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Police Integrity Commission

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7. ASSESSMENT: THE PRIVATE HEARING WITNESSES

7.1 The Commission will now undertake an assessment of the evidence relating to the private hearing witnesses.

7.2 The Commission will use the expression *"private hearing witnesses"* but at times in this part of its report it will be convenient to refer to the private hearing witnesses simply as *"the witnesses".* The witnesses are:

- Besant
- Immens
- Kasun
- Peresson
- Zeibots
- Robertson
- Mundy
- Reily
- Groves
- Seydler
- Innes
- Goonan
- Guest
- Foster
- Muller
- Cursley
- Seagg
- Kolosque.

7.3 At the public hearing the witnesses were sometimes referred to as *"bowlers"* and the accounts that were opened in their names were sometimes referred to as *"bowler accounts."* This use of the word *"bowler"* was often coupled with a submission made on behalf of the witnesses or on behalf of Smith, Williams, Fletcher or Azzopardi that there was nothing untoward in what the witnesses did, because the use of *"bowlers"* is widespread in gambling and is generally condoned.

7.4 However, in the opinion of the Commission, none of the witnesses was a *"bowler"* according to the definitions of the term *"bowler"* which were provided in evidence before the Commission by Fletcher and Azzopardi.

7.5 When Fletcher was asked what the term *"bowler"* means in a gambling context, he replied: *"A bowler is more or less a colloquial term for a commission agent, and a commission agent could be described as a person who places bets on behalf of another punter for a small commission."*[1]

7.6 When Azzopardi was asked what he meant by the word *"bowler"* in the context of gambling, he said: *"A bowler is someone that bets for someone else."*[2]

7.7 On the evidence before the Commission none of the witnesses placed any bet on behalf of anyone else or at all.

7.8 In the opinion of the Commission, it leads to confusion to apply the term *"bowler"* to any of the witnesses and the use of the term *"bowler"* in relation to any of the witnesses should be avoided.

HOW THE WITNESSES BECAME INVOLVED

7.9 The police officers who became involved in gambling with Smith or Williams worked with either Smith or Williams. Thirteen of them worked with Smith in the Tactical Operations Unit. One worked with Williams in the Homicide Squad. The four witnesses who were not police officers were friends or acquaintances of Smith or Williams.

7.10 Each of the witnesses was told something about what was proposed and was promised payment of some money if he permitted the setting up of accounts in his name with a corporate bookmaker or permitted the use of an existing account in his name. Each of them was at least told that a betting account in his name would be operated and that he would play no part in the operation of the account.

7.11 Having agreed to become involved, a witness provided Smith or Williams with his personal identification documents and personal identification details. The documents and details he provided to Smith or Williams included his driver's licence, Medicare Card and bank or credit account details. The personal identification documents and personal identification details were needed by Smith or Williams to enable an account in the name of the witness to be opened with a corporate bookmaker.

ASSESSMENT OF THE POLICE WITNESSES GENERALLY

7.12 The Commission considers that, although the knowledge that some of the police witnesses had of what was proposed was limited, they should have realised, and in some cases clearly did realise, that what was proposed involved at least the possibility of deception of a corporate bookmaker. The police witnesses knew that an account in their name with a corporate bookmaker was to be opened and operated, or at least operated, in the operation of which they would play no part. They knew that they would not be making any contribution to the funds used for betting on the account in their

[1] PIC Transcript, S C Fletcher, 5 December 2013, p. 314:14-314:17

[2] PIC Transcript, D S Azzopardi, 19 December 2013, p. 636:10

name and that they would not determine any of the bets to be placed on the account.

7.13 What was proposed was clearly not a *"punters club"*, in which all members of the club make some contribution to the funds used for betting and in which all members of the club participate, at least to some extent, in the making of decisions by the club.

7.14 In the opinion of the Commission, each police officer who was approached by Smith or Williams should have declined to become involved or should have made further inquiries and not limited his inquiries to inquiries directed to Williams or Smith, who were clearly not able to give disinterested advice. To adopt an expression used by Counsel Assisting, each police witness was required to apply and failed to apply *"a policeman's eye"* to assessing the proposal made to him by Smith or Williams, that is, to determine and take into account what risks might be involved in acting in accordance with the proposal.

7.15 The Commission considers that parts of the NSW Police Force's *Statement of Values* and *Code of Conduct* are relevant to assessing the conduct of the police private hearing witnesses. The *Statement of Values* states that each member of the Police Force *"is to act in a manner which … places integrity above all"*.[3] The NSW Police Force's Code of Conduct states that *"an employee of the NSWPF must … behave honestly and in a way that upholds the values and the good reputation of the NSW Police Force whether on or off duty"*.[4]

7.16 As already indicated, each of the police witnesses provided his personal identification documents and personal identification details to Smith or Williams, knowing that they would be used for gambling. He did so, without having regard or without having sufficient regard to the risk that the identification documents and details might be used to his own detriment or the detriment of the NSW Police Force. Such disregard of obvious risks was reckless.

7.17 As to the individual witnesses the Commission makes the following assessments.

SENIOR CONSTABLE BENJAMIN BESANT

7.18 The Commission accepts that Besant did not have a complete appreciation of what it was that Smith was proposing when he agreed to enter into the arrangement with him. The Commission also accepts that Besant was, as he said, *"a little bit ignorant"* about the betting accounts that were set up in his name and that he only came to view the conduct as deceptive with the benefit of hindsight.[5]

7.19 However, the Commission does not accept that Besant had no appreciation of what it was that Smith had in mind when he was first approached by Smith. Besant gave evidence that he knew that one purpose of setting up accounts in his name was for Smith to gamble through those accounts. He *"assumed"* that

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3 Police Act 1990, s 7

4 NSWPF Standards of Professional Conduct

5 Ex 39 AC, PIC Transcript, B R Besant, 4 November 2013, pp. 23:25-24:20, 14:43-15:1

Smith had been restricted or prohibited from placing bets with particular corporate bookmakers and could not use his own betting accounts to bet. He knew that the purpose of the arrangement was to enable Smith to open accounts and to place bets in Besant's name and not in Smith's name and to thereby avoid the restrictions that applied to Smith's ability to bet.

7.20 Besant gave the following evidence of his understanding of the arrangement, when he was asked why it had been necessary for Smith to open and use betting accounts in Besant's name:

> *A. Okay. Yeah, he* [Smith] *explained to me that he was gambling with – well, sorry, betting with other friends who gave him tips and whatever and he told me that if – with these accounts, if you win a couple of times pretty big, they'll shut your account down, so, as a result, I assume they must have been shutting his account down when he won big and then he was using my account as a result of that*.[6]

7.21 Besant provided his identification documents to Smith so that betting accounts could be set up in Besant's name. He said that he did not give any consideration to the possibility that his identification documents might be used to cause harm to somebody else or to deceive somebody else. He said that he was not concerned in having handed his identification documents over to Smith, as he had known Smith for *"nine years"*, had *"no reason to mistrust him before"* and *"wasn't worried about it"*.[7]

7.22 The Commission considers that Besant engaged in police misconduct by providing his identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts in Besant's name.

SENIOR CONSTABLE JASON IMMENS

7.23 The Commission accepts that Immens came to view the conduct as deceptive only with the benefit of hindsight.[8] However, the Commission does not accept that Immens had no appreciation either of what it was that Smith had in mind when he first approached him or of what Smith in fact did with the betting accounts that he set up in Immens' name after they were set up.

7.24 Two lawfully intercepted telephone calls establish that Immens knew that other gamblers were standing behind Smith and using the accounts that had been opened in Immens' name.[9]

7.25 Immens also knew that one purpose of setting up the accounts in his name was for Smith to obtain free bets that Smith could not otherwise have obtained.[10] He knew that Smith could not have obtained free bets on his own, if he had opened accounts in his own name, as he had existing betting accounts with the corporate bookmakers and was not eligible to receive any more free bets from

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6 Ex 39 AC, PIC Transcript, B R Besant, 4 November 2013, p. 12:40-12:46

7 Ex 39 AC, PIC Transcript, B R Besant, 4 November 2013, p. 18:7-18:46

8 Ex 41 AC, PIC Transcript, J P Immens, 4 November 2013, p. 8:11-8:33

9 Ex 41 AC, PIC Transcript, J P Immens, 4 November 2013, pp. 22:17-23:37

10 Ex 41 AC, PIC Transcript, J P Immens, 4 November 2013, pp. 6:40-7:7, 8:5-8:9

them. Immens gave the following evidence about his knowledge of those matters:

> *A. My understanding of why he opened the accounts was to get free bets in the names of all the other people, so obviously, if he opened an account in his name, he only gets the free bets for* [sic] *one specific sporting agency, whereas if he's using numerous, he gets more free bets.* [11]

7.26 Contrary to the evidence Immens gave, the Commission is of the view that it is unlikely that Immens expressed concern to Smith about the arrangement, when he became aware that a sum of $17,000 had been deposited into his bank account.[12] A lawfully intercepted telephone conversation in which Smith told him about this money does not suggest that Immens was in any way concerned. On the contrary, there was discussion about the two of them receiving money, once Immens facilitated the withdrawal of the money. Smith said that they might receive *"five hundred bucks each or something".* Immens expressed delight at the prospect and replied: *"a little Christmas bonus would be nice wouldn't it"*. [13]

7.27 Immens supplied Smith *"with all my details, personal details … for the purpose of opening the accounts".* In doing so, Immens said that he was not concerned about the possibility of identity fraud.[14]

7.28 In becoming involved in an arrangement in which the corporate bookmakers were deceived into providing a financial advantage to Smith, Immens agreed that he had not applied a *"policeman's eye to what was going on".* [15]

7.29 Immens started having a concern about his arrangement with Smith towards the end of his involvement but did not bring his concern to the attention of any of his superiors. He accepted that he was still prepared to accept money from Smith for his involvement.[16]

7.30 Immens was also one of a number of police witnesses who asked Smith if what was being done with the betting accounts *"was all above board".* He was assured by Smith that it was.[17] It can be inferred that Immens asked Smith this question because he had some concern about the legality or at least the propriety of the arrangement. The inquiry that he made was insufficient, being made of the person who had the most to gain from Immens becoming involved.

7.31 Immens also made inquiries with other members of the Tactical Operations Unit who had been approached by Smith. Immens asked his colleagues, *"Are you going to do it?", "Does it seem all right? Does it seem above board to you?"* He said that none of his colleagues expressed any concern that the corporate

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11 Ex 41 AC, PIC Transcript, J P Immens, 4 November 2013, p. 8:5-8:9

12 Ex 41 AC, PIC Transcript, J P Immens, 4 November 2013, p. 18:1-19:18

13 Ex 41 AC, Transcript of Telephone call between Marc Smith and Jason Immens on 18 December 2012

14 Ex 41 AC, PIC Transcript, J P Immens, 4 November 2013, p. 16:9-16:25

15 Ex 41 AC, PIC Transcript, J P Immens, 4 November 2013, p. 22:11-22:15

16 Ex 41 AC, PIC Transcript, J P Immens, 4 November 2013, pp. 25:31-26:45

17 Ex 41 AC, PIC Transcript, J P Immens, 4 November 2013, p. 8:11-8:14

bookmakers were being deceived.[18] Those inquiries were also insufficient in the circumstances, being made of persons who were not disinterested.

7.32 The Commission considers that Immens engaged in police misconduct by providing his personal details and identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts, and to obtain free bets, in Immens' name.

SENIOR CONSTABLE JOSHUA KASUN

7.33 The Commission accepts that Kasun did not put a great deal of *"thought"* into the arrangement he entered into with Smith. The Commission also accepts that it was only in hindsight that he came to view his conduct as having been deceptive.[19]

7.34 However, the Commission does not accept that Kasun had no understanding of what it was that Smith was proposing when he was approached by Smith. He knew that the purpose of what was proposed was to obtain free bets.[20] He knew that bets would be placed on accounts in his name but would not be his bets. He knew that he would play no part in making them.[21]

7.35 Like other private hearing witnesses, Kasun received money for his involvement. The payment of money did not by itself raise any concern in his mind about the legality of what was going on.[22] He thought the payment was *"part of the profits"* that had been made from the use of free bets. When it was pointed out to him that no profits were made on any of the accounts that had been opened in his name, he could not explain where the money that he received came from. [23]

7.36 Had Kasun given more consideration to the arrangement he entered into with Smith, the Commission considers that it is likely that Kasun would not have become involved. As already noted, he did not put a lot of *"thought"* into the arrangement.[24] He also said that he *"thought it was similar to a punters' club".* When certain obvious propositions were put to him about punters' clubs, including the contribution of money by members, and it was put to him that he did not make any such contribution, he accepted that the arrangement he entered into with Smith was not in fact like a punters' club and agreed that what was done was not honest.[25]

7.37 The Commission considers that Kasun engaged in police misconduct by providing his identification documents to Smith for the purpose of enabling

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18 Ex 41 AC, PIC Transcript, J P Immens, 4 November 2013, pp. 9:42-10:10

19 Ex 43 AC, PIC Transcript, J D Kasun, 4 November 2013, p. 13:33-14:8

20 Ex 43 AC, PIC Transcript, J D Kasun, 4 November 2013, p. 6:16-6:19

21 Ex 43 AC, PIC Transcript, J D Kasun, 4 November 2013, p. 10:16-10:21

22 Ex 43 AC, PIC Transcript, J D Kasun, 4 November 2013, pp. 16:23-17:45

23 Ex 43 AC, PIC Transcript, J D Kasun, 4 November 2013, pp. 17:47-18:18

24 Ex 43 AC, PIC Transcript, J D Kasun, 4 November 2013, p. 13:33-14:8

25 Ex 43 AC, PIC Transcript, J D Kasun, 4 November 2013, pp. 11:41-12:16

Smith to set up and use betting accounts, and to obtain free bets, in Kasun's name.

SENIOR CONSTABLE MARK PERESSON

7.38 The Commission accepts that Peresson had an incomplete appreciation of what was intended to happen and did not give it careful consideration. The Commission also accepts that in hindsight he came to view his conduct as having been deceptive.[26]

7.39 However, the Commission does not accept that Peresson, when he agreed to participate, had no knowledge of what was proposed. He was told by Smith that the purpose was to obtain free bets and was given an undertaking by Smith that Smith would give him *"some money for* [his] *trouble"*, for letting him use his "*details"*.[27] It was never intended that Peresson would use any of the accounts that were set up in his name. [28]

7.40 In order for the betting accounts to be set up in his name, Peresson provided Smith with copies of his driver's licence and MasterCard.[29] He agreed that he provided those documents so that Smith might deceive the corporate bookmakers and admitted that he knew that when he handed over those documents to him.[30]

7.41 When the arrangement was first proposed to Peresson by Smith, Peresson asked Smith questions about the legality of the arrangement.[31] He said that he asked those questions, because *"I was giving him my details and it wouldn't be me setting up an account".*[32] Peresson also asked Smith whether *"it was all above board"* and was told by him that it was. He accepted Smith's word because he *"trusted"* Smith.[33] The Commission considers that those inquiries were insufficient. They were made of a person who stood to gain from Peresson becoming involved.

7.42 The Commission considers that Peresson engaged in police misconduct by providing his identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts, and to obtain free bets, in Peresson's name, in circumstances where Peresson knew that Smith would use his identification documents to deceive the corporate bookmakers.

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26 Ex 22 AC, PIC Transcript, M J Peresson, 4 November 2013, pp. 9:7-9:46, 20:5-20:38

27 Ex 22 AC, PIC Transcript, M J Peresson, 4 November 2013, p. 6:15-6:20

28 Ex 22 AC, PIC Transcript, M J Peresson, 4 November 2013, p. 9:7-9:22

29 Ex 22 AC, PIC Transcript, M J Peresson, 4 November 2013, pp. 21:21- 22:25

30 Ex 22 AC, PIC Transcript, M J Peresson, 4 November 2013, pp. 22:23-22:47

31 Ex 22 AC, PIC Transcript, M J Peresson, 4 November 2013, p. 8:11-8:16

32 Ex 22 AC, PIC Transcript, M J Peresson, 4 November 2013, p. 8:29-8:30

33 Ex 22 AC, PIC Transcript, M J Peresson, 4 November 2013, p. 10:34-10:39

7.43 The Commission accepts that Zeibots was *"naive"* about what was being proposed and only came to realise in hindsight that it involved a deception of the corporate bookmakers[34] or that it looked like a deception.[35]

7.44 However, the Commission does not accept that Zeibots had no appreciation of what it was that Smith had in mind when Smith first approached him or what Smith in fact did with the betting accounts that he set up in Zeibots' name after they were set up. He knew that one purpose was for Smith to obtain free bets.[36] Later, he came to suspect that other people may have used his accounts.[37] By 23 November 2012, his suspicions were confirmed when he was told by Smith that he had used other people's money to bet through the accounts.[38] It was then that Zeibots instructed Smith that he wanted the betting accounts closed. He said that he wanted *"everything shut down"* because he *"didn't like what was happening"*. [39]

7.45 Zeibots also knew from the beginning of his involvement that he would not have to contribute any money to open the accounts or operate the accounts.[40] He was aware that for what was proposed to work, the corporate bookmakers had to be deceived into thinking that he personally put up the money to open the accounts. He understood, at least initially, that that money was provided by Smith. And he knew that it was necessary for that money to go to the corporate bookmakers from his own bank account, to sustain the belief or understanding on the part of the corporate bookmakers that it was Zeibots who was operating the accounts.[41]

7.46 Zeibots was concerned about whether his involvement would *"affect"* his "*credit rating"*, and had asked Smith whether it would.[42] He was also concerned about the possibility of identity fraud.[43] However he was not concerned that Smith was going to use his identification to deceive the corporate bookmakers.[44]

7.47 The Commission considers that Zeibots engaged in police misconduct by providing his identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts, and to obtain free bets, in Zeibots' name, in circumstances where Zeibots knew that for the *"scheme"* to work the corporate bookmakers had to believe that he was in fact setting up the accounts which were to be in his name.

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34 Ex 13 AC, PIC Transcript, M C Zeibots, 5 November 2013, p. 11:10-11:17

35 Ex 13 AC, PIC Transcript, M C Zeibots, 5 November 2013, p. 15:42-15:47

36 Ex 13 AC, PIC Transcript, M C Zeibots, 5 November 2013, p. 11:10-11:17

37 Ex 13 AC, PIC Transcript, M C Zeibots, 5 November 2013, p. 21:19-21:32

38 Ex 13 AC, PIC Transcript, M C Zeibots, 5 November 2013, pp. 28:38-29:1

39 Ex 13 AC, PIC Transcript, M C Zeibots, 5 November 2013, 28:41-29:1

40 Ex 13 AC, PIC Transcript, M C Zeibots, 5 November 2013, pp. 5:35-6:1

41 Ex 13 AC, PIC Transcript, M C Zeibots, 5 November 2013, pp. 16:27-17:33

42 Ex 13 AC, PIC Transcript, M C Zeibots, 5 November 2013, pp. 5:35-6:1

43 Ex 13 AC, PIC Transcript, M C Zeibots, 5 November 2013, p. 16:15-16:25

44 Ex 13 AC, PIC Transcript, M C Zeibots, 5 November 2013, p. 11:2-11:8

7.48 Robertson denied that the purpose of the arrangement he entered into with Smith was to deceive the corporate bookmakers and would not say that the arrangement was deceptive. He claimed that Smith had opened the accounts on his behalf and repeated that claim on a number of occasions.[45] In effect, he said that Smith was acting as his agent.

7.49 The Commission considers that Robertson's claim is untenable in light of other evidence he gave.

7.50 Robertson acknowledged that, apart from supplying his identification documents and details, he had nothing to do with the accounts. He received a payment of around $400 or $500 for his involvement and agreed that his contribution for this reward was limited to providing Smith with the identification documents and details, which Smith used to set up the accounts.[46] He stood to lose nothing from the arrangement, *"because I wasn't putting the money up for the accounts".* He *"didn't nominate any particular bet"* that was placed on an account and he did not have any password for any account that was opened in his name. He accepted that it would appear to the corporate bookmakers that it was Robertson and not Smith who was placing the bets on the accounts.[47]

7.51 Robertson also understood that the arrangement involved free bets. He understood that free bets were provided by the corporate bookmakers to *"entice"* new clients and that they were provided on accounts set up in his name in the belief that he was a new customer.[48] Although he denied that the financial advantage that that represented had been obtained by means of deception,[49] he understood that the reason that Smith could not have opened the accounts in his own name was that he could not *"keep having multiple accounts and keep getting free bets"*.[50]

7.52 Robertson did not have any misgivings about his involvement. He could not *"see any criminal element to it".* He viewed the opening of accounts in his name by Smith as being *"legitimate".* He did not see *"deception"*.[51]

7.53 He took the view that it was *"something I could have done myself".* Rather than do that, he said he *"allowed someone I trusted to use my identification to do that for me"*.[52] That view appears to have been formed from discussions he had with a group of other officers in the Tactical Operation Unit who were involved. He said that the group had arrived at a *"unanimous decision"* that what was being proposed by Smith was legitimate. He said that the *"discussion"* was to the effect *"that you could do it yourself if you were prepared to fill out the forms*

45 Ex 55 AC, PIC Transcript, S F Robertson, 5 November 2013, p. 8:7-8:27

46 Ex 55 AC, PIC Transcript, S F Robertson, 5 November 2013, p. 13:11-13:29

47 Ex 55 AC, PIC Transcript, S F Robertson, 5 November 2013, pp. 8:29-9:28, 12:2-13:9

48 Ex 55 AC, PIC Transcript, S F Robertson, 5 November 2013, p. 10:10-10:32

49 Ex 55 AC, PIC Transcript, S F Robertson, 5 November 2013, p. 11:5-11:13

50 Ex 55 AC, PIC Transcript, S F Robertson, 5 November 2013, p. 6:19-6:30

51 Ex 55 AC, PIC Transcript, S F Robertson, 5 November 2013, p. 14:6-14:47

52 Ex 55 AC, PIC Transcript, S F Robertson, 5 November 2013, p. 14:39-14:47

and have the initial opening money".[53] In the circumstances, such unanimity was insufficient to justify Robertson's involvement, having been expressed by persons who were involved. It was not an opinion proffered by a disinterested party. In any event, the hypothetical case on which the officers reached a *"unanimous decision"* was not truly analogous to what happened in Robertson's case. Robertson did not *"fill out the forms"* himself or supply any money.

7.54 The Commission considers that Robertson engaged in police misconduct by providing his identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts, and to obtain free bets, in Robertson's name.

SENIOR CONSTABLE ADAM MUNDY

7.55 Mundy took a similar view to Robertson. In explaining his involvement, he said that he gave his details to Smith so that Smith could *"open an account for me"*[54] and *"place a bet for me"*[55] and described an account that was opened in his name of which he was aware as *"my account".* [56] He received payment for his involvement but denied that he was being paid for the service of providing Smith with his identification.[57] He saw no deception, *"because the one account that I knew about I assumed it was mine"*.[58]

7.56 The Commission does not accept Mundy's evidence that Smith was acting on Mundy's behalf. Mundy knew that what was proposed by Smith related to free bets. He knew that the corporate bookmakers provided those free bets to new account holders.[59] While he claimed that he could have done it himself, he confirmed that he played no role in operating any of the accounts that were set up in his name and that he never placed a bet or put money into any of the accounts.[60] It was never intended that he would.[61] These facts show that the assertion Mundy made that there was *"no difference to me giving him 100 bucks down at the pub to put a bet on for me"*[62] was unfounded.

7.57 The Commission considers that Mundy engaged in police misconduct by providing his identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts, and to obtain free bets, in Mundy's name.

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53 Ex 55 AC, PIC Transcript, S F Robertson, 5 November 2013, p. 21:22-22:4

54 Ex 20 AC, PIC Transcript, A J K Mundy, 5 November 2013, p. 6:1-6:11

55 Ex 20 AC, PIC Transcript, A J K Mundy, 5 November 2013, pp. 4:47-5:1

56 Ex 20 AC, PIC Transcript, A J K Mundy, 5 November 2013, p. 26:44-26:47

57 Ex 20 AC, PIC Transcript, A J K Mundy, 5 November 2013, p. 26:44-26:47

58 Ex 20 AC, PIC Transcript, A J K Mundy, 5 November 2013, pp. 27:28-28:19

59 Ex 20 AC, PIC Transcript, A J K Mundy, 5 November 2013, pp. 6:13-6:25

60 Ex 20 AC, PIC Transcript, A J K Mundy, 5 November 2013, p. 9:41-9:45

61 Ex 20 AC, PIC Transcript, A J K Mundy, 5 November 2013, p. 16:12-16:40

62 Ex 20 AC, PIC Transcript, A J K Mundy, 5 November 2013, p. 16:34-16:37

SERGEANT BLAKE REILY

7.58 Reily was Smith's supervisor in the Tactical Operations Unit. He became involved in seeking to obtain free bets. He did not consider that any deception was perpetrated on the corporate bookmakers in relation to those free bets and claimed that Smith had acted as his *"agent"*[63] and was *"just doing the legwork"*.[64]

7.59 The Commission considers that Reily's evidence was contradicted by other evidence he gave.

7.60 Reily knew that the free bets were to be obtained by Smith, from money that Smith would provide.[65] He knew that the corporate bookmakers provided free bets as incentives to new customers and agreed that they constituted a financial advantage.[66] He knew that a customer could obtain a free bet only once.[67]

7.61 It is not true that Smith was *"just doing the legwork".* Reily never gave any instructions to his alleged "agent". Reily did not contribute any money to the accounts and the circumstances in which he became involved indicate that it was never intended that he would. Reily's sole contribution was to provide the identification documents and details that Smith used to open the accounts.[68] He played no role in operating any of the accounts. He did not have the access numbers or passwords for any of the accounts and did not place any bets on any of the accounts.[69]

7.62 The Commission considers that Reily must have had some appreciation that a deception was to be perpetrated on the corporate bookmakers. The money that was used to secure the free bets had first been deposited into his bank account by Smith. The money was then transferred from his bank account to the corporate bookmakers with whom the betting accounts had been opened. Reily accepted that it needed to come from his bank account, because it was his bank account, and not Smith's, that was linked to the betting accounts that were set up in his name. He said that the money had to be *"seen to come"* from his account.[70] The following questions and answers occurred:

> *Q. Don't you see that, first of all, the betting agency is being told, "Blake Reily is a new customer who's opening an account and who is going to receive a benefit of a free bet"?*
>
> *A. Yes.*

63 Ex 61 AC, PIC Transcript, B Reily, 5 November 2013, pp. 24:45-25:1

64 Ex 61 AC, PIC Transcript, B Reily, 5 November 2013, pp. 26:38-28:30

65 Ex 61 AC, PIC Transcript, B Reily, 5 November 2013, pp. 26:38-28:30

66 Ex 61 AC, PIC Transcript, B Reily, 5 November 2013, p. 7:38-7:46

67 Ex 61 AC, PIC Transcript, B Reily, 5 November 2013, p. 9:37-9:44

68 Ex 61 AC, PIC Transcript, B Reily, 5 November 2013, p. 9:10-9:21

69 Ex 61 AC, PIC Transcript, B Reily, 5 November 2013, p. 10:10-10:36

70 Ex 61 AC, PIC Transcript, B Reily, 5 November 2013, pp. 26:38-28:29

Q. The betting company then sees that Blake Reily has sent $500 to them in order to secure the free bet?

A. Yes.

Q. But Blake Reily hasn't sent them $500 at all, Marc Smith has. It has just been done in such a way that it looks like it's coming from Mr Reily?

A. Yes.

Q. Isn't that deceptive?

A. No. My understanding is funds have to be seen to come from my account into the account of my name, being the betting account. I don't think Marc Smith can put money from his account into the betting account: that's my understanding.

Q. Why do you think money has to be seen to be coming from your account?

A. Because that's the account linked to the betting account.

Q. Because the betting agency thinks it is you doing the betting?

A. Yes, it's in my name. It has to be - the betting - it's in my name.[71]

7.63 Reily never considered that Smith's proposal was something he needed to report to a senior officer in the Tactical Operations Unit. He said that Smith had explained what was proposed to him and that he personally spoke to a number of police officers who were involved. Having discussed it with them, Reily said that he was of the view that there was nothing *"illegal"* in what was being proposed and that no misconduct was involved. He said that his understanding was that what was being proposed *"was completely legal and completely within the parameters of those betting accounts"*.[72]

7.64 The Commission considers that Reily engaged in police misconduct by providing his identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts, and to obtain free bets, in Reily's name.

DETECTIVE SENIOR CONSTABLE CHRISTOPHER GROVES

7.65 Contrary to the submissions of Counsel Assisting, the Commission accepts that it is likely that Groves did not provide Williams with his existing Sportingbet account. However, he enabled betting accounts to be opened in his name by Williams, which would be used by other people. This was conceded in the submissions made on Groves' behalf.

