing betting (refer section 5.2.7), there are few prohibitions relating to the dissemination away from racecourses of fixed odds on sporting events. Australian sports punters who are price sensitive are able to shop around on the Internet and seek the odds available.
- The bulk of sports betting in Australia on local events is heavily slanted toward the higher profile competitions and events – such as AFL games, first grade Rugby League games, test and first class cricket matches and international Rugby Union events. Hypothetically, an Australian betting exchange would foreseeably experience little difficulty generating a critical mass of betting activity on these events. To an extent, this contrasts with racing, where TAB and Sky Channel coverage extends to a great many events (of varying status) every day across three different codes.
- While noting the current prohibition in the *Interactive Gambling Act 2001 (Cth)* against in-the-run betting, betting exchanges on sport are, on face value, particularly well placed to offer this facility to punters. As such, if this prohibition were to be relaxed at some stage, betting exchanges may prove additionally attractive to some punters.

On the other hand, there are several factors tending to reduce the likelihood of transfer of fixed odds sports bets from TABs and licensed bookmakers to betting exchanges:

- As discussed above in section 5.7.1, as a consequence of the low number of outcomes involved in much of the sports betting with TABs and bookmakers, the aggregate percentage of the prices offered tends to be relatively (compared to racing betting) closer to 100%. Hence, the relative attraction on price grounds of betting exchanges over TABs and bookmakers is lower – particularly when the commission payable to betting exchanges on winning bets is factored in. There are, however, some price sensitive sports punters who would likely seek out a new operator offering even marginally better odds.

- The existence of essentially only two outcomes in many popular sports betting options removes the opportunity to back several outcomes in one event. In contrast, some racing punters tend to back several runners to win a race. Similarly, in a betting exchange on racing, several punters backing different runners to win a race may access a single betting exchange account. In these respects, the current customer commission structure applying in many British betting exchanges (eg Betfair) – involving the charging of commission on the net winnings per event on each account – confers significant potential benefits on punters in the case of betting exchange operations on racing.

In the case of forms of sports betting in an exchange involving essentially only two outcomes (eg head-to-head betting on AFL or Rugby League), this benefit does not accrue in the case of many betting exchange customers. A possible exception in this respect is the “trader”, who aims to lock-in a profit before an event commences by backing mutually exclusive outcomes at various points in betting when favourable odds are on offer.

5.7.8 POSSIBLE BENEFITS FROM AN AUSTRALIAN BETTING EXCHANGE ON SPORTS (OTHER THAN RACING)

“New money” in Australian wagering market

The concept of “new money” was canvassed – in the context of betting on racing – in section 5.2.11. As was the case there, this discussion is subject to adequate responsible wagering safeguards being in place in the context of increased punter expenditure on sports betting.

The introduction of a betting exchange(s) on sport in Australia would represent the formal introduction of a third genus of wagering here. However, if it results in an increase in the size of the overall wagering “pie”, it may not necessarily have proportionate adverse effects on existing licensed sports betting operators.

For example, it is possible that some Australians who enjoy “playing” the stock market could be attracted to sports wagering when the betting vehicle is similar conceptually to a stock exchange.

In broad terms, whether Governments, sporting bodies and the racing industry in Australia would be net beneficiaries from the establishment of a betting exchange(s) here would be heavily dependent on the financial aspects of any licensing arrangements. As discussed in section 5.2.20 in the context of a betting exchange on racing, the risk associated with providing for income streams along these lines is that offshore betting exchanges would likely enjoy cost structure advantages and as a result will be in a position to offer Australians better odds.

Greater competition among sports betting operators

It is to be expected that a reasonable proportion of sports punters would be reasonably price sensitive – particularly those who have betting accounts with multiple operators and shop around on the Internet for the best odds available. Appendix C2 is a sample of odds available on the Rugby World Cup from a cross-section of wagering operators.

On face value, the odds on offer at betting exchanges tend to be marginally better than those of the established Australian operators. However, two points should be noted here:

- The odds available in the betting exchanges are gross, with winning customers liable to pay commission – at an advertised rate of 5% down to 2%.
- A significant proportion of TAB sports bets are sold through high-cost distribution channels – such as cash bets in agencies. Also, generally speaking, the ability of TABs to operate off-course provides them with access to “soft money” bets from recreational punters who tend to be less price-sensitive. For these reasons, TABs tend to offer less attractive odds overall than bookmakers.

Hypothetically, if a sports betting exchange(s) were to be established in Australia, the increased competition would likely result in better odds overall for sports punters.

It is important that this issue of “benefits” to punters from increased competition among sports betting operators is balanced against possible adverse effects on racing industry revenue flows from sports betting as a consequence of:

- tighter margins for existing licensed sports betting operators, particularly TABs; and
- transfer of sports betting turnover to betting exchanges on sport, under circumstances where the racing industry does not enjoy a healthy revenue stream from those betting exchanges.

Wagering revenue flows from a sports betting exchange

It is generally acknowledged that sports betting – particularly where it involves betting on only a small number of outcomes – does not have the capacity to pay similar amounts (as a proportion of turnover) by way of levies and Government taxes as racing betting.

At present, racing industries around Australia receive modest revenue flows from TAB and bookmaker sports betting.

Major sporting bodies periodically raise the issue of their entitlement to a share in the revenues of sports betting operators wagering on their sports. This issue could easily resurface in Australia in any discussion of a betting exchange on sport.

If an Australian betting exchange(s) on sport were to cannibalise some of the sports betting turnover of existing Australian wagering operators, one logical source of replacement of revenue streams to the racing industry and Governments would be the betting exchange(s) itself.

5.7.9 POSSIBLE WIDER RISKS EMANATING FROM A BETTING EXCHANGE ESTABLISHED IN AUSTRALIA OPERATING ON SPORTING (NON-RACING) EVENTS

The Task Force considered the hypothetical prospect of a betting exchange on sporting (non-racing) events only being licensed in Australia.

The Task Force identified the following downsides as possibly flowing from this:

Risks of greater exposure of betting exchange concept to mainstream Australian punters

There is no doubt that overseas betting exchanges operating on Australian racing and sporting events (eg Betfair) have already made some inroads into the Australian wagering market. Betfair particularly has been the subject of considerable media focus following its decision in February 2003 to operate “full-time” on Australian racing and overtly target Australian punters.

However, it is reasonable to assume that smaller and/or recreational Australian punters in the main have found the prospect of betting with an overseas wagering operator daunting. It is feasible that many Australian punters would be disinclined to provide their credit card details to an operator not licensed in Australia and may have doubts regarding the security of their funds held in an account with an overseas operator. Overall, the betting exchange concept is relatively novel and complex compared to the established forms of wagering in Australia, with TABs and bookmakers.

In contrast, however, if a betting exchange (on sport) were to establish in Australia, licensed by an Australian jurisdiction, it is feasible it would be accessed by greater numbers of smaller and mainstream Australian punters than is currently the case with overseas betting exchanges. Those punters would thereby become familiar and comfortable with the betting exchange concept. This would likely result in a transfer of some sports betting turnover from Australian bookmakers and TABs to a betting exchange. Racing industry and Government wagering revenues from these sources would in turn decline.

Additionally, however, upon becoming more comfortable and familiar with the betting exchange concept generally, some mainstream Australian punters may then seek out overseas betting exchanges operating on (Australian) racing – to the likely detriment of established Australian wagering operators on racing. This increased betting activity would also allow the overseas betting exchanges concerned to develop greater depth and liquidity in terms of their Australian racing operations. This would in turn give rise to the concerns regarding the integrity of Australian racing alluded to in chapter 5.1.

The Task Force notes that any assessment of the risk of a betting exchange on sport in Australia leading to leakage overseas of betting turnover on racing is speculative and necessarily subjective. The Task Force also acknowledges the existence of a viewpoint that many punters who normally bet on racing are not necessarily inclined to bet on sport and vice versa.

Risks of subsequent pressure by an Australian sports betting exchange operator(s) to also operate on racing

It would be a watershed decision on the part of an Australian jurisdiction to license a betting exchange – albeit on sporting events only. It would represent the birth on home soil of the first genuinely new licensed wagering concept in Australia for over seventy years.

However, it is possible that a betting exchange operator with a “foot in the door” in Australia, ie issued with a licence to operate a betting exchange on sporting events here, would subsequently seek to exert pressure on the relevant State or Territory Government to expand into racing events.

Concerns re promotion of an overseas betting exchange on Australian racing to Australian clients

If a betting exchange(s) on sport only were permitted to open in an Australian jurisdiction, its operator would likely have greater access to Australian punters generally than current overseas betting exchanges such as Betfair and Twoflys. This would likely enable the operator(s) to accumulate a sizeable Australian client list, with possibly a significant proportion from other States and Territories. The Australian sports betting exchange operator may then, at a time of its choosing, decide to:

- “Transfer” those clients to an overseas betting exchange fielding on Australian racing. This risk has possibly been heightened recently by moves on the part of some Australian corporate bookmakers to obtain bookmaker/betting exchange licences in Britain.

- Allow an overseas betting exchange (which operates on Australian racing events) access to their Australian client list to enable the direct promotion of the overseas business to Australian clients.

Concerns of possible cannibalisation of racing betting

It is possible that, with greater exposure to the betting exchange concept, a proportion of Australian racing punters will transfer some of their punting expenditure from racing betting with TABs and bookmakers to a local sports betting exchange. A consequence of such a cannibalisation effect would be a decline in wagering revenues of the Australian racing industry and Governments.

