

**TASMANIA**

**– LAWS TO REGULATE BETTING EXCHANGES –**

**OVERVIEW**

**JAMIE NETTLETON, PARTNER**  
**KATE ERMAN, SOLICITOR**

Level 12  
60 Carrington Street  
SYDNEY NSW 2000  
DX 262 SYDNEY NSW  
Tel: (+61 2) 89151000  
Fax: (+61 2) 8916 2000

## TASMANIA – LAWS TO REGULATE BETTING EXCHANGES - OVERVIEW

### *Introduction*

To say that the decision to grant Britain's leading online betting business a licence to operate in Tasmania has been a contentious one in Australia's sports betting circles would be an understatement.

The racing industry and other State governments maintain that making a betting exchange a legal form of gambling will only encourage skulduggery – if punters are able to bet on a horse to lose, it is argued, it would increase opportunities for races to be fixed.

Tasmania's Gaming Control Act ("the Act") did not contemplate readily the operation of a licensed betting exchange.

Despite vehement resistance, the Government of Tasmania has announced its intention to allow Betfair to operate legally in Tasmania. There have been media reports that the Tasmanian Parliament has now passed the Gaming Control Amendment (Betting Exchange) Bill ("the Bill") to make provision for the licensing and operation of betting exchanges. The Bill is likely to become law soon, possibly by the end of this year.

A summary of the amendments to the Act proposed by the Bill is set out below.

### *Operational provisions*

In essence, a betting exchange works in a similar manner to a stock exchange, and enables players to bet among themselves on predetermined markets. The market is formed when a person's bet – say, that a horse will win – is matched with a bet taking the opposite position.

The concept of "betting exchange" introduced by the Bill is:

*a facility that enables persons to –*

- (a) place or accept through the betting exchange operator, wagers with other persons; or*
- (b) place with the betting exchange operator wagers that, on acceptance, are matched (so as to offset all risk to the operator) with opposing wagers placed with and accepted by the operator.*

This will cover both types of betting exchange, the facilitator (where the operator does not act as the party to the transaction, traditionally the model associated with Betfair) and the situation where the operator acts more like a traditional bookmaker (like Sporting Options before its demise).

The holder of a Tasmanian gaming licence with a "betting exchange endorsement" (a "betting exchange licence") (the annual fee for which is 350,000 fee units, currently AUD 409,500), Betfair will be able to (under s 76VA):

- operate a betting exchange by way of a telecommunications device; and
- through that betting exchange:

- broker wagering directly between persons on contingencies relating to brokered wagering events; or
- broker wagering between the licensed provider and other persons on contingencies relating to brokered wagering events.

“Broker wagering” means, by means of a betting exchange, to broker wagering between persons “directly” or “indirectly” –

- (a) directly (as in the manner referred to in paragraph (a) of the definition of “betting exchange”); or*
- (b) indirectly, by matching opposing bets placed with and accepted by the broker (as in the manner referred to in paragraph (b) of the definition of “betting exchange”).*

The Tasmanian Gaming Commission has the responsibility to oversee the operation of licensed providers and ensuring their compliance with the conditions attaching to their licence.

Section 76ZDC outlines special conditions which will attach to a Tasmanian betting exchange licence. These include the following:

- the licensed provider must only allow registered players to participate in the betting exchange
- the funds of registered players must be held in trust
- the licensed provider must have wagering rules in place for each event (with the Commission having the power of veto over the rules).
- licensed providers are prohibited from broker wagering on contingencies relating to:
  - competitions or events held in Tasmania that are unlawful, or
  - competitions or events held elsewhere that would, if they were to be held in Tasmania, be unlawful.

The Commission may instruct the betting exchange licensee not to broker wagering on any competition or event “that the Commission considers is not a fit subject for betting exchange wagering”.

The Commission also has the power to “freeze” some or all of the funds (in other words, “to hold the funds and not to disburse them in any way”) held by the licensed provider on behalf of a registered player “for such period as the Commission specifies” in a written notice. Put another way, for situations where there are reasonable grounds for suspecting that the funds have been acquired in an illegal manner, or where there are other reasonable grounds, the Commission has the power to act to freeze the funds.