7.66 The Commission accepts that Groves did not fully appreciate the magnitude of what was being proposed and what was being implemented. The Commission

[71] Ex 61 AC, PIC Transcript, B Reily, 5 November 2013, pp. 27:46-28:29

[72] Ex 61 AC, PIC Transcript, B Reily, 5 November 2013, p. 6:1-6:15

also accepts that it had not been his intention to deceive the corporate bookmakers and that he had not seen a problem with what was being proposed, as he had given his *"consent to use my accounts".* However, he also admitted that *"it was probably a stupid decision to make"*; that he was *"an idiot for doing it"*; that he *"should have thought about it a little bit more"*.[73]

7.67 While it was to Groves' credit that he made these admissions, the making of the admissions does not detract from the fact that Groves was aware of the true purpose of what was being proposed. He knew that the true purpose was to enable Williams and his professional gambling friends to place bets that they themselves could not place due to restrictions on their ability to bet. He was told this by Williams. Williams told him that *"his friends had been stopped from using their accounts"* and that it was necessary for them to *"use other people's accounts"*.[74] It was explained to him that the reason for using other people's accounts was to get around the restrictions that applied to them.[75] He knew from the very beginning that Williams' friends included Fletcher.[76]

7.68 Groves said that before he became involved he asked Williams *"whether it was legal or not".* One of his principle concerns was whether *"it would affect me getting a loan later on down the track in any way."* He received assurances from Williams that what was being proposed was legal and said that he "*trusted Tony Williams in what he was telling me."* [77] Had he been approached by a person other than Williams, he *"wouldn't have done it, but because it was Tony Williams - as I said, I trusted him, I believed in what he said and, like I said, I looked up to him".*[78] But for his trust in Williams, he would have applied a clearer head and *"would have questioned it more"*.[79] His trust in Williams endured, even when he saw large amounts of money being deposited into his bank account. He said that he was *"a little bit concerned but … trusted Tony Williams."*[80]

7.69 It can be inferred from the questions Groves asked Williams that Groves apprehended that there was a risk that what was being proposed was not legal or proper. As in the case of the other police witnesses, the only person he asked for advice was a person who stood to gain from Groves becoming involved.

7.70 The Commission considers that Groves engaged in police misconduct by providing his identification documents to Williams for the purpose of setting up betting accounts in Groves' name, which would then be used by professional gamblers, in circumstances where Groves knew that the purpose of the arrangement was to enable those professional gamblers to place bets that they could not otherwise place.

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73 Ex 114 AC, PIC Transcript, C F Groves, 5-6 November 2013, pp. 22:33-23:10

74 Ex 114 AC, PIC Transcript, C F Groves, 5-6 November 2013, pp. 8:39-9:3

75 Ex 114 AC, PIC Transcript, C F Groves, 5-6 November 2013, p. 9:26-9:32

76 Ex 114 AC, PIC Transcript, C F Groves, 5-6 November 2013, p. 21:31-21:33

77 Ex 114 AC, PIC Transcript, C F Groves, 5-6 November 2013, pp.11:30-12:7

78 Ex 114 AC, PIC Transcript, C F Groves, 5-6 November 2013, pp. 23:6-23:10

79 Ex 114 AC, PIC Transcript, C F Groves, 5-6 November 2013, p. 23:33-23:43

80 Ex 114 AC, PIC Transcript, C F Groves, 5-6 November 2013, pp. 17:7-19:10

7.71 The Commission accepts that Seydler may not have thought at the time he became involved that he had done anything *"wrong".*[81]

7.72 However, Seydler was not unaware of what was proposed. He had authorised Smith to open one betting account in his name and came to realise that other betting accounts had been opened in his name by Smith. [82] He knew that what was being proposed involved Smith *"getting $1,500 worth of bets"* by opening accounts in other people's names. [83] He provided his identification to Smith for that purpose.[84]

7.73 Seydler had spoken to Smith before he became involved and received $500 for becoming involved.[85] Seydler had not asked Smith any questions about the lawfulness of what was being proposed and said that he *"didn't believe that he* [Smith] *was going to put me in any – harm's way whatsoever"*. [86] He also came to the view that there was nothing wrong with what was being done, as *"a number of blokes in the office"* were involved. He said: *"If everyone else is there, well, you know, there can't be anything wrong with it".* [87]

7.74 The Commission considers that Seydler was wilfully blind to what was going on. He said that he was *"dumb to it"* (the reason why he was being paid). [88] He did know that he was being paid for opening an account but beyond that said that he knew little else. He said: *"He* [Smith] *gave me $500 because he was going to open an account with $1,500 betting money in it. I don't know the account that he was opening. That is all that I was aware of and I gave him consent to do that. Everything else I don't know."* [89]

7.75 He made no contribution to any of the accounts that were set up in his name and agreed that, while the accounts were in his name, they were in truth Smith's accounts. [90]

7.76 At one point in the arrangement $30,000 was deposited into Seydler's bank account from a corporate bookmaker. Seydler did not ask Smith any questions about that money.[91] Arrangements were made for the bulk of the money to be transferred to Smith. Seydler was left with $400 for himself. This is established by a lawfully intercepted telephone conversation that took place between himself and Smith on 14 December 2012. In that conversation, when discussing

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81 Ex 24 AC, PIC Transcript, T S Seydler, 6 November 2013, p. 17:17-17:20

82 Ex 24 AC, PIC Transcript, T S Seydler, 6 November 2013, pp. 7:31-8:31

83 Ex 24 AC, PIC Transcript, T S Seydler, 6 November 2013, p. 8:38-8:43

84 EX 24 AC, PIC Transcript, T S Seydler, 6 November 2013, p. 22:42-23:18

85 Ex 24 AC, PIC Transcript, T S Seydler, 6 November 2013, p. 9:24-9:36

86 Ex 24 AC, PIC Transcript, T S Seydler, 6 November 2013, p. 10:26-10:44

87 Ex 24 AC, PIC Transcript, T S Seydler, 6 November 2013, p. 11:20-11:24

88 Ex 24 AC, PIC Transcript, T S Seydler, 6 November 2013, pp. 11:41-12:7, 10:10-10:12

89 Ex 24 AC, PIC Transcript, T S Seydler, 6 November 2013, pp. 12:3-12:7

90 EX 24 AC, PIC Transcript, T S Seydler, 6 November 2013, pp. 26:29-27:39

91 Ex 24 AC, PIC Transcript, T S Seydler, 6 November 2013, pp. 12:31-14:1

the deposit, Seydler said the following words to Smith, *"Oh mate I, I don't need to hear anything"* and laughed.[92]

7.77 In giving evidence Seydler denied that in saying those words he had meant to convey that he thought that there was something suspicious in what was happening.[93] The Commission does not accept that evidence. Seydler would not have said those words unless he believed that there was something suspicious in what was happening and did not want to hear anything further about it from Smith. The Commission considers that in this situation also Seydler was wilfully blind.

7.78 The Commission considers that Seydler engaged in police misconduct by providing his identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts in Seydler's name.

SENIOR CONSTABLE MICHAEL INNES

7.79 Innes said in his evidence that he did not consider that the arrangement that he entered into with Smith was improper. He said that Smith had in all relevant respects acted on his behalf and with his consent. He saw no difference between what was done with the accounts that Smith opened in his name and circumstances where a friend might ask another friend to place a bet for the first friend at the local TAB. [94] In Innes' view, what he was personally getting was *"a free bet which was on offer from the sporting companies."*[95]

7.80 While Innes may have held these views, the Commission considers that they were inconsistent with other evidence he gave and some of the facts as he knew them. He knew that the purpose of what was being proposed was to obtain free bets. He had been told by Smith that *"he wanted to open a number of* [betting] *accounts"* in Innes' name to obtain the free bets.[96] While Innes claimed to have thought that there was no difference between what was being done in his and Smith's case and where a person might ask a friend to place a bet for the person at the local TAB, Innes did not contribute any money to any of the betting accounts and played no role in the determination of what bets should be made.[97] Given those circumstances, the Commission considers that it could not be said in truth that Smith was acting on Innes' behalf when he opened and operated betting accounts in Innes' name. The relationship was not one of principal and agent.

7.81 The Commission considers that Innes engaged in police misconduct by providing his identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts, and to obtain free bets, in Innes' name.

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92 Ex 24 AC, Transcript of telephone call between Marc Smith and Todd Seydler, 14 December 2012

93 Ex 24 AC, PIC Transcript, T S Seydler, 6 November 2013, p. 17:7-17:11

94 Ex 59 AC, PIC Transcript, M P Innes, 6 November 2013, pp. 14:30-15:10

95 Ex 59 AC, PIC Transcript, M P Innes, 6 November 2013, p. 15:32-15:37

96 Ex 59 AC, PIC Transcript, M P Innes, 6 November 2013, p. 5:10-5:22

97 Ex 59 AC, PIC Transcript, M P Innes, 6 November 2013, p. 17:5-17:10

7.82 Goonan did not consider that there was any deception being perpetrated on the corporate bookmakers. He said that the reason he did not, was that he had asked Smith *"many times, definitely more than once, 'Are you sure this is legal?'"* Goonan said that in asking that question he *"wanted to be sure"* that what was being proposed was legal and he said that he became sure that it was. [98]

7.83 The Commission accepts that Goonan may have held such a belief. However, he was aware that the purpose of the arrangement was for Smith to obtain free bets by opening betting accounts in Goonan's name. He also knew that the free bets were *"an incentive to open an account"*. When asked what he had been told by Smith, Goonan said: *"The impression I was left with, well, my recollection of the conversation was that he was going to put bets on under a Sportsbet or some - an account, a betting account, that he'd somehow - he'd put bets on but they would be matched in value, or something, by Sportsbet, it was an incentive to open an account, and that was the impression I was left with."* [99]

7.84 Goonan gave further evidence about the inquiries he made of Smith as to whether what was being done with the betting accounts was legal. He made the first inquiry before he became involved.[100] He made that inquiry because he *"felt a little bit hairy about handing over details"*, because he *"thought it was a proper question to ask"* and because it was *"something"* that he *"should ask"*.[101] He asked Smith again on other occasions. One of those occasions occurred after Goonan had received a telephone call from his bank, asking him if he had authorised a particular transaction. Goonan *"felt uncomfortable"* and asked Smith if Smith was *"the only one who got access to my accounts"* and whether this *"is…all legal".* Goonan said:

> *I asked him - I looked for an answer from him. It was always, "It's all legal; it's not illegal." I remember distinctly being told that, "I'd never do anything to, you know, put you at risk or get you into trouble", or words to that effect, and I trusted him on that, yeah, implicitly*.[102]

7.85 Goonan also said that he took the view that what was being done was not illegal because the amounts of money involved were small, because so many of his colleagues were involved and because it was being done so openly by them.[103] He spoke in that regard of a concept he described as *"social proof".*

7.86 An inference can be drawn that Goonan suspected that what was being proposed and implemented may not have been appropriate, even if not illegal. In the circumstances, the assurances he sought and obtained from Smith and the comfort that he took from what he described as *"social proof"* was

98 Ex 57 AC, PIC Transcript, B S Goonan, 6 November 2013, p. 12:20-12:40

99 Ex 57 AC, PIC Transcript, B S Goonan, 6 November 2013, pp. 7:41-8:33

100 Ex 57 AC, PIC Transcript, B S Goonan, 6 November 2013, pp. 6:41-7:1

101 Ex 57 AC, PIC Transcript, B S Goonan, 6 November 2013, p. 7:4-7:7

102 Ex 57 AC, PIC Transcript, B S Goonan, 6 November 2013, p. 12:20-12:40

103 Ex 57 AC, PIC Transcript, B S Goonan, 6 November 2013, p. 7:9-7:27

insufficient. The assurances he obtained were obtained from the person who had the most to gain from Goonan's involvement. The *"social proof"* that he relied upon was likewise deficient, as it was proof of persons who were themselves involved. The comfort he took from the fact that the amounts of money involved were *"small"* was also ill-founded. Any deception of a corporate bookmaker was not lessened by reason of the relatively low amount of money involved in his case.

7.87 The Commission considers that Goonan engaged in police misconduct by providing his identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts, and to obtain free bets, in Goonan's name.

SENIOR CONSTABLE ADAM GUEST

7.88 Guest did not think that there was any deception involved in Smith setting up accounts in his name to obtain free bets. He saw nothing wrong in what was proposed, because of the assurances he received from Smith that what was proposed was legal and because so many of his colleagues within the Tactical Operations Unit, "*80 per cent of the office",* as he said, were doing the same thing.[104]

7.89 The Commission accepts that Guest may have held a genuine belief that what was being done was not illegal. However, the Commission does not accept that he was unaware that it involved deceptive conduct.

7.90 Guest had been told by Smith that the method of obtaining free bets took advantage of a *"loophole"*.[105] He provided his identification documents to Smith to enable Smith to open the accounts and secure the free bets and knew that his identification documents were needed for that purpose.[106] Critically, he also understood that the reason he was asked to provide certified copies of his identification documents was to satisfy a corporate bookmaker, in order for it to provide a free bet, that he, and not Smith, was genuinely opening an account with them.[107]

7.91 As with other witnesses, before Guest agreed to participate he had sought certain assurances from Smith. He asked Smith, *"Oh, are you allowed to* [do] *that sort of stuff?"* and was told, *"Yeah, absolutely … Heaps of guys in the office have done it".* Guest said that he did not *"give it any much thought than that".*[108] When he was asked by Smith to hand over his bank details and *"three forms of ID"*, he also asked him, *"Is that the normal thing that you do?"* and he was told, *"Yeah, it's fine, everyone in the office has done exact same thing* [sic].*"*[109] He went on to say that he did not think it was *"unusual"* that he provided his identification to Smith, although he agreed that he would not usually hand his

104 Ex 73 AC, PIC Transcript, A D Guest, 6 November 2013, pp. 7:5-7:17, 18:44-19:17

105 Ex 73 AC, PIC Transcript, A D Guest, 6 November 2013, p. 5:25-5:46

106 Ex 73 AC, PIC Transcript, A D Guest, 6 November 2013, pp. 18:19-18:42, 20:38-21:42

107 Ex 73 AC, PIC Transcript, A D Guest, 6 November 2013, pp. 18:44-19:17

108 Ex 73 AC, PIC Transcript, A D Guest, 6 November 2013, p. 5:25-5:46

109 Ex 73 AC, PIC Transcript, A D Guest, 6 November 2013, p. 6:34-6:38

identification over to someone else. He said that he trusted Smith and thought that it *"was completely legit and above board"*.[110]

7.92 An inference can be drawn that Guest sought assurances from Smith because he felt some concern about the legality or the propriety of what was proposed. As with other police officers, the assurances he obtained were obtained from the person who had the most to gain from Guest's involvement.

7.93 The Commission considers that Guest engaged in police misconduct by providing his identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts, and to obtain free bets, in Guest's name.

SENIOR CONSTABLE MICHAEL FOSTER

7.94 The Commission accepts that Foster came to view his conduct as being deceptive only in hindsight and that the reason he was not aware of the deception at the time was that he was *"naïve"*.[111] He also relied on assurances he obtained from Smith that what he was proposing was *"above board"* and *"legal"*[112] and on the consensus of his colleagues in the Tactical Operations Unit that what was being proposed was lawful.[113] The Commission accepts the evidence he gave that, had he believed that what was being proposed was unlawful, he would not have become involved.[114] His concession that there were *"lessons"* to be *"learned out of all this"* was made honestly.[115]

7.95 However, while he may have been naïve in some respects, the Commission does not accept that Foster agreed to participate with Smith without any appreciation of what it was that Smith had in mind. Before he became involved, Smith had told him about the *"scheme"* to obtain *"credits"* from the corporate bookmakers. He knew that those credits were obtained when accounts were opened with them.[116] He provided Smith with his identification documents for that purpose and knew that the credits (free bets) were being obtained by Smith.[117] He received $500 for providing his identification and knew that he would not receive any of the profits that Smith might earn from gambling on the accounts.[118]

7.96 Foster said that it took him *"a number of weeks to come around"* to Smith's proposal, *"because I wasn't sure of it".* He was finally convinced because Smith *"assured"* him that *"it was a hundred-per-cent legal"*.[119] He said that he had no reason to disbelieve Smith and accepted his assurances.[120] He also relied on

110 Ex 73 AC, PIC Transcript, A D Guest, 6 November 2013, p. 9:14-9:19
111 Ex 63 AC, PIC Transcript, M J Foster, 6-7 November 2013, pp. 9:41-10:6
112 Ex 63 AC, PIC Transcript, M J Foster, 6-7 November 2013, p. 9:12-9:29
113 Ex 63 AC, PIC Transcript, M J Foster, 6-7 November 2013, pp. 25:37-26:30
114 Ex 63 AC, PIC Transcript, M J Foster, 6-7 November 2013, pp. 26:24-26:30
115 Ex 63 AC, PIC Transcript, M J Foster, 6-7 November 2013, p. 26:41-45
116 Ex 63 AC, PIC Transcript, M J Foster, 6-7 November 2013, pp. 7:43-8:4
117 Ex 63 AC, PIC Transcript, M J Foster, 6-7 November 2013, p. 8:20-8:46
118 Ex 63 AC, PIC Transcript, M J Foster, 6-7 November 2013, p. 9:1-9:11
119 Ex 63 AC, PIC Transcript, M J Foster, 6-7 November 2013, p. 9:12-9:29
120 Ex 63 AC, PIC Transcript, M J Foster, 6-7 November 2013, p. 9:31-9:39

the consensus of his police colleagues that what was being proposed was lawful.[121] Foster was concerned that no one else should have access to the details he provided to Smith. He said that he *"specifically"* told Smith, *"I don't want anyone else having these details".*[122] That was his primary concern.[123]

7.97 An inference can be drawn that Foster clearly held concerns about the legality or propriety of the *"scheme"* to obtain credits. As with other police officers, the assurances he obtained were obtained from the person who had the most to gain from Foster's involvement. The comfort that he took in the consensus of his colleagues was unwarranted, as it was the consensus of persons who were themselves involved in the *"scheme."*

7.98 The Commission considers that Foster engaged in police misconduct by providing his identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts, and to obtain free bets, in Foster's name.

SCOTT MULLER

7.99 Muller was one of four private hearing witnesses who were not police officers. Unlike the police witnesses, Muller was prepared to acknowledge that he knew when he entered into the arrangement with Smith that what was being done constituted a deception of the corporate bookmakers; *"probably wrong"*; and *"a bit crook"*. He knew that, because of the opening of accounts in his and in other people's names, the corporate bookmakers were giving free bets away in the belief that they were getting new clients.[124]

7.100 The Commission considers that Muller engaged in misconduct by providing his identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts, and to obtain free bets, in Muller's name, in circumstances where Muller knew or believed that the conduct contemplated by Smith was deceptive, *"probably wrong"* and *"a bit crook"*.

JASON CURSLEY

7.101 Cursley was the second non-police witness to give evidence and was likewise frank in his admissions. While he had not *"gone into the moral or legal implications"* of what was being done in relation to the betting accounts that Smith opened in his name, he admitted that he had a *"sense that it might have been a bit dodgy"*. He participated regardless of that knowledge, because he was interested in obtaining *"free money"*.[125] He also knew that *"it would probably be … frowned upon".* Looking back on his conduct, he said that it was a *"stupid idea"* to have allowed Smith to use his *"ID".*[126]

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121 Ex 63 AC, PIC Transcript, M J Foster, 6-7 November 2013, pp. 25:37-26:30

122 Ex 63 AC, PIC Transcript, M J Foster, 6-7 November 2013, p. 9:12-9:18

123 Ex 63 AC, PIC Transcript, M J Foster, 6-7 November 2013, p. 22:47-23:3

124 Ex 71 AC, PIC Transcript, S F Muller, 7 November 2013, pp. 17:33-18:26

125 Ex 69 AC, PIC Transcript, J R Cursley, 7 November 2013, p. 9:4-9:17

126 Ex 69 AC, PIC Transcript, J R Cursley, 7 November 2013, p. 18:20-18:26

7.102 A lawfully intercepted telephone conversation between Cursely and Smith also establishes that Cursely knew from the beginning that the accounts that would be opened by Smith in Cursley's name would be used by a *"mate"* of Smith's.[127] In his evidence Cursley accepted that the terms of that telephone conversation indicated as much. However, he said that he had no memory of that being the case. He said: *"What I do remember is my understanding of the whole thing, which was that Marc was opening accounts in my name. I didn't really look further into it, to be honest."*[128]

7.103 The Commission considers that Cursley engaged in misconduct by providing his identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts, and to obtain free bets, in Cursley's name, in circumstances where Cursley knew that the conduct contemplated by Smith was not appropriate and where he knew that accounts in his name would be used by a person other than Smith.

MATTHEW SEAGG

7.104 Seagg said that he became involved after he was recruited by Williams through Facebook. He provided Williams with his existing Sportingbet account. He knew that his account was going to be used by a *"mate"* of Williams' who was *"a professional punter"* who could not *"put bets through corporate bookmakers"*.[129] He understood that to mean that Williams' *"mate"* had been restricted or banned from using corporate betting accounts.[130] He also accepted that the arrangement was to the effect that the corporate bookmakers were to be tricked into thinking that he was gambling, whereas in fact a professional gambler who they had previously banned would be doing the gambling.[131]

7.105 Having regard to the conflicting evidence given by Seagg and Williams about a number of matters, the Commission does not consider that it should uphold some of Counsel Assisting's submissions about Seagg. However, the Commission considers that the conduct on the part of Seagg discussed in the preceding paragraph was established and amounted to misconduct.

DARREN KOLOSQUE

7.106 Kolosque provided his Sportingbet account to Williams so that it might be used by Williams' professional gambling friends.[132] In his evidence Kolosque denied that the purpose was to deceive the corporate bookmakers as to the identity of the person making the bets on his account. He saw no difference between what was being done with his account and circumstances where he had *"put bets on for other people … using my account"*.[133] He also said that he *"didn't really*

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127 Ex 69 AC, Transcript of telephone call between Marc Smith and Jason Cursley, 12 October 2012

128 Ex 69 AC, PIC Transcript, J R Cursley, 7 November 2013, pp. 15:40-16:24

129 Ex 110 AC, Exchange of Facebook messages

130 Ex 110 AC, PIC Transcript, M D Seagg, 7 November 2013, pp. 6:1-6:45

131 Ex 110 AC, PIC Transcript, M D Seagg, 7 November 2013, p. 8:15-8:25

132 Ex 112 AC, PIC Transcript, D Kolosque, 14 November 2013, p. 13:21-13:45

133 Ex 112 AC, PIC Transcript, D Kolosque, 14 November 2013, p. 13:47-14:16

question it" or *"remember really even asking about it"* and *"thought it sounded perfectly normal".* [134]

7.107 The Commission accepts that Kolosque may have had genuine belief that what was being done with his Sportingbet account was not illegal. However, it does not accept that he had no appreciation of the fact that the use of his Sportingbet account by Williams' gambling friends involved at least an element of trickery. He provided his Sportingbet account to Williams to enable Williams' gambling friends to place bets through the account, in circumstances where he knew that those gambling friends could not use betting accounts in their own names to gamble, because they had won *"big"* on their own accounts, which meant *"they can't use the account any more".*[135]

7.108 The Commission considers that Kolosque engaged in misconduct by providing his Sportingbet account to Williams for the purpose of enabling professional gamblers to place bets on his account, in circumstances where Kolosque knew that the professional gamblers could not use accounts in their own names to gamble.

134 Ex 112 AC, PIC Transcript, D Kolosque, 14 November 2013, p. 15:20-15:31

135 Ex 112 AC, PIC Transcript, D Kolosque, 14 November 2013, p. 13:25-13:28

8. ASSESSMENT: THE PRINCIPALS

8.1 The Commission will now undertake an assessment within s 16 of the Act of the matters submitted in relation to Smith, Williams, Fletcher and Azzopardi. It will be convenient to refer to those four individuals as the *"principals".*

8.2 By deciding to refer to Smith, Williams, Fletcher and Azzopardi as the principals the Commission is not to be taken as making any assumption about the existence of any relationship of principal and agent as between any two or more of the principals or as between any of the principals and any of the police officers or other persons in whose names betting accounts were opened.

8.3 A very large number of submissions about the principals were made by Counsel Assisting and counsel for the principals. The Commission has not found it necessary to resolve every one of those submissions.

8.4 In the assessment that follows the Commission has confined itself to resolving whether any of the principals engaged in police misconduct or other misconduct on the specific grounds that were submitted by Counsel Assisting.

SECTION 192E OF THE CRIMES ACT 1900 (NSW)

8.5 Counsel Assisting made submissions against all four of the principals that the Commission could form the opinion that they had engaged in serious police misconduct or other misconduct by engaging in conduct which contravened section s 192E of the *Crimes Act 1900* (NSW) ("the *Crimes Act*").

8.6 Submissions in reply to the submissions of Counsel Assisting were made on behalf of all four of the principals.

8.7 The submissions on behalf of Fletcher were by far the most extensive. Counsel for Azzopardi adopted the submissions made on behalf of Fletcher, so far as they were relevant to Azzopardi's case, and made a few additional submissions. Only a small number of submissions were made on behalf of Smith. The submissions on behalf of Williams were somewhat more extensive.

8.8 There was some overlap in the submissions made on behalf of the principals concerning s 192E of the *Crimes Act*, in the sense that some submissions made on behalf of more than one of the principals were substantially the same. Nevertheless, it will be convenient to consider the cases of the four principals individually and in turn. However, where in considering the case of one of the principals the Commission has discussed and formed a conclusion about a submission, and substantially the same submission is made on behalf of another of the principals, the Commission will refer to its earlier discussion and conclusion. Furthermore, if the Commission considers that an issue arises in the case of one of the principals, then the Commission will consider that issue, even if it was not the subject of any submission made by or on behalf of that principal.

8.9 Before considering the cases of the individual principals the Commission will make some general observations about s 192E of the *Crimes Act.*

GENERAL OBSERVATIONS ABOUT S 192E OF THE *CRIMES ACT*

8.10 Section 192E of the *Crimes Act* is headed *"Fraud"* and so far as is relevant provides as follows:

> *(1) A person who, by any deception, dishonestly:*
>
> *…*
>
> *(b) obtains any financial advantage or causes any financial disadvantage,*
>
> *is guilty of the offence of fraud.*

8.11 Section 192E is in Part 4AA of the *Crimes Act,* which was inserted into the *Crimes Act* by the *Crimes Amendment (Fraud, Identity and Forgery Offences) Act 2009,* becoming operational on 22 February 2010.

8.12 Section 192E(1) is similar in a number of respects to the former s 178BA of the *Crimes Act*, which was repealed by the amending Act of 2009.

8.13 In the submissions the Commission received there was some confusion and conflation of the elements of an offence under s 192E(1), especially concerning the elements of deception and dishonesty. This confusion was aggravated by the decision of some counsel to discuss together the elements of s 192E(1) and the elements of the common law offence of conspiracy to defraud.

8.14 For the purposes of the present investigation and report, the elements of an offence under s 192E(1) may be stated as follows. A person is guilty of an offence of fraud under s 192E(1) if:

- the person engages in a deception which was intentional or reckless,
- the person obtains a financial advantage or causes a financial disadvantage,
- the person obtains the financial advantage or causes the financial disadvantage by means of the deception, and
- the person acts dishonestly.

8.15 There are partial definitions of some of the elements of an offence under s 192E(1) in other provisions of Part 4AA of the *Crimes Act.*

8.16 Section 192B in Part 4AA is headed *"Deception"* and provides the following definition of that term:

192B Deception

(1) In this Part,

"deception" means any deception, by words or other conduct, as to fact or as to law, including:

(a) a deception as to the intentions of the person using the deception or any other person, or

(b) conduct by a person that causes a computer, a machine or any electronic device to make a response that the person is not authorised to cause it to make.

(2) A person does not commit an offence under this Part by a deception unless the deception was intentional or reckless.

8.17 Section 192D in Part 4AA is headed *"Obtaining financial advantage or causing financial disadvantage"* and provides the following definitions of the expressions obtain a financial advantage and cause a financial disadvantage:

(1) In this Part,

"obtain" a financial advantage includes:

(a) obtain a financial advantage for oneself or for another person, and

(b) induce a third person to do something that results in oneself or another person obtaining a financial advantage, and

(c) keep a financial advantage that one has,

whether the financial advantage is permanent or temporary.

(2) In this Part,

"cause" a financial disadvantage means:

(a) cause a financial disadvantage to another person, or

(b) induce a third person to do something that results in another person suffering a financial disadvantage,

whether the financial disadvantage is permanent or temporary.

8.18 Apart from the definition in s 192B there is no definition of the term "***deception"*** in Part 4AA or elsewhere in the *Crimes Act*.