The level of turnover at risk of transfer in this context would be modest. Again, the Task Force acknowledges the difficulties in assessing the level of this risk, along with the existence of a viewpoint that punters who normally bet on racing are not inclined to bet on sport and vice versa.

5.7.10 SUMMARY

- 1 A consequence of the popularity among sports bettors of bet forms involving only 2 or 3 outcomes is that sports betting is particularly suited to the betting exchange concept. Among the primary reasons for this suitability are:
 - (a) The relative simplicity and ease of understanding involved in a betting exchange application with limited outcomes.
 - (b) The concentration of wagering activity across a small number of outcomes renders it easier for a betting exchange operator to achieve critical mass. (*section 5.7.1*)
- 2 Globally, sports betting mostly involves fixed odds – as against totalizator – betting products. Throughout Australian jurisdictions, the sports betting market is dominated by corporate bookmakers, TABs and a small number of traditional bookmakers operating from racecourse offices. (*section 5.7.2*)
- 3 Sports betting options offered by existing Australian wagering operators involving only two or three outcomes tend to involve odds with an aggregate percentage equivalent closer to 100% than is usually the case with racing betting, where there is an average of around 10 outcomes (the number of runners) per race. (*section 5.7.4*)
- 4 The potential for betting exchanges on sport to incrementally threaten the integrity of the events upon which they operate is relatively less than the potential risks posed to racing integrity by betting exchanges. (*section 5.7.5*)

- 5 Nevertheless, particularly in the case of betting exchange operations on multi-outcome bet types, the facility inherent in betting exchanges for competitors to lay (bet against) themselves has the potential to give rise to concerns for the actual and perceived integrity of sporting events. (*section 5.7.6*)
- 6 The degree of exposure of existing licensed Australian wagering operators to betting exchanges operating on sport is, in some respects greater than in the case of betting exchanges on racing. The primary reasons for this are:
 - (a) The focus of existing sports betting in Australia on fixed odds products – similar to betting exchanges.
 - (b) The popularity among Australian sports bettors of betting options involving only 2 (or 3) outcomes.
 - (c) The popularity in Australia of “remote” channels of placing sports bets (eg Internet and telephone).
 - (d) The relative ease with which betting exchanges could likely attain critical mass in their operations on those events upon which the bulk of sports betting in Australia occurs. (*section 5.7.7*)
- 7 On the other hand, some key factors tend to reduce the exposure of existing Australian betting operators to betting exchanges on sport. These include:
 - (a) The relatively smaller extent to which the odds (prices) on offer in a betting exchange on sport are superior to those obtainable from bookmakers or TABs (fixed odds) – compared to betting exchanges on racing.
 - (b) In many cases, the current situation with British betting exchanges regarding the structure of commissions payable by customers to betting exchange operators tends to favour customers betting in events where there are multiple outcomes to a greater extent than customers betting on two outcome events. (*section 5.7.7*)
- 8 A betting exchange on sport would attract some “new money” (player loss) into the Australian sports wagering market. Also, the competition from a betting exchange may well result in existing licensed sports betting operators offering better odds. However, a possible downside is the potential threat to racing industry revenues from the sports betting activities of existing operators – particularly TABs. (*section 5.7.8*)

- 9 There may exist some further potential downsides associated with the establishment of a betting exchange(s) in Australia operating on sport, in terms of risks to existing revenue streams from wagering on racing. These include:
- (a) Greater exposure of recreational, mainstream punters in Australia to betting exchanges, with the likelihood many would become familiar and comfortable with the betting exchange concept. This could lead to some punters seeking out overseas betting exchanges fielding on Australian racing.
 - (b) An increased risk of referral of Australian punters to an overseas betting exchange operating on Australian racing.
 - (c) The possibility that some wagering turnover on racing with existing licensed Australian TABs and bookmakers would be cannibalised by a betting exchange on sport.
 - (d) The risk of subsequent pressure by an Australian sports betting exchange operator to be allowed to operate on racing events. (*section 5.7.9*)

5.7.11 FINDINGS ON CHAPTER 5.7

The Task Force is of the view that:

- 1 In relative terms, betting exchanges on sport are less likely to give rise to significant additional widespread concerns regarding the actual and perceived integrity of the events involved than betting exchanges on racing. Nevertheless, particularly in respect of betting exchange operations on multi-outcome bet options (such as “wooden spoon” premierships betting or first point scorer in a football game) a facility for competitors to “lay” (bet against) themselves could give rise to concerns regarding actual or perceived integrity for the sporting events the subject of exchange betting.
- 2 A betting exchange in Australia on sport (other than racing) would likely result in:
 - (a) A modest increase in the level of total sports betting in Australia, ie some “new money” in the Australian sports wagering market.
 - (b) Some transfer of turnover from existing licensed Australian sports betting operators, with resultant moderate declines in racing industry and State/Territory Government revenues from these sources. Any future wagering revenue returns from betting exchanges must of course be netted-off against these declines.

The Task Force is of the majority view (the sole dissent being from the Northern Territory) that:

- 3 A betting exchange in Australia on sport would likely result in:
 - (a) Some leakage of racing betting turnover from existing licensed Australian wagering operators over the medium term (around 5 years). While any attempt to quantify the likely amount of any such leakage is necessarily highly speculative and subjective, the amount involved would likely be moderate.
 - (b) Betting exchange operator(s) having relatively greater leverage for exerting pressure on State or Territory Governments to permit betting exchange operations on racing events.

Northern Territory view

The Northern Territory is of the view that there would be minimal migration of race wagering to a sports only bet exchange.

The Northern Territory agrees that any attempt to quantify an amount of such leakage would be purely speculative. The Northern Territory experience suggests that serious punters concentrate on the one medium (sports or racing) while interested recreational punters may cover both.

The Northern Territory sees a regulated licensed sports bet exchange as a growth area that will appeal to the new age internet savvy gambler and we need to cater to the needs of the new gambling generation.

6 MEASURES AVAILABLE TO AUSTRALIAN GOVERNMENTS AND THE RACING INDUSTRY IN RESPECT OF BETTING EXCHANGES

6.1 MEASURES AVAILABLE REGARDING BETTING EXCHANGES IN AUSTRALIA

Term of reference 2.3 (a) – (c)

6.1.1 INTRODUCTION

As at 30 June 2003, no betting exchanges (on either racing or sport) had been established in Australia.

The Task Force terms of reference subdivide this issue as follows:

2.3 *Identify and evaluate any measures available to Australian governments and the racing industry in response to betting exchanges:*

- (a) *established in Australia, conducting an exchange on Australian racing events.*
- (b) *established in Australia, conducting an exchange on Australian sporting events*
- (c) *established in Australia, conducting an exchange on non-Australian races or sporting events and accepting bets from persons residing in Australia.*

The aspect alluded to in each of the above paragraphs is dealt with separately in the sections following.

Chapter 4 examines the current legal position in each Australian jurisdiction regarding the possible establishment of a betting exchange and the use of betting exchanges by people within each jurisdiction. This chapter examines the measures available in response to the hypothetical commencement of a betting exchange within Australia. For example, a betting exchange may establish in one jurisdiction (A) but another jurisdiction (B) may be desirous of preventing the betting exchange operating on B's racing and/or accepting bets from B's punters.

6.1.2 MEASURES AVAILABLE IN RESPONSE TO AUSTRALIAN BETTING EXCHANGES CONDUCTING AN EXCHANGE ON AUSTRALIAN RACING EVENTS

(a) Measures available to State and Territory Governments

Legislation prohibiting the “publication” of betting odds (on racing events)

Six States and Territories currently have legislation fully or partially prohibiting the “publication” away from racecourses of bookmaker prices (fixed odds) on racing events. The exceptions are Northern Territory and Western Australia.

The prohibition generally takes effect during the currency of the subject race meeting. A primary objective of such legislation – originally introduced in most cases prior to the establishment of TABs – was to hinder off-course SP (illegal) betting activities.

	RELEVANT LEGISLATION
ACT*	Gaming & Betting Act 1906 (NSW), section 19B Determination 262 of 2001 – Rules of Racing apply
NSW	Racing Administration Act 1998, section 29
QLD	Racing & Betting Act 1980, section 220(3)
SA	Authorised Betting Operations Act 2000, section 61
TAS	Racing Regulation Act 1952, section 111A
VIC	Lotteries Gaming & Betting Act 1966, section 42A

* The ACT situation is as follows:

Subsection 19B(1) of the *ACT Gaming and Betting Act 1906 (NSW)* in essence prohibits the publication of any betting odds relating to horse races, etc.

However, sports bookmaking licensees operating from a sports betting venue are expressly exempted from the prohibition by virtue of subsection 19B (2)(c) which states:

(2) Subsection (1) does not apply in relation to –

(c) an advertisement or notification about betting at a sports betting venue.

Section 21 of the *Race and Sports Bookmaking Act 2001* provides for the Gambling and Racing commission to determine a place to be a sports bookmaking venue.

The places at the ACT Racing Club where licensed sports bookmaking is conducted are determined places in accordance with the provisions of the Act.

Given that betting exchanges on racing are a relatively recent development it is unlikely that odds published as part of betting exchange operations were within the contemplation of the respective legislatures when the above legislation was enacted. However, in most of the above cases, it seems likely odds published as part of betting exchange operations would be caught.

An important legal issue arising is what constitutes “publication” of betting odds. Overseas licensed Internet betting exchanges would normally post their websites onto the Internet from outside Australia.