To enhance the operational restrictions in the Bill, there are a number of prohibitions applying to the betting exchange licensee. They include Section 76ZDL which states:

- broker wagering by or between persons who are not registered players;
- allowing persons who are not registered players to engage in wagering through a betting exchange operated by the betting exchange operator; or
- soliciting “by direct advertising, direct inducements or other direct means, excluded persons to engage in wagering through a betting exchange”.

Contravention of this provision may result in a maximum penalty of 50,000 penalty units (currently AUD 5 million).

### *Problem gambling*

Section 76ZDH regulates “self-exclusion” in connection with betting exchanges. Similar provisions for other forms of gambling exist in the regulatory frameworks of the other States and Territories of Australia. This section essentially allows a person, by written notice to a betting exchange operator, to bar himself or herself from that betting exchange. After receiving this notice, the betting exchange licensee is obliged to close that person’s account and remove them from its register of players, and to notify the Commission and all its employees.

In addition, section 76ZDI entitles a third party “who has a close personal interest in the welfare of another person who wagers with a betting exchange” to apply to the Commission for a betting exchange exclusion order. After considering representations made by the applicant and the person in respect of whom the application is made, the Commission may either prohibit that person from using the betting exchange, or refuse the application altogether. These provisions are similar to those envisaged in the Ausmodel (Uniform Standards for the Regulation of Interactive Gaming: Exposure Draft of 5 April 2001) and which have been introduced in other jurisdictions in Australia.

### *The issue of integrity*

In an attempt to address concerns that the integrity of the racing industry (and other sports) would be threatened by the operation of a betting exchange, section 76ZDM prohibits owners of participating horses or greyhounds, and other “direct” and “indirect” participants (and their associates) in the relevant event from wagering through a betting exchange in connection with that event.

Sub-section (2) prohibits the making of inducements to competitors and officials to fix an event – it provides:

- (2) *A person who has an interest in the outcome of a brokered wagering event must not, through a betting exchange, place or accept a wager of a kind that could reasonably be taken to constitute an inducement for –*
- (a) *a human competitor in the event –*
    - (i) *to withdraw from, become disqualified for or fail to participate in the event; or*
    - (ii) *not to participate in the event to the best of the human competitor's ability; or*
    - (iii) *to interfere with or jeopardise, contrary to the rules of the event, the performance of other human competitors, or any non-human competitors, in the event; or*
    - (iv) *to commit an offence against section 165; or*
  - (b) *an official in the event –*
    - (i) *not to officiate in the event impartially; or*
    - (ii) *to commit an offence against section 165.*

Sub-section (3) provides –

- (3) *The owner of a horse or greyhound must not wager through a betting exchange that, in a race or event in which the horse or greyhound is competing or entered to compete, the horse or greyhound will fail to –*
- (a) *win first place; or*
  - (b) *be placed second; or*
  - (c) *be placed third; or*
  - (d) *win first place or be placed second or third; or*
  - (e) *win first place or be placed second; or*
  - (f) *win first place or be placed third; or*
  - (g) *be placed second or third.*

Sub-section (4) requires a betting exchange operator to inform the Commission immediately “if the operator knows or reasonably suspects that a person has placed or accepted, or is trying to place or accept, a wager” of the kind referred to in the sub-sections noted above.

Sub-section (5) provides –

- (5) *For the purposes of this section, a person is taken to have an interest in the outcome of a brokered wagering event if the person is –*
- (a) *a direct or indirect participant in the event; or*
  - (b) *an associate of a direct or indirect participant in the event.*

A “direct participant” in a brokered wagering event is –

- (a) *in the case of a horse race, a licensed person who trains, rides, drives or performs another function in respect of a horse in the race; or*
- (b) *in the case of a greyhound race, a licensed person who, other than as an owner, trains or performs another function in respect of a greyhound in the race; or*
- (c) *in any other case, a person who –*
  - (i) *competes in the event; or*
  - (ii) *is entitled, under the rules of the event, to give direct technical or logistical support to a person competing in the event while it is underway.*

An “indirect participant” in a brokered wagering event is a person who is capable of influencing or deciding the outcome of the event or the outcome of a contingency relating to that event (for example, a team doctor).