8.19 According to general English usage, a deception will generally involve the making of a representation which is knowingly untrue and the acceptance of that representation by the representee. In the *Australian Concise Oxford*

Dictionary (2nd edition 1992) a definition of *"deceive"* is to *"make (a person) believe what is false, mislead purposely".*

8.20 Section 4B was inserted into the *Crimes Act* at the same time as Part 4AA.

8.21 Section 4B is headed *"Dishonesty"* and is within Part 1 of the *Crimes Act* which is headed *"Preliminary and Interpretation".* Section 4B provides as follows:

> *4B Dishonesty*
>
> *(1) In this Act:*
>
> *"dishonest" means dishonest according to the standards of ordinary people and known by the defendant to be dishonest according to the standards of ordinary people.*
>
> *(2) In a prosecution for an offence, dishonesty is a matter for the trier of fact.*

8.22 This definition of *"dishonest"* clearly applies to the cognate term *"dishonestly"* in s 192E(1). The definition contains two limbs, both of which must be satisfied before a finding of dishonesty can be made; namely, conduct must be "*dishonest according to the standards of ordinary people"* (the first limb) and must be *"known by the defendant to be dishonest according to the standards of ordinary people"* (the second limb).

8.23 The clear terms of s 4B mean that there is no need to refer to earlier conflicting authorities on the meaning of *"dishonest".*

8.24 As to s 4B(2), some observations about the matters to which the trier of fact can refer in determining whether conduct was dishonest are to be found in the judgment of Macfarlan JA, with whom the other members of the Court of Criminal Appeal agreed, in *Krecichwost v R* (2012) 88 ACSR 339; [2012] NSWCCA 101.

8.25 Krecichwost applied for special leave to appeal to the High Court: *Krecichwost v. The Queen* [2012] HCATrans 294. His application for special leave was refused and there is nothing in the transcript of the special leave application which would cast doubt on Macfarlan JA's judgment in the Court of Criminal Appeal.

8.26 Krecichwost had been charged with an offence under s 184(2)(a) of the *Corporations Act 2001* (Cth), which included as an element that the accused had used his position as a director *"dishonestly".* In his judgment Macfarlan JA referred to the test of dishonesty laid down in *Peters v R* (1998) HCA 7; 192 CLR 495, namely, *"the standards of ordinary, decent persons"*, which is similar to the first limb of the test in s 4B, and said (at [63]) that such a judgment by the jury *"required the jury to consider the wide variety of circumstances revealed by the evidence".*

8.27 In the submissions received by the Commission counsel referred to some cases on the meaning of the expression *"financial advantage".*

8.28 *Elias v The Director of Public Prosecutions* (NSW) [2012] NSWCA 302 is a recent decision of the New South Wales Court of Appeal in which there was some discussion of the meaning of the expression *"financial advantage".* Elias had been convicted on an offence under s 178BB of the *Crimes Act,* as then in force. An alleged question of law which Elias sought to raise on appeal was whether obtaining a loan on usual terms was incapable of constituting a financial advantage. It was held by the Court of Appeal that no question of law was involved and that it was not even reasonably arguable that a question of law was involved.

8.29 Basten JA, with whom Beazley JA agreed (at [1]), observed (at [19]) that:

> *The word "advantage", which was at the heart of the applicant's submissions, is no doubt a word capable of different connotations and nuance in different circumstances. However, there was no submission that it was not, in its statutory context, a word bearing its ordinary English usage. The ordinary meaning of a non-technical word is a question of fact: whether facts found are capable of falling within the meaning may be a question of law, and that may be the case whether or not the word is to be given its ordinary meaning: Collector of Customs v Agfa-Gevaert Ltd [1996] HCA 36; 186 CLR 389 at 395.*

8.30 Blanch J, with whom Beazley JA agreed (at [1]), said (at [46]) that:

> *The words financial advantage are plain words as O'Bryan J noted in Walsh supra* [*John Richard Walsh* (1990) 52 A Crime R 380 – Victorian Court of Criminal Appeal]. *To obtain two significant loans would appear on the face of it to be a financial advantage even if secured by a mortgage. The loans put the claimant in a position to use funds he would not otherwise have at his disposal and gave him the opportunity to repay over a period of time. In this case he was wanting to assist his sons and he needed the finance to do so. The inference can be drawn that he saw an advantage in obtaining the loans that being an ability to help his sons at a time they needed help and when otherwise he would not have been able to do so. In my view it clearly was a financial advantage.*

8.31 In *Walsh*, the Victorian case referred to by Blanch J in *Elias*, Walsh had been convicted of attempting to obtain a financial advantage from the Westpac Bank. Walsh had asked the Bank to place the proceeds of a draft, which was in fact a counterfeit draft to the credit of his company in an account with the Bank. O'Bryan J, with whom the other members of the Court agreed, held on the appeal that Walsh had indeed attempted to obtain a financial advantage from the Bank. If the Bank had placed the proceeds of the draft into Walsh's company's account, Walsh would have obtained a financial advantage in that he (or his company) would have become a creditor of the Bank for the amount of the draft and there would have been brought into existence a relationship of creditor and debtor as between Walsh (or his company) and the Bank.

8.32 O'Bryan J referred, with approval to the earlier Victorian decision of *Matthews v Fountain* [1982] VR 1045 in which it was said that the words *"financial advantage"* were *"two common words, each of clear meaning"*, and that no narrow construction should be given to them.

8.33 *Fisher v Bennett* (1987) 85 FLR 469 (Supreme Court of the Australian Capital Territory) was a case concerning the obtaining of a financial advantage by

deception contrary to s 178C(1) of the *Crimes Act,* as then in force in the Australian Capital Territory. The question for decision by Miles CJ, sitting as a single judge, was whether the receiving of a valueless cheque was the obtaining of a financial advantage. Miles CJ held that, in the circumstances of the particular case, the obtaining of a valueless cheque did not amount to obtaining a financial advantage. Concerning the expression *"financial advantage"*, Miles CJ said (at [472]):

> *I do not think that it is necessary to resort to dictionary definitions of the word "financial" or the word "advantage". I think that it is inescapable that an advantage involves a particular situation which is more beneficial to the person concerned than another relevant situation with which it is compared. A financial advantage involves a situation which from the financial aspect is more beneficial than another situation. When one speaks of obtaining a financial advantage by deception, there is imported in my view the notion of improving a financial situation by means of that deception.*

8.34 The Commission will now assess the submissions that were made about whether the Commission could form the opinion that there was evidence that the principals had engaged in conduct which contravened s 192E(1) of the *Crimes Act*. The Commission will first consider the case of Fletcher. It is convenient to take Fletcher's case first, because the submissions made on his behalf about s 192E were by far the most extensive of the submissions in response to Counsel Assisting's submissions.

STEPHEN FLETCHER

8.35 In Part 14 of his submissions Counsel Assisting submitted that the Commission should make a recommendation that consideration should be given to the prosecution of Fletcher for a number of specified criminal offences, including offences under s 192E of the *Crimes Act* in relation to:

- the use of Immens' Sportingbet account and the 25 calls he made to Sportingbet pretending to be Jason (Immens),
- the use of Williams' betting accounts,
- the use of a TAB betting account opened in the name of MC13[136] and the call he made to the TAB pretending to be MC13,
- the use of a Bet365 betting account opened in the name of MC14[137] and the call he made to Bet365 pretending to be MC14,
- the use of a Sportingbet betting account opened in the name of MC14[138] and the call he made to Sportingbet pretending to be MC14,
- the attempted use of a TAB betting account opened in the name of MC16[139] and the call he made to the TAB pretending to be MC16, and
- the use of betting accounts in the name of Matthew Seagg.

[136] The real name of this person is subject to a non-publication order by the Commission
[137] The real name of this person is subject to a non-publication order by the Commission
[138] The real name of this person is subject to a non-publication order by the Commission
[139] The real name of this person is subject to a non-publication order by the Commission

8.36 The Commission will assess each of these submissions in turn.

The use of Immens' Sportingbet account and the 25 calls he made to Sportingbet pretending to be Jason (Immens)

8.37 The evidence for the allegation that Fletcher had used a Sportingbet account in the name of Jason Immens consisted of 25 lawfully intercepted telephone calls which Fletcher made to Sportingbet in the period between 28 September 2012 and 17 October 2012; the oral evidence that Fletcher gave about the telephone calls and the bets that he placed on Immens' account by means of those telephone calls; and the oral evidence that Smyth gave about Fletcher's ability to bet with Sportingbet.

Summary of evidence relating to the 25 telephone calls

8.38 It is convenient to refer to the terms of the telephone calls that Fletcher made and to set out some of the evidence that Fletcher gave about them.

8.39 The first telephone call to be referred to in the evidence occurred at 20:54:26 on 28 September 2012. In the telephone conversation Fletcher said, *"Jason"* and immediately afterwards said, *"three, two, three, four, three, nine"*, which was the number of Immens' account. The operator at Sportingbet confirmed the number and said, *"and that's Jason"*, to which Fletcher replied, *"Yep".* Fletcher then asked to place a $20,000 bet on *"a treble"*, on the golf Ryder Cup and two football premierships. Later in the telephone conversation the operator said, *"Jason you there?"*, to which Fletcher replied, *"Yeah",* and the operator then confirmed that the bets were placed, by saying *"Okay so that's on for you".*[140]

8.40 In his evidence Fletcher said that that he could as Stephen Fletcher have placed the $20,000 bet with Sportingbet and said that the bet *"would suit them"*, as the event was a *"big tournament and they hold a lot of money on it".* He denied that he had deceived the operator or that he was pretending to be Jason when he said *"Jason".* He said that by saying Jason, *"I'm just matching up the account number to the name that will come up on his screen, so he can confirm he has access to the correct account".* When the operator said, *"that's Jason",* Fletcher said that the operator was referring to the *"name on the account number"* and was not asking him for his name.[141] The following question and answer also occurred in relation to the telephone call he had made:

> *Q. Would it have been problematic had you said, "It's Stephen Fletcher here, but I am betting through Jason's account" --*
>
> *A. They would probably have to - they would probably ask, "Oh, we will have to get Jason to confirm that he's allowing you to use that account, Steve."*[142]

8.41 The second telephone call referred to in the evidence occurred at 18:43:27 on 28 September 2012, that is, before the first telephone call referred to in the

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[140] Ex 136, Transcript of telephone call between Stephen Fletcher and Sportingbet, 28 September 2012

[141] PIC Transcript, S C Fletcher, 5 December 2013, pp. 362:13-363:16

[142] PIC Transcript, S C Fletcher, 5 December 2013, p. 363:28-363:34

evidence. In the telephone conversation Fletcher said, *"Ah three, two, three, four, three nine. Jason".* The operator at Sportingbet replied, *"Hi Jason, how can I help you".* Fletcher then asked to place a *"maxidiv"* bet of $4,000 on the horse Clinton Affair in a racing event, which bet was then placed on the account.[143]

8.42 In his evidence Fletcher agreed with the proposition that the operator at Sportingbet thought that he was *"Jason"*, but denied that any deception was involved. He said by saying *"Jason"* he was referring to the account name. He said that he could, as Stephen Fletcher, have placed the bet that he placed on the account and said, *"That's a tote bet. They would like it".* [144]

8.43 The third telephone call referred to in the evidence occurred at 13:30:25 on 29 September 2012. In the telephone conversation Fletcher said, *"Yeah mate, three, two, three, four, three, nine"*, to which the operator at Sportingbet replied, *"Jason".* Fletcher in turn replied, *"Yeah"* and then asked to place a *"maxidiv"* bet on More Joyous in a racing event using the *"whole balance"* of the account, which bet was then placed.[145]

8.44 In his evidence Fletcher denied that he was tricking the operator at Sportingbet into thinking that he was *"Jason"* and said, *"I'm, just identifying the account name"*. He also thought that he could as Stephen Fletcher have placed the bet by using the whole balance of Immens' account and did not think that Sportingbet would have had a problem accepting the bet from him.[146]

8.45 The fourth telephone call referred to in the evidence occurred at 14:13:47 on 29 September 2012. In the telephone conversation Fletcher said, *"Jason, three, two, three, four, three, nine".* The operator at Sportingbet replied, *"Jason"*, to which Fletcher replied, *"Yeah"* and asked to place a *"maxidiv"* bet of $3,000 on Glacier King in a horse racing event, which bet was then placed on the account.[147]

8.46 In his evidence Fletcher denied that the telephone conversation had involved any trickery on his part and said, *"I'm just putting a bet on the commission agent's account".*[148]

8.47 The fifth telephone call referred to in the evidence occurred at 14:14:52 on 29 September 2012. In the telephone conversation Fletcher said, *"Three, two, three, four, three, nine"*, to which the operator at Sportingbet replied, *"Ah Jason is it".* Fletcher replied, *"Yep. Mate I just had a bet on Mornington on a maxi bid, div bet, on a thing called Glacier King, number four for three thousand … Can I have that each way?"* On Fletcher being told, *"I can't give you a place maxi"*, the bet was not placed.[149]

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[143] Ex 138, Transcript of telephone call between Stephen Fletcher and Sportingbet, 28 September 2012

[144] PIC Transcript, S C Fletcher, 5 December 2013, pp. 363:35-367:22

[145] Ex 140, Transcript of telephone call between Stephen Fletcher and Sportingbet, 29 September 2012

[146] PIC Transcript, S C Fletcher, 5 December 2013, pp. 364:35-365:3

[147] Ex 142, Transcript of telephone call between Stephen Fletcher and Sportingbet, 29 September 2012

[148] PIC Transcript, S C Fletcher, 5 December 2013, p. 366:12-366:14

[149] Ex 144, Transcript of telephone call between Stephen Fletcher and Sportingbet, 29 September 2012

8.48 In his evidence Fletcher said that by asking *"Ah Jason is it?"* the operator was *"confirming they have dialled in the correct account name with the number. That's just a security precaution to ensure the bet's going in the right account".* He denied that the operator was under a mistaken belief that he was talking to Jason and said, *"He doesn't care if I'm Jason or not, as long as the bet's being put into the correct account".* On being asked if an operator would have cared that the person making the bet was someone who had been *"flagged"* by the corporate bookmaker, Fletcher replied: *"Not for a maxidiv bet, no"*.[150]

8.49 The sixth telephone call referred to in the evidence occurred at 15:31:40 on 6 October 2012. In the telephone conversation Fletcher said, *"three, two, three, four, three, nine. Jason calling".* The operator replied, *"Jason"* and Fletcher then asked to place a *"maxidiv"* bet of $2,500 on Azora in a horse racing event, which bet was then placed.[151]

8.50 The seventh telephone call referred to in the evidence occurred at 16:21:39 on 6 October 2012. In the telephone conversation Fletcher said, "*"three, two, three, four, three, nine. Jason calling"* and the operator replied, "*Hi Jason".* Fletcher then asked to place a *"maxidiv"* bet of $500 on Winchester in a horse racing event, which bet was then placed.[152]

8.51 In his evidence Fletcher said, with reference to the sixth and seventh telephone conversations, that he was not tricking the operators at Sportingbet into believing that he was someone else. He said, *"I'm ensuring the correct account is being brought up."* By saying *"Jason calling"* in those two telephone conversations, *"I meant that Jason is the name associated with the account 323439".*[153]

8.52 The eighth telephone call referred to in the evidence occurred at 14:38:49 on 6 October 2012. In the telephone conversation Fletcher said, *"three, two, three, four, three, nine"*, to which the operator at Sportingbet replied, *"Jason, how can I help?"* Fletcher then asked to place a *"maxidiv"* bet of $17,000 on Proisir in a horse racing event, which bet was then placed.[154]

8.53 In his evidence Fletcher was asked if the operator at Sportingbet believed that he was speaking to somebody called *"Jason"* when the operator said, "*Jason, how can I help?"* Fletcher interpreted those words to mean, *"he's confirming that the account number is correct".*[155] He also gave the following evidence about whether the operator believed that he was speaking to somebody called *"Jason"*:

> *A. Well, no, it's a corporate bookmaker. That's protocol. What they do, to ensure they've opened the correct account, they always say the name attached to the account, and then that's like a secondary security precaution to make sure the bet is not being placed on an account that it's not supposed to be placed upon. So I don't think he necessarily quite cares*

[150] PIC Transcript, S C Fletcher, 5 December 2013, p. 367:13-367:27

[151] Ex 150, Transcript of telephone call between Fletcher and Sportingbet, 6 October 2012.

[152] Ex 152, Transcript of telephone call between Fletcher and Sportingbet, 6 October 2012.

[153] PIC Transcript, S C Fletcher, 5 December 2013, p. 368:3-368:23

[154] Ex 146, Transcript of telephone call between Fletcher and Sportingbet, 6 October 2012.

[155] PIC Transcript, S C Fletcher, 5 December 2013, p. 369:20-370:28

> *less if he is speaking to a Jason or a Steve or a Charlie. As long as that account and the person on the other end of the phone identifies that account with that name, the bet is going to be placed correctly and not debited on someone's account who has no idea about that race.* [156]

8.54 The ninth telephone call referred to in the evidence occurred at 14:45:19 on 6 October 2012. In the telephone conversation Fletcher said, *"three, two, three, four, three, nine".* The operator at Sportingbet then said, *"Jason".* Fletcher replied by saying *"Yeah mate"* and asked to place a *"maxidiv",* using the *"the balance"* of the account which was $20,578, on Travinator in a horse racing event, which bet was then placed.[157]

8.55 In his evidence Fletcher maintained that he had not purported to be *"Jason"* and said that the reference to *"Jason"* was a reference to the name of the account.[158]

8.56 The tenth telephone call referred to in the evidence occurred at 16:59:55 on 6 October 2012. In the telephone conversation Fletcher said, *"three, two, three, four, three, nine"* and the operator at Sportingbet replied, *"Jason".* Fletcher in turn replied, *"yep"* and then asked for a *"maxidiv"* bet of $1,500 on Midsummer Music in a horse racing event, to which the operator replied: "*fifteen hundred to win best tote".* Fletcher then replied: *"yeah, maxidiv it's called, thank you."*[159]

8.57 In his evidence Fletcher was asked about the references to *"maxidiv"* and *"best tote"* in that telephone conversation and gave the following evidence explaining what those terms meant:

> *A. … I can explain it. "Best tote" is the best of the three, like I was explaining before, pari-mutuel dividends, of New South Wales, Victoria and what they call TattsBet. That's best tote. "Maxidiv" is that again, but also the SP price, which is the final bookmaker's price. So maxidiv is a little bit better, but best tote is - yes, almost as good.*[160]

8.58 The eleventh telephone call referred to in the evidence occurred at 17:16:58 on 6 October 2012. In the telephone conversation Fletcher said, *"three, two, three, four, three, nine"* and the operator at Sportingbet replied, *"Jason".* Fletcher in turn replied, *"yeah"* and then asked to place a *"maxidiv"* bet of $1,000 on Ever the Same in a horse racing event. The operator then replied, *"One thousand maxi, it's on for you mate"*.[161]

8.59 The twelfth telephone call referred to in the evidence occurred at 17:25:14 on 6 October 2012. In the telephone conversation Fletcher said, *"three, two, three, four, three, nine",* and then said, *"Jason".* The operator at Sportingbet replied,

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[156] PIC Transcript, S C Fletcher, 5 December 2013, p. 370:5-370:16

[157] Ex 148, Transcript of telephone call between Fletcher and Sportingbet, 6 October 2012.

[158] PIC Transcript, S C Fletcher, 5 December 2013, p. 371:47-372:3

[159] Ex 154, Transcript of telephone call between Fletcher and Sportingbet, 6 October 2012.

[160] PIC Transcript, S C Fletcher, 5 December 2013, p. 372:23-372:29

[161] Ex 156, Transcript of telephone call between Fletcher and Sportingbet, 6 October 2012.

"Jason is it". Fletcher replied, *"Yeah"* and placed a *"maxidiv"* bet of $4,000 on Texan in a horse racing event.[162]

8.60 In his evidence Fletcher said that by saying *"Jason is it"* the operator at Sportingbet was referring to the account name and not to an understanding that he was speaking to someone called *"Jason"*.[163]

8.61 The thirteenth telephone call referred to in the evidence occurred at 18:32:51 on 6 October 2012. In the telephone conversation Fletcher said, *"three, two, three, four, three, nine"* and the operator at Sportingbet replied, *"Jason".* Fletcher replied by asking to place a *"maxidiv"* bet of $800 on Painted in a horse racing event, which bet was then placed.[164]

8.62 The fourteenth telephone call referred to in the evidence occurred at 18:35:37 on 6 October 2012. In the telephone conversation Fletcher said, *"three, two, three, four, three, nine"* and the operator at Sportingbet replied, *"Jason".* Fletcher replied by asking to place two "*maxidiv"* bets of $1,000 on Painted and $3,000 on Penicci in a horse racing event.[165]

8.63 The fifteenth telephone call referred to in the evidence occurred at 15:38:49 on 7 October 2012. In the telephone conversation Fletcher said, *"three, two, three, four, three, nine"* and the operator at Sportingbet replied, *"Jason".* Fletcher in turn replied, *"Yeah"* and attempted to place a bet on a horse named Super Easy in Singapore at a fixed price. However, he was told by the operator at Sportingbet, *"this account's actually tote only, no fixed prices"* and a conversation then took place in which Fletcher complained about not being able to bet at fixed prices. Fletcher then said that he would take *"my money out"* of the account and asked the operator how much he had *"lost to you guys"* on *"my account".*[166]

8.64 In his evidence Fletcher said that he believed, with reference to all of the telephone calls he made on 6 October 2012 in which he placed bets, that Sportingbet would have taken the bets from him as Stephen Fletcher.[167]

8.65 The sixteenth telephone call referred to in the evidence occurred at 15:07:58 on 10 October 2012. In the telephone conversation Fletcher said, "*three, two, three, four, three, nine"* and the operator at Sportingbet replied, *"Jason".* Fletcher replied by asking to place a *"maxidiv"* bet of $500 on Pediment in a horse racing event, which bet was then placed.[168]

8.66 The seventeenth telephone call referred to in the evidence occurred at 14:14:20 on 13 October 2012. In the telephone conversation Fletcher said, "*three, two, three, four, three, nine, Jason".* The operator at Sportingbet who identified herself as Leaha replied, *"Yes Jason".* Fletcher replied by asking to place a

[162] Ex 158, Transcript of telephone call between Fletcher and Sportingbet, 6 October 2012.

[163] PIC Transcript, S C Fletcher, 5 December 2013, p. 373:39-373:42

[164] Ex 160, Transcript of telephone call between Fletcher and Sportingbet, 6 October 2012.

[165] Ex 162, Transcript of telephone call between Fletcher and Sportingbet, 6 October 2012.

[166] Ex 164, Transcript of telephone call between Fletcher and Sportingbet, 6 October 2012.

[167] PIC Transcript, S C Fletcher, 5 December 2013, p. 375:3-375:7

[168] Ex 166, Transcript of telephone call between Fletcher and Sportingbet, 10 October 2012.

"maxidiv" bet of $2,500 on Golden Archer in a horse racing event, which bet was then placed on the account.[169]

8.67 In his evidence Fletcher said that by saying *"Yes Jason"* the operator at Sportingbet was not referring to him by that name, but was *"reaffirming"* that the account being accessed was *"the correct one"*.[170]

8.68 The eighteenth telephone call referred to in the evidence occurred at 14:15:06 on 13 October 2012. In the telephone conversation Fletcher said, *"Yeah, Jason again three, two, three, four, three, nine".* The operator at Sportingbet, who was again Leaha, replied: *"Yes Jason".* Fletcher then replied by asking to place a *"maxidiv"* bet of $2,000 on a horse in a racing event, which bet was then placed on the account.[171]

8.69 In his evidence Fletcher said that by saying *"Yes Jason"* the operator at Sportingbet was confirming the account name. If the operator had said, *"Yes Robert",* Fletcher would have said: *"that's the wrong account"*.[172]

8.70 The nineteenth telephone call referred to in the evidence occurred at 14:39:00 on 13 October 2012. In the telephone conversation Fletcher said, *"three, two, three, four, three, nine, Jason".* The operator replied, *"Jason, yes mate*". Fletcher replied by asking to place three *"maxidiv"* bets of $2,000, $1,000 and $3,000 on three different horses in a racing event, which bets were then placed on the account.

8.71 The twentieth telephone call referred to in the evidence occurred at 14:47:23 on 13 October 2012. In the telephone conversation Fletcher said, *"three, two, three, four, three, nine"* and the operator at Sportingbet replied, *"Yes Jason".* Fletcher replied by asking to place a *"maxidiv"* bet of $1,000 on Midas Touch in a horse racing event, which bet was then placed on the account.[173]

8.72 The twenty-first telephone call referred to in the evidence occurred at 15:28:30 on 13 October 2012. In the telephone conversation Fletcher said, "*three, two, three, four, three, nine, Jason".* The operator at Sportingbet replied, *"How can I help Jason?"* Fletcher replied by asking to place two *"maxidiv"* bets of $1,000 and $500 on two different horses in a horse racing event, which bets were then placed on the account.[174]

8.73 The twenty-second telephone call referred to in the evidence occurred at 15:48:43 on 13 October 2012. In the telephone conversation Fletcher said, "*three, two, three, four, three, nine"* and then said, *"Jason calling".* Fletcher then asked to place a *"maxidiv"* bet of $1,000 on General Sniper in a horse racing event, which bet was then placed on the account.[175]

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[169] Ex 168, Transcript of telephone call between Fletcher and Sportingbet, 13 October 2012.

[170] PIC Transcript, S C Fletcher, 5 December 2013, p. 375:34-375:37

[171] Ex 170, Transcript of telephone call between Fletcher and Sportingbet, 13 October 2012.

[172] PIC Transcript, S C Fletcher, 5 December 2013, p. 376:6-376:17

[173] Ex 174, Transcript of telephone call between Fletcher and Sportingbet, 13 October 2012.

[174] Ex 176, Transcript of telephone call between Fletcher and Sportingbet, 13 October 2012.

[175] Ex 178, Transcript of telephone call between Fletcher and Sportingbet, 13 October 2012

8.74 In his evidence Fletcher did not accept that by saying *"Jason calling"* he was pretending to be someone called Jason. He said that the form of the words *"Jason calling"* was *"like saying 'password Jason'".*[176]

8.75 The twenty-third telephone call referred to in the evidence occurred at 18:05:51 on 13 October 2012. In the telephone conversation Fletcher said, "*three, two, three, four, three, nine",* which was repeated back to him by the operator at Sportingbet. Fletcher then said, *"Yeah Jason"* and the operator at Sportingbet replied, in turn, *"Yeah Jason".* Fletcher then asked to place a *"maxidiv"* bet by using the balance on the account, which was $27,294, on Barakey in a horse racing event. The bet was then placed on the account, which the operator confirmed by saying, *"Too easy mate, that's on for you"*.[177]

8.76 The twenty-fourth telephone call referred to in the evidence occurred at 15:57:40 on 14 October 2012. In the telephone conversation Fletcher said, "*three, two, three, four, three, nine".* The operator at Sportingbet replied *"three, two, three, four, three, nine, Jason".* Fletcher replied by asking to place three *"maxidiv"* bets of $4,000 on Miss Artistic, $3,000 on Destiny's Kiss and $3,000 on Boom N Zoom in a horse racing event.[178]

8.77 The twenty-fifth telephone call referred to in the evidence occurred at 13:52:51 on 17 October 2012. In the telephone conversation Fletcher said, *"Jason calling. Three, two, three, four, three, nine"* and then asked if he could have a *"maxidiv"* bet of $1,000 on a horse in a racing event. The following conversation then occurred:

> *SPORTINGBET: Give me one moment*
>
> *-On hold-*
>
> *SPORTINGBET: Hello Jason.*
>
> *FLETCHER: Yeah.*
>
> *SPORTINGBET: Your account is set to an internet only account. You can only place bets over the internet.*
>
> *FLETCHER: Since when? I just did thirteen thousand dollars two days ago on it over the phone and I can't bet over the internet. They told me I've gotta ring up to do it.*
>
> *…*
>
> *-On hold-*

[176] PIC Transcript, S C Fletcher, 5 December 2013, p. 378:29-378:33

[177] Ex 180, Transcript of telephone call between Fletcher and Sportingbet, 13 October 2012

[178] Ex 182, Transcript of telephone call between Fletcher and Sportingbet, 13 October 2012

SPORTINGBET: Hello Jason. Thanks for holding there. Um you was rung up this morning and advised that you can only place bets over the internet.[179]

8.78 In his evidence Fletcher accepted that the operator at Sportingbet thought that she was *"talking to the account holder, Jason".* However, he denied having led her to that belief by saying *"Jason calling".* He said that by saying *"Jason calling"* he was *"confirming the account number with her"* and that the form of words *"Jason calling"* was *"like a password".* As to where he had said, *"I can't bet over the internet"*, Fletcher denied that he had told the operator that he was Jason Immens, and said: *"I'm telling her that the account holder can't bet over the internet".* He also said that he could personally *"bet over the internet on a maxidiv bet with Sportingbet … in my own name"*.[180]

Deception

8.79 Counsel Assisting submitted that in each of the 25 telephone calls that Fletcher made to Sportingbet, *"he represented that he was Jason Immens and intended to represent that he was Jason Immens, the person registered to the account"* and that, *"conversely he disguised the fact that he was, in fact, Stephen Fletcher, a person whose own account with Sportingbet was subject to betting restrictions".* In effect, Counsel Assisting submitted that in each of the telephone calls Fletcher had expressly represented that he was Jason Immens and had impliedly represented that he was not Stephen Fletcher.