On 10 December 2002, the High Court brought down an important decision in this general area in the defamation case of Dow Jones v Gutnick. The Full Bench held unanimously that “publication” of the contents of a website occurs in any jurisdiction where it can be accessed. Appendix A summarises the case and judgment.

If Australian courts are prepared to extend the Dow Jones legal principle of what constitutes publication over the Internet to a situation involving a statutory wagering prohibition, it is possible this may represent an avenue for legal action against interstate betting exchanges by some Australian States and Territories.

Separately, it may be open to State and Territory Governments to examine the possibility of including in relevant legislation some form of “codification” of the Dow Jones principle on what constitutes publication. This could foreseeably clarify the position regarding the ambit of the decision in terms of its applicability beyond defamation cases. Alternatively, this could more appropriately be regarded as a Commonwealth Government issue – in light of the Commonwealth’s powers under the Constitution.

Legislation restricting advertising of “wagering” services

As at 30 June 2003, six Australian States have legislative provisions restricting the right to advertise wagering services to operators licensed within the jurisdiction,

	RELEVANT LEGISLATION
NSW	Racing Administration Act 1998, section 30
QLD	Interactive Gambling (Player Protection) Act 1998
SA	Lottery and Gaming Act 1936, sections 60 and 68
TAS	Racing Regulation Act 1952, section 96
VIC	Lotteries Gaming and Betting Act 1966, section 40
WA	Police Act 1892, sections 84A, 84G and 84H

Particularly in the case of a newly established local betting exchange seeking to operate on Australian racing, advertising into other Australian jurisdictions would probably represent an important tool in attaining critical mass and building up the exchange’s depth and liquidity.

In most cases, implementation of the above legislation is flexible in that prosecution action can usually be taken against the media proprietor – such as a major city newspaper or radio station, in addition to the wagering operator concerned.

In Queensland, the provision of gambling services via the Internet is governed by the *Interactive Gambling (Player Protection) Act 1998 (IGPPA)* (the IGPPA).

By conducting an internet-based betting exchange and accepting bets from Queenslanders, Betfair and the Queensland residents betting with Betfair are in breach of s.16 of the IGPPA which prohibits the conduct of an interactive game wholly or partly in Queensland or allowing a person in Queensland to participate in an interactive game unless the game or the operators are specifically authorised.

Consequently, betting exchanges providing fixed-odds wagering via the internet could only operate lawfully in Queensland if the operators obtained licences under the IGPPA. A betting exchange could apply for a licence under the IGPPA. The Minister responsible for administration of the IGPPA has absolute discretion on whether to grant a licence.

Exceptions to the IGPPA permit UniTAB to offer telephone and Internet betting and licensed bookmakers to offer telephone betting from off-course.

Under the provisions of the *Wagering Act 1998*, UniTAB's race wagering and sports wagering licences are held exclusively by UniTAB until 2014. Any move by a betting exchange to operate within Queensland would appear to be in breach of these exclusivities unless through a commercial arrangement between the betting exchange and UniTAB.

Legislation prohibiting the “publication” of lists of race fields without the permission of the body conducting the race meeting

Section 33 of the *Racing Administration Act 1998* (NSW) states,

A person must not publish:

- (a) *a list of the horses or dogs nominated for any intended race that is to be held at any race meeting on a licensed racecourse, or*
- (b) *a list of the horses or dogs that will or will not take part in any such race,*

unless the publication of the list has been approved or authorised by the person, club or association conducting the race meeting.

Currently a feature of any Internet betting exchanges operating on racing is the publication of race fields.

Again, based on the precedent in Dow Jones v Gutnick, it may be arguable that the posting onto the Web within Australia of NSW race fields by an Australian betting exchange licensed in a jurisdiction other than New South Wales would be in breach of this section. This would be so particularly if a stream of precedent develops involving the application of the Dow Jones Internet publication principle to offence provisions in gambling legislation.

Legislation prohibiting betting on Australian horse races with an operator not licensed in Australia

New South Wales has legislation in place commonly referred to as the "overseas betting offence provision". Section 8(3) of the *Unlawful Gambling Act 1998* states,

A person must not make a bet on any horse race, harness race or greyhound race that is to be held anywhere in Australia if:

- (a) the bet is made by telephone or electronically by means of the Internet, subscription TV or other on-line communications system, and*
- (b) the bet is made with another person whom the person making the bet knows (or would be reasonably expected to know):*
 - (i) is not a legal bookmaker, or*
 - (ii) is not a person who is authorised under the law of any State or Territory to conduct totalizator betting.*

(4A) Subsection (3) extends to a bet that is made by a person while in the State even though the other person with whom the bet is made is outside the State (including outside Australia).

Notwithstanding the specific reference in the legislation to section 8(3)'s extra-territorial application, it could foreseeably still apply in the hypothetical case of somebody in NSW transacting with a betting exchange within Australia operating without a licence.

Two of the intended effects of the NSW section are to dissuade NSW punters from betting on Australian racing with wagering operators not licensed in Australia and to render any credit card debts, etc arising from such bets unenforceable. In this second respect, section 56(1) of the *Unlawful Gambling Act* states,

Any agreement, whether oral or in writing, that relates to any form of gambling that is prohibited under this Act has no effect, and no action may be brought or maintained in any court to recover any money alleged to have been won from, or any money paid in connection with, any such form of gambling.

In Western Australia, an Act amending the *Betting Control Act 1954* which includes a section that has the general effect of the above NSW provision will come into operation on 1 August 2003.

Legislation imposing liability on Internet Service Providers for Internet access to unlicensed operators

Section 30(3) of the New South Wales *Racing Administration Act 1998* creates the offence of providing access (via Internet, subscription TV, etc) to the gambling operation of other than a licensed bookmaker or a licensee under the *Totalizator Act 1997*.

Under section 30(4), the regulations may exempt persons under specified circumstances from the operation of subsection (4).

(b) Measures available to Commonwealth Government

Interactive Gambling Act 2001 (IGA)

With the exception of micro-event wagering, eg betting in-the-run, there would not appear to be scope within the IGA as it stands (at 30 June 2003) for any action against an Internet betting exchange operating in Australia on racing or sport.

Under section 68(1) of the IGA, the Commonwealth Minister is required to conduct a review of Commonwealth regulation of interactive gambling.

The experience to date is that the Internet is by far the most popular distribution vehicle for betting exchange services. In light of this betting exchanges are potentially within the scope of the IGA.

It is technically possible that the IGA could be amended to, for example, outlaw the provision of betting exchange services to Australians – along the same lines as the current prohibition against Internet gaming generally. That is, to effectively classify Internet betting exchange operations “an illegal interactive gambling service”.

Another section of the IGA of potential considerable relevance to the debate on betting exchanges is section 69A – given the popularity of credit cards as a means of transferring funds into accounts with betting exchange operators. Section 69A empowers the Commonwealth Government to make regulations providing that an agreement for the payment of money for the supply of “an illegal gambling service” has no effect.

Some of the submissions to the Commonwealth as part of the above review advocate amendment to the IGA with a view to restricting the access of Australians to betting exchanges – particularly on racing events.

In its supplementary submission, the Australian Racing Board stated,

Section 69A of the Interactive Gambling Act 2001 was inserted to the effect that regulations may be made under the IGA to provide:

- (a) that an agreement has no effect to the extent to which it provides for the payment of money for the supply of an illegal interactive gambling service; and*
- (b) that civil proceedings do not lie against a person to recover money alleged to have been won from, or paid in connection with, an illegal interactive gambling service.*

Subsection 69A(2) requires the Minister to take all reasonable steps to ensure that regulations of this nature are made within six months of the passage of the legislation. So as to comply with subsection 69A(2) NOIE subsequently called for submissions on the merits and content of regulations in this area. However, nothing further has been done in this regard although the ARB notes that the issue of financial controls has received some prominence in recent media reports relating to betting exchanges.

The Minister, Senator the Hon Richard Alston, has not made public any intentions to augment the Interactive Gambling Act 2001 with financial regulations relating to illegal transactions. However it is a primary contention of the ARB that should the Commonwealth seek to ban offshore interactive wagering services (as argued by State TAB's and others), to do so without appropriate financial 'teeth' would render the ban ineffectual at best and debilitating at worst.

(c) Measures available to racing industry

Protection of intellectual property rights

The issue of the racing industry's rights over its intellectual property in race fields, results, etc is often raised in discussions of wagering operators fielding on racing without the consent of the racing industry – in the form of the club conducting the race meeting or the relevant State or Territory-based controlling body.

The Australian thoroughbred racing industry is currently taking action by way of developing a national approach to the management of its intellectual property.

It is possible that this process may lead to a situation where any Australian wagering operator who wishes to bet on Australian racing product will need the agreement of the racing industry to do so.

On the subject of the racing industry's intellectual property, the view was expressed by a Task Force member that:

- There may currently be legal action available to the racing industry – either collectively or as individual race clubs – to assert its intellectual property rights which the industry has not yet adequately explored or pursued.
- The range of available actions might include seeking injunctive relief to prevent wagering operators publishing race fields, etc without the industry's permission.
- A concomitant of the privatisation of many Australian TABs during the 1990s was an expectation that wagering operators and the racing industry protect their own commercial and legal interests, without the need for excessive Government involvement.

Control over licensed bookmaker activities

In several Australian jurisdictions, the racing industry (in the three codes) has a primary role in the licensing of bookmakers and/or the making of rules of racing or betting by which bookmakers are required to abide.