Finally, a person is “another person’s associate” if:

- they hold “any relevant financial interest, or is or will be entitled to exercise any relevant power” in the other person’s business and “by virtue of that interest or power, is able or will be able to exercise a significant influence over or with respect to the management or operation of that business”;
- they hold or will hold any “relevant position” in the other person’s business; or
- is a relative of the other person.

In addition to these provisions, section 165, as amended, will prohibit a person cheating in a “gaming activity” and doing “anything for the purposes of enabling or assisting another person to cheat in a gaming activity”. The maximum penalty for contravening this sub-

section (4) is 10,000 penalty units (currently AUD 1 million) and/or imprisonment for a maximum of 4 years. Further to this are sub-sections (5) and (6):

*(5) For the purposes of subsection (4), it is immaterial whether a person who cheats in a gaming activity –*

*(a) improves the person's chances of winning anything; or*

*(b) wins anything.*

*(6) Without prejudice to the generality of subsection (4), cheating in a gaming activity may, in particular, consist of actual or attempted deception or interference in connection with –*

*(a) the process by which the gaming activity is conducted; or*

*(b) a real or simulated game, race or other event or process to which the gaming activity relates.*

It is clearly intended that these provisions will capture anyone who has even the remotest interest in the outcome of an event.

The perceived risk to the integrity of the sport on which betting is enabled by the betting exchange is addressed by the provisions referred to in section 76ZDM above. To the writer's knowledge, these provisions are without precedent in Australia and possibly (save for the prohibition on cheating in the UK Gambling Act), in the world. They are very broad in effect and provide a significant deterrent to anyone involved in, or associated with, an entrant or an official, in a race or other sporting event, from making a bet with a betting exchange. These provisions do, however, beg the question: why are they linked to betting exchanges if there is a need to include such significant deterrents in the Bill. Also, the question whether these prohibitions will satisfy the opponents of betting exchanges, principally the racing industry leaders, is a matter of considerable doubt.

### *Taxation*

The Tasmanian legislature has responded to concerns that the licensing of betting exchanges will have a detrimental effect on the revenue derived by the local racing industry by requiring licensees to underwrite the revenue of Tote Tasmania.

In addition, Section 150A of the Act will provide that the tax payable in relation to a month and the gaming business conducted in respect of a betting exchange endorsement is as follows:

- 10% of the monthly betting exchange commission that the licensed provider is entitled to in respect of events held outside Australia;
- 15% of the monthly betting exchange commission for events held in Australia.

Further, there are requirements for the licensee to pay a betting exchange product levy.

### *Comments*

As Tasmania is the only jurisdiction other than England to contemplate expressly the regulation of betting exchanges, the Bill is of significant interest in considering how betting exchanges should be regulated, and whether it addresses appropriately those issues which are

considered by the opponents of betting exchanges as the detrimental effects or by-products of their operation.

These are considered to be:

- failure to provide a proper return (or product fee) to the racing industry; and/or
- the potential to undermine the integrity of the industry.

The Tasmanian Government has taken the view that it is a preferred course of action to regulate a betting exchange and provide for a return to industry, rather than allowing operators to conduct business offshore without providing any return. The Bill contains a mechanism to ensure that licensed betting exchange operators make additional payments to guarantee that the levels of funding received by the Tasmanian racing industry are not detrimentally affected by those operators.

As a result of the approval of the Bill, it is probable that the Tasmanian Gaming Commission will consider Betfair's licence application soon.

There have been media reports that other betting exchange operations have approached the Tasmanian authorities to obtain further information relating to the licensing process. It will be interesting to see whether the new law results in a number of betting exchange operators conducting business in Tasmania.

Jamie Nettleton, Partner Ph: +61 2 8915 1030, [jamie.nettleton@addisonslawyers.com.au](mailto:jamie.nettleton@addisonslawyers.com.au)

Kate Erman, Solicitor Ph: +61 2 8915 1033, [kate.erman@addisonslawyers.com.au](mailto:kate.erman@addisonslawyers.com.au)

**Addisons Lawyers, Sydney**

**28 November 2005**