8.80 Counsel for Fletcher accepted that Fletcher had "*arguably"* represented that he was Jason Immens when he had used the words *"Jason calling".* However, it was submitted that it was more difficult to reach a conclusion that Fletcher was representing that he was Jason Immens in the telephone conversations in which Fletcher merely stated a name and an account number. It was submitted that, in those telephone conversations, the purpose of the statements Fletcher made "*was to simply identify for the operator the correct account to place the bet on"* and that it was an industry practice for a name to be used to verify an account. Counsel for Fletcher submitted that this had been confirmed by the evidence given by Smyth.

8.81 Smyth was the director of risk and trading at Sportingbet. He gave the following evidence about the verification processes used by Sportingbet when taking a bet over the telephone:

Q. … When a telephone bet is made, does the operator do anything to verify the person who is calling or is it simply a verification of the account that is being used?

A. Internally we use the first name, so each account's got a PIN name - a PIN number and then, again, ideally, we like to say, "Hello Max" or, "Yes, Max", or whatever it may be, and the reason we do that is if the caller's name isn't Max and then by some reason the operator has typed in the wrong PIN number, it quite often gets picked up by the caller at the time and they go, "No, no, it's not Max, it's Brad" and then they can go through the process again. So again, sometimes it doesn't happen, there is human

[179] Ex 184, Transcript of telephone call between Fletcher and Sportingbet, 13 October 2012

[180] PIC Transcript, S C Fletcher, 5 December 2013, pp. 380:17-382:30

error, but primarily it's PIN number 1234, "Hello, Max" and then Max may be able to say, "Listen, it's not Max".

Q. Is that to verify the identity of the caller?

A. It's to identify that the caller is the caller relating to that specific account.[181]

…

Q. Can I ask you then about the process that occurs when somebody rings up to place a bet through their account. The operator requires of them a PIN number; correct?

A. Yes.

Q. And then they type that PIN number into your system and the field pops up on the computer; correct?

A. Yeah, their client screen comes up on the --

Q. The client screen comes up?

A. Yeah.

Q. The operator sees that the name of the account is in a person's name; correct?

A. Yes. Yes.

Q. Then typically, in accordance with company policy, the operator says the name - the first name - of the owner of the account?

A. Yes.

Q. As I understand your evidence, the main reason why that is done is to make sure that the correct account is open; correct?

A. Yes, to make sure that the person on the phone – that the account that is being accessed by the Sportingbet operator coincides with the gentleman or lady that's on the phone.

Q. Or the account that's being - the account that relates to the PIN number?

A. Yes. Yeah.

Q. It's a secondary consideration as to whether or not the person on the phone is indeed the first name mentioned; correct?

A. Yes.

[181] PIC Transcript, B A Smyth, 20 December 2013, p. 745:27-745:45

Q. That's a secondary consideration?

A. Yes.

Q. In fact, if the person actually said, "Well, look, actually, Max is not here at the moment, he's down the shop", the operator would probably still take the bet; correct?

A. No, no, not unless - no. If it was someone knowingly trying to access Max's account, no, they would be pulled up, ideally.

Q. Ideally?

A. Yep.

Q. Certainly who Max is betting for is not the subject of any inquiry; right?

A. No.

Q. And on occasions you know, or the company knows, that the caller is not betting on their own behalf; correct?

A. Yes. [182]

8.82 Smyth gave the following evidence about why customers of Sportingbet could only have one account with Sportingbet:

> *A. One of the risk management practices that Sportingbet has is a "Know your customer" risk practice, so we know that if Bill Smith is ringing to have a bet, that it's Bill Smith. We like to know that we are dealing with the person that the account holder - that the account name is in and that's why we have one account per customer*. [183]

8.83 In his evidence Smyth agreed that the main reason for the practice of an operator saying the first name of the owner of the account is to ensure that the bet will be allocated to the correct account. However, a submission made by Counsel for Fletcher that the reason for the practice was *"solely"* to ensure that the bet was allocated to the correct account was not warranted by Smyth's evidence.

8.84 In the extract from his evidence which has been quoted above Smyth said that that if the operator was told that the person in whose name the account had been opened was not the person seeking to access the account *"they would be pulled up, ideally".*

8.85 In the extract from his evidence Smyth also said that the practice of the operator saying the first name of the person in whose name the account had been opened was "*to make sure that the person on the phone – that the account that is being accessed by the Sportingbet operator coincides with the gentleman or lady that's on the phone."*

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[182] PIC Transcript, B A Smyth, 20 December 2013, p. 768:28-769:39

[183] PIC Transcript, B A Smyth, 20 December 2013, p. 718:17-718:22

8.86 As the Commission has demonstrated in its summary of the various telephone calls, the terms of the conversations differed. A finding that Fletcher was representing that he was Jason Immens can clearly be made where Fletcher said *"Jason calling".*

8.87 However, in all cases, except the conversation in the twenty-fourth telephone call, the operator addressed Fletcher as *"Jason"*, without any dissent from Fletcher, or asked Fletcher to confirm that the caller was *"Jason"*. The Commission considers that in the case of all the telephone calls, apart from the twenty-fourth telephone call, Fletcher made a representation that he was Jason Immens and made an implied representation that he was not anybody else, that he was not Stephen Fletcher. These representations were untrue but were believed by the operators to be true.

8.88 It was also submitted by Counsel for Fletcher that there had not been any deception because Fletcher was authorised by Immens to use Immens' account for his own betting.

8.89 The Commission considers that Fletcher was aware that he was not authorised to use the account. In his oral evidence he was asked, "w*ould it have been problematic had you said, 'It's Stephen Fletcher here, but I am betting through Jason's account'?"* and he said that the operator would have said: "*Oh, we will have to get Jason to confirm that he's allowing you to use that account, Steve'."*[184]

8.90 Counsel for Fletcher also submitted that the conduct of Fletcher needed to be considered within the context of the gambling industry in which corporate bookmakers knowingly engage with bowlers and commission agents and in which the use of bowlers is commonplace. Indeed, Smyth gave evidence that Sportingbet knowingly engaged with bowlers and commission agents and accepted bets from people they knew were bowlers.

8.91 A bowler was identified in the evidence before the Commission as a person who places a bet on behalf of another person and receives payment for the actual work of placing the bet. In his oral evidence Fletcher, for example, referred to bowlers getting paid *"$300 for the legwork, running around…"*[185]

8.92 However, in using Immens' Sportingbet account Fletcher did not perform the role of a bowler, as Fletcher was himself the gambler. Nor did Immens perform the role of a bowler.

8.93 The Commission considers that in all of the telephone calls, apart from the twenty-fourth telephone call, Fletcher engaged in a deception.

Financial advantage

8.94 Counsel Assisting submitted that there was an obtaining of a financial advantage in the obtaining of an opportunity to bet on certain terms, which in the case of Fletcher he said was *"the opportunity to bet in circumstances where*

[184] Pic Transcript, S C Fletcher, p. 363

[185] PIC Transcript, S C Fletcher, 6 December 2013, p. 442:22-442:23

he would not have been able to place the bet in his own name or would only have been able to place a bet in his own name subject to restrictions".

8.95 At the time of placing the bets on Immens' account Fletcher had a betting account in his own name with Sportingbet which was subject to a restriction on betting on certain events. The client summary information for his Sportingbet account showed that the account had been restricted to *"no racing-sport only"* since 8 September 2005.

8.96 Counsel Assisting in making his submission that Fletcher had obtained a financial advantage by his deception relied on the decision of the Victorian Court of Appeal in *R v Walsh*.

8.97 Counsel for Fletcher strongly contested that an *"opportunity to bet"* was a financial advantage. It was submitted that the concept of financial advantage includes *"an element of certainty with respect to receipt of that financial advantage"* and that as gambling was a matter of chance, *"a chance at both winning and losing"*, an opportunity to bet lacked the element of certainty.

8.98 Counsel for Fletcher also submitted that the present case was distinguishable from *R v Walsh.*

8.99 The Commission agrees that the present case is distinguishable from *R v Walsh.* If the Bank in Walsh had placed the proceeds of the draft into Walsh's company's account, Walsh would have obtained a financial advantage in that he (or his company) would have become a creditor of the Bank for the amount of the draft and there would have been brought into existence a relationship of creditor and debtor as between Walsh (or his company) and the Bank.

8.100 Earlier in this report the Commission surveyed some of the cases dealing with the meaning of the expression *"financial advantage".* These cases show that the words *"financial"* and *"advantage"* are words that should be given their ordinary meaning in English usage and that they should not be narrowly construed. In *Fisher v Bennett* Miles CJ held that the test for whether something is a financial advantage is an undemanding one, which involves a determination of whether the particular situation which has been obtained is more beneficial to the person concerned than his previous situation. Having regard to those authorities the Commission does not consider that it should restrict the meaning of a *"financial advantage"* by requiring an element of certainty that a financial advantage will actually be received.

8.101 In the opinion of the Commission the obtaining of an opportunity to bet free from a restriction that would have applied if Fletcher had placed a bet in his own name was the obtaining of a financial advantage. However, no bet was ultimately placed by Fletcher in the fifth, fifteenth or twenty-fifth telephone calls, so that on those occasions no financial advantage was obtained.

Causation

8.102 Counsel Assisting submitted that there was a causal connection between Fletcher's deceptive conduct and the obtaining of a financial advantage.

8.103 Counsel for Fletcher submitted that there was no causal connection between the alleged deceptive conduct and the obtaining of an advantage and made the following submissions in support of that general submission:

> *a. The proposed counts of fraud recommended by Counsel Assisting all identified instances when Mr Fletcher made telephone calls to place bets. The alleged deception or dishonesty relied on is the act of Mr Fletcher allegedly pretending to be the holder of the account. It is submitted that these actions cannot be considered to be causative of the bet being accepted in light of the evidence of Mr Smyth that the operator enquiries are solely for the purpose of ensuring that the right account has been identified, and not to verify the identity of the caller. That is, the alleged deception had no practical effect in effecting the wager.*
>
> *b. In any case, it would have been entirely possible for Mr Fletcher to have placed <u>any</u> of the wagers which relate to the proposed offences, by placing the bet over the internet, and not making a telephone call. In the case of bets placed over the internet, there is no specific request made to identify the operator and the account in the manner that is done in a telephone bet. An example of this distinction was identified by Counsel Assisting in his questioning of Mr Smyth. In other words, the bet could have been placed without the alleged act of deception, and it therefore cannot have been causative of the alleged financial advantage (i.e. the opportunity to bet)*
>
> *c. The Commission heard evidence from Mr Smyth that Sportingbet selectively impose or disregard their terms and conditions with respect to account holding policy. That is, when it suits Sportingbet, the company will not take steps to eliminate accounts through which bets are placed for third parties by bowlers and/or commission agents. The circumstances in which it suits Sportingbet to keep those accounts open is when the third party for whom the bets are being placed, loses*
>
> *d. Finally, it is submitted that the prosecution would not be able to exclude the possibility that a bet would have been accepted regardless of whether a restriction was nominally in place in respect of a certain punter. There were several examples in the evidence of Mr Smyth in which he acknowledged that operators might accept bets regardless of the general policy consideration. In those circumstances, the prosecution would inevitably fail to prove that the bet would in fact have been rejected even if the operator was aware that the bet being placed was on Mr Fletcher's behalf. In those circumstances, no deception would have been necessary for the bet to have been placed.*

8.104 Submissions (a) and (b) can readily be dealt with. As to (a), the Commission has examined the relevant parts of Smyth's evidence and has formed the view that Smyth's evidence would not support the proposition that inquiries made by an operator are *"solely"* for the purpose of ensuring that the right account has been identified and not at all for the purpose of identifying the caller. As to (b), it may be true that, if the bets had been placed over the internet, there would have been no request by an employee of the bookmaker for the person making the bet to identify himself. However, Fletcher chose to place the bets by telephone and, given the method of placing bets he chose to adopt, he would necessarily have a conversation with an employee of the bookmaker.

8.105 To make a determination of submissions (c) and (d) and the further submission that there was no causal connection between the alleged deception and the obtaining of an advantage, because Fletcher would have been able to place the

bets in his own name, without there being any deception, it is necessary to make a further examination of parts of the evidence of Fletcher and Smyth.

Summary of parts of Fletcher's evidence

8.106 In his evidence Fletcher said he believed that Sportingbet would have accepted the bets that he placed on Immens' account, from himself as Stephen Fletcher.

8.107 In relation to the $20,000 *"treble"* bet he placed in the first telephone call, he said that it was *"highly likely"* he could have placed the bet in his own name, "*if I had money in my account".* He also said: *"I'd almost state they would definitely take that bet from me – two grand finals and the Ryder Cup … That would suit them … Because it is a big tournament and they hold a lot of money on it*".[186]

8.108 In relation to the $4,000 *"maxidiv"* bet he placed in the second telephone call he said that he believed that he could as Stephen Fletcher have placed the bet with Sportingbet. He said: *"That's a tote bet. They would like that".* [187]

8.109 When asked whether as Stephen Fletcher he could have made the bet that he placed in the third telephone call, in which he used the whole balance of Immens' account to back More Joyous, he said: *"I think so, yes".* When asked if it was a bet that Sportingbet would like, he said: *"A maxidiv, the favourite – I assume it was favourite – on a Saturday meeting; I don't think they would have a problem with that".* [188]

8.110 In relation to the sixth telephone call in which he placed a *"maxidiv"* bet of $2,500 he said that the operator at Sportingbet was not concerned to know that the person who was making the bet had been *"flagged"* by Sportingbet, *"not for a maxidiv bet"*.[189]

8.111 In relation to the seventh telephone call in which he placed a *"maxidiv"* bet of $500 on Winchester he said: *"…it is a maxidiv bet. They love it".* [190]

8.112 In relation to each of the bets that he placed in the first ten telephone calls he made, including the *"maxidiv"* bet of $17,000 on Proisir in the eighth telephone call and the *"maxidiv"* bet of $20,578 on Travinator in the ninth telephone call, Fletcher said he believed that Sportingbet would have taken the bets from him as Stephen Fletcher.[191]

8.113 Later in his evidence Fletcher was asked to explain the basis of his belief that Sportingbet would have accepted the bets that he placed on Immens' account, had Sportingbet known that the bets were being placed by Fletcher himself. He gave the following evidence:

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[186] PIC Transcript, S C Fletcher, 5 December 2013, p. 362:20-362:38

[187] PIC Transcript, S C Fletcher, 5 December 2013, p. 364:19-364:22

[188] PIC Transcript, S C Fletcher, 5 December 2013, pp. 364:39-365:3

[189] PIC Transcript, S C Fletcher, 5 December 2013, p. 367:27

[190] PIC Transcript, S C Fletcher, 5 December 2013, p. 368:14

[191] PIC Transcript, S C Fletcher, 5 December 2013, p. 375:3-375:12

A. I think they would have accepted - I personally believe they would, yes, given the type of bets they were.

…

A. Yes. Well, I believe they would accept them. They would possibly retail them and earn the commission on the bets, as I explained yesterday, that they can do with any tote business such as that. So basically they can get 8 per cent of whatever I turned over for nothing. There's no risk at all. They get 8 per cent back from the tote for retailing the bets back.

Q. Explain to us what you mean by retailing them back?

A. By putting them back into the pool and then they would get a commission rebate from the TABs.[192]

Summary of parts of Smyth's evidence

8.114 Smyth was examined at length by Counsel Assisting and counsel for each of Williams, Smith and Fletcher as well as by his own counsel.

8.115 In the first part of his evidence Smyth discussed in general terms the processes by which Sportingbet imposed restrictions on the ability of certain gamblers to bet with Sportingbet.[193]

8.116 In a further part of his evidence Smyth discussed bowler accounts and the measures that Sportingbet used to *"minimise the effect of bowlers … to make it difficult for third – second and third-party accounts to be opened"*.[194]

8.117 Later in his evidence Smyth was asked about the restrictions that applied to Fletcher's own Sportingbet account.

8.118 As to the comment, "*No racing – Sport only – 08 Sep 05",* which appeared on the client summary for Fletcher's account,[195] Smyth said that the comment meant that Fletcher had not been able to bet on *"racing*" events since September 2005 and said that the restriction continued to apply.[196]

8.119 Smyth was asked whether an individual operator could override the system and take a racing bet from Fletcher despite the restriction and he replied: *"it should only be done in error … It should not be – a senior operator could, yes, still do it, but they would want to have … quite a good reason to do so".* He also said that the restriction was not *"hard and fast"* and that, if a bet *"suited the company in terms of the odds and the tote pool"*, a senior operator could take a racing bet from Fletcher.[197]

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[192] PIC Transcript, S C Fletcher, 5 December 2013, p. 412:28-412:43

[193] PIC Transcript, B A Smyth, 20 December 2013, pp. 713:27-716:6

[194] PIC Transcript, B A Smyth, 20 December 2013, pp. 718:24-719:32

[195] Ex 361AC, Client summary of Fletcher's Sportingbet account

[196] PIC Transcript, B A Smyth, 20 December 2013, p. 726:34-726:43

[197] PIC Transcript, B A Smyth, 20 December 2013, p. 727:22-727:36

8.120 Smyth gave evidence that, if Fletcher had telephoned Sportingbet to place a horse racing bet on his own account, the operator wo*uld "hopefully … pick up that the account says, 'No racing-sport only'"*; and, in terms of the reality of whether a bet would be accepted, said that *"the bet on racing should only be accepted in error on this account"*. [198]

8.121 Smyth said that, if an operator became aware that an account was being used by Fletcher to place a bet, Sportingbet would *"mirror the restrictions"* that applied to Fletcher's own account. [199]

8.122 Smyth was then asked about the bets that Fletcher in fact placed on Immens' account in the telephone calls he made to Sportingbet in the period between 28 September 2012 and 17 October 2012. Smyth was shown an extract of a record of Immens' Sportingbet account on which the bets that Fletcher had placed on the account in those telephone calls had been highlighted. The records for the account showed that the type of bet that was placed on each occasion was *"Maxidiv/Best Tote"* (apart from the non-racing *"treble"* bet placed in the first telephone call).[200]

8.123 The following questions and answers occurred about whether Sportingbet would have accepted any of the bets from Fletcher:

> *Q. I just want you to look at them and look at them as carefully as you need to, to answer the same question, that is, would Sportingbet have accepted those bets from Mr Fletcher?*
>
> *A. The racing bets, no, Mr Hamill. I can't speak to the Ryder Cup outright win bet there of $20,000. Again, without seeing the book at the time, Mr Fletcher was certainly entitled to bet on the golf with Sportingbet, so they're reliant upon the risk and liability at the time, that bet may have been accepted.*
>
> *Q. I think is it correct - and you will have to help the uninitiated - that the rest of those bets appear to be racing bets, the rest of the highlighted bets?*
>
> *A. Yes.*
>
> *Q. Is it your evidence that Sportingbet would not have accepted such bets from Mr Fletcher as at the 10th of October and 6th of October and 29th of September of 2012?* [The Commission considers that Counsel Assisting gave those dates by way of example and did not intend to exclude bets placed on other days between 29 September and 14 October.]
>
> *A. No.* [In using the word *"No"* Smyth clearly meant that such bets would not have been accepted.]
>
> *Q. Given I think we've seen a certain degree of flexibility surrounding these limitations, with what degree of certainty can you give that evidence, really?*

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[198] PIC Transcript, B A Smyth, 20 December 2013, p. 729:2-729:17

[199] PIC Transcript, B A Smyth, 20 December 2013, p. 729:19-729:24

[200] Ex 368, Extract of Immens Sportingbet account

A. Well, certainly the bulk of the bets I've seen there, and I would suggest all of the bets, Mr Hamill, are to win more than the $1,000, that is, the system default and the fact that we saw on a previous screen that Mr Fletcher's account was "no racing - sport only", the racing bets could have and should have been rejected.

Q. We took Mr Fletcher through these series of bets and I can indicate they were bets placed by him on the telephone using Mr Immens' account and he said, in relation to at least some of those bets, that his view and opinion was that - or his belief - was that Sportingbet would or might have taken those bets from him directly. By way of example, the item which ends 537, "Randwick Race 5, Proisir" for $17,000 and the best tote, Mr Fletcher was of the opinion that you would take that bet?

A. Not in light of the rules that were applied to Mr Fletcher's account, Mr Hamill.

Q. And the bet just above that for $20,578 at Belmont on a horse, I think it is, called Travinator, on the best tote again, Mr Fletcher believed you would have taken that bet and his reason for believing that was because it was a best tote bet rather than a fixed price bet?

A. As I said, the rules that were on Mr Fletcher's account were "no racing - sport only", so the racing bets lie outside the parameters of those rules.

Q. And again, going up the page, the $2,500 bet on Alzora at Flemington Race 6, he held a similar belief - again, it's a best tote?

A. Again, same answer applies. The rules that were applied to Mr Fletcher's account, "no racing - sport only", that would lie outside the parameters of those rules.

…

Q. And again going back to just - taking by way of example that $20,578 bet on Travinator, had he, Mr Fletcher, gone on to his internet account and placed the bet online, as opposed to on the telephone, what would have happened then?

A. Again, due to the system, he would have been able to back that runner to win about or on $1,000.

Q. And does the computer program itself reject the bet and tell the customer online "Restricted to $1,000", or does that then go to one of the analysts to say, "Oh, well, maybe we will, maybe we won't"?

A. No, the system will notify the customer of the reduced stake, so the maximum amount allowed is X, which is then demonstrated to the customer and they can accept or reject that reduced stake.[201]

8.124 The records for Fletcher's Sportingbet account showed that on 7 December 2013, that is, the day after he completed giving evidence before the Commission, Fletcher was able to place a $1 bet on a horse racing event on his Sportingbet account, at fixed price odds of $7.

[201] PIC Transcript, B A Smyth, 20 December 2013, pp. 733:5-735:24

8.125 Smyth was asked by Counsel Assisting how he could reconcile Fletcher's ability to place a horse racing bet at fixed price odds with Sportingbet, when his account was restricted to Sports only. Smyth gave the following evidence:

> *A. As I said earlier, there was a - there's an IT request there that Sportingbet have had in the backlog for quite a while, which for internet customers, as part of our licence with the NT Government, we had to bet our customers to win a minimum of $1,000 on races and I believe $500 on trots and dogs. That has since been lifted but we have not been able to make the adjustment to that CRM back-end that we were referring to before, Mr Hamill.*
>
> *Q. Sorry, just breaking that down, does that mean that this $1 bet must have been placed on the internet rather than on the telephone?*
>
> *A. Yes.*
>
> *Q. And are you certain of that?*
>
> *A. Yes.*
>
> *Q. Could that $1 bet have been placed on the telephone?*
>
> *A. Only in error.*
>
> *Q. Only in error?*
>
> *A. Yeah, if a - if the 1800 number was called and the operator, for example, didn't read the comment there, which is at the bottom of Mr Fletcher's screen, which says "no racing - sport only", then obviously an operator could make a mistake*.[202]

Assessment of whether there was a causal connection

8.126 Fletcher said that the non-racing bet that he made in the first telephone call, that is, the telephone call in which he placed a $20,000 *"treble"* on the Ryder Cup and two football premierships, would have been accepted if made by Fletcher himself. Smyth said in his evidence that the bet might have been accepted by Sportingbet. Accordingly, in relation to the bet placed in the first telephone call the third element of an offence under s 192E is not satisfied.

8.127 The bets that were placed by Fletcher in the other telephone calls in which he placed a bet were *"maxidiv"* bets on racing events. In his evidence Fletcher said that Sportingbet would have accepted each bet from himself, as they *"love"* maxidiv bets. Fletcher gave evidence that Sportingbet could protect itself against any loss on a maxidiv bet by retailing the bet and collecting a commission from a totalisator for doing so.

8.128 Smyth said that Sportingbet would not have accepted any racing bet from Fletcher that he sought to place over the telephone in light of the restriction, *"no racing – sport only"*, that had been on Fletcher's account since September

[202] PIC Transcript, B A Smyth, 20 December 2013, p. 725:12-725:37

2005. Smyth was of the same opinion, even when his attention was expressly drawn to a bet being a tote bet or a best tote bet, which differs hardly at all from a *"maxidiv"* bet. Smyth was not cross-examined about whether Sportingbet would accept *"maxidiv"* or other tote bets from Fletcher, even if it would not accept fixed odds bets from Fletcher. At one stage in the examination of Smyth by Counsel for Fletcher Smyth was asked whether in certain hypothetical circumstances Sportingbet would accept a pari-mutuel bet and then retain the amount of the bet and obtain a commission. However, the circumstances Smyth was asked to assume for the purpose of answering the question included that the gambler *"did not have a racing restriction"*.[203]

8.129 Smyth gave evidence that it could happen that betting restrictions might not be applied because of the possibility of human error on the part of the telephone operator and because of the possibility of a deliberate disregarding of the restriction by a senior operator. As is shown by some of the extracts from his evidence which have been quoted, Smyth sometimes used the words *"ideally"* and *"hopefully"* when replying in the negative to questions about whether Fletcher as himself could have placed bets on racing events with Sportingbet.

8.130 The Commission considers that Smyth, in giving evidence that a restriction might not be applied because of the possibility of error on the part of a telephone operator and in using the words *"ideally"* and *"hopefully"* in giving evidence that a bet in contravention of the restriction on Fletcher's account would not have been accepted, was merely recognising the possibility of human fallibility in the implementation of Sportingbet's procedures. The Commission heard evidence about the processes that telephone operators at Sportingbet follow when taking a bet over the telephone. After identification of the account occurs, the account *"client screen"* comes up on the computer that the operator is using.[204] Any restriction applying to the account is noted as a *"comment"* at the bottom of the client screen.[205]

8.131 Smyth was able to explain why Fletcher was able to place a $1 bet on a horse racing event on his own account with Sportingbet, in circumstances where his account had been restricted to betting on sports only. Smyth said that Fletcher had placed the $1 bet over the internet and not by telephone and said that the $1 bet would have been accepted from Fletcher himself over the telephone, *"only in error … if the 1800 number was called and the operator, for example, didn't read the comment there, which is at the bottom of Mr Fletcher's screen, which says "no racing - sport only", then obviously an operator could make a mistake."*

8.132 The Commission considers that there was a causal connection between Fletcher's deceptive conduct and the obtaining of a financial advantage.

Dishonestly

8.133 It was submitted by Counsel Assisting, and disputed by Counsel for Fletcher, that Fletcher's conduct had been dishonest

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[203] PIC Transcript, B A Smyth, 20 December 2013, p. 773:34-773:35

[204] PIC Transcript, B A Smyth, 20 December 2013, p. 768:28-768:38

[205] PIC Transcript, B A Smyth, 20 December 2013, p. 725:33-725:37

8.134 In the introductory part of Counsel for Fletcher's submissions it was contended that in gambling, particularly with a corporate bookmaker, there was a contest between the bookmaker and the gambler, which only one of them could win. This contest was not conducted on equal terms, the contest being heavily weighted in favour of the bookmaker. It was submitted in effect that, because the contest was not on equal terms, some licence should be allowed to gamblers seeking to reduce the imbalance that exists between the bookmaker and the gambler.

8.135 In the body of Counsel for Fletcher's submissions it was submitted that, where a particular industry is unusual and many ordinary people may have little knowledge or exposure to it, accepted practices within that industry, the reasons behind such practices which are unique to the industry, and the prevalence of their use would be relevant matters in determining whether the practices would be regarded as dishonest according to the standards of ordinary people. It was then submitted that gambling, particularly with corporate bookmakers, is an unusual industry and, therefore, that a range of factors which would not ordinarily be taken into account in determining whether conduct was dishonest should be taken into account in determining whether conduct in the context of gambling was dishonest.

8.136 Counsel for Fletcher listed a number of what he said were *"unique industry factors".* These factors were:

a. In the case of wagers placed by telephone, the purpose of requiring the caller to give his name is to ensure that the bet is allocated to the correct account. In one part of his submissions Counsel for Fletcher submitted that requiring the caller to give his name was *"solely"* for this purpose. In another part of his submissions Counsel accepted, in accordance with Smyth's evidence, that there was a secondary purpose of ascertaining the identity of the person making the call.

b. Smyth acknowledged that Sportingbet took bets from persons who they knew to be commission agents, not knowing *"who the bets really belong to"*, and did not wish to eradicate betting with Sportingbet by commission agents.

c. Smyth accepted that it does happen that employees of Sportingbet find commission agents to act for Sportingbet.

d. Corporate bookmakers engage in *"profiteering"* and employ strategies to secure an advantage over those who bet with them. These strategies included:

    i. an overall meticulous approach to risk management

    ii. the use of technology to identify successful gamblers and the strengths and weaknesses of gamblers

    iii. the use of technology to profile and link accounts

iv. the practice of closing successful accounts. The Commission notes that Smyth said that Sportingbet had not closed a customer's account in *"years".* However, he said that, although Sportingbet did not close accounts, *"we have tools that we can use to minimise damage"*

v. the practice of *"following in".* If a corporate bookmaker receives a bet from someone considered by it to be a *"smart"* gambler, the corporate bookmaker can put the amount of the gambler's bet plus some of its own money into the totalisator pool, ensuring that the corporate bookmaker does not make a loss but reducing the odds for the gambler.

vi. the retailing of bets back into the totalisator pool, negating any loss to the bookmaker

vii. engaging in a number of restrictive practices, including:

A. factoring. Factoring limits the amount of the wager the bookmakers will accept, by not accepting any bet if the amount the gambler would win, if the bet was successful, would exceed a certain figure.