In the event an existing licensed bookmaker attempted to operate a betting exchange in Australia, or enter into some form of agency agreement for an overseas betting exchange, the racing industry would foreseeably be empowered to take some form of action against the bookmaker – if it desired.

6.1.3 MEASURES AVAILABLE IN RESPONSE TO AUSTRALIAN BETTING EXCHANGES CONDUCTING AN EXCHANGE ON AUSTRALIAN SPORTING EVENTS

(a) Measures available to State and Territory Governments

Legislation prohibiting the “publication” of betting odds

(Refer table in section 6.1.2(a) – relevant legislation prohibiting the publication of betting odds)

Even in those Australian jurisdictions where the publication of racing fixed odds is not permitted, exceptions are made for the publication of, inter alia, fixed odds being offered on sporting events by wagering operators licensed within that jurisdiction.

However, in those jurisdictions, action may be possible against an unlicensed operator publishing odds on sporting events in the jurisdiction. Again, this would likely hinge on future directions under the Internet “publication” principle enunciated in Dow Jones (refer to discussion in section 6.1.2).

Legislation restricting advertising of wagering services

As discussed in section 6.1.2(a), six Australian States have legislative provisions restricting the right to advertise wagering services to operators licensed within the jurisdiction. These provisions are non-specific regarding the type of wagering. Hence they would apply equally to prohibit advertising by a wagering operator not licensed in a jurisdiction regardless whether sport or racing betting is being promoted.

(b) Measures available to Commonwealth Government

As indicated in section 6.1.2(b), the Commonwealth, by amendment to the *Interactive Gambling Act*, could prohibit the offering of betting exchanges on racing or sport to Australians. However, as the IGA currently stands, the Commonwealth would have no power to take action under the IGA against an Australian betting exchange operator on sport, other than for in-the-run betting, etc.

(c) Measures available to racing industry

Control over licensed bookmaker activities

As discussed in section 6.1.2(c), if a bookmaker is licensed by the racing industry or required to operate in accordance with racing industry rules of racing/betting, attempted to operate a betting exchange on either sports or racing the industry would foreseeably have options at its disposal to act against the bookmaker.

6.1.4 MEASURES AVAILABLE IN RESPONSE TO AN AUSTRALIAN BETTING EXCHANGE ON NON-AUSTRALIAN RACES OR SPORTING EVENTS AND ACCEPTING BETS FROM PERSONS IN AUSTRALIA

(a) Measures available to State and Territory Governments

Legislation prohibiting the “publication” of betting odds

Refer sections 6.1.2(a) and 6.1.3(a) above.

The relevant legislation in several jurisdictions does not distinguish between betting odds on Australian or non-Australian racing events.

Legislation restricting advertising of wagering services

Refer sections 6.1.2(a) and 6.1.3(a) above.

The relevant legislation in several jurisdictions does not distinguish between Australian and non-Australian races. The legislation basically applies to the advertising of both racing and sports betting services.

(b) Measures available to Commonwealth Government

Refer sections 6.1.2(b) and 6.1.3(b) above.

As indicated above, as the Interactive Gambling Act currently stands, the Commonwealth would have no power to take action under the IGA against an Australian betting exchange operator on racing (whether conducted in Australia or overseas) or sport, other than for in-the-run betting, etc.

(c) Measures available to racing industry

Control over licensed bookmaker activities

Refer section 6.1.2(a) above.

6.1.5 SUMMARY

- 1 If a betting exchange were to establish in an Australian jurisdiction, the range of actions available to other State and Territory Governments varies widely – mainly because of the variety of State and Territory wagering legislation. Following are the main legislative measures identified as potentially being available to some Australian States and Territories:
 - (a) Legislation prohibiting the “publication” of betting odds – on racing and, to a lesser extent, sporting events.
 - (b) Legislation restricting the advertising of wagering services – on both racing and sport.
 - (c) Legislation prohibiting the “publication” of lists of race fields without the permission of the body conducting the race meeting.
 - (d) Legislation prohibiting betting on Australian racing with an operator not licensed in Australia.

- 2 The future effectiveness of (a) and (c), and to a lesser extent (b) above in the context of Internet betting exchanges will depend upon the willingness of Courts to apply the Internet publication principles laid down recently by the High Court in Dow Jones v Gutnick to areas beyond defamation.
- 3 The obvious piece of relevant Commonwealth legislation is the *Interactive Gambling Act 2001 (IGA)*. As the IGA stands (at 30 June 2003), there would not appear to be any measures available to the Commonwealth to respond, if it so desired, to a betting exchange commencing operations in Australia. However, some submissions to the review of the IGA underway as at June 2003 advocate an expansion of what is defined as prohibited “interactive gambling services” to encompass betting exchanges.
- 4 Two of the main areas in which the racing industry may be able to respond to the establishment of a betting exchange in Australia would be:
 - (a) (In the case of operations on Australian racing) some action in respect of its intellectual property rights over fields and related information. The thoroughbred racing industry is currently taking steps to enable it to better manage its intellectual property.
 - (b) If a bookmaker licensed by the racing industry or subject to rules of racing/betting was involved in the conduct of the betting exchange the racing industry may be able to act with respect to the bookmaker’s licence. In the case of a bookmaker licensed by a Government body, action along these lines may also be available to some State and Territory Governments.

6 MEASURES AVAILABLE TO AUSTRALIAN GOVERNMENTS AND THE RACING INDUSTRY IN RESPECT OF BETTING EXCHANGES (continued)

6.2 MEASURES AVAILABLE REGARDING BETTING EXCHANGES OUTSIDE AUSTRALIA

Term of reference 2.3 (d) – (f)

6.2.1 INTRODUCTION

As at June 2003, the only two known betting exchanges operating on Australian racing and sport hold bookmaker licences in Great Britain. Hence, if Governments or the racing industry in Australia are minded to take action against betting exchanges in their current form, the overseas perspective is particularly relevant.

The Task Force terms of reference subdivide this issue as follows:

2.3 *Identify and evaluate any measures available to Australian governments and the racing industry in response to betting exchanges:*

- (d) *established outside Australia, conducting an exchange on Australian racing events.*
- (e) *established outside Australia, conducting an exchange on Australian sporting events*
- (f) *established outside Australia, conducting an exchange on any sporting events and accepting bets from persons residing in Australia.*

The aspect alluded to in each of the above paragraphs is dealt with separately in the sections following.

In many respects the measures identified here are also canvassed in chapter 6.1 – in the context of betting exchanges on Australian soil.

6.2.2 MEASURES AVAILABLE IN RESPONSE TO OVERSEAS BETTING EXCHANGES CONDUCTING AN EXCHANGE ON AUSTRALIAN RACING EVENTS

(a) Measures available to State and Territory Governments

Legislation prohibiting the “publication” of betting odds (on racing events)

Six States and Territories currently have legislation which fully or partially prohibits the “publication” away from racecourses of bookmaker prices (fixed odds) on racing events. The exceptions are Northern Territory and Western Australia.

The prohibition generally takes effect during the currency of the subject race meeting. A primary objective of such legislation – originally introduced in most cases prior to the establishment of TABs – was to hinder off-course SP (illegal) betting activities.

	RELEVANT LEGISLATION
ACT*	Gaming & Betting Act 1906 (NSW), section 19B Determination 262 of 2001 – Rules of Racing apply
NSW	Racing Administration Act 1998, section 29
QLD	Racing & Betting Act 1980, section 220(3)
SA	Authorised Betting Operations Act 2000, section 61
TAS	Racing Regulation Act 1952, section 111A
VIC	Lotteries Gaming & Betting Act 1966, section 42A

* The ACT situation is set out in section 6.1.1(a).

The issues of relevance here are essentially similar to those set out in section 6.1.2(a).

The Dow Jones v Gutnick case relates to contentious material posted onto the Web in the USA. The Court held that the material was “published” in Victoria. On that basis, the legal principles of the case can potentially be applied to international situations such as the scenarios under consideration here.

If Australian courts are prepared to extend the Dow Jones legal principle of what constitutes publication over the Internet to a situation involving a statutory wagering prohibition, it is possible this may represent an avenue for legal action against overseas betting exchanges by some Australian States and Territories.

Legislation restricting advertising of wagering

As at 30 June 2003, six Australian States have legislative provisions restricting the right to advertise wagering services to operators licensed within the jurisdiction,

RELEVANT LEGISLATION	
NSW	Racing Administration Act 1998, section 30
QLD	Interactive Gambling (Player Protection) Act 1998
SA	Lottery and Gaming Act 1936, sections 60 and 68
TAS	Racing Regulation Act 1952, section 96
VIC	Lotteries Gaming and Betting Act 1966, section 40
WA	Police Act 1892, sections 84A, 84G and 84H

In most cases, legislation along the above lines tends to be flexible in that prosecution action can usually be taken against the media proprietor – such as a major city newspaper or radio station – in addition to the wagering operator concerned. This point is of practical importance in that it may be possible to lay an information against an Australian defendant, notwithstanding the betting exchange is an overseas operation.

NSW, for example, recently lodged successful prosecution action in respect of advertising by a British-based Internet wagering operator.

Legislation prohibiting the “publication” of lists of race fields without the permission of the body conducting the race meeting

Section 33 of the *Racing Administration Act 1998* (NSW) states,

A person must not publish:

- (a) *a list of the horses or dogs nominated for any intended race that is to be held at any race meeting on a licensed racecourse, or*
- (b) *a list of the horses or dogs that will or will not take part in any such race,*

unless the publication of the list has been approved or authorised by the person, club or association conducting the race meeting.

Currently a feature of any Internet sites operating on racing is the publication of race fields.

Again, based upon the precedent set in Dow Jones v Gutnick, it may be arguable that the posting onto the Web by an overseas betting exchange of New South Wales race fields is in breach of this section.

Particularly if a stream of precedent develops in Australian superior Courts involving the application of the Dow Jones Internet publication principle, legislation along these lines may represent a valuable means of curtailing the activities of overseas-based Internet wagering operators covering Australian racing. This would apply particularly where the operator is based in a first level country such as Great Britain.

Legislation prohibiting betting on Australian racing with an operator not licensed in Australia

New South Wales has legislation in place commonly referred to as the "overseas betting offence provision". Section 8(3) of the *Unlawful Gambling Act 1998* states,

A person must not make a bet on any horse race, harness race or greyhound race that is to be held anywhere in Australia if:

- (a) the bet is made by telephone or electronically by means of the Internet, subscription TV or other on-line communications system, and*
- (b) the bet is made with another person whom the person making the bet knows (or would be reasonably expected to know):*
 - (i) is not a legal bookmaker, or*
 - (ii) is not a person who is authorised under the law of any State or Territory to conduct totalizator betting.*

(4A) Subsection (3) extends to a bet that is made by a person while in the State even though the other person with whom the bet is made is outside the State (including outside Australia).

In Western Australia, an Act amending the *Betting Control Act 1954* which includes a section that has the general effect of the above NSW provision will come into operation on 1 August 2003.

Two of the intended effects of the NSW section are to dissuade NSW punters from betting on Australian racing with wagering operators not licensed in Australia and to render any credit card debts, etc arising from such bets unenforceable. In this second respect, section 56(1) of the *Unlawful Gambling Act* states,

Any agreement, whether oral or in writing, that relates to any form of gambling that is prohibited under this Act has no effect, and no action may be brought or maintained in any court to recover any money alleged to have been won from, or any money paid in connection with, any such form of gambling.

Legislation imposing liability on Internet Service Providers for Internet access to unlicensed operators

Section 30(3) of the New South Wales *Racing Administration Act 1998* creates the offence of providing access (via Internet, subscription TV, etc) to the gambling operation of other than a licensed bookmaker or a licensee under the Totalizator Act 1997.

Under section 30(4), the regulations may exempt persons under specified circumstances from the operation of subsection (4).

(b) Measures available to Commonwealth Government

The situation under the key piece of Commonwealth legislation in this area – the *Interactive Gambling Act 2001 (IGA)* – is canvassed generally in section 6.1.2(b).

The IGA applies to all interactive gambling service providers, whether based in Australia or offshore.

However, because of the wagering nature of betting exchange activity, it appears unlikely that the provision of betting exchange services over the Internet would be proscribed under the IGA as it currently stands.

(c) Measures available to racing industry

Protection of intellectual property rights

This issue is canvassed in section 6.1.2(c).

It is relevant here that the current global home of betting exchanges is Great Britain. As discussed in chapter 5.2, unlike bookmaker betting, betting exchanges – particularly in racing operations – are heavily dependent upon attaining reasonable levels of depth and liquidity. By establishing in other than a first level gambling regime, prospective betting exchange operators are more likely to experience difficulties in this respect.

The notion of first level racing countries respecting each other's intellectual property in racing information could foreseeably provide future opportunities for the Australian racing industry to prevent unauthorised wagering on its product.

“Good neighbour” arrangements

The Task Force is aware of initiatives at the international level – particularly in the case of the thoroughbred racing industry – involving countries providing undertakings to each other regarding the conduct of their own wagering operators. Foreseeably, these arrangements could cover issues such as fielding on another country’s racing events and accepting bets from another country’s punters.

For example, in a speech to the Asian Racing Conference 2003, Dr Terry Imahara of the Japan Racing Association alluded to such an arrangement with the Hong Kong Jockey Club,

The Hong Kong Jockey Club and the JRA signed a bilateral Good Neighbour Policy in December 2002 and sent a clear and strong message to Internet wagering that “we will no longer let you off the hook.

The Good Neighbour Policy also gives us new business opportunities while protecting each other’s wagering market since the signatories are in mutual agreement.

The Task Force is aware of some difficulties arising in this area for the Australian racing industry as a consequence of both Australia’s status as a Federation and the various bookmaker licensing arrangements across States and Territories.

Prohibitions against the involvement of licensed Australian bookmakers in overseas betting exchanges operating on Australian racing

As also discussed in 6.1.2(c), in several Australian jurisdictions, the racing industry has a direct role in the licensing of bookmakers. Also, in many cases bookmakers are required to operate under Rules of racing/betting.

It could possibly be open to a racing controlling body to impose a bookmaker licence condition or introduce rule of racing or betting proscribing the involvement of a licensed bookmaker in an overseas betting exchange (on Australian racing).

For example, NSW Racing recently passed the following amendment to Local Rule of Racing 90,

A bookmaker's licence is granted on the express condition that the person to whom the licence is granted does not:

(d) except with the permission of the Board

(i) hold any significant interest, directly or indirectly, in a non-Australian bookmaking or totalizator operation; or

(ii) hold a position as a director, etc with a non-Australian bookmaking or totalizator operation;

that accepts wagers or investments on a horse race, harness race or greyhound race that is conducted anywhere in Australia unless that operation is conducted with the written approval of the controlling body that administers that racing in Australia ...

In cases where bookmaker licensing is the domain of a government or semi-government body, similar options may be available to that licensing body.

6.2.3 MEASURES AVAILABLE IN RESPONSE TO OVERSEAS BETTING EXCHANGES CONDUCTING AN EXCHANGE ON AUSTRALIAN SPORTING EVENTS

(a) Measures available to State and Territory Governments

Legislation prohibiting the “publication” of betting odds

(Refer table in section 6.1.2(a) – relevant legislation prohibiting the publication of betting odds)

As discussed in section 6.1.3(a), the legislation in several Australian jurisdictions prohibiting the publication of fixed odds on racing events, generally permits publication of fixed odds on sporting events by bookmakers properly licensed and authorised within that jurisdiction.

In this respect, any action potentially available in respect of a sports betting exchange located in another Australian jurisdiction would foreseeably also exist against an overseas operation.

Again, in the case of any scope for action against an Internet betting exchange, the key issue is likely to be the extent to which the decision in Dow Jones is applied to other facts situations.

Legislation restricting advertising of wagering services

As set out in section 6.1.2(a), six Australian States have legislative provisions restricting the right to advertise wagering services to operators licensed within the jurisdiction. These provisions are non-specific regarding the type of wagering. Hence they would apply equally to prohibit advertising by a wagering operator not licensed in a jurisdiction regardless whether sport or racing betting is being promoted – refer section 6.1.3(a).

Further, the prohibition would extend to advertising by an overseas wagering operator such as a betting exchange.

(b) Measures available to Commonwealth Government

As indicated in 6.2.2(b), the Commonwealth, by amendment to the Interactive Gambling Act, could prohibit the offering of betting exchanges on racing or sport to Australians, including by an overseas operator. However, as the IGA currently stands, the Commonwealth would have no power to take action under the IGA against an overseas betting exchange operator on sport, other than for in-the-run betting, etc.

(c) Measures available to racing industry

Control over licensed bookmaker activities

As discussed above in 6.2.2 (c), if a bookmaker is licensed by the racing industry or required to operate in accordance with racing industry rules of racing/betting, attempted to operate an overseas betting exchange on either sports or racing the industry would foreseeably be able to consider action against the bookmaker.

6.2.4 MEASURES AVAILABLE IN RESPONSE TO AN OVERSEAS BETTING EXCHANGE ON ANY SPORTING EVENTS AND ACCEPTING BETS FROM PERSONS IN AUSTRALIA

(a) Measures available to State and Territory Governments

Legislation prohibiting the “publication” of betting odds

Refer sections 6.2.2(a) and 6.2.3(a) above.

The relevant legislation in several jurisdictions does not distinguish between betting odds on Australian or non-Australian racing events.

Legislation restricting advertising of wagering services

Refer sections 6.2.2(a) and 6.2.3(a) above.

The relevant legislation in several jurisdictions does not distinguish between Australian and non-Australian races. The legislation basically applies to the advertising of both racing and sports betting services.

(b) Measures available to Commonwealth Government

Refer sections 6.2.2(b) and 6.2.3(b) above.

As indicated above, as the *Interactive Gambling Act* currently stands, the Commonwealth would have no power to take action under the IGA against an overseas betting exchange operator on sport, other than for in-the-run betting, etc.

(c) Measures available to racing industry

Control over licensed bookmaker activities

Refer section 6.2.2(a) above.

6.2.5 SUMMARY

- 1 In the case of an overseas betting exchange targeting Australia (in the sense of betting on Australian racing or sport and/or accept bets from Australians) the range of actions available to other State and Territory Governments varies widely – mainly because of the variety of State and Territory wagering legislation. Following are the main legislative measures available to some jurisdictions:
 - (a) Legislation prohibiting the “publication” of betting odds – on racing and, to a lesser extent, sporting events.
 - (b) Legislation restricting the advertising of wagering services – on both racing and sport.
 - (c) Legislation prohibiting the “publication” of lists of race fields without the permission of the body conducting the race meeting.
 - (d) Legislation prohibiting betting on Australian racing with an operator not licensed in Australia.

- 2 The future effectiveness of (a) and (c), and to a lesser extent (b) above in the context of Internet betting exchanges will depend upon the willingness of Courts to apply the Internet publication principles laid down recently by the High Court in Dow Jones v Gutnick to areas beyond defamation.