B. prohibiting certain betting types, for example, preventing a gambler from making fixed odds bets and

C. baring certain betting methods, for example, using the internet to place a bet.

8.137 It was also submitted by Counsel for Fletcher that, in a conversation on 9 January 2013 with a person employed by Bet365, Fletcher stated that he would use a *"bodgie"* account. It was disputed by Fletcher in his evidence that the use of the word *"bodgie"* imported any dishonesty on his part. It was submitted by Counsel for Fletcher that, even if Fletcher's use of the word *"bodgie"* might appear to suggest dishonesty, the frank and blatant manner in which he used the word *"bodgie"* in the conversation with the Bet365 employee indicated that he did not himself think his conduct was dishonest.

Assessment

8.138 The Commission will now consider the submissions by Counsel for Fletcher, adopting the numbering used by counsel in the submissions.

8.139 **(a)** The Commission considers that the practice of a gambler giving his first name to a telephone operator is, at least partly, even if only secondarily, for determining the identity of the caller.

8.140 **(b) & (c)** The Commission accepts that the evidence shows that the use of bowlers or commission agents is common and could not be held to import dishonesty. However, the bets placed on Immens' account were placed by

Fletcher as the effective controller of the account and were not placed by him or by Immens in the capacity of being a bowler.

8.141 **(d)** Counsel for Fletcher's principal submissions were:

- that the contest between the gambler and a corporate bookmaker is not on equal terms and that steps taken by a gambler to reduce the imbalance should not be characterised as dishonest; and
- that gambling is an unusual industry in which a range of factors that would not ordinarily be taken into account in determining whether conduct is dishonest should be taken into account.

8.142 The Commission applies the decision of the Court of Criminal Appeal in *Krecichwost* that the tribunal of fact, in determining whether someone has acted dishonestly, has to consider the wide variety of circumstances revealed by the evidence.

8.143 The Commission accepts the general submission by Counsel for Fletcher that the gambling industry is a unique industry and that there are accepted practices within that industry which are relevant in determining whether some conduct by a person in the industry should be considered to be dishonest.

8.144 The Commission accepts that the contest between the gambler and the corporate bookmaker is not a contest on equal terms. However, the fact that the contest is not on equal terms and that corporate bookmakers may engage in profiteering, as was submitted by Counsel for Fletcher, does not mean that anything which a gambler does to reduce what he perceives as the imbalance between the corporate bookmaker and the gambler is permissible and cannot be regarded as dishonest.

8.145 Smyth gave evidence that Fletcher had been banned from betting on races since September 2005. Smyth's evidence about whether this restriction had been brought to Fletcher's notice was not completely satisfactory. He said that, if the usual procedure had been followed, Fletcher would have been notified by telephone, soon after the restriction was imposed. However, he could not say that the usual procedure had in fact been followed and Sportingbet had no record of Fletcher having been notified of the restriction.

8.146 The Commission refers to evidence given by Williams. In a conversation with Seagg on Facebook Williams said that he had a *"mate who can't get on"*, that is, someone whose bets would not be accepted by corporate bookmakers. The *"mate"* Williams was referring to was clearly Fletcher. In his evidence Williams said that what he said to Seagg was only *"spiel"* and not seriously intended.

8.147 The Commission also refers to evidence given by Groves. Groves said that he had been told by Williams *"that his friends"*, who were professional gamblers, *"had been stopped from using their accounts because they were winning too much".* One of the friends Williams was referring to was clearly Fletcher.

8.148 The evidence from Williams is likely to be second hand. However, the source of the information would have been Fletcher. If the source was Fletcher, Williams'

evidence is strong evidence that Fletcher knew of the restrictions on his account.

8.149 The Commission considers that, if Fletcher believed that there were restrictions on his Sportingbet account, it would be evidence of dishonesty in placing bets on Immens' account, including evidence that he knew that his conduct was dishonest according to the standards of ordinary people.

8.150 The Commission recognises that in the case of an offence under s 192E the element *"dishonestly"* is additional to the element of a deception. The Commission nevertheless considers that the Commission can take into account the deception it has found, as one factor in determining whether the deception was made dishonestly.

8.151 The Commission has concluded in 20 of the 25 telephone calls that Fletcher engaged in a deception by falsely representing to different operators at the corporate bookmaker Sportingbet that he was Jason Immens and not Stephen Fletcher; that he obtained the advantage of obtaining the opportunity of placing bets on horse racing events free of any restrictions; that there was a causal connection between the deception and the obtaining of the financial advantage; and that Fletcher's conduct was dishonest within s 4B of the *Crimes Act*. The Commission considers that Fletcher engaged in misconduct.

8.152 The Commission considers that it should make a recommendation that consideration should be given to the prosecution of Fletcher for offences under s 192E in relation to the use of Immens' Sportingbet account, as evidenced in the 25 telephone calls discussed herein, with the exception of the first, fifth, fifteenth, twenty-fourth and twenty-fifth telephone calls.

The use of Williams' betting accounts

8.153 Counsel Assisting did not make detailed submissions concerning Fletcher's use of betting accounts that were in Williams' name. Although there was some general evidence that Fletcher may have used other betting accounts opened by Williams in his own name, the only such account as was specifically identified in the evidence was the account used on 26 February 2012.

8.154 Williams and Fletcher gave evidence that Williams became involved in gambling activities with Fletcher on 26 February 2012. On that date Fletcher used Williams' Sportingbet account to place a number of bets on greyhound racing events. The bets that were placed on the account totalled $16,893 and resulted in an overall winning pay-out of $84,888.

8.155 In their evidence Williams and Fletcher said that the bets that were placed on Williams' Sportingbet account on 26 February 2012 were determined and funded by Fletcher.

8.156 The bets were placed over the internet, by either Williams or Fletcher himself. Williams said that he was present with Fletcher when the bets were placed on

the account but could not remember *"who was using the computer"* at the time.[206]

8.157 Williams said that he did not contribute any money to the bets that were placed on the account as he *"didn't have any money".* However, he received half of the net winnings. As to what he did to earn a share of the winnings, he said: *"I didn't do anything. I just provided my account".*[207]

8.158 The bets were placed when Fletcher and Williams were together and were clearly authorised by Williams. Williams may have been the person using the computer, so that the bets were actually placed by Williams.

8.159 In these circumstances, the Commission does not consider that it should make a recommendation that consideration should be given to the prosecution of Fletcher for an offence under s 192E in relation to the use of any one of Williams' betting accounts. The Commission further considers that there was no misconduct on Fletcher's behalf.

The use of a TAB betting account opened in the name of MC13 and the call he made to the TAB pretending to be MC13

8.160 The evidence relating to the TAB account in the name of MC13 was contained in a lawfully intercepted telephone call that Fletcher made to the TAB on 2 December 2012. Fletcher agreed to having made the telephone call, in which he said *"[MC13]"* when the TAB operator asked for his name:

> *TAB EMPLOYEE: What's your name again sorry?*
>
> *FLETCHER: [MC13].*[208]

8.161 While the conduct was deceptive, there was no evidence that Fletcher placed a bet on the account or that he attempted to place a bet on the account, and there was a lack of evidence of his having obtained or having attempted to obtain a financial advantage.

8.162 The Commission considers that Fletcher engaged in misconduct.

The use of a Bet365 betting account opened in the name of MC 14 and the call he made to Bet365 pretending to be MC14

8.163 The evidence relating to the Bet365 account in the name of MC14 was contained in a lawfully intercepted telephone call that Fletcher made to Bet365 on 2 January 2013 in which he placed a $200 bet on a horse racing event. When asked for his *"full name"* by the Bet365 operator, he replied: *"Ah full name's [MC14]".*[209]

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[206] PIC Transcript, A P Williams, 21 November 2013, p. 229:36-229:37

[207] PIC Transcript, A P Williams, 11 November 2013, p. 230:22

[208] Ex 190 AC, Transcript of telephone call between Stephen Fletcher and TAB, 2 December 2012

[209] Ex 192 AC, Transcript of telephone call between Stephen Fletcher and Bet365, 2 January 2013.

8.164 In his evidence Fletcher agreed that he had made the telephone call but did not agree that he had deceived the Bet365 operator. He said that by using the name *"[MC14]"* he had merely given the Bet365 operator the name that was *"associated with that account".* The Commission does not accept this evidence, as Fletcher was clearly asked for his *"full name".* The Commission considers that Fletcher's conduct was deceptive.

8.165 However, there was no evidence before the Commission to establish that Fletcher obtained a financial advantage by means of the deception.

8.166 Early in his oral evidence Fletcher was played a telephone call between himself and an operator at Bet365 which took place on 9 January 2013. During the telephone conversation he was advised by the operator that the *"traders"* had decided to close Fletcher's personal betting account with Bet365.

8.167 Having regard to the date of the telephone call in which he placed a bet on MC14's account, the Commission considers that Fletcher would not have been prevented from placing the $200 bet that he placed on MC14's account, had he placed the bet in his own name on 2 January 2013, when his own account was still open.

8.168 Accordingly, the Commission considers that it should not make a recommendation that consideration should be given to the prosecution of Fletcher for an offence under 192E in relation to the use of a Bet365 betting account opened in the name of MC14. However, the Commission considers that Fletcher engaged in misconduct.

The use of a Sportingbet betting account opened in the name of MC14 and the call he made to Sportingbet pretending to be MC14

8.169 This account was in the same name as the account the Commission has just dealt with.

8.170 The evidence relating to this submission was contained in a lawfully intercepted telephone call that Fletcher made to Sportingbet on 1 December 2012, in which he placed a $3,500 bet on a horse racing event to win at fixed price odds.

8.171 In the telephone call the following conversation took place between himself and the operator at Sportingbet whose name was Jonathan:

> *JONATHAN: Racing, Jonathan.*
>
> *FLETCHER: Ah, double three, seven, four, nine, four. [MC14]*
>
> *JONATHAN: Yes [MC 14]?*
>
> *FLETCHER: What odds, what have I got left in my account please? How much left in there?*
>
> *JONATHAN: Thirty-five hundred.*

FLETCHER: In the last race at Ascot today, can I just have that on Acc-, Acceler-, Accelero-, fuck, Accelerometer.

JONATHAN: Two twenty-five at the moment, do you want to take that or?

FLETCHER: Yeah, yeah I want to take that, yeah, that's good, I

JONATHAN: Thirty-five at the price.

FLETCHER: Yep.

JONATHAN: Not a problem, that's on.[210]

8.172 The Commission considers that Fletcher engaged in a deception. He represented in the telephone conversation that he was *"[MC14]"*, which was knowingly untrue, and the representation was accepted by Jonathan as being true.

8.173 The bet that Fletcher placed on the account was secured at fixed price odds and represented an opportunity to win a pre-determined amount at the time he placed the wager.

8.174 There were some variations in the evidence Fletcher gave about his ability to bet with Sportingbet, but he said unambiguously that he could not *"take fixed odds"* with Sportingbet.[211] He gave evidence that he could not have placed in his own name the fixed price bet he placed on MC14's account. The following questions and answers occurred about the bet that he placed:

Q. … is that a fixed-price bet on a horse race?

A. At Ascot, that's correct.

Q. And Could Stephen Fletcher, as Stephen Fletcher, have placed that bet with Sportingbet?

A. No, he couldn't have.

Q. So it was necessary to use one of the bowler accounts?

A. Correct.

Q. And it was necessary, I suggest to you, to deceive the operator that you, the phone caller, was not Stephen Fletcher?

A. Well, again, I claim that I'm just confirming the identity of that account holder.

Q. It's absolutely clear in at least the case of that call that you could not have made the bet as Stephen Fletcher?

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[210] Ex 194 AC, Transcript of telephone call between Stephen Fletcher and Sportingbet, 1 December 2012.

[211] PIC Transcript, Stephen Fletcher,6 December 2013, p. 413:2-413:37

A. I agree.[212]

8.175 Having regard to the categorical evidence from Fletcher himself that he could not have made the bet if he had identified himself as Stephen Fletcher, the Commission is satisfied Sportingbet would not have accepted the bet from Fletcher, if he had revealed his true identity.

8.176 The evidence shows that Fletcher lied to the operator at Sportingbet about his identity. The operator was led to believe by what Fletcher said that he was speaking to MC14 and Fletcher encouraged this belief, by asking "*what have I got left in my account please?"*

8.177 The Commission has taken into account the submissions made by Counsel for Fletcher about dishonesty with respect to the bets placed on Immens' account. After taking those submissions into account, the Commission has concluded that Fletcher's conduct was dishonest according to the standards of ordinary people and was known by Fletcher to be dishonest according to those standards.

8.178 The Commission considers that Fletcher engaged in misconduct.

8.179 The Commission considers that it should make a recommendation that consideration should be given to the prosecution of Fletcher for an offence under 192E in relation to the use of a Sportingbet betting account opened in the name of MC14.

The attempted use of a TAB betting account opened in the name of MC16 and the call he made to the TAB pretending to be MC16

8.180 The evidence relating to the use by Fletcher of the TAB account opened in the name of MC16 was contained in two lawfully intercepted telephone calls that Fletcher made on 23 November 2012.

8.181 The first telephone call took place between Fletcher and MC15[213] at 17:22:49. In the telephone conversation Fletcher told MC15 that he was *"betting"* on MC16's *"TAB account".* He asked MC15 to provide him with the birth date and address of MC16 for that purpose.[214]

8.182 The second telephone call took place between Fletcher and a TAB operator at 17:24:25, less than two minutes after the first telephone call. In the second telephone call, after identification of the TAB betting account number and the personal identification number attached to the account, the following conversation between Fletcher and the operator at the TAB whose name was *"Jodi"* occurred:

JODI: Mr [MC16]?

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[212] PIC Transcript, Stephen Fletcher, 6 December 2013, p. 420:1-420:30

[213] The real name of this person is subject to a non-publication order by the Commission

[214] Ex 200 AC, Transcript of telephone call between Stephen Fletcher and [MC15], 23 November 2012

FLETCHER: Yes, Jodi

…

FLETCHER: What's going on?

JODI: Need to ask you a couple of questions

FLETCHER: Yep

JODI: Just your date of birth?

FLETCHER: Twenty-sixth of November, sixty-one.

JODI: Thank you. Your address?

FLETCHER: Ah one slash one …

JODI: I've got a different address here.

FLETCHER: What have you got there?

JODI: You have to tell me.

…

JODI: Email address?

FLETCHER: Ah … at hotmail dot com.

JODI: No. Mobile number?

FLETCHER: Ah zero, four, three …

JODI: No.

FLETCHER: Mm, that's interesting.

JODI: What's another address we might have on file?

FLETCHER: Um, no idea.

JODI: Okay. Unfortunately, um 'cause you're not answering the questions that I have on the account, we've um had to freeze the account.

FLETCHER: Right. Why?

JODI: Ah, due to some er irregular betting activity today

FLETCHER: What, irregular bet, tryin' to bet on the, your website that doesn't work, the app?

JODI: Mm, what was happening? Can you tell me?

FLETCHER: Well every time I put a bet on, it says it can't be placed over the, on the app on my phone.

JODI: Can you tell me what bets they were and for how much?

FLETCHER: Young trots, I was tryin' to back three horses and it just said you can't bet. Was, I don't know if you're aware but, y-your app's quite useless and when the, as you see that account has to be considered by a betting manager, but the app doesn't um accept that so if you try to have a bet from fixed odds on the app it won't work. Is that what, the race you're talking about? The Young trot, two races ago?

JODI: Um, few, few bets (ui) um 'bout an hour ago to be honest.

FLETCHER: Right, well, w-why would you freeze my account? You should freeze the idiots that made the app. It didn't work.

JODI: Okay, but I, I just need to fully be, fully um guaranteed who I'm, who I'm dealing with so.

FLETCHER: Alright, let me get, I'll get the address and I'll ring you straight back Jodi …

…

JODI: Yeah, we need to confirm who you are first and then we'll be (ui)

FLETCHER: Alright, hang on a sec, hand on Jodi, I'll ring you back. [215]

8.183 The Commission considers that Fletcher represented to Jodi that he was MC16 and attempted to convince Jodi that he was MC16. He had sought to prepare himself for making the representation. He had made the prior telephone call to MC15 to obtain the personal details of MC16, which he would need when he contacted the TAB. The Commission considers that the conduct was deceptive.

8.184 In his evidence Fletcher said that he had not deceived the TAB, because he knew an account manager at the TAB and *"he knows I use several accounts that aren't in my name"*.[216] This evidence was the subject of a submission on his behalf.[217]

8.185 The Commission considers that any knowledge an account manager at the TAB may have had about Fletcher's use of accounts did not prevent what was said to Jodi giving rise to a deception. In the evidence before the Commission it was clear that Fletcher had personal contacts within several corporate bookmakers and was able to obtain commercially sensitive information from those persons.[218]

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[215] Ex 202 AC, Transcript of telephone call between Stephen Fletcher and TAB, 23 November 2012.

[216] PIC Transcript, S C Fletcher, 6 December 2013, pp. 416:35-416:47, 417:26-417:28

[217] Submissions on behalf of Stephen Fletcher, paragraph 87

[218] See, for example, PIC Transcript, S C Fletcher, 6 December 2013, pp. 471:43-473:19

8.186 The terms of the conversations Fletcher had with Jodi showed that he was unable to place a bet, so that there was no obtaining of a financial advantage. However, it was submitted by Counsel Assisting that Fletcher had attempted to commit an offence under s 192E.

8.187 However, as already stated, there was no financial advantage obtained by Fletcher and there was no evidence before the Commission that Fletcher would have been prevented from placing the bet with the TAB, had he attempted to place the bet in his own name.

8.188 Accordingly, the Commission considers that it should not make a recommendation that consideration should be given to the prosecution of Fletcher for an offence under 192E in relation to the use of a TAB betting account opened in the name of MC16. However, the Commission considers that Fletcher engaged in misconduct.

The use of betting accounts in the name of Matthew Seagg

8.189 The evidence relating to the use by Fletcher of betting accounts in the name of Seagg was set out earlier this report. The principal evidence was contained in three lawfully intercepted telephone calls that Fletcher had with persons he knew at Bet365 concerning his use of a Bet365 account in the name of *"Matty Seaggs".*

8.190 The first telephone call took place on 7 March 2013. In the telephone conversation which occured Fletcher admitted that he was using the account and sought to confirm the status of the account. He asked the person he knew at Bet365 the following question: *"Have a look at what it says on the, the account I'm using as a bodgy at the moment, Matty Seaggs … can you look at the account, see what it says about it?"*[219]

8.191 The second telephone call took place on 8 March 2013 and included the following:

> *FLETCHER: Matty, Matty, Matty Seaggs?*
>
> *BET365 EMPLOYEE: … Yeah he's under review.*
>
> *FLETCHER: What does that mean, th-that's normal though isn't it?*
>
> *BET365 EMPLOYEE: No it's okay, it's something. (ui) all clients can go under that, betting that big so.*
>
> *…*
>
> *BET365 EMPLOYEE: they've checked for computer links and they can't find any.*
>
> *FLETCHER: Oh lovely.*

[219] Ex 212 AC, Transcript of telephone between Stephen Fletcher and Bet365, 7 March 2013

BET365 EMPLOYEE: It's all clear so he's under review. So that'll run for about a fortnight. So all is (ui), they'll check every, they will check every cent that he has and they will note what price you took (ui) to Betfair. That's how it'll work.

FLETCHER: Is that right? Well it's about time Matty Seaggs had some bad bets.

BET365 EMPLOYEE: Yes. (ui) yeah just don't tell anyone for fuck sake. Is that, I get those emails no one else gets them so,

FLETCHER: Yeah, yeah, no gotcha, no worries of course.

…

BET365 EMPLOYEE: So yeah, it's a, doesn't mean he has to lose but you know, you saw the other day with a, it says possibly sharp, possibly sharp with horses. So in other words, just, they'll just note the bet until, and eventually they, if it's okay they'll say client okay take off review well then he goes into the ruck.

FLETCHER: Well I know how to fix Matty.

…

FLETCHER: Just, just punt off the gronk sheet.[220]

8.192 The third telephone call took place on 18 March 2013. In the telephone conversation Fletcher said that the account was in the name *of "one of the Inspector Detective's mates"* and was told by his contact within Bet365 that the account was *"under review"* but that Fletcher could *"probably still get bets at the moment"*.[221]

8.193 The betting account that was set up in Seagg's name with Bet365 was used between 2 March 2013 and 30 March 2013, to place a series of bets on horse racing events, with stakes of up to $10,000.[222]

8.194 Having regard to the terms of the telephone conversation on 7 March 2013, the Commission considers that the bets that were placed on the account were made by Fletcher.

8.195 By using the account to place the bets, the Commission considers that Fletcher represented to Bet365 that he was the person in whose name the account had been opened and that this had been accepted by Bet365 as being true. In the telephone conversation of 8 March 2013 he was told that Bet365 would "*check every cent that he has and they will note what price you took".* The Commission considers that Fletcher's conduct was deceptive.

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[220] Ex 210 AC, Transcript of telephone call between Stephen Fletcher and Bet365, 8 March 2013

[221] Ex 208 AC, Transcript of telephone between Stephen Fletcher and Bet365, 18 March 2013

[222] Ex 110 AC, Bundle of evidence tendered at the hearing of Matthew Seagg

8.196 The Commission considers that Fletcher obtained a financial advantage in this case by obtaining a bare opportunity to bet. By March 2013 he was unable to bet with Bet365 in his own name, as his own account with Bet365 had been closed.

8.197 In a telephone conversation which took place between Fletcher and an employee of Bet365 on 9 January 2013 Fletcher was told that *"the traders h-h-have uh, reviewed your account and they've decided to close it".* On being informed that his own account had been closed, Fletcher replied: *"Right so now I've just gotta get another bodgy* [sic] *and they won't know who I am … That's how it works".*[223] In his evidence Fletcher said that his account with Bet365 was closed because he was *"winning too much".*[224]

8.198 It was submitted on behalf of Fletcher that by disclosing to Bet365 his intention to obtain a *"bodgy",* he did not understand the term *"bodgy"* to mean *"false"* but to mean a *"bowler or commission agent"* that he might use to retain his *"anonymity".* It was also submitted that because he had been frank in that disclosure, the *"logical inference"* was that he *"believed that there was no dishonesty or deception to hide".*

8.199 The term *"bodgie"* is defined by the *Australian Macquarie Dictionary* (3rd edition 1997) as a colloquial adjective meaning *"false"* and as a colloquial noun meaning *"a person who has assumed an alias or who is in some way acting under false pretences".* The Commission considers that this was the sense in which Fletcher used the term *"bodgy"* in the telephone conversation on 9 January 2013. Having decided on a particular course of conduct, he conveyed his intention to the employee at Be365, knowing that Bet365 would have difficulty in detecting his use of a *"bodgy"* account. The Commission considers that this is what Fletcher meant when he then said: *"…and they won't know who I am".*

8.200 The Commission considers that in the telephone conversation on 7 March 2013 Fletcher was using the word *"bodgy"* to convey the same meaning, when he said: "*Have a look at what it says on the, the account I'm using as a bodgy at the moment, Matty Seaggs … can you look at the account, see what it says about it?"*

8.201 In the telephone call on 8 March 2013 Fletcher said that he would "*punt off the gronk sheet*", that is, *"deliberately lose"*,[225] to keep the account open, after he was told by the employee at Bet365 that Bet365 would "*check every cent that he has and they will note what price you took (ui) to Betfair. That's how it'll work."*

8.202 The Commission considers that Fletcher engaged in deception, that he obtained a financial advantage by means of the deception and that he acted dishonestly. The Commission considers that Fletcher engaged in misconduct.

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[223] Ex 121 AC, Transcript of telephone call between Stephen Fletcher and Bet365, 9 January 2013

[224] PIC Transcript, S C Fletcher, 5 December 2013, p. 327:23-327:37

[225] PIC Transcript, S C Fletcher, 6 December 2013, p. 535:12-535:15

8.203 The Commission considers that it should make a recommendation that consideration should be given to the prosecution of Fletcher for an offence under 192E in relation to the use of a Bet365 betting account in the name of Seagg.

DARREN AZZOPARDI

8.204 In Part 14 of his submissions Counsel Assisting submitted that the Commission should make a recommendation that consideration should be given to the prosecution of Azzopardi for a number of specified criminal offences, including offences under s 192E of the *Crimes Act* in relation to:

- the use of the Sportingbet account in the name of Marc Smith to place a bet on the greyhound Imry Bale,
- the use of betting accounts opened by Williams in the name of "Paul Williams", and
- the use of the Bookmaker account in the name of Todd Seydler.

8.205 The Commission will assess each of these submissions in turn.

The use of the Sportingbet account in the name of Marc Smith to place a bet on the greyhound Imry Bale

8.206 The evidence before the Commission showed that Smith's Sportingbet account was used on 5 November 2012 to place two bets on the greyhound Imry Bale which was racing in Race 6 at the Meadows race track. The bets were for $500 and $1000 and were at fixed price odds.

8.207 The evidence about how the bets came to be placed on the account included a series of MSN messages between Williams and Azzopardi and text messages and a telephone conversation between Williams and Smith.

8.208 The MSN messages between Williams and Azzopardi took place earlier on 5 November 2012. In those messages Azzopardi said: "*Have we got a Sportingbet or a Centrebet account? … Need to back one!! … Race 6 No 5 Meadows Imry Bale!! … $2000 at $7*".[226]

8.209 Between 16:54:16 and 17:03:08 on 5 November 2012 the following text messages occurred between Williams and Smith:

> *WILLIAMS: Have we got $$ in a Sportingbet or Centrebet??*
>
> *SMITH: Yep. What's happening?*
>
> *WILLIAMS: Need 2k for dazz on Imri bale at the meadows / fixed …*

[226] Ex 98 AC, MSN exchange between Anthony Williams and Darren Azzopardi, 5 November 2012

WILLIAMS: Race 6 / number 5.[227]

8.210 Williams and Smith then had a telephone conversation at 17:17:22 on 5 November 2012, in which the following was said:

WILLIAMS: … Can we get that two K on for DAZ anywhere?

SMITH: Yeah I um, got, fifteen hundred on my Sportingbet

WILLIAMS: Yeah, At sixes?

SMITH: At sixes yeah …228

8.211 In his evidence Williams confirmed that $1,500 was *"put on"* Imry Bale through Smith's Sportingbet account. The records for Smith's Sportingbet account show that two bets totalling $1,500 were placed on Imry Bale on 5 November 2012.[229] In their evidence, Williams and Azzopardi both said that the bets that were placed on Smith's Sportingbet account were placed on behalf of Azzopardi.[230]

8.212 Earlier in this report the Commission stated what, for present purposes, are the elements of an offence under s 192E.

8.213 In the present case the Commission is not satisfied that Azzopardi committed any deception. There was no evidence which would support a finding that he had access to Smith's Sportingbet account on 5 November 2012 or that he was actually involved in placing the bets on the account or that he specifically directed that the bets be placed on the account. Possible questions of accessorial liability were not raised at the hearing and were not the subject of any submissions and in those circumstances the Commission does not propose to examine them now.

8.214 Accordingly, the Commission considers that it should not make a recommendation that consideration should be given to the prosecution of Azzopardi for an offence under 192E in relation to the use of the Sportingbet account in the name of Marc Smith to place a bet on the greyhound Imry Bale. The Commission does not consider that it should form the opinion that there was misconduct by Azzopardi.

The use of betting accounts opened by Williams in the name of *"Paul Williams"*

8.215 The evidence before the Commission showed that Williams opened a number of betting accounts in the name of *"Paul Williams"* with different corporate bookmakers and provided the login details for those accounts to Azzopardi. In the MSN messages by which he provided the login details for one of the accounts, Williams told Azzopardi that he had opened the account by using his

[227] Ex 276 AC, Text messages between Anthony Williams and Marc Smith, 5 November 2012

[228] Ex 278, Transcript of telephone call between Marc Smith and Anthony Williams, 5 November 2012

[229] Ex 328 AC, Sportingbet account records for Marc Smith

[230] PIC Transcript, A P Williams, 17 December 2013, p. 586:21; PIC Transcript, D S Azzopardi, 19 December 2013, p. 654:9-654:27

"middle name".[231] Paul is in fact Williams' middle name but he does not generally use it.