The applicability or otherwise of the Dow Jones case would not appear to be affected by whether the betting exchange operator is based in Australia or overseas.

- 3 The relevant Commonwealth legislation is the *Interactive Gambling Act 2001 (IGA)*. As the IGA stands (at 30 June 2003), there would not appear to be any measures available to the Commonwealth to respond, if it so desired, to an overseas betting exchange accepting bets from persons in Australia. However, some submissions to the review of the IGA underway as at June 2003 advocate an expansion of the prohibited interactive gambling services to encompass betting exchanges. Some of these submissions make specific reference to the need for action against overseas exchanges.
- 4 Two of the main areas in which the racing industry may be able to respond to an overseas betting exchange targeting Australia would be:
 - (a) (In the case of operations on Australian racing) some action in respect of its intellectual property rights over fields, etc. The thoroughbred racing industry is currently taking steps to enable it to better manage its intellectual property. The practicality of such a course of action would be greater in the case of a betting exchange operator in a first level jurisdiction such as Great Britain.
 - (b) If a bookmaker licensed by the racing industry or subject to rules of racing/betting was involved in the conduct of an overseas betting exchange, the racing industry may be able to take action in respect of the bookmaker's licence. In the case of a bookmaker licensed by a Government body, action along these lines may also be available to some State and Territory Governments.

Report of the

BETTING EXCHANGE TASK FORCE

APPENDICES

- A Dow Jones v Gutnick - High Court of Australia, 10 December 2002
- B Legal position in Australia relating to disclosure to a third party of "personal information"
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UK Racing Post, 26 June 2003

Appendix A**DOW JONES v GUTNICK** (High Court of Australia, 10 December 2002)**1 FACTS OF CASE**

Dow Jones & Company Inc operates a subscription news website – WSJ.com. Available at WSJ.com is the on-line version of the financial publication *Barron's* magazine.

In the edition of *Barron's Online* published on the website on 28 October 2000, was an article titled “Unholy Gains”. The article made several unflattering references to the plaintiff in this case Mr Joseph Gutnick – a Melbourne businessman.

Mr Gutnick sued for defamation. For several reasons, the success of Mr Gutnick's case depended on him being able to sue in Victoria. Hence, the principal issue in the case was “where was *Barron's Online* published?”

An indication of the significance with which the primary issue at stake was viewed by the Internet industry is that Amazon.com (and others) “intervened” in the case.

2 LOWER COURT DECISION

The matter was originally heard before Hedigan J in the Supreme Court of Victoria.

On the issue of where the statements relating to Mr Gutnick were “published”, Hedigan J concluded that they were “published in the State of Victoria when downloaded by Dow Jones subscribers who had met Dow Jones's payment and performance conditions and by the use of their passwords”.

In making the above finding, the Judge rejected Dow Jones' contention that publication occurred at the servers maintained by Dow Jones in the United States. Hedigan J then concluded that the defamation of which Mr Gutnick complained had occurred in Victoria.

The Court of Appeal of Victoria declined to grant Dow Jones leave to appeal to it – holding that the original decision was plainly correct. By special leave, Dow Jones appealed to the High Court.

3 HIGH COURT DECISION

The Full Bench (seven judges) of the High Court unanimously dismissed the appeal of Dow Jones. Gleeson CJ, McHugh, Gummow and Hayne JJ jointly provided the head judgment, while Gaudron J, Kirby J and Callinan J each gave separate judgments.

In examining what the Court referred to as the “primary issue” in this case – that of the place of publication – the head judgment noted the great deal of evidence on the unusual features of publication on the Internet and the World Wide Web. Included in some particularly useful definitions set out in the judgment are:

- “uploading” – the act of making, for example, a document available on the Web by placing it in a storage area managed by a Web server
- “downloading” – the delivery of that document to a computer user in response to a request.

In the case of the *Barron’s Online* website, the “magazine” was placed on the Web via Dow Jones’ servers located in New Jersey, USA. Dow Jones argued, therefore, that the on-line magazine was published in New Jersey.

Dow Jones relied upon two main lines of argument:

- 1 It alluded to an allegedly crucial distinction between a person placing material on a Web site (on the one hand) and the publisher of a widely circulated newspaper or radio/television broadcast (on the other). Dow Jones argued that, in the case of the Web, the role of publisher could be characterised as “passive”, in contrast to the “active” role played by the publisher of more traditional media forms. Further, in the case of the Web, it was the reader who had to actively seek out the relevant website and the document within the site.
- 2 From more of a policy perspective, there is the desirability of a single law governing the conduct of a person who chooses to make material available on the Web. Dow Jones was joined in this broad line of argument by the interveners in the case (Amazon, et al). It was argued that, otherwise, a publisher of material on the Web would be “bound to take account of the law of every country on earth, for there were no boundaries which a publisher could effectively draw to prevent anyone, anywhere, downloading the information it put on its web server”.

In general terms, the Court readily acknowledged that, by posting information on a website, the publisher makes the content available to anyone, anywhere, having access to the Web. The Court also acknowledged the inherent difficulties in controlling access to a website – in the sense of “ensuring with complete effectiveness the isolation of any geographic area on the Earth’s surface from access to a particular website”⁵⁵.

⁵⁵ Kirby J at paras 83, 84

In respect of the first of the above two lines of argument, the Court was not convinced. For example, Callinan J stated,⁵⁶ “the Internet, which is no more than a means of communication by a set of interconnected computers, was described, not very convincingly, as a communications system entirely different from pre-existing technology”. Callinan J went on to say, “(The expert witnesses for Dow Jones) described the Internet as a set of interconnexions among computers all over the world to facilitate an exchange of messages. Using their computers, people can communicate with one another, and gain access to information. They claimed that it was a unique telecommunications system defying analogy with pre-existing technology. The description however, by the appellant of the server as passive is inaccurate”.

Along the same line, the head judgment stated,⁵⁷

It was suggested that the World Wide Web was different from radio and television because the radio or television broadcaster could decide how far the signal was to be broadcast. It must be recognised, however, that satellite broadcasting now permits very wide dissemination of radio and television and it may, therefore, be doubted that it is right to say that the World Wide Web has a uniquely broad reach. It is no more or less ubiquitous than some television services. In the end, pointing to the breadth or depth of reach of particular forms of communication may tend to obscure one basic fact. However broad may be the reach of any particular means of communication, those who make information accessible by a particular method do so knowing of the reach that their information may have. In particular, those who post information on the World Wide Web do so knowing that the information they make available is available to all and sundry without any geographic restriction.

Because publication is an act or event to which there are at least two parties, the publisher and a person to whom material is published, publication to numerous persons may have as many territorial connections as there are those to whom particular words are published. It is only if one starts from a premise that the publication of particular words is necessarily a singular event which is to be located by reference only to the conduct of the publisher that it would be right to attach no significance to the territorial connections provided by the several places in which the publication is available for comprehension.

Ordinarily (the place where the damage to reputation occurs) will be where the material which is alleged to be defamatory is available in comprehensible form assuming, of course, that the person defamed has in that place a reputation which is thereby damaged. It is only when the material is in comprehensible form that the damage to reputation is done and it is damage to reputation which is the principal focus of defamation, not any quality of the defendant's conduct. In the case of material on the World Wide Web, it is not available in comprehensible form until downloaded on to the computer of a person who has used a web browser

⁵⁶ at para 180

⁵⁷ paras 39, 40, 44

to pull the material from the web server. It is where that person downloads the material that the damage to reputation may be done. Ordinarily then, that will be the place where the tort of defamation is committed.

In respect of the second of Dow Jones' two main lines of argument set out above, the Court dismissed it broadly on the basis that the situation where a publisher of material on the Web would be exposed to the laws of every country on Earth was overstating reality. To quote from the head judgment⁵⁸, "those who would seek to order their affairs in a way that will minimise the chance of being sued for defamation must be able to be confident in predicting what law will govern their conduct. But certainty does not necessarily mean singularity. What is important is that publishers can act with confidence, not that they be able to act according to a single legal system, even if that system might, in some sense, be described as their "home" legal system. Activities that have effects beyond the jurisdiction in which they are done may properly be the concern of the legal systems in each place".

4 POSSIBLE BROADER RAMIFICATIONS

- From the perspective of this case establishing the law of Internet publication in a wider sense, the obvious point is that the action brought by Mr Gutnick was one for defamation. In turn, defamation is but one action in the branch of the law known as tort. A critical issue, in the absence of relevant legislative intervention, will likely be the extent to which Courts within the Australian hierarchy (which are bound to follow High Court precedents) laterally apply the "place of Internet publication" aspect of the Dow Jones decision to areas of the law other than defamation/tort.
- The High Court alluded to the possible desirability of legislative intervention in this area. In doing so, the Court referred to the limitations on the ambit of its powers to "reformulate" an established principle of the common law. The Court suggested that the alteration of the law should be left to the legislature. Kirby J, for example, sets out⁵⁹ a raft of various considerations of which the legislature properly has the opportunity to take into account when deciding whether to alter the law.
- In terms of the High Court's view that the on-line publisher of "general" material (such as, in this case, a magazine article) over the Internet did not face a particularly onerous task in complying with the applicable defamation laws in the World's jurisdictions, perhaps the task of the Internet wagering operator (specifically) in complying with laws such as those relating to the publication of fixed odds would not be viewed by Australian Courts as being any more onerous.