8.216 One of the accounts which Williams opened was with the corporate bookmaker Bookmaker and was in the name of *"Paul Williams (paulywine)"*. A significant number of bets on mostly greyhound events were placed on the account in February and March 2013. Total winnings of $56,000 were withdrawn from the account on 13 March 2013.[232] In his evidence Azzopardi said that he had placed the bets on the account.[233]

8.217 When he was using the account in the name of *"Paul Williams (paulywine)"* Azzopardi did not have an account with Bookmaker. In an email to the Commission dated 16 December 2013 a representative of Bookmaker provided the Commission with the following advice about whether Bookmaker would have accepted that bets that Azzopardi placed on the account:

> *Darren Azzopardi had an account with bookmaker.com.au which was closed on 27/07/2012. The client was restricted on greyhounds before the account was closed. If Darren Azzopardi was using the accounts 'seydler1' and 'paulywine' to place greyhound bets we would not have accepted the bets. We would have closed the accounts and as per our terms, we would have been entitled to request our money back.*[234]

8.218 There was no real challenge at the hearing to the accuracy of this email. At one stage in his examination by Counsel Assisting Azzopardi asserted that the writer of the email had contradicted himself by saying that Azzopardi's account had been restricted, that his account had been closed and that Bookmaker would not have accepted bets from Azzopardi.[235] However, the Commission considers that there were no contradictions in the statements in the email stating that Azzopardi's account had been closed on 27 July 2012, that it had been restricted for some time before it was closed and that, if Bookmaker had discovered that Azzopardi was using the accounts in the names of *"seydler1"* and *"paulywine"* to place bets, Bookmaker would not have accepted the bets and would have closed the accounts in the names of *"seydler1"* and *"paulywine".*

8.219 Other evidence relating to the account was contained in four telephone conversations between Azzopardi and Williams on 23 February 2013. The telephone conversations related to a *"problem"* of getting the money which had been won out of the account. The terms of these telephone conversations were set out earlier in this report. However, it is convenient to repeat here some parts of the third and fourth conversations that took place.

8.220 The third telephone call took place at 18:06:31 and included the following:

> *AZZOPARDI: Mate you're not gonna believe this.*

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[231] Ex 105 AC, Exchange of MSN messages between Anthony Williams and Darren Azzopardi, 18 February 2013

[232] Ex 340 AC, Bookmaker.com.au account records for Paul Williams

[233] PIC Transcript, D S Azzopardi, 19 December 2013, p. 685:7-685:19

[234] Ex 341 AC, Emails between Commission and Bookmaker.com.au, 16 December 2013

[235] PIC Transcript, D S Azzopardi, 19 December 2013, p. 688:22-289:32

…

AZZOPARDI: Bookmaker.com rang me.

WILLIAMS: Rang you?

AZZOPARDI: Yep.

WILLIAMS: And said what?

AZZOPARDI: She goes is this Paul? I go sorry, she goes oh Paul I'm just letting you know, can you give us your bank details, we're closing your account, we, we've worked out your account's not viable. So um, we're just letting you know, so if you could give us your bank details in due course that'd be great.

WILLIAMS: What?

AZZOPARDI: I've gone what, I nearly fucking mate, I-I shivered all the way through me.

WILLIAMS: Yeah and what'd you say?

AZZOPARDI: I went oh, okay no worries thank you and hung up.[236]

8.221 The fourth telephone call took place at 18:23:41 and included the following:

WILLIAMS: hello mate.

AZZOPARDI: Yeah just fucking rang me just then.

WILLIAMS: Oh what'd they say?

AZZOPARDI: No I didn't answer it. [237]

8.222 However, during the fourth telephone conversation Azzopardi did answer a further telephone call from Bookmaker. The following conversation took place between Williams and Azzopardi about that telephone call:

AZZOPARDI: This is them again, what do I tell them?

WILLIAMS: Well what do you say? Fucking they know it's you.

…

AZZOPARDI: Okay, they said I sa-, is she goes oh we just found out we don't have your ID?

WILLIAMS: Yeah.

---

[236] Ex 102 AC, Transcript of telephone call between Anthony Williams and Darren Azzopardi, 23 February 2013

[237] Ex 104 AC, Transcript of telephone call between Anthony Williams and Darren Azzopardi, 23 February 2013

AZZOPARDI: I said that's fine, I said I'll tell you what you turn my account off so I couldn't do it, I said so turn it back on for half an hour, she goes well you won't be able to bet, I said no that's good, you turn it back on, I'll do the ID, and then we'll be sweet.

WILLIAMS: -Laughs- Yeah, oh well I don't have any of my shit here but I need my Passport.

AZZOPARDI: -Sighs- Oh fuck.

WILLIAMS: Like I, yeah, I-I can't send my fucking Driver's Licence, I'll send my Driver's Licence they're gonna like, email it to me anyway, at least, at least if I send my Passport, it doesn't have (ui)

AZZOPARDI: Where's your Passport?

WILLIAMS: At work.

…

WILLIAMS: Yeah. If I send my Li-, Driver's Licence they're gonna know it's fucking me, it's got same licence number and everything. At least if I send my Passport it doesn't have any of that shit on it, it's just got my name.

AZZOPARDI: Yeah okay.[238]

8.223 The Commission will now consider whether the separate elements of the offence under s 192E are established.

Deception

8.224 Counsel for Azzopardi submitted that there was no evidence that Azzopardi *"engaged in measures or conduct that might be described as deceptive or misleading".* It was submitted that he did not use *"different or multiple internet dongles or computers"* or *"hold himself out to be another person in telephone conversations".*

8.225 The Commission accepts that there was no evidence that Azzopardi had used *"different or multiple internet dongles or computers"* in relation to the *"Paul Williams (paulywine)"* account or any of the accounts he used.

8.226 However, it was not the case that he did not *"hold himself out to be another person in telephone conversations".* In the telephone conversations with Williams set out above, Azzopardi admitted having held himself out to be Paul Williams in the two telephone calls he reported having had with Bookmaker.

8.227 It was submitted on Azzopardi's behalf that there was no deception involved in using betting accounts in the names of other people, because *"the alleged use of the accounts merely indicated to the relevant corporate bookmaker that a particular account was being used to place a particular bet, such that any winnings or losses should be credited to or debited from that account".*

[238] Ex 104 AC, Transcript of telephone call between Anthony Williams and Darren Azzopardi, 23 February 2013

8.228 It is apparent from the telephone conversations that Azzopardi was unwilling to identify himself as the person who had been placing the bets on the account. The Commission considers that it can be inferred that Azzopardi had represented himself to be *"Paul Williams"* in the placing of all the bets on the account. Azzopardi was not acting as a bowler in the placing of the bets; he was the effective owner of the account.

8.229 The representations by Azzopardi that he was *"Paul Williams"* were clearly accepted by Bookmaker as being true, as is shown by Bookmaker's acceptance of the bets.

8.230 It was submitted on behalf of Azzopardi that corporate bookmakers were not deceived or deprived of an ability to make *"relevant commercial decisions"*. However, whether a person seeking to make a bet was Darren Azzopardi would have been relevant to Bookmaker making a commercial decision, as is shown by the email from Bookmaker of 16 December 2013.

8.231 In the circumstances, the Commission considers that the Azzopardi did engage in a deception by pretending to be *"Paul Williams".*

Financial advantage

8.232 The submissions that were made on behalf of Fletcher were adopted by Azzopardi, including that there was no obtaining of a financial advantage in the obtaining of an opportunity to bet.

8.233 The email of 16 December 2013 from Bookmaker shows that Azzopardi did not have an account with Bookmaker in 2013. His account with Bookmaker was closed on 27 July 2012 and, before it was closed, had been "*restricted on greyhounds".*[239]

8.234 The Commission considers that the opportunity to bet with Bookmaker and to place unrestricted bets on greyhounds was a financial advantage, as it was an opportunity to bet in circumstances where Azzopardi would not have been able to place the bet in his own name.

Causation

8.235 In the submissions made on behalf of Azzopardi it was claimed that the evidence before the Commission was *"incapable of establishing a causal relationship or nexus between the alleged use of online betting accounts and the relevant financial advantage or benefit"* and that there was no evidence that *"relevant bets would have been refused had they been placed in Mr Azzopardi's name".*

8.236 The Commission has already set out the terms of the email from Bookmaker of 16 December 2013, the accuracy of which was not challenged. In his evidence

[239] Ex 341 AC, Emails between Commission and Bookmaker.com.au, 16 December 2013

Azzopardi said that Bookmaker would not have accepted bets from him or if Bookmaker had known that he was using someone else's account.[240]

8.237 The Commission is satisfied that Bookmaker would not have accepted the bets that Azzopardi placed on the *"Paul Williams (paulywine)"* account if Bookmaker had known that Azzopardi was the person placing the bets.

Dishonestly

8.238 As in the case of Fletcher, it was submitted on Azzopardi's behalf that he had not acted dishonestly by using betting accounts in names other than his own, because the practice of using *"bowlers"* was common within the gambling industry. However, as stated previously, Azzopardi was not a *"bowler"*, that is, a person who within his definition of the term bets on behalf of someone else;[241] he was the principal and the effective owner of the account.

8.239 Azzopardi was aware that Williams had deliberately used his *"middle name"* to open the betting account in the name of *"Paul Williams".* When Williams provided him with the account, the following MSN messages took place between them:

> *AZZOPARDI: It's not your account?*
>
> *…*
>
> *WILLIAMS: Yes – me. My middle name!*
>
> *AZZOPARDI: Ok*
>
> *WILLIAMS: Just tell them I got confused and thought I put in my full name!!*
>
> *WILLIAMS: Hahahahha*
>
> *AZZOPARDI: Classic*.[242]

8.240 The Commission considers that it can infer that Williams had opened the account, using not the name by which he was generally known but his middle name, in an attempt to deceive Bookmaker into believing that the person opening the account was not Anthony Williams. In using the word *"classic"*, Azzopardi was conveying his approval of what Williams had done.

8.241 Azzopardi recognised that there was a problem with using the *"Paul Williams (paulywine)"* account. In a telephone conversation he had with Williams at 14:05:36 on 23 February 2013 he told Williams that "*there better not be a problem getting that money out"* of the account and said, "*Yeah, yeah but, what*

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[240] PIC Transcript, D S Azzopardi, 19 December 2013, p. 675:9-675:12

[241] PIC Transcript, D S Azzopardi, 19 December 2013, p. 636:10

[242] Ex 105 AC, Exchange of MSN messages between Anthony Williams and Darren Azzopardi, 18 February 2013

happens if it's not in your name, 'cause you've already had an account there?"[243]

8.242 In the telephone conversation with Williams at 18:06:31 on 23 February 2013, Azzopardi said that he "*shivered all the way through me"* after he received a telephone call from Bookmaker seeking to speak to *"Paul".* From the conversation he had with Williams, it is clear that he had represented to Bookmaker that he was *"Paul",* in circumstances where Bookmaker had sought to speak to that person. Azzopardi was afraid that the money in the account would not be able to be withdrawn, if Bookmaker discovered the true facts that the person who was the nominal owner of the account was Anthony Williams and that the person who had conducted the betting on the account was himself.

8.243 The Commission concludes that Azzopardi's conduct was dishonest.

8.244 The Commission considers that Azzopardi engaged in misconduct.

8.245 The Commission considers that it should make a recommendation that consideration should be given to the prosecution of Azzopardi for an offence under 192E in relation to the use of the Bookmaker betting account opened by Williams in the name of *"Paul Williams".*

The use of the Bookmaker account in the name of Todd Seydler

8.246 Todd Seydler was a work colleague of Smith's in the Tactical Operations Unit. Several accounts with different corporate bookmakers were opened in his name in October 2012. One of those accounts was opened with the corporate bookmaker Bookmaker.

8.247 An email seized on the execution of a search warrant at Williams' home shows that Williams had access to the account with Bookmaker and that he sent the login details for the account to Azzopardi on 7 November 2012.[244] A telephone conversation that occurred between Williams and Azzopardi on 30 November 2012 confirmed that Azzopardi had been given that account. During the conversation Azzopardi referred to "*Todd, Todd, Todd, bookmaker, Todd*", which it can be inferred was a reference to the account with Bookmaker in the name of Todd Seydler which had been provided to him by Williams.[245]

8.248 The records of the account with Bookmaker in the name of Todd Seydler show that bets on mostly greyhound events were placed on 2, 3 and 5 December 2012 and that $30,000 was withdrawn from the account on 13 December 2012.[246] The records for Seydler's banking account show that $30,000 was deposited into his account by Bookmaker on 13 December 2012 and that on 17 December 2012 $29,600 was transferred out of Seydler's account to Smith.[247] Those transfers were the subject of three separate telephone conversations

[243] Ex 337 AC, Transcript of telephone call between Anthony Williams and Darren Azzopardi, 23 February 2013

[244] Ex 302, Email exchange from mentalpatient!@hotmail.com to Darren Azzopardi, 7 November 2012

[245] Ex 116 AC, Transcript of telephone call between Darren Azzopardi and Anthony Williams, 30 November 2012

[246] Ex 24AC, Bundle of documents relating to the evidence given by Todd Seydler

[247] Ex 24AC, Bundle of documents relating to the evidence given by Todd Seydler

between Smith and Seydler.[248] The banking records for Smith show that $29,100 was transferred by Smith to Azzopardi on 17 December 2012.[249]

8.249 In his evidence Azzopardi recalled that the Seydler account *"did win a lot of money".*[250]

8.250 The Commission considers that the bets that were placed on the account were in fact placed by Azzopardi and that almost all of the winnings on the account were transferred to Azzopardi.

8.251 The Commission considers that in using the Seydler account to place bets Azzopardi represented to Bookmaker that he was the nominal holder of the account, that is, Todd Seydler, and that Bookmaker accepted the representation when it took each bet from him.

8.252 As in the case of the *"Paul Williams (paulywine)"* account, the Commission considers that the obtaining by Azzopardi of the opportunity to bet with Bookmaker and to place unrestricted bets on greyhounds was a financial advantage, as it was an opportunity to bet in circumstances where he would not have been able to place the bet in his own name.

8.253 For the reasons stated in relation to the *"Paul Williams (paulywine)"* account, the Commission is satisfied that Bookmaker would not have accepted the bets that Azzopardi placed on the Seydler account if Bookmaker had been aware that it was Azzopardi who was using the account. The Commission relies particularly on the unchallenged email from Bookmaker of 16 December 2013.

8.254 Although *"dishonestly"* is a separate element of an offence under s 192E, the fact that Azzopardi intentionally deceived Bookmaker is some evidence that he acted dishonestly, particularly as he would have been aware that his account with Bookmaker had been closed in July 2012. In the absence of any evidence which might suggest the possibility of a lack of dishonesty, the Commission considers that it should find that the element of dishonestly is established.

8.255 The Commission considers that Azzopardi engaged in misconduct.

8.256 The Commission considers that it should make a recommendation that consideration should be given to the prosecution of Azzopardi for an offence under 192E in relation to the use of the Bookmaker account in the name of Todd Seydler.

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[248] Ex 24AC, Bundle of documents relating to the evidence given by Todd Seydler

[249] Ex 44, Summary of bank account records for Smith

[250] PIC Transcript, D S Azzopardi, 19 December 2013, p. 673:8-673:31

8.257 In Part 14 of his submissions Counsel Assisting submitted that the Commission should make a recommendation that consideration should be given to the prosecution of Smith for a number of specified criminal offences, including offences under s 192E of the *Crimes Act* in relation to:

- the provision of his Sportingbet account to Azzopardi for the purpose of enabling Azzopardi to place bets on the greyhound Imry Bale which he could not have placed in his own name
- the provision of betting accounts in the names of the following persons to Williams for the intended use of Fletcher and/or Azzopardi to place bets which they could not otherwise place: Immens, Seydler, Besant, Zeibots and Foster
- the setting up of betting accounts in the names of the following persons to obtain free bets: Besant, Immens, Kasun, Peresson, Zeibots, Robertson, Mundy, Innes, Goonan, Guest, Foster, Seydler, Muller and Cursley.

8.258 The Commission will assess each of these submissions in turn.

The provision of his Sportingbet account to Azzopardi for the purpose of enabling Azzopardi to place bets on the greyhound Imry Bale which he could not have placed in his own name

8.259 Evidence relating to bets being placed on the greyhound Imry Bale has already been summarised by the Commission in the course of its consideration of whether Azzopardi might have contravened s 192E. In that summary the Commission referred to communications between Azzopardi and Williams and between Williams and Smith and to records of Smith's account with Sportingbet.

8.260 The Commission concluded that on 5 November 2012 two bets of $1000 and $500, respectively, were placed on Imry Bale on Smith's account with Sportingbet. It can be inferred that those bets on Smith's account were placed by Smith on behalf of Azzopardi. In this way Smith provided his account to Azzopardi to enable Azzopardi to place bets.

8.261 The Commission considers that in placing the bets Smith represented to Sportingbet that the bets were being placed by him on his own behalf. These representations by Smith were untrue and knowingly untrue and were accepted by Sportingbet.

8.262 Smith did not have a relationship with Azzopardi, having met him only once. Such knowledge as he had of Azzopardi was based on what he had been told by Williams. He had been told by Williams that Azzopardi and Fletcher were successful gamblers and *"had trouble"* getting their bets on under their own *"name".* However, there is no evidence that he had been told or was otherwise aware of any restrictions Sportingbet imposed on the account Azzopardi had with Sportingbet.

8.263 Smyth did not give evidence that Sportingbet would not accept bets from Azzopardi. However, Smyth did give evidence of a notation on Azzopardi's account with Sportingbet, which showed that since June 2009 Azzopardi's account had been subject to a restriction, *"dogs and trots to win $500"*, that is, a bet would not have been accepted from Azzopardi, if the amount which would be won, if the bet was successful, would exceed $500.

8.264 Smyth gave evidence that the two bets placed on Imry Bale were fixed price bets. If Imry Bale had won, the amount won on the bet of $1,000 would have been $3,000 and the amount won on the bet of $500 would have been $1,500. Accordingly, both bets would have been prohibited by the restriction applying to Azzopardi's account. The only bets which Sportingbet would have accepted from Azzopardi would have been bets to win a maximum total amount of $500.

8.265 The Commission considers that a financial advantage was obtained by Smith for Azzopardi in the form of an opportunity to bet which, if successful, would enable him to win more than $500 and that this financial advantage was obtained by means of Smith's deceptive conduct. However, Smyth's evidence was to the effect that Sportingbet would accept bets from Azzopardi, subject to the restriction on the amount which could be won. There is no evidence that Smith was aware of the restriction applying to Azzopardi's account and, this being so, the Commission is not persuaded that it should form the opinion that the further element of an offence under s 192E, namely *"dishonestly"*, is established.

8.266 Accordingly, the Commission considers that it should not make a recommendation that consideration should be given to the prosecution of Smith for an offence under s 192E in relation to the provision of his Sportingbet account to Azzopardi for the purpose of enabling Azzopardi to place bets on the greyhound Imry Bale which he could not have placed in his own name. However, the Commission considers that Smith's conduct amounted to police misconduct.

The provision of betting accounts in the names of the following persons to Williams for the intended use of Fletcher and/or Azzopardi to place bets which they could not otherwise place: Immens, Seydler, Besant, Zeibots and Foster

8.267 By virtue of s 192D(1) of the *Crimes Act*, the expression *"obtain a financial advantage"* includes *"obtain a financial advantage for oneself or for another person"*.

8.268 The evidence before the Commission established that Smith opened betting accounts in the names of several persons with various corporate bookmakers and provided some of those betting accounts to Williams and that Smith knew that some of the accounts were for the intended use of Fletcher and/or Azzopardi. The evidence also established that those accounts were in fact used by Fletcher and/or Azzopardi.

8.269 However, Smith's conduct, while it may have enabled other persons to engage in conduct which might have contravened s 192E, was not in itself a contravention of s 192E. Possible questions of accessorial liability were not raised at the public hearing and were not the subject of any submissions; and

the Commission does not consider that it should enter into the field of accessorial liability.

8.270 Accordingly, the Commission considers that it should not make a recommendation that consideration should be given to the prosecution of Smith for an offence under s 192E in relation to the provision of betting accounts in the names of the following persons to Williams for the intended use of Fletcher and/or Azzopardi to place bets which they could not otherwise place: Immens, Seydler, Besant, Zeibots and Foster. However, the Commission considers that Smith's conduct amounted to police misconduct.

The setting up of betting accounts in the names of the following persons to obtain free bets: Besant, Immens, Kasun, Peresson, Zeibots, Robertson, Mundy, Innes, Goonan, Guest, Foster, Seydler, Muller and Cursley

8.271 What was described as a *"free bet"* was offered by corporate bookmakers to persons opening an account with a corporate bookmaker for the first time. To obtain a free bet a new customer had to make an initial deposit or bet, which the corporate bookmaker would match, either in whole or in part. The new customer could then use the free bet to bet with.

8.272 The offer of a free bet was intended by a corporate bookmaker to be an incentive to a person who did not already have an account with the corporate bookmaker, to open an account and place bets on the account. If a person who already had an account with a corporate bookmaker opened another account, he would not be eligible to receive a free bet.

8.273 Smith opened accounts with corporate bookmakers in the names of Besant, Immens, Kasun, Peresson, Zeibots, Robertson, Mundy, Innes, Goonan, Guest, Foster, Seydler, Muller and Cursley and free bets were received.

8.274 Counsel Assisting submitted that in reality Smith himself, and not the person in whose name an account had been opened, was the owner and operator of the account. The corporate bookmaker had been deceived into believing that the person in whose name the account had been opened was the owner of the account and hence a genuine new customer who would be eligible to receive a free bet.

8.275 It was submitted on behalf of Smith that Smith had not engaged in any deception, because each of the persons in whose name an account had been opened had consented to Smith opening an account and Smith was acting as that person's agent.

8.276 The Commission considers that these submissions by Counsel for Smith should be rejected.

8.277 It is true that each person in whose name an account was opened consented to the opening of an account and provided Smith with identification documents and details to enable an account to be opened. However, each account was to be conducted by Smith for his own benefit, and there was no relationship of principal and agent between the nominal account holder and Smith. It was Smith who would determine what bets would be placed on the account, without

the nominal account holder being consulted, and it was Smith who would provide all of the funds for the betting on the account. The nominal account holder would not provide any of the funds for the betting on the account.

8.278 The nominal account holder would not be giving Smith any instructions about how the account should be operated and would not receive any report or accounting from Smith of operations on the account.

8.279 How the amount of any free bet that was obtained would be used would be determined by Smith, without any consultation with the nominal account holder.

8.280 In some cases there was express evidence that the nominal account holder would be unable to access the account himself, because he would not be informed of the identification details and password of the account. The Commission considers that it can infer that this was also the position with the accounts in respect of which there was no express evidence.

8.281 A particularly telling piece of evidence was the evidence of a telephone conversation between Smith and Immens on 20 December 2012, in which Smith told Immens to contact the corporate bookmaker with whom there was an account in Immens' name which had been opened by Smith and, in speaking to the corporate bookmaker, to treat the account *"as if it was …yours all along".*[251]

8.282 The Commission concludes that Smith falsely represented to the corporate bookmaker that the true owner of an account was the person in whose name the account had been opened who had never previously had an account with the corporate bookmaker, whereas in fact the true owner of the account was Smith himself. The corporate bookmaker was led to believe that the true owner of the account was the person in whose name the account was being opened who would be eligible to receive a free bet.

8.283 Counsel Assisting submitted that by this deception Smith obtained in each case a financial advantage in the form of a free bet.

8.284 Counsel for Smith submitted that a *"free"* bet was not in fact free and conditions attaching to a so-called *"free"* bet were so onerous that the obtaining of the *"free"* bet did not amount to the obtaining of a financial advantage.

8.285 The Commission accepts that it may not have been accurate to describe what the corporate bookmakers were offering as being *"free"* and that the free bet that was being offered was subject to restrictions which substantially reduced the value of what was being offered.

8.286 As already stated, to obtain a free bet an account holder was required to make an initial deposit or bet which the corporate bookmaker would match, either in whole or in part. The amount of the free bet could not be withdrawn immediately from the new customer's account. The amount of a free bet was required to be *"turned over"*, that is, bet with successfully, before the amount of the free bet could be withdrawn and in some cases the free bet was required to be turned over more than once, before the amount of the free bet could be withdrawn from

[251] Ex 41 AC, Transcript of telephone call between Marc Smith and Jason Immens on 20 December 2012

the account. Additionally, an account had to be verified before any winnings could be withdrawn, by providing further identification documents and details to the corporate bookmaker.

8.287 The Commission is, nevertheless, of the opinion that the obtaining of a free bet amounts to the obtaining of a financial advantage. By obtaining a free bet Smith improved his financial position, as he obtained funds with which he could bet. Smith himself obviously regarded a free bet as being something of value. He was prepared to engage in deceptive conduct in order to obtain a free bet.

8.288 Smith would not have been able to receive a free bet by opening an account in his own name, as he already had accounts with the corporate bookmakers and would not have been a new customer. He admitted this was the case in the following evidence:

> *Q. If you had set up an account with one of the companies that you already had an account with, would you have got a free bet?*
>
> *A. You can't set up - once you have set up an account with a bookmaker, you can't set up another one in your own name; so, no, I wouldn't have.*
>
> *Q. So indeed, they wouldn't have allowed you to set up an account in your name?*
>
> *A. No.*[252]

8.289 Accordingly, there was a causal connection between each deception in which Smith engaged and the obtaining of a financial advantage.

8.290 The Commission is of the opinion that Smith acted dishonestly. Smith knew that he would not be eligible to receive a free bet if he opened an account in his own name and, having this knowledge, he represented to each corporate bookmaker that an account which would in reality be his would be owned by someone else who did not already have an account with the corporate bookmaker.

8.291 In his evidence Smith agreed that it was necessary to convince the corporate bookmakers that different people were operating the individual accounts he set up, whereas it was he who was operating those individual accounts.[253] He knew that the corporate bookmakers had security systems in place[254] and that they employed *"IP"* or Internet Protocol address matching software to prevent multiple accounts from being opened by one person, *"because they didn't want one person getting multiple lots of free bets."*[255] One of the methods he employed to circumvent the corporate bookmakers security systems was to use different computers, as he admitted in the following questions and answers:

> *Q. When you were setting up the accounts you would use different computers to set up the accounts, wouldn't you?*

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[252] PIC Transcript, M J Smith, 19 November 2013, p. 17:33-17:42

[253] PIC Transcript, M J Smith, 19 November 2013, pp. 81:41-82:7

[254] PIC Transcript, M J Smith, 19 November 2013, pp. 81:28-81:32

[255] PIC Transcript, M J Smith, 19 November 2013, pp. 81:41-82:16

A. Yeah, it's the same as - same answer as with the phones. I think this just goes back to me doing the work. There was absolutely no reason why my friends, at their houses, couldn't use their own personal computer and do it.

Q. But there was also no reason, or was there, Mr Smith - was there - no reason that you couldn't sit at one computer and open all of these accounts, or was there?

A. You cannot do that.

Q. No, you cannot do that because some of the betting agencies had systems in place where they could tell which computer it was coming from; correct?

A. Yes.

Q. So that if you were trying to set up different accounts with the same organisation, they might be able to tell that it's coming from the same computer and realise that they're being deceived?

A. Yes, that's right. That's why I should have just let my friends open them up with their own computers.

Q. And so to counter that security measure you went to any number of different computers to set up the accounts; correct?

A. Yes. [256]

8.292 There was evidence before the Commission that Smith had also used SIM cards in relation to the accounts he opened and used. One purpose of using those SIM cards was to prevent accounts from being linked. This was known to Smith. In an email that was retrieved from his mobile telephone, of which he appears to have been the author, he said that a benefit of using a *"pre paid phone"* was: "*u can call up and put bets on so IP* [Internet Protocol] *not an issue".*[257]

8.293 The evidence of these measures taken by Smith to prevent his conduct being detected by the corporate bookmakers confirms that Smith was acting dishonestly according to the standards of ordinary people and knew that he was acting dishonestly according to those standards.

8.294 The Commission considers that Smith engaged in police misconduct.

8.295 The Commission considers that it should make a recommendation that consideration should be given to the prosecution of Smith for offences under s 192E, in relation to the setting up of betting accounts in the names of the following persons to obtain free bets: Besant, Immens, Kasun, Peresson, Zeibots, Robertson, Mundy, Innes, Goonan, Guest, Foster, Seydler, Muller and Cursley.

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[256] PIC Transcript, M J Smith, 19 November 2013, pp. 29:35-30:15

[257] Ex 14

DETECTIVE SENIOR CONSTABLE ANTHONY WILLIAMS

8.296 In Part 14 of his submissions Counsel Assisting submitted that the Commission should make a recommendation that consideration should be given to the prosecution of Williams for certain specified criminal offences, including offences under s 192E of the *Crimes Act* in relation to:

- the setting up of betting accounts in the name of *"Paul Williams"* and the provision of those accounts to Azzopardi for his use to place bets which Azzopardi could not otherwise place
- the provision of betting accounts in the names of the following persons to Fletcher and/or to Azzopardi for their intended use in placing bets which they could not otherwise place: Immens, Seydler, Besant, Zeibots, Foster, Williams, Groves, Kolosque, Seagg, MC4, MC5, MC6, MC7, MC8 and MC9
- the attempt to obtain a free bet on a Luxbet betting account opened in the name of Christopher Groves by pretending to be Christopher Groves
- the attempt to obtain a free bet on a Luxbet betting account opened in the name of MC22 (Williams' sister) by pretending to be MC22
- the attempt to reopen a Luxbet betting account opened in the name of Matthew Seagg by pretending to be Matthew Seagg
- the setting up of betting accounts in the names of the following persons to obtain free bets: MC22, Groves, Seagg and *"Paul Williams"*.

8.297 The Commission will assess each of these submissions in turn.

The setting up of betting accounts in the name of *"Paul Williams"* and the provision of those accounts to Azzopardi for his use to place bets which Azzopardi could not otherwise place

8.298 As stated by the Commission in a part of this report relating to Smith, the Commission is of the opinion that the setting up of an account with a corporate bookmaker and the providing of that account to a professional gambler for use by the professional gambler does not of itself amount to an offence under s 192E, even though it might have enabled other persons to engage in conduct which might amount to an offence under s 192E.

8.299 In considering whether Azzopardi may have committed contraventions of s 192E in the use of betting accounts in the name of *"Paul Williams"* the Commission has referred to telephone conversations between Williams and Azzopardi on 23 December 2013 about an account in the name of *"Paul Williams (paulywine)"* opened by Williams and provided to Azzopardi. This evidence could suggest that Williams may have engaged in deceptive conduct with a view to assisting Azzopardi to obtain a withdrawal of his winnings from the account.

8.300 In the telephone conversation at 18:06:31 Williams said that he would *"send an email right now".*[258] In the telephone conversation at 18:23:21 the following was said:

> *AZZOPARDI: Did you send 'em the email?*
>
> *WILLIAMS: Yeah I sent an email.*
>
> *AZZOPARDI: what'd you say?*
>
> *WILLIAMS: I just said, dear Jade as per conversation please make payment into this bank account.*
>
> *AZZOPARDI: Yep, what did the name have on the bank account? What, did you put tony4willy?*
>
> *WILLIAMS: No I didn't put a ba-, no I didn't put a name on it, I just fucking put BSB (ui), I just put, oh I'll send you the email. So just put, please put it in this bank, the same bank account I used to put the money in there.*
>
> *AZZOPARDI: Yeah. Yeah, have a,*
>
> *WILLIAMS: So.*
>
> *AZZOPARDI: (ui) it had a BSB on it?*
>
> *WILLIAMS: Yeah BSB and account number, that's all they*
>
> *AZZOPARDI: Yeah*
>
> *WILLIAMS: need, the fuckers.*[259]

8.301 However, any such deceptive conduct would not fit within the terms of Counsel Assisting's submission, which was limited to asserting a contravention of s 192E in the setting up of the account and the providing of the account to Azzopardi, and was not dealt with in the submissions of Williams' counsel.

8.302 In these circumstances, the Commission considers that it should not enter into an examination of whether Williams contravened s 192E in assisting Azzopardi to obtain a withdrawal of the winnings from the account.

8.303 Accordingly, the Commission considers that it should not make a recommendation that consideration should be given to the prosecution of Williams for offences under s 192E(1) in relation to the setting up of betting accounts in the name of *"Paul Williams"* and the provision of those accounts to Azzopardi for his use to place bets which Azzopardi could not otherwise place. However, the Commission considers that Williams' conduct amounted to police misconduct.

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[258] Ex 102AC, Transcript of telephone call between Darren Azzopardi and Anthony Williams, 23 February 2013

[259] Ex 104AC, Transcript of telephone call between Darren Azzopardi and Anthony Williams, 23 February 2013

The provision of betting accounts in the names of the following persons to Fletcher and/or to Azzopardi for their intended use in placing bets which they could not otherwise place: Immens, Seydler, Besant, Zeibots, Foster, Williams, Groves, Kolosque, Seagg, MC4, MC5, MC6, MC7, MC8 and MC9

8.304 For the reasons which have already been stated, the provision of betting accounts to Fletcher or Azzopardi for their intended use to place bets would not of itself constitute a contravention of s 192E.

8.305 Accordingly, the Commission considers that it should not make the recommendation that was submitted by Counsel Assisting. However, the Commission considers that Williams' conduct amounted to police misconduct.

The attempt to obtain a free bet on a Luxbet betting account opened in the name of Christopher Groves by pretending to be Christopher Groves

8.306 Groves was a work colleague of Williams' in the Homicide Squad and allowed accounts in his name to be opened with different corporate bookmakers. Williams said that he had opened the accounts in Groves' name.[260] One of the betting accounts in Groves' name that Williams opened was with the corporate bookmaker Luxbet.

8.307 In the course of the taking of their evidence Groves and Williams were each shown a photograph of a *"chat session"* which was described as having occurred between *"Chris Groves"* and an employee at Luxbet known as *"Roisin".* The photograph of the chat session had been retrieved from Smith's phone in the course of a search of Smith's home. Metadata showed that the photograph had been sent to Smith by Williams on 12 August 2012.

8.308 The chat session was as follows:

> *ROISIN: Welcome to Luxbet Live Chat – how can I help you?*
>
> *CHRIS GROVES: Hi I'm just wondering if I received my free 400 bet*
>
> *…*
>
> *ROISIN: Did you deposit money to your Luxbet account and enter the deposit code?*
>
> *CHRIS GROVES: Yes I put 2000 in*
>
> *ROISIN: What's your username?*
>
> *ROISIN: cfgrover?*
>
> *…*
>
> *CHRIS GROVES: Yes …*

[260] PIC Transcript, A P Williams, 20 November 2013, pp. 191:41-192:10

ROISIN: I'm afraid you will not be eligible for this bonus bet. Refer to the email sent to you on 4/Aug/12

CHRIS GROVES: Yeah but I opened the account way before receiving that email

ROISIN: OK, I see.

CHRIS GROVES: It should have been credited after my first bet.

…

CHRIS GROVES: … I'm entitled to the bonus.[261]

8.309 When he gave evidence before the Commission Williams was asked whether he was the person *"on the other end of that chat?"* (that is, the person other than Roisin). Williams replied:

> *A. Possibly, yes. I don't remember it but I had his* [Groves'] *account, so - and obviously I was managing the free bets, so it's more than likely it was me, yes, but I don't specifically remember it.*[262]

8.310 When Groves gave evidence he denied that he had taken part in the chat session.

8.311 The following questions and answers occurred in Williams' evidence about the chat session:

> *Q. Again, looking back on it now and accepting that you're at a particular stage of difficulties in your life, do you accept that's deceptive conduct?*
>
> *A. I don't know what I was thinking at that time. I was --*
>
> *Q. Do you accept it's deceptive conduct?*
>
> *A. Well, I'm trying to get a free bet. I'm just betting on behalf of - I'm opening the account on behalf of Chris Groves. I don't know if it was deceptive*
>
> *THE COMMISSIONER: Q. You were pretending to be Chris Groves, weren't you?*
>
> *A. Well, I was using the account. I'm using Chris Groves' account. I wouldn't - if you put it that way then I'd say yes, but –*
>
> *Q. The person described in that communication is Roisin?*
>
> *A. Yes.*
>
> *Q. Did you understand it as an actual person?*

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[261] Ex 114 AC, Photograph of chat session between "Chris Groves" and "Roisin"

[262] PIC Transcript, A P Williams, 21 November 2013, p. 296:20-296:23

A. Oh, that was just the computer operator on the other end.

Q. Just a computer operator is still a person?

A. Yes.

Q. And that person is under the apprehension that they are communicating with Chris Groves?

A. Well I - yes.[263]

8.312 The Commission considers that in the chat session Williams was the person purporting to be *"Chris Groves".* Williams represented that he was "*Chris Groves".* It is quite clear from what Roisin said in the "chat" that she believed that she was dealing with *"Chris Groves".*

8.313 It is clear from the terms of the chat session that Williams posing as *"Chris Groves"* was not successful in obtaining a free bet. Accordingly, the offence which Counsel Assisting submitted Williams might have committed was the offence of attempting to obtain a free bet on the account.

8.314 The principles applying to an allegation that a person is criminally liable for having attempted to commit a crime were concisely summarised by Hodgson JA in *Onuorah v R* (2009) NSWCCA 23 at [30]:

> *[T]he question … turns on whether an accused person intends each element of the relevant crime to occur, and in pursuance of that intention does acts that are not merely preparatory but are sufficiently proximate to the intended commission of the crime.*

8.315 In the present case it was submitted by Counsel Assisting that Williams had intended to deceive Luxbet by representing that the account was truly Chris Groves' account and that he was *"Chris Groves".*

8.316 Counsel for Williams submitted that there was *"no evidence that Mr Williams did not have complete authority from Mr Groves to deal with the accounts in the manner that he did".*

8.317 The Commission rejects this submission. For reasons that the Commission has given in rejecting a similar submission by Counsel for Smith, the Commission considers that there was no relationship of principal and agent between Groves and Williams. In any event, Williams was not purporting to be acting as Groves' agent. He was purporting to be Groves.

8.318 As to the obtaining of a financial advantage, Williams engaged in the deception with the intention of obtaining a free bet. Earlier in this report the Commission has expressed its opinion that a free bet, notwithstanding the conditions attaching to it which reduced its value, is to be regarded as a financial advantage.

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[263] T p 296-297

8.319 Williams acted dishonestly in attempting to obtain a free bet, in representing to Roisin that the account was Chris Groves' account and that he was Chris Groves, in circumstances where he would not have obtained a free bet if he had opened an account in his own name.

8.320 The Commission concludes that, within the principles stated by Hodgson JA in *Onuorah,* Williams intended each element of an offence under s 192E to occur and pursuant to that intention did acts in his conversation with Roisin which were not merely preparatory but proximate to the commission of a complete offence.

8.321 The Commission considers that Williams engaged in police misconduct.

8.322 The Commission considers that it should make a recommendation that consideration should be given to the prosecution of Williams for an offence under s 192E, in relation to the attempt to obtain a free bet on a Luxbet betting account opened in the name of Christopher Groves by pretending to be Christopher Groves.

The attempt to obtain a free bet on a Luxbet betting account opened in the name of MC22 (Williams' sister) by pretending to be MC22

8.323 Williams admitted to having opened as many as six accounts in the name of his sister, MC22. The account with Luxbet which the Commission will consider was actually opened in Williams' sister's middle name, a name by which she was not generally known.

8.324 A chain of eight emails concerning this Luxbet account was retrieved from Williams' laptop computer.[264] The subject line of the emails was *"Important Account Information".*

8.325 The first email in the chain was dated 10 April 2013. It was an email from Luxbet addressed to a hotmail address in the name of MC22. The email read in part as follows:

> *Dear [MC22]*
>
> *…*
>
> *Please note that from 9:00 am EST April 11th 2013, Luxbet will only offer you:*
>
> *LuxMid win or place bets on Australian Racing …*
>
> *Racing exotics for Australian Racing …*
>
> *Sports single betting …*
>
> *In addition, Luxbet will no longer allow you to participate in our special such as Bonus Bets, Account Top-Ups or Promotional Products*

[264] Ex 79AC, Chain of emails

This is a commercial decision made by Luxbet.

8.326 The second email was dated 30 April 2013. It was an email addressed to Luxbet from the hotmail address in the name of MC22. It read in part as follows:

> *I would like you to send this on to the betting manager*
>
> *I have tried various times to verify this account. I gave you specific instructions as to why I used my middle name instead of my first name and I put down my old address because I will be moving back there within the next 3 months. I had planned to keep betting on this account but it's pointless without multi's, fixed odds and being cut back massively with every sports bet …*
>
> *…*
>
> *I CAN NOT provide you with any identification saying that I go by my middle name because I don't have anything on it, unless you want me to get a stat dec signed by 50 people saying that is what I am known as.*
>
> *I want to withdraw the money that I have in this account*

8.327 The third email was also dated 30 April 2013. It was an email addressed to Luxbet from the hotmail address in the name of MC22. It read as follows:

> *I sent this email yesterday*
>
> *Can someone please respond before I take things further.*

8.328 The fourth email was dated 2 May 2013. It was an email from Luxbet addressed to the hotmail address in the name of MC22. It read as follows:

> *Hi [MC22]*
>
> *As you have been advised previously, in this kind of situation we require signed and certified copies of all your identification posted to us. When this has been received we will commence the verification process.*

8.329 The remaining four emails were between the hotmail address used by the sender of the second and third emails and another hotmail address which was also in the name of MC22.

8.330 When Williams gave evidence he was asked if he had ever pretended to be his sister. He said that he had "*sent emails from an account that I'd generated for my sister".* He was then shown the email chain and he explained that he had opened an account in his sister's name with Luxbet, *"had a free bet, which subsequently won"* and *"was trying to get the money from Luxbet".*[265] Williams agreed that he had been the author of the second and third emails and that he was *"pretending"* to be his sister *"in order to get money from … Luxbet."*[266]

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[265] PIC Transcript, A P Williams, 20 November 2013, pp. 198:33-199:14

[266] PIC Transcript, A P Williams, 20 November 2013, p. 199:27-199:37

8.331 The last four emails appear to be emails between Williams and his sister about attempting to obtain evidence verifying the owner of the account, which would satisfy Luxbet.

8.332 It is clear that in seeking the withdrawal of the money in the account Williams was prepared to further deceive Luxbet. The money in the account included the amount of the free bet and the winnings from the free bet. Accordingly, it might be said that in attempting to obtain the withdrawal of the money in the account Williams was, within the terms of Counsel Assisting's submission, attempting to obtain a free bet on the account. However, the Commission has reached the conclusion that such an interpretation of Counsel Assisting's words was not clearly signalled in his submissions and the Commission consequently considers that it should not adopt such an interpretation.

8.333 Accordingly, the Commission concludes that it should not make a recommendation that consideration should be given to the prosecution of Williams for an offence under s 192E in relation to the attempt to obtain a free bet on a Luxbet betting account opened in the name of MC22 by pretending to be MC22. However, the Commission considers that Williams' conduct amounted to police misconduct.

The attempt to reopen a Luxbet betting account opened in the name of Matthew Seagg by pretending to be Matthew Seagg

8.334 The evidence relating to this Luxbet account was contained in a chain of two emails, both dated 5 March 2013, between Luxbet and *"mattyseaggs@hotmail.com".* The chain of emails was retrieved from Williams' laptop computer.

8.335 The first email was from Luxbet and was addressed *"Dear Matthew".* The email stated that Luxbet's security system had identified that the computer used to access this Luxbet betting account matched the computer used to access other Luxbet betting accounts; that Luxbet considered that a breach of its terms and conditions had occurred; and that Luxbet considered that *"Matthew"* was not entitled to receive a free bet of $1,000 which had been *"credited"* to the account.[267]

8.336 The second email was from the email address *mattyseaggs@hotmail.com"* to Luxbet. In this email the author complained about the taking away of the free bet and said that he would be taking the matter to the *"NT* [Northern Territory] *gaming commission"*.

8.337 Williams claimed that he did not remember writing or sending the second email. However, he did not deny that it had been retrieved from his laptop computer and conceded that he *"must have"* been the author of the email and assumed that he was the author.[268] When he gave evidence before the Commission Seagg denied that he owned the email address *"mattyseaggs@hotmail.com".*[269]

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[267] Ex 110AC, Evidence tendered at the private hearing of Matthew Seagg

[268] PIC Transcript, A P Williams, 20 November 2013, p. 195:3-195:35

[269] Ex 110AC, PIC Transcript, M D Seagg, 7 November 2013, p. 8:37-8:42

8.338 The Commission considers that Williams was the author of the second email and that he sent the email to Luxbet.

8.339 The email chain shows that so far from only attempting to open an account with Luxbet in Seagg's name, Williams in fact opened an account with Luxbet in Seagg's name and obtained a $1,000 free bet.

8.340 Although it might be argued that it is implicit in the second email that Williams was attempting to *"reopen"* the Luxbet account in the name of Seagg and have the free bet of $1,000 re-instated, he did not say this expressly in the email. In the email he said only that he would be taking the matter to the *"NT gaming commission".*

8.341 Accordingly, the Commission does not consider that it should make a recommendation that consideration should be given to the prosecution of Williams for an offence under s 192E in relation to the attempt to reopen a Luxbet betting account opened in the name of Matthew Seagg by pretending to be Matthew Seagg. However, the Commission considers that Williams' conduct amounted to police misconduct.

The setting up of betting accounts in the names of the following persons to obtain free bets: MC22 (Williams' sister), Groves, Seagg and *"Paul Williams"*.

8.342 In his evidence Williams admitted that he had opened accounts in the names of his sister (MC22), Seagg, Groves and *"Paul Williams"*, that he had obtained free bets by opening the accounts and that his purpose in opening the accounts was to obtain a free bet.[270] When asked in his evidence what the reason was for opening accounts in other people's names, he said: *"we'd get a free bet".* [271]

8.343 The records for the accounts show that Williams opened eight accounts with corporate bookmakers in the name of Groves and obtained a total of $1,850 in free bets.[272]

8.344 The Commission has already referred to the evidence of the $1000 free bet that Williams obtained when Williams opened an account with Luxbet in the name of Seagg.

8.345 The records for the account with Bookmaker that Williams opened in the name of *"Paul Williams (paulywine)"* show that a free bet of $1,000 was obtained when the account was opened with an initial deposit of $2,000.[273]

8.346 Williams opened accounts in his sister's name after he sent his sister an email on 4 February 2013. The email (not attempting to correct any apparent typographical errors) read as follows:

> *When are you heading oversea's??*

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[270] PIC Transcript, A P Williams, 20 November 2013, pp. 196:39-196:42, 199:10-199:14, 248:42-248:47

[271] PIC Transcript, A P Williams, 20 November 2013, pp. 196:39-196:42

[272] Ex 114 AC, Evidence tendered at the private hearing of Christopher Groves

[273] Ex 340 AC, Bookmaker.com account of "Paul Williams"

I am going to transfer you $4250 if you could put it into you other debit card for me. It doesnt matter if you owe money on it, just as long as it works??

Which bank is it with?

A few of them are offering free bets at the moment.

For example, if you deposit $1000 you get a free $1000 bet.

I will keep the account open for a few months and then the boys can bet through it again (we will leave it sit there for a bit) and then you will get some more easy $$$$

I will give you 450 for your trouble now!!!!

Can you send me the following details…

bank account;

bsb number;

bank name;

Card Number;

Expiry date;

start date;

ccv;

date of birth;

uni address;[274]

8.347 In his evidence before the Commission Groves said that he was surprised to discover that eight accounts had been opened in his name and also said that he was surprised that Williams had used an address in Parramatta for some of the accounts he had opened. On seeing the Parramatta address he said that the address was not among the *"details"* he had provided to Williams.[275] Groves was paid for his involvement. When asked if there had been any discussion with Williams about the payments he would receive, he said:

A. Yes, there was. I would receive a percentage of the win. I don't know what the percentage was, he did tell me, and also he'd given me $400 for opening the accounts and also probably compensation for - because of the free bets you get.[276]

[274] Ex 274 AC, exchange of emails between Anthony and MC22, 4-7 February 2013

[275] Ex 114 AC, PIC Transcript, C F Groves, 6 November 2013, p. 35:10-35:43

[276] Ex 114 AC, PIC Transcript, C F Groves, 6 November 2013, p. 30:43-30:47

8.348 In his evidence before the Commission Seagg said that he had an existing account with Sportingbet which he provided to Williams after Williams contacted him by Facebook. He was vaguely aware from statements for his bank account that Williams had opened other betting accounts in his name but said that he had not authorised Williams to open the accounts. He was unaware that an account was opened in his name with Luxbet and denied owning the email address, *"mattyseaggs@hotmail.com"*, which was associated with that account.[277]

8.349 Williams used his *"middle name"* to open accounts in the name of *"Paul Williams"* with a number of different corporate bookmakers. He gave the login detail for three such accounts to Azzopardi on 18 February 2013.[278]

8.350 The evidence before the Commission establishes that, apart from any special promotional offer, a free bet was intended to be an incentive for someone who was not already a customer of the corporate bookmaker to become a customer. Only a new customer would be eligible to receive a free bet. A person who already had an account with the bookmaker would not be eligible to receive a free bet. Furthermore, apart from any special promotional offer, an account opened by a new customer could receive only one free bet. Williams gave evidence that *"you can only have one free bet per account."*[279]

8.351 Williams knew that he could not obtain a free bet from any of the corporate bookmakers with whom he had an account. The following questions and answers occurred in Williams' evidence about why he had not opened an account with Bookmaker by using his real name:

> *Q. Why didn't you* [open the account in your real name]*?*
>
> *A. … If I'd opened it up in Anthony Williams - I'm not sure if I had a bookmaker.com previous account, I may have had, I'm not sure, but if I did have - if I did open it up in Anthony Williams, I wouldn't have been able to have that $300 free bet.*
>
> *Q. Because? Sorry, why?*
>
> *A. Well, because I would have had a previous account with them and you can only get one free bet per account.*
>
> *Q. So you were obtaining a benefit from the betting company by deceit; correct?*
>
> *A. A $300 free bet, yes.*[280]

Deception

8.352 The Commission considers that Williams opened accounts using his middle name, a name by which he was not generally known, with the intention of

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[277] Ex 110 AC, PIC Transcript, M D Seagg, 7 November 2013, pp. 8:44-9:27

[278] Ex 275 AC, MSN exchange between Anthony Williams and Darren Azzopardi, 18 February 2013

[279] PIC Transcript, A P Williams, 21 November 2013, p. 252:31-252:32

[280] PIC Transcript, A P Williams, 21 November 2013, p. 278:19-278:32

leading the corporate bookmaker to believe that the person *"Paul Williams"* in whose name the account was being opened was not the same person as Anthony Williams, who already had or had had an account with the corporate bookmaker, and that the person *"Paul Williams"* was a new customer who would be eligible to receive a free bet. Williams clearly engaged in a deception of the corporate bookmaker

8.353 As to the accounts opened by Williams in the name of his sister, Groves and Seagg, it was submitted on behalf of Williams that in opening the accounts Williams was acting with the authority of the persons in whose names the accounts were opened. A similar submission was made by Counsel for Smith in opposing a similar allegation that Smith had set up betting accounts in the names of several persons to obtain free bets.

8.354 The Commission considers that this submission made on behalf of Williams should also be rejected and that most, if not all, of what the Commission said in rejecting the submission made on behalf of Smith is applicable in rejecting the submission made on behalf of Williams.

8.355 It is true that each of Williams' sister, Groves and Seagg consented to the opening of an account in his or her name and provided Williams with identification documents and details to enable the account to be opened. In the case of some of the accounts opened by Williams a small amount of additional information was supplied to the persons in whose names the accounts were to be opened. Williams' sister was told by Williams that if she agreed to an account being opened in her name she would receive some *"easy $$$$* [money]*".* Groves was told that if he agreed to an account being opened in his name he would receive $400 for the opening of the account and the obtaining of the free bet and would receive a percentage of the winnings.

8.356 However, there was no true relationship of principal and agent between the persons in whose name the accounts were opened and Williams. Williams would determine what bets would be placed on the account, without the nominal account holder being consulted, and Williams would provide all of the funds for the betting on the account. How the amount of any free bet that was obtained would be used would be determined by Williams, without any consultation with the nominal account holder. The nominal account holder would not give any instructions to Williams about how the account would be operated and would not receive any report or accounting from Williams on operations on the account.

8.357 The Commission concludes that by opening an account in the name of his sister, Groves and Seagg, Williams represented that the person in whose name the account was being opened was a new customer who would operate the account and who would thus be eligible to receive a free bet, whereas in fact Williams, who was not eligible to receive a free bet, was the person who would operate the account.

8.358 The Commission considers that Williams engaged in deceptions of the corporate bookmaker.

Financial advantage & Causation

8.359 For the reasons already stated in this report, the Commission considers that in each case the obtaining of a free bet was the obtaining of a financial advantage and that there was a causal connection between each deception and the obtaining of the financial advantage.

Dishonestly

8.360 Williams conduct was dishonest. Williams deceived the corporate bookmakers when opening the accounts in the names of other people, in circumstances where he knew that the corporate bookmakers would not provide a free bet to persons who already held accounts with the corporate bookmakers and would want to know the truth about the identity of persons seeking to open new accounts.

8.361 The Commission considers that Williams engaged in police misconduct.

8.362 The Commission considers that it should make a recommendation that consideration should be given to the prosecution of Williams for an offence under s 192E of the *Crimes Act* in relation to the setting up of betting accounts in the names of the following persons to obtain a free bet: his sister [MC22], Groves, Seagg and *"Paul Williams"*.

CONSPIRACY TO DEFRAUD

8.363 In Part 11 of his submissions, which was headed *"Fraud under the Crimes Act (NSW) 1900"*, Counsel Assisting discussed possible offences under s 192E of the *Crimes Act 1900* which might have been committed by the principals. In paragraph 11.4 Counsel Assisting concluded this part of his submissions by saying that establishing conduct which contravened s 192E *"would create some difficulties".* Counsel Assisting added that *"it may be that the common law offence of conspiracy to cheat and defraud may be a more appropriate offence to capture the extent and scope of the criminality".*

8.364 The following part of Counsel Assisting's submissions, Part 12, was headed *"Conspiracy to cheat and defraud"*. In this part of his submissions Counsel Assisting made a number of submissions of a general kind about the offence of conspiracy to defraud, including that it is a common law offence which still survives and that the elements of the offence are as set out in *Peters v The Queen* (1998) 192 CLR 493.

8.365 In paragraph 12.5 of Counsel Assisting's submissions a submission was made that *"in the circumstances of the present investigation, the common law offence is capable of encompassing the true scope of the conduct while individual statutory offences are not".*

8.366 In Part 14 of his submissions Counsel Assisting submitted that each of the principals had engaged in misconduct by engaging in a conspiracy to defraud and that the Commission should make a recommendation that consideration

should be given to the prosecution of each of them for the offence of conspiracy to defraud.

8.367 Each of the principals made submissions in response to the submissions of Counsel Assisting concerning the offence of conspiracy to defraud.

8.368 Counsel for Fletcher, referring to the statement of the elements of the offence in *Peters v The Queen*, submitted that Fletcher did not use any dishonest means and had not been a party to a dishonest agreement to bring about a situation that prejudiced or imperilled the legal rights of others. Counsel for Fletcher also sought to rely on what were described by Counsel as general discretionary factors militating against a prosecution. However, with regard to this submission the Commission observes that it is not a prosecuting authority and, in deciding whether to recommend to the Director of Public Prosecutions that consideration be given to prosecuting for an offence, the Commission has regard to what appears to the Commission to be the sufficiency of the evidence to establish the offence but does not take into account discretionary factors which it is the function of the Director of Public Prosecutions to take into account in his capacity as a prosecuting authority.

8.369 Counsel for Azzopardi said in his submissions that Azzopardi relied on the submissions made on behalf of Fletcher, to the extent to which they applied to Azzopardi's situation. It was also submitted on behalf of Azzopardi that there had not been any dishonesty on his part.

8.370 Counsel for Smith submitted that, on the evidence before the Commission, it was doubtful whether the elements of the offence of conspiracy to defraud could be made out against his client.

8.371 It was submitted on behalf of Williams that there had not been any dishonesty on his part.

ASSESSMENT

8.372 It is correct, as was submitted by Counsel Assisting and accepted, at least implicitly, by counsel for all of the principals, that the common law offence of conspiracy to defraud survives in New South Wales. As was submitted, the elements of the offence of conspiracy to defraud were authoritatively laid down by the High Court in *Peters v The Queen*.

8.373 In *Peters v The Queen* the High Court was constituted by Toohey J, Gaudron J, McHugh J, Gummow J and Kirby J. Toohey and Gaudron JJ delivered a joint judgment. McHugh J gave a judgment with which Gummow J agreed. Kirby J gave a separate judgment. McHugh J, and accordingly Gummow J, and Kirby J disagreed with some parts of the joint judgment of Toohey and Gaudron JJ. However, Kirby J, for reasons which he gave in the concluding part of his judgment, withdrew the part of his judgment he had already given and said that he would agree with the joint judgment. His Honour did this partly in order that the Court should achieve a result in the case. Consequently, the joint judgment of Toohey and Gaudron JJ became the judgment of a majority of the Court.

8.374 The joint judgment of Toohey and Gaudron JJ in *Peters v The Queen* was subsequently approved by the High Court in *Macleod v The Queen* [2003] HCA 24; (2003) 214 CLR 230.

8.375 In *Peters v The Queen* Toohey and Gaudron JJ were of the opinion that dishonesty is not a separate element of the offence of conspiracy to defraud but does enter into some of what are the elements of the offence. Their Honours explained:

> *33 …when properly analysed, the offence of conspiracy to defraud involves dishonesty at two levels. First, it involves an agreement to use dishonest means. Ordinarily, the means will be dishonest if they assert as true something which is false and which is known to be false or not believed to be true or if they are means which the conspirators know they have no right to use or do not believe that they have any right to use the means in question. And quite apart from the use of dishonest means, the offence involves an agreement to bring about a situation prejudicing or imperilling existing legal rights or interests of others.*

8.376 It is, accordingly, a necessary ingredient of the offence of conspiracy to defraud that the alleged conspirators entered into an agreement. The formation of such an agreement need not be by express words and often will not be by express words. However, if there was no agreement formed by express words, it will be necessary to establish that the formation of an agreement to defraud is the only reasonable inference which can be drawn from the circumstantial evidence.