⁵⁸ at para 24

⁵⁹ for example, see Kirby J at para 76

Appendix B**LEGAL POSITION IN AUSTRALIA RELATING TO DISCLOSURE TO A THIRD PARTY OF “PERSONAL INFORMATION”****INTRODUCTION**

Disclosure by a betting exchange to racing stewards of details of betting transactions (including details of the customers involved) appears to be widely acknowledged as a linchpin of any regime aimed at minimising the risk to racing integrity of betting exchanges. The Task Force obtained legal advice on the hypothetical scenario of a betting exchange licensed in Australia and its ability to disclose betting information to racing authorities. Following is a summary of some of the salient points in the advice,

Re: A betting exchange licensed in Australia*Position at Common Law or Equity*

The disclosure of personal information may in some circumstances give rise to an action in *breach of confidence*.

If a betting exchange were to be licensed in Australia it would foreseeably be a licence condition that the betting exchange make available “personal information” (relating to details of betting transactions, etc) to racing authorities. Disclosure of personal details under such circumstances would not amount to a *breach of confidence* at common law or equity.

Position under Privacy Act 1988 (Cth)

The *Privacy Act* has applied to the private sector since December 2001. The Act prohibits breaches of approved *Privacy Codes* or *National Privacy Principles* in relation to “personal information that relates to an individual”.

“Personal information” is defined in section 6(1) of the Act as,

information about an individual who identify is apparent, or can reasonably be ascertained, from the information ...

Information which merely details matched bets made on a betting exchange, but which does not identify the individual parties to the bets, does not fall within that definition. Accordingly, disclosure of such information under any circumstances would not amount to a breach of the Privacy Act (itself).

National Privacy Principles

In the event a betting exchange is licensed in Australia, it could possibly be bound by an “approved privacy code”. Under such circumstances, its conduct in respect of the collection and disclosure of personal information would likely be primarily governed by that code.

Assuming, for the purposes of this exercise, that an “approved privacy code” is not applicable, the National Privacy Principles are relevant broadly as follows,

Collection of personal information

Under Principle 1.1, an organisation “must not collect personal information unless the information is necessary for one or more of its functions or activities.”

It would seem highly likely that any betting exchange operator in Australia would be required (as a licence condition) to collect relevant personal information on its customers.

Principle 1.3, would require that the betting exchange take reasonable steps to ensure that the individual is aware of, for example, the purposes for which the information is collected and the organisations (or types of organisations) to which the betting exchange usually discloses information of that kind. Presumably this would extend to racing authorities and sporting bodies upon which related wagering has occurred.

Disclosure of personal information

The provisions outlined below represent alternative bases under which a betting exchange would be permitted to disclose personal information to a racing (or sporting) authority.

Primary purpose of collection

Principle 2 prohibits the use or disclosure of personal information for a purpose other than the primary purpose of collection, except under certain conditions. If the primary purpose of the collection of personal information is compliance with a licence condition, disclosure to racing (or sporting) authorities in terms of the licence would possibly align with that primary purpose.

Required under law

Under Principle 2.1(g),

Reasonable belief on the part of the betting exchange operator

Under Principle 2.1(h) a betting exchange may disclose personal information to a racing authority without breaching the Act if it “reasonably believes that the disclosure is reasonably necessary” for the protection of the public revenue or the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct.

Consent

Principle 2.1(b) states that the disclosure of personal information is permitted under circumstances where the individual consents.

CONCLUSION

In précis, in the event that a betting exchange were to be licensed in Australia, the neatest and most comprehensive approach to this issue might be the imposition of a strict licence condition on the betting exchange that it is not permitted to open an account on behalf of or accept transactions from a customer unless unequivocal written consent is obtained in advance from the prospective customer for the full disclosure of “personal information” and betting data to the racing (and sporting) authorities, along with bodies such as regulators, Police in all eight Australian States and Territories. Relevant Federal law enforcement bodies might also be included.

Appendix C1

COMPARISON OF ODDS AVAILABLE FROM WAGERING OPERATORS

RACING EVENTS

Moonee Valley, Race 6, Saturday, 31 May 2003

HORSE		APN		(To back)
		Bookmakers	TAB Ltd	Betfair
		<i>(Return for \$1)</i>		
1	<i>Quencher</i>	11	10.30	12
2	<i>Roktzar</i>	7	6.10	8
3	<i>Scenic Garden</i>	6.50	7.10	6.60
4	<i>Go Thenaki</i>	11	14.70	15
5	<i>Evil Master</i>	3.30	3.40	3.60
6	<i>Brodance (winner)</i>	6.50	7.80	11.50
7	<i>Regicide</i>	6.50	6.10	6.80
8	<i>As You Do</i>	12	12.60	17
9	<i>Encosta Legend</i>	17	23.70	21
	Aggregate % :	123%	118%	104.5%

Eagle Farm, Race 7 (QTC Cup), Saturday, 31 May 2003

HORSE		APN		(To back)
			TAB Ltd	Betfair
		<i>(Return for \$1)</i>		
1	<i>Bomber Bill</i>	6.5	5.9	8.6
2	<i>Make Mine Magic</i>	13	15.1	14
3	<i>Bradshaw</i>	11	11.7	11
4	<i>Cosmic Rays</i>	9	9.3	9.4
5	<i>Clay Shaker</i>	212	15.9	14.5
6	<i>Into the Night (winner)</i>	9	9.2	8
7	<i>Salgado</i>	11	12.8	13.5
8	<i>Canadian Time</i>	31	39.6	40
9	<i>Polygram</i>	8	10.4	10.5
10	<i>Academe</i>	26	24.7	50
11	<i>Jar Jar Binks</i>	21	20.1	26
12	<i>Knickerbocker Kid</i>	17	29.7	27
13	<i>Sir Breakfast (scr)</i>			
14	<i>Shockeroo</i>	71	176	150
15	<i>Gullcatcher</i>	5.5	6.6	6.2
16	<i>Limited Impulse</i>	101	208.9	170
17	<i>Calaway Gal</i>	31	27.4	38
18	<i>Damigos</i>	61	93.9	80
19	<i>Stormcat Academy</i>	16	25.1	17.5
	Aggregate % :	133%	118%	112%

Appendix C2**COMPARISON OF ODDS AVAILABLE FROM WAGERING OPERATORS****SPORT EVENTS****Rugby Union World Cup Winner (pre-post fixed odds betting)***(Odds displayed on Internet sites at 5:30pm on 8 July 2003)*

	SportOdds	IASBet	TAB Ltd	SportsBet (TABCorp)	Betfair
<i>New Zealand</i>	2.65	2.65	2.4	2.35	2.94
<i>England</i>	3.4	3.35	3.2	3	3.4
<i>Australia</i>	4	4.15	3.6	3.75	4.6
<i>France</i>	10	9.5	9	9	10.5
<i>South Africa</i>	15	19	12	12	23
<i>Ireland</i>	41	41	34	31	60
<i>Scotland</i>	251	251	251	201	270
<i>Argentina</i>	61	61	61	81	95
<i>Wales</i>	401	351	501	251	510
<i>Samoa</i>	751	501	1001	401	800
<i>Fiji</i>	351	401	201	201	780
<i>Italy</i>	1001	501	2001	601	810
<i>Japan</i>	2501	1501	5001	2501	1000
<i>Canada</i>	2501	1001	3001	2001	1000
<i>Namibia</i>	5001	2501	6001	2501	1000
<i>Romania</i>	5001	2501	6001	2501	1000
<i>Uruguay</i>	5001	2501	5001	2501	1000
<i>Georgia</i>	5001	2501	6001	2501	1000
<i>Tonga</i>	2501	501	3001	1001	1000
<i>USA</i>	3001	2501	4001	601	1000
Aggregate % :	111.4%	113.4%	126.15%	128.7%	103.5%

Subject to the qualification that, at any one point in time, there may be severe limitations on the amount which can be placed at the top odds available on the "To back" side of a betting exchange, in this example the top odds available on Betfair for many of the World Cup teams are superior to those available from the other fixed odds operators listed.

Further, to arrive at the "real odds" available in a betting exchange it is important to factor in the effect of the commission payable to the exchange operator.

Appendix D**STAKEHOLDER SUBMISSIONS TO REVIEW**

Listed below are the submissions on the terms of reference received from Australian racing and wagering stakeholders. In addition several informal submissions were lodged by members of the public on the various individuals' own initiative. While these were reviewed by the members of the Task Force, the authors generally expressed a preference that they remain anonymous for the purposes of this Report.

Additionally, submissions on the specific issue of the possible effects on racing integrity of betting exchanges were received from racing controlling bodies. These are listed in section 5.1.7 of the Report.

Australian Racing Board	May 2003
Harness Racing Qld	4 June 2003
Harness Racing NSW	20 May 2003
Harness Racing Authority NSW	28 April 2003
WA Trotting Association	19 May 2003
Greyhound Racing Authority NSW	3 June 2003
Greyhound Racing NSW	26 May 2003
Australian Bookmakers' Association	8 May 2003
CentreRacing & Multibet	29 April 2003
IASBet	April 2003
Sports Acumen	24 April 2003
ACTTAB	30 April 2003
TABCORP	28 April 2003
TAB Limited	29 April 2003
UNITAB	23 April 2003
WA TAB	30 April 2003

Appendix E

(UK) Department of Culture, Media and Sport, May 2003

LICENSING OF BETTING INTERMEDIARIES: BETTING EXCHANGES**Purpose**

- 1 To make proposals for the licensing of betting exchanges.