8.377 The Commission has already summarised the submissions of Counsel Assisting on the subject of conspiracy to defraud. In the initial part of these submissions (paragraph 11.4) the submission that misconduct in the form of a conspiracy to defraud might have occurred was not put with any conviction. The Commission notes that in the final sentence of paragraph 11.4 the expression *"may be"* was used twice by Counsel Assisting. Nowhere in his submissions did Counsel Assisting furnish any particulars of any formation of a conspiracy to defraud. In Part 14 of his submissions, in which Counsel Assisting submitted that certain findings of misconduct should be made by the Commission, Counsel Assisting did not identify the alleged parties to any conspiracy to defraud with any precision. As to each of the principals, it was suggested that that principal entered into an agreement with the first of the other three principals, *"and/or*" the second of the other three principals, *"and/or*" the third of the other three principals. The Commission does not consider that it should itself undertake the task of attempting to identify in the evidence the formation of an agreement between two or more of the principals, notice of which was not given in the submissions of Counsel Assisting.

8.378 It appears to the Commission that, so far from an allegation of conspiracy to defraud being capable of encompassing the full scope of the alleged misconduct of all the principals, it is unlikely, even assuming that some agreement could be discerned between some of the principals, that a single agreement could be discerned to which all of the principals were parties. The Commission notes that, while Fletcher and Azzopardi knew each other, they would appear on the evidence to have conducted independent operations. In the opinion of the Commission the state of the evidence was accurately reflected in a leading question asked by Counsel Assisting in his examination of Fletcher, to which Fletcher assented. The question and answer were as follows:

Q. Just in terms of the use of these accounts by you and Mr Azzopardi, am I correct in taking from your evidence that really there was no joint conduct by you and Mr Azzopardi; it's just you both knew Mr Williams and you were both accessing bowler accounts through him?

39 A. I think that's a fair assertion, yes.[281]

8.379 It is clear on the evidence that Smith had little contact with Azzopardi or even with Fletcher. Additionally, there is no evidence that either Fletcher or Azzopardi were involved in the free bets that Williams and Smith obtained.

8.380 In these circumstances, the Commission does not consider that it should attempt the task of discerning and then examining a single conspiracy to defraud involving all or some of the principals. Consequently, the Commission does not express any opinion that any of the principals entered into a conspiracy to defraud.

OTHER ALLEGED MISCONDUCT

8.381 The Commission will now consider other grounds on which Counsel Assisting submitted that the Commission could form an opinion that each of Smith, Williams and Fletcher engaged in misconduct.

SENIOR CONSTABLE MARC SMITH

Participating in misconduct by private hearing witnesses

8.382 In a previous part of this report the Commission conducted an assessment of the private hearing witnesses and found that all of these witnesses had engaged in misconduct. The Commission found that each of Besant, Immens, Kasun, Peresson, Zeibots, Robertson, Mundy, Reily, Seydler, Innes, Goonan, Guest and Foster, all of whom were police officers, engaged in police misconduct by providing his identification documents to Smith for the purpose of setting up betting accounts in the officer's name.

8.383 The Commission considers that Smith's conduct in participating in and indeed instigating such conduct on the part of the other police officers itself amounted to police misconduct.

8.384 The Commission further considers that it was misconduct on the part of Smith to provide the accounts which he had opened to professional gamblers for use by them in gambling.

Causing Innes to access the COPS system for an improper purpose

8.385 Counsel Assisting submitted that Smith had caused another police officer, Innes, to access the Computerised Operational Policing System (COPS) on behalf of a friend of Smith's, for the improper purpose of obtaining information for a private purpose.

[281] PIC Transcript, S C Fletcher, 6 December 2013, p. 466:34-466:39

8.386 The evidence to be considered consists of an exchange of text messages between Smith and Innes, occurring on 7 November 2012; an exchange of text messages between Smith and a person code-named MC2 who was a friend of Smith's, occurring between 23 November 2012 and 29 November 2012; the records of a COPS audit report showing COPS accesses made by Innes on 29 November 2012; and the oral evidence given before the Commission by Smith and Innes.

8.387 The COPS audit report showing accesses made by Innes on 29 November 2012 shows that on that day Innes accessed information about a person, code-named MC3.

8.388 The exchange of text messages between Smith and Innes on 7 November 2012 included the following:

> *SMITH: Got as little job for u. I'll email u details. $100 for your trouble. When u back in Sydney?*
>
> *INNES: Next week … I love free money …*[282]

8.389 In his evidence before the Commission Smith said he could not remember what the job was that he had for Innes in those text messages. However, he assumed that *"it would have been in relation to betting stuff"* and denied that it related to the COPS access that Innes subsequently made on 29 November 2012. [283]

8.390 The exchange of text messages between Smith and MC2 included the following:

> *MC2: can u get car rego today*
>
> *SMITH: Nah. My mate does all those sorts of checks in our office. I haven't accessed those systems for years. He does 10 a day.*
>
> *MC2: Ok can anyone else or too risky.*
>
> *SMITH: Yeah too sus. We all get audited but my mate does so many he can do it no worries. Monday morning mate.*
>
> *MC2: Cheers*
>
> *SMITH: No dramas getting address, car rego etc. he will do it. He just left for an exercise out at Holsworthy so it'll be done by this arvo.*
>
> *MC2: No problems thx – will catch up with ya and get thoughts when your free…*

[282] Ex 65 AC, Exchange of text messages between Marc Smith and Michael Innes, 7 November 2012

[283] PIC Transcript, Marc Smith, 19 November 2013, pp. 167:35-168:8

SMITH: Checked him out. Is he in early 30's? With surname spelling u gave me found a Clovelly road address Randwick, born 1981 an no history at all. Not much there at all mate. Talk to u Saturday.[284]

8.391 In his evidence Smith was questioned about whether he had ever asked Innes to access the police computer on behalf of MC2 and he said that he had. In explaining how that had happened, he said:

> *A. … [MC2] had a relationship with a female, I'm not sure who it was, and he was - her partner or ex-partner was in - from the information I got, was stalking the female and he asked me to look - I think it was - it was some - he had a domestic relationship with a female and she was having dramas with another male and it was becoming violent, and I looked him up - I got Mick Innes to look him up, just to see - I can't remember exactly why, but just to get his general information, in an attempt to try and stop him from harassing the female.*[285]

8.392 Smith was then shown the text messages between himself and MC2 and agreed that MC2 had asked him to obtain information about MC3, including the registration number for MC3's car, when MC2 said: *"Can u get car rego today"*. Smith gave evidence that before he received the messages from MC2, he had already had some discussions with MC2 about MC3 and was meeting MC2 *"quite regularly"*. Smith said that those meetings were not official police work, *"just a coffee between two friends".* [286]

8.393 The following questions and answers then occurred in the evidence:

> *Q. And that coffee between two friends led to you asking another police officer to access the database of the police department?*
>
> *A. Yes.*
>
> *Q. Is that in accordance with the rules and regulations which govern access to the computer database in relation to people's private details?*
>
> *A. I'm not sure.*
>
> *Q. The earlier offer of a job to Mr Innes on 7 November 2012, is it correct to say that that relates to his accessing the police computer?*
>
> *A. No, it definitely wasn't that*
>
> *…*
>
> *Q. You say that you don't know what it was for?*
>
> *A. Yeah, I would assume it would have been in relation to betting stuff. This was a favour as I had spoken to [MC2] about just handling the matter through normal police but because he has a close relationship with me and*

[284] Ex 64 AC, Exchange of text messages between Marc Smith and MC2, 23-29 November 2012

[285] PIC Transcript, M J Smith, 20 November 2013, p. 166:8-166:17

[286] PIC Transcript, M J Smith, 20 November 2013, p. 167:5-167:23

I was in the police, I was going to handle it for him and have a chat to the guy.

…

Q. And did you have a chat to the guy?

A. No

…

Q. You obtained the personal information of the man [MC3], is that correct, from Mr Innes?

A. Yes.

Q. And you provided it to [MC2]; is that correct?

A. I - most likely I would have. I don't remember exactly how I did it or if I did, but I would say that would have been very likely.

…

Q. … do you see [in the text messages] *after you talk about "My mate doing all the checks" - do you see that line from you; second line?*

A. Yes.

Q. And that's a reference - the "mate" in that case is Mr Innes?

A. Yes.

Q. You're then asked: "Ok can anyone else or too risky." And you say: "Yeah too sus. We all get audited but my mate does so many he can do it no worries." Do you see that?

A. Yes.

Q. What's that about?

A. Like I said, my job doesn't require me to look people up, or rarely does, so Mr Innes looks up a lot of people and he can look it up without anyone noticing.

Q. Why would it be a problem if anyone noticed, if it was a regular police job?

A. Because it wasn't - didn't go through the regular channels, it wasn't really my duty type to be handling that sort of complaint.

Q. And because it's not proper for policemen to access people's private records for their mates, is it?

A. No, it's not.

Q. And that's what you did, isn't it?

A. Yes.[287]

8.394 In giving evidence about the circumstances in which he had got Innes to access COPS to obtain information about MC3, Smith also said that he was *"trying to do something"* about *"a complaint from a member of the public to me, as a police officer"*.[288]

8.395 When Innes gave evidence before the Commission he was shown the COPS audit report showing the accesses he made on 29 November 2012 regarding MC3.

8.396 Innes denied that the text messages on 7 November 2012 related to the COPS access he later made about MC3 and said that he did not have any memory of making the access. He said that he was an *"Intel officer"* and *"a lot of people come to me to do those checks".* When asked if he could have made the access about MC3 on Smith's behalf, he said:

> *A. If he* [Smith] *came and approached me and asked me to access the police system, I would generally ask why and there'd be a valid reason why and based on that valid reason, I may have conducted the inquiry*.[289]

8.397 Counsel Assisting submitted that Smith had caused Innes to access COPS for an improper purpose and had then improperly supplied to MC2 the information he had obtained from Innes and had thereby acted contrary to police policy, s 308H of the *Crimes Act 1900* and s 62 of the *Privacy and Personal Information Protection Act 1998.*

8.398 Counsel for Smith submitted that, as *"Innes had the necessary authorisation or approval to access the Police computer and make the inquiry he apparently did on 29 November 2012",* there could *"be no suggestion that the access … was unauthorised"* for the purposes of s 308H of the *Crimes Act*.

8.399 Counsel for Smith also submitted that his client was *"acting on a complaint from a member of the public"* and that the access he had caused Innes to make was for a *"legitimate purpose".* Counsel referred to s 308B(2) of the *Crimes Act*, which provides that an access to data is *"not unauthorised merely because the person has an ulterior purpose for that action".* It was submitted that Smith's admission that it was not proper for police officers to access private records for their friends needed to be *"balanced with the remainder of his evidence"* and the *"context"* in which it was given.

8.400 As to s 62 of the *Privacy and Personal Information Protection Act,* it was submitted that Counsel Assisting had not identified which of the offences under s 62 it was alleged that Smith had committed.

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[287] PIC Transcript, M J Smith, 20 November 2013, pp. 167:25-170:22

[288] PIC Transcript, M J Smith, 20 November 2013, p. 169:10-169:12

[289] E x 59 AC, PIC Transcript, M P Innes, 6 November 2013, p. 10:39-10:46

Assessment

8.401 Part 6 of the *Crimes Act,* in which ss 308 to 308I occur, is headed *"Computer offences".*

8.402 Section 308 is headed *"General definitions"* and provides definitions of some terms in Part 6, inducing the term *"data".* The definition of *"data"* provides that the term *"data"* includes *"information in any form".*

8.403 Section 308A is headed *"Meaning of access to data, modification of data and impairment of electronic communication"* and provides the following definition of the term *"access"* to data held in computers:

> *(1) In this Part,*
>
> ***"access"** to data held in a computer means:*
>
> *(a) the display of the data by the computer or any other output of the data from the computer, or*
>
> *(b) the copying or moving of the data to any other place in the computer or to a data storage device, or*
>
> *(c) in the case of a program-the execution of the program.*
>
> *…*
>
> *(4) A reference in this Part to any such access … is limited to access … (whether directly or indirectly) by the execution of a function of a computer.*

8.404 Section 308B is headed *"Meaning of unauthorised access, modification or impairment"* and provides as follows:

> *(1) For the purposes of this Part, access to or modification of data, or impairment of electronic communication, by a person is "unauthorised" if the person is not entitled to cause that access, modification or impairment.*
>
> *(2) Any such access, modification or impairment is not unauthorised merely because the person has an ulterior purpose for that action.*
>
> *(3) For the purposes of an offence under this Part, a person causes any such unauthorised access, modification or impairment if the person's conduct substantially contributes to the unauthorised access, modification or impairment.*

8.405 Section 308H is headed "*Unauthorised access to or modification of restricted data held in computer (summary offence)"* and provides as follows:

> *(1) A person:*

(a) who causes any unauthorised access to or modification of restricted data held in a computer, and

(b) who knows that the access or modification is unauthorised, and

(c) who intends to cause that access or modification,

is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

(2) An offence against this section is a summary offence.

(3) In this section:

"restricted data" means data held in a computer, being data to which access is restricted by an access control system associated with a function of the computer.

8.406 The offence under s 308H was considered by the New South Wales Court of Appeal in *Salter v Director of Public Prosecutions (NSW)* [2011] NSWCA 190. In *Salter* a police officer had *"accessed the COPS system and looked at 22 screens of different data during an 11 minute period."* In the facts of that case, "*the information on the screens was not relevant to any current investigation then being undertaken by the NSW Police Service"* (at [7] per McClellan CJ at CL, with whom the other members of the Court of Appeal agreed).

8.407 In his judgment in *Salter* McClellan CJ at CL, after holding that information in COPS is *"restricted data"* to which s 308H applies, said:

18. Section 308H(1) creates an offence where a person knowingly has unauthorised access to restricted data in the computer. Section 308B(1) provides that access is unauthorised if the person is not entitled to cause that access. Although an officer of the police service who has the relevant authority is entitled to access the system in furtherance of a task required of that person in the discharge of their duties as a police officer, they are not otherwise entitled to access the system.

19. The object of s 308B(2) is to protect an officer who has a legitimate entitlement to access particular data but who may also have an ulterior purpose for that access. Accordingly, if there is a legitimate purpose even though there is also an ulterior purpose, the officer will not breach the Act.

…

25. … subsection [308B(2)] has the purpose of ensuring that when a person accesses the COPS system exercising their authority they will not commit an offence "merely" because they have in addition some ulterior purpose.

8.408 According to general English usage the word *"ulterior"* has the meanings: *"existing in the background or beyond what is evident or admitted; hidden; secret; situated beyond; more remote; not immediate"* (*The Australian Concise Oxford Dictionary*).

8.409 The Commission rejects the submission made on behalf of Smith that the access to COPS which Smith caused Innes to make was not *"unauthorised",* because Innes had authority to access COPS. In accordance with what McClellan CJ at CL said in *Salter*, Innes, however often he might legitimately access COPS, had authority to access COPS only if it was in furtherance of a task required of him in the discharge of his duties as a police officer. Smith had authority to cause Innes to access COPS, only if it was in furtherance of a task required of Smith in the discharge of his duties as a police officer. Smith's request to Innes to access COPS was not in furtherance of a task required of Smith in the discharge of his duties as a police officer. As Smith conceded, *"it wasn't a regular police job".*

8.410 The Commission also rejects the submission made on behalf of Smith that Smith had a legitimate purpose, namely that he was acting on a complaint from a member of the public, and was therefore protected from liability by s 308B(2). It is clear on the evidence that Smith's primary purpose was to assist his friend, MC2, and that any purpose of acting on a complaint from a member of the public was an ulterior, secondary purpose.

8.411 Section 308B(2) provides that an access is not unauthorised merely because a person has an ulterior purpose. Accordingly, an access by a police officer to COPS will not be unauthorised, if the police officer's primary purpose for accessing COPS is proper, even if the police officer has an ulterior purpose which is not a proper purpose. However, if the police officer's primary purpose for accessing COPS is improper, the access will not be saved from being unauthorised by the existence of an ulterior proper purpose.

8.412 The Commission concludes that there is sufficient evidence supporting consideration of prosecution of Smith for an offence under s 308H of the *Crimes Act 1900.* However, as s 308H is a summary offence, to which s 179 of the *Criminal Procedure Act 1986* applies, a prosecution of Smith under s 308H would now be time-barred.

8.413 Nevertheless, the Commission considers that it was police misconduct for a police officer to have caused another police officer to access COPS for the improper purpose of obtaining information otherwise than in furtherance of a task required in the discharge of his duties as a police officer.

8.414 Section 62 of the *Privacy and Personal Information Protection Act* is headed *"Corrupt disclosure and use of personal information by public sector officials"* and provides as follows:

> *(1) A public sector official must not, otherwise than in connection with the lawful exercise of his or her official functions, intentionally disclose or use any personal information about another person to which the official has or had access in the exercise of his or her official functions.*
>
> *Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.*
>
> *(2) A person must not induce or attempt to induce a public sector official (by way of a bribe or other similar corrupt conduct) to disclose any personal information about another person to which the official has or had access in the exercise of his or her official functions.*

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

(3) Subsection (1) does not prohibit a public sector official from disclosing any personal information about another person if the disclosure is made in accordance with the Public Interest Disclosures Act 1994 .

(4) In this section, a reference to a public sector official includes a reference to a person who was formerly a public sector official.

8.415 In s 3(1) of the *Privacy and Personal Information Protection Act* the term *"public sector official"* is defined as meaning any one of a list of persons and institutions and includes a person employed by the NSWPF.

8.416 The Commission concludes that there is sufficient evidence supporting consideration of prosecution of Smith for an offence under s 62(1) or 62(2) of the *Privacy and Personal Information Protection Act.* However, as any offence under s 62 is a summary offence, to which s 179 of the *Criminal Procedure Act 1986* applies, a prosecution of Smith under s 62 would now be time-barred.

Acted contrary to the authority he was given

8.417 Under this heading, Counsel Assisting submitted that the Commission could form the opinion that Smith engaged in serious police misconduct, by deceiving some of the police officers in whose names he opened accounts and by acting contrary to the authority they gave him.

8.418 Counsel for Smith submitted that *"the Commission would need to be satisfied to the requisite standard whether or not the alleged actions of Smith (if proven) amount to serious police misconduct as defined under the Act".* Counsel for Smith also submitted that *"a careful assessment"* needed to be made of the evidence that was given by the police officers in whose name Smith opened accounts with corporate bookmakers, as Smith was not present in person or by any legal representative when the police officers gave evidence and hence did not have any opportunity of testing the police officers' evidence.

i. Assessment of whether Smith deceived some of the police officers in whose name he opened accounts

8.419 The evidence before the Commission shows that Smith became involved in gambling activities with Williams after he received a telephone call from Williams in early 2012. In his evidence Williams said that he was *"looking for old Sportingbet accounts"* to be supplied to Fletcher.[290]

8.420 Commencing in June 2012, several of Smith's colleagues at the Tactical Operations Unit consented to Smith opening betting accounts in their names and provided Smith with personal details and identification documents that would be need to open the accounts. Some of the accounts Smith opened were provided to Fletcher and Azzopardi.[291]

[290] PIC Transcript, A P Williams, 21 November 2013, p. 512:31

[291] PIC Transcript, M J Smith, 20 November 2013, p. 112:7-112:9

8.421 While Smith gave evidence that the reason he opened betting accounts in the names of colleagues was "to get free bets" and accounts were only subsequently provided to Fletcher and Azzopardi, there is strong evidence that the reason why at least some of the accounts were opened in the first place was so that accounts could be provided to Fletcher and Azzopardi and that the purpose of obtaining free bets was secondary.

8.422 In his evidence before the Commission Smith conceded that "*there would have been some occasions where the setting up of the accounts would have been to pass on to Mr Fletcher or Mr Azzopardi"*, that is, not for the purpose of obtaining free bets.[292]

8.423 In an interview he gave before giving evidence before the Commission, Smith said that the idea of setting up accounts started after Williams told him that *"bookmakers didn't want to do business"* with Fletcher and that *"Fletch needed an account to use".* He said that the idea of obtaining free bets was something that he and Williams *"noticed"* and was *"just sort of something that popped up later on it was".*[293]

8.424 At the time when Smith sought the consent of a colleague to the opening of a betting account in the colleague's name, the colleague was not told by Smith that the account would be used by professional gamblers. In his interview with Commission officers Smith said that it was not the understanding of any of the police officers that *"anyone else"* (that is, anyone other than Smith) was going to use the accounts that he would be opening in their names. He said: *"it wasn't their understanding that anyone else was going to use them."*[294]

8.425 In the circumstances, the Commission considers that Smith deceived his colleagues about the purpose of opening accounts in their names.

ii. Assessment of whether Smith acted contrary to the authority he was given

8.426 There was evidence that Smith acted contrary to the limits on the authority that he was given by at least some of his police colleagues.

8.427 There is one clear example in the evidence of Smith acting contrary to the authority he was given by a fellow police officer.

8.428 Zeibots gave evidence that he had asked Smith to guarantee him that only Smith would have access to Zeibots' personal identification details and that Smith had assured him that he, Smith, would be the only person in control of the accounts opened in Zeibots' name.[295]

8.429 In his evidence Smith said that Zeibots had told him that Zeibots did not want anyone else using Zeibots' account and that Zeibots had asked Smith to

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[292] PIC Transcript, M J Smith, 19 November 2013, pp. 34:37-36:28

[293] Ex 25AC, Transcript of interview with Smith, pp. 9, 27

[294] Ex 25AC, p. 20

[295] Ex 13 AC, PIC Transcript, M C Zeibots, 5 November 2013, p. 7:1-7:14

guarantee that the professional gamblers who Smith had mentioned to Zeibots would not be using Zeibots' accounts.[296]

8.430 Notwithstanding what had been said between Smith and Zeibots, Smith through Williams allowed Zeibots' accounts to be passed on to, and used by, either Fletcher or Azzopardi. Smith said in his evidence that it had been a *"bad decision"* by him.[297]

8.431 A number of other police officers gave evidence about limits which they said had been placed on the authority they had given Smith to open accounts in their names. Each of Reily and Innes said that, although they knew Smith would be opening multiple accounts in their names, they had an understanding that Smith would not be making multiple bets on any account. Multiple bets were in fact placed on the accounts opened in the names of Reily and Innes.[298]

8.432 Mundy gave evidence that Smith had told him that only one account would be opened in his name and that he was not aware that seven accounts had been opened in his name.[299]

8.433 Seydler gave evidence that he had consented to only one account being opened in his name. He subsequently became aware that more than one account had been opened in his name.[300]

8.434 The evidence given by each of Mundy and Seydler to which reference has just been made was challenged by Smith, when Smith gave evidence. Smith said that he *"was always pretty clear that I was going to open up multiple accounts"*.[301] As already stated, Smith and his Counsel did not have any opportunity to cross-examine any of Reily, Innes, Mundy or Seydler. Earlier in this report the Commission expressed some reservations about the reliability as witnesses of all of Reily, Innes, Mundy and Seydler.

8.435 In the circumstances, the Commission does not consider that it should express any opinion that Smith acted contrary to the authority he was given by Reily, Innes, Mundy and Seydler. However, the Commission does consider that Smith acted contrary to the authority he was given by Zeibots.

Using his influence over his police colleagues

8.436 Counsel Assisting submitted that the Commission could form the opinion that Smith engaged in serious police misconduct by *"using his influence over his police colleagues to cause them to conduct themselves in a manner contrary to the standards expected of police officers".*

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296 PIC Transcript, M J Smith, 19 November 2012, pp. 41:2741:30, 46:19-47:1, 53:3-53:18

297 PIC Transcript, M J Smith, 19 November 2012, pp. 41:2741:30, 46:19-47:1, 53:3-53:18

298 Ex 59 AC, PIC Transcript, M P Innes, 6 November 2013, p. 19:18-19:46; Ex 61 AC, PIC Transcript, B Reily, 5 November 2013, p. 11:4-4:32

299 Ex 20 AC, PIC Transcript, A J K Mundy, 5 November 2013, p. 8:5-8:14, 9:22-9:27, 20:21-23:45

300 Ex 24 AC, PIC Transcript, T S Seydler, 6 November 2013, p. 7:31-8:31

301 PIC Transcript, M J Smith, 19 November 2013, p. 82:29-82:30

8.437 Counsel for Smith submitted that all of the police officers were *"willing"* and *"eager"* participants in the opening of betting accounts in their names and that there was no *"evidence of sufficient quality to satisfy the Commission that they were subject to undue, excessive or improper influence by Smith"*.

8.438 Earlier in this report the Commission assessed the conduct of the police officers who had allowed Smith to open accounts in their names and expressed the opinion that, by handing over their personal details and personal identification documents to Smith, each of the police officers had acted contrary to the standards expected of police officers.

8.439 Evidence was given by a number of the police officers that they had raised with Smith a concern they felt about the propriety of what Smith was proposing in the opening of accounts with corporate bookmakers and they had agreed to participate only after being told by Smith that what was being proposed was *"legal"* or *"above board".* The Commission will give some examples of police officers seeking and receiving assurances from Smith about the propriety of what was proposed.

8.440 Immens asked Smith if what was being done with the betting accounts *"was all above board"* and was assured by Smith that it was.[302]

8.441 Peresson asked Smith about the legality of the arrangement[303] and whether it was all *"above board"* and was told by him that it was. Peresson accepted Smith at his word because he *"trusted"* Smith.[304]

8.442 Goonan made numerous inquiries of Smith. Goonan said in his evidence: *"I asked him* [Smith] *- I looked for an answer from him. It was always, "It's all legal; it's not illegal." I remember distinctly being told that, 'I'd never do anything to, you know, put you at risk or get you into trouble', or words to that effect, and I trusted him on that, yeah, implicitly"*.[305]

8.443 Foster told Smith that he did not want anyone else to have access to his details and was assured by Smith that the scheme was *"above board".* He also trusted Smith and said that he had no reason to disbelieve him.[306]

8.444 It was not the case, as was submitted by Counsel for Smith, that it was only *"subsequently"* and with the benefit of hindsight that the police officers had concerns about participating with Smith in the opening of betting accounts in their names. The Commission is satisfied that the police officers it has referred to agreed to participate, only after they had been assured by Smith that what was being proposed by him was *"legal"* and *"above board".*

8.445 Smith did not in his evidence contest the evidence that had been given by several of his colleagues in the Tactical Operations Unit that they trusted him.[307]

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302 Ex 41 AC, PIC Transcript, J P Immens, 4 November 2013, p. 8:11-8:29

303 Ex 22 AC, PIC Transcript, M J Peresson, 4 November 2013, p. 8:11-8:16

304 Ex 22 AC, PIC Transcript, M J Peresson, 4 November 2013, p. 10:34-10:39

305 Ex 57 AC, PIC Transcript, B S Goonan, 6 November 2013, p. 12:20-12:40

306 Ex 63 AC, PIC Transcript, M J Foster, 6-7 November 2013, p. 9:31-9:39

8.446 The Commission considers that Smith used his influence over his police colleagues to cause them to conduct themselves in a manner contrary to the standards expected of police officers and that the use of his influence amounted to police misconduct.

Improper association with a professional gambler

8.447 Counsel Assisting submitted that the Commission could form the opinion that Smith engaged in serious misconduct by having an *"improper association with a professional gambler, contrary to the Declarable Associations Policy of the NSW Police Force".*

8.448 Counsel for Smith submitted that the evidence before the Commission did not disclose that Smith *"had a close personal relationship"* or a *"continuing relationship"* with either Fletcher or Azzopardi and, on the contrary, that there was evidence that Smith had met Fletcher and Azzopardi on no more than *"a handful of occasions".*

8.449 Counsel for Smith also submitted that there was insufficient evidence that Smith's relationship with Azzopardi and Fletcher was within any of the *"categories"* of a *"declarable association"* under the *NSW Police Force Procedures to Manage Declarable Associations – Individual Responsibilities.* Alternatively, it was submitted that *"any failure of Smith to identify and report a declarable association does not amount to serious misconduct".*

8.450 The *NSW Police Force Declarable Associations* Policy ("the Policy") came into operation in July 2012. In the Policy the term "declarable association" was adopted, replacing the term *"improper association"* which had previously been used. The Policy provides that:

> *A declarable association exists when an individual is associated (to varying degrees) with a person, group or organisation that is involved in (or perceived to be involved in) activity that is incompatible with activity conducted on behalf of the NSW Police Force*.[308]

8.451 The Policy further provides:

> *These associations create a conflict of interest between the individual's responsibility to the NSW Police Force and their personal relationships/private interests.*
>
> *The NSW Police Force is