Background

- 2 Betting exchanges have emerged over the past few years. Using the Internet, they offer consumers a new form of betting opportunity. The operator of the betting exchange constructs a market on particular events that allows users to both offer and accept odds. The operator brings opposite bets together, and takes a commission from the winner. In this way, like pool betting, the operator has no profit interest in the outcome of the event. A number of exchanges are now in operation.
- 3 The Department understands that operators have all sought, and been granted, bookmakers' permits. Arrangements have been made for operators to pay betting levy and betting duty (gross profits tax).

Product definition

- 4 There has been a lively debate amongst interested parties as to what it is that betting exchanges are doing. The operators argue that their product represents a no-risk form of bookmaking, where they only accept a punter's bet when they also receive an equal and opposite bet from another punter. Some people, including some of the conventional bookmaking companies, have suggested that an exchange acts as a conduit for unlicensed bookmaking. They argue that the facility to offer, as well as accept, odds makes some of the exchange users betting operators in themselves. Another view sees the betting exchange as a new form of betting intermediary that constructs a controlled market and allows access by its customers.

Proposals**A specific licence**

- 5 The Department considers that betting exchanges merit a specific licence for their activities. That licence will permit the holder to establish betting markets and hold monies on behalf of its users. Where exactly opposed bets are initiated, the exchange may allow the bet to proceed and make arrangements for the winning user to be paid. Terms and conditions would allow the operator to generate an income through the charging of a commission.

- 6 Betting exchanges will be bound by all of the general conditions of licence noted in the main position paper. There will also be at least two further specific conditions:
- Operators may not initiate bets in any way on the exchange. The Department thinks that it is important that a clear line is drawn between betting operators who are a party to the bet, like bookmakers and those, like exchanges, who merely construct a controlled market; and;
 - However or wherever they operate, exchanges may not permit their customers to identify themselves to each other, either through personal contact or otherwise.
- 7 With this specific licence in place, defining what an exchange may and may not do, one can see how an exchange can achieve the Government's regulatory objectives:
- Fairness to the consumer can be achieved by the display and dissemination of betting rules. Where the exchange operates through the Internet the systems for play and payment that the operators propose to employ should be checked by a someone authorised by the Gambling Commission. In addition, the separation of 'punters' and the operating company's resources should eliminate any risks of failure to pay winnings. The Gambling Commission will work with other regulatory bodies to combat the threat of 'insider dealing'.
 - Protection of the vulnerable can be assured through the entry barriers that exclude children, and control measures in place to discourage players taking on risks beyond their ability to pay and to detect signs of problem gambling. In this, betting exchanges operating on the Internet will be subject to the same level of regulation as any other gambling product operating through this media.
 - Keeping crime out can be achieved first of all through personal licensing and examination of companies during the operational licensing procedure. The exchanges will also be subject to the same restrictions as other betting operators on the production of information to the Commission. As with all remote gambling operations a full anti-money laundering regime will need to be in place.

Licensing / control of exchange users

- 8 The Department has received a number of representations urging the licensing of exchange users who offer (or 'lay') odds through the exchange. We have considered these representations carefully. However, we do not agree that exchange users need to be licensed. We regard this step as unnecessary for the achievement of the Government's regulatory objectives (described above).

- 9 Those individuals and organisations advocating the licensing of exchange users laying odds suggest that this act, if carried on regularly and to some significant level of value, constitutes the business of bookmaking, as defined in the Betting, Gaming and Lotteries Act 1963 ('1963 Act'). Of course, the 1963 Act was formulated long before the Internet, let alone a betting exchange, were ever conceived of, and does not therefore specifically address the exchange business model. Interpretation of existing legislation is a matter for the courts. The Department will bring forward, in proposals for new legislation, definitions that draw a clear distinction between the acts involved in carrying on the business of bookmaking, and those that are involved in the operation and the use of betting exchanges. While there seems sure to be an ongoing debate about these issues it will not be productive for anyone to focus on the current definition of 'bookmaker'.
- 10 We have taken some time to understand the betting opportunity provided by betting exchanges. In broad terms, we regard an exchange user (whether they are laying or backing) as a person involved in a relationship with the operator of the exchange. In the way that the exchanges operate at present, a user cannot bet without entering the controlled market provided by the operator. Once they have entered this market, they must conduct their activities in accordance with the rules and systems devised by the operator. They cannot hold themselves out as an independent business, capable of setting and altering the rules of the exchange. This is an important consideration when one considers what has been referred to as the risk of 'unlicensed bookmaking' through a betting exchange.
- 11 It has been put to the Department that the exchanges offer an opportunity for persons to carry on a betting business without first seeking a licence for that activity. It may well be possible, theoretically at least, for a person to use the exchange regularly in order to 'construct a book' in the traditional sense, or lay particular outcomes, and seek to make a profit. Such persons could conceivably be persons who had applied for a betting licence in their own name and, because they were not regarded as fit and proper, been rejected.
- 12 It has been asserted that, if such unfit persons use exchanges to lay odds regularly, the aims of regulation would be defeated. We do not accept this assertion.
- 13 A comparison with traditional forms of bookmaking illustrates the point: If a private person acts as though s/he was a bookmaker in public or at an office, and offers odds to other private individuals, there is a risk to those third parties. The unlicensed person offering odds may not have sufficient finance to make good winnings, or they may simply not make themselves available to pay. **There is a risk of harm.**
- 14 On the other hand, where someone who may not qualify as a bookmaker offers odds on the betting exchange, there is no risk of harm. The person cannot deprive other users of winnings, because s/he does not hold any stakes. Moreover, the exchange operator will not permit the 'unfit' user to bet or lay odds where s/he does not have sufficient funds deposited to

cover the maximum liability associated with those transactions. **There is no risk of harm to the public from an exchange user.** The user enters a regulated market where the market provider is licensed in ways that ensure that no user may present a risk to other users. If payment is guaranteed and anti-money laundering measures are in place the threat of criminal activity is negligible.

Integrity of betting events

- 15 Representations have also been made to the Department that betting exchanges involve a new risk to the integrity of betting events. These representations observe that the exchange allow persons with 'inside knowledge' to exploit less informed punters. This threat seems to be particularly relevant to events, like horseracing, where there is a multiplicity of possible outcomes. Knowledge that one outcome is highly unlikely allows an individual to then offer apparently attractive odds on the exchange. One scenario might involve a user laying long odds on a horse otherwise thought to have a reasonable chance of success, on the basis of knowledge of an injury or illness.
- 16 Of course, the use of inside knowledge for personal profit, however inappropriate, is not new. It existed long before betting exchanges came into being, and the threat of corruption would be present even without the exchange model.
- 17 The responsibility for tackling it must fall primarily on the sport, and its regulators. Regulators must decide what restrictions to place on the betting activities of participants and other licensed persons. If they regard betting by some participants to be a risk to the integrity of their sport, they must take action to prevent it happening. The Government does not license people involved with sport, and cannot therefore restrain their private activities. Sports regulators can. So, for example, the Jockey Club has recently decided to prohibit licensed trainers from laying horses they train, although it would have been open to the Club to allow them to do so on the condition that the fact that any trainer laying one of his own horses had to make a public declaration to this effect, so that everyone contemplating betting on that horse was aware of the position
- 18 What the Government, and the Gambling Commission, can do is to give its full support to sporting regulators in their endeavour to maintain the very highest standards of integrity. Where the Commission is alerted to suspicions of wrongdoing, it will be able to conduct an investigation. It will require betting operators to produce specific information on events and / or customers and will be in a position to assess whether an operator has, knowingly or otherwise, accepted a bet from a prohibited person, or has otherwise not acted appropriately. It will be able to publish such findings.

Savill sees benefits of a Tote monopoly

BRITISH Horseracing Board chairman Peter Savill has admitted he can see the advantages a Tote monopoly could bring to racing in this country.

Savill has always maintained he is opposed to the idea of a monopoly, but in the light of disputes between bookmakers and betting exchanges, as well as worries about the integrity of some of those using exchanges, Savill believes a monopoly could have its benefits.

"The ultimate person-to-person betting exchange is the Tote monopoly in which you're not betting against anyone other than all the other people," he said on Attheraces on Wednesday.

"There is no question that a Tote monopoly has the greatest integrity in the world, far better than bookmaker or betting exchanges, there is a huge plus there.

"Of course it comes down to choice and I've never been one to advocate a Tote monopoly, I've always said I do believe in bookmakers.

"I think I'm getting close to the point where I'm not sure that that isn't the solution," Savill added.

"I'm not saying I'm at the point where I think we need move to a Tote monopoly but I'm much closer to it than I was a year ago when it wouldn't have entered my head as being the way forward."

However, Savill made it clear that although he could see the benefits in having a Tote monopoly in theory, he would not want to see one introduced in the near future.

He continued: "There have been off-course bookmakers since the early 60s and I've been very happy with the fact that they have been there and I have never, ever called for a Tote monopoly.

"And I want to make it clear I am not calling for one now but what I am saying is that clearly bookmakers are not happy with their business model on horseracing because margins are coming down, largely because of the betting exchanges, and I can actually see a situation where it wouldn't have to get much worse and where they would actually not be that averse to the concept of becoming outlets for something like a Tote monopoly.

"The attraction for the bookmakers in operating a Tote system is obviously they have no risk management, In other words they win on every race, there's a takeout of 12 or 15 per cent taken off the top and then everybody is basically betting against each other.

"So we've got everybody happy - the bookmakers get their margins, racing gets their share of the money and the punter is still betting person-to-person."

by **Anita Chambers, PA Sport (26 June 2003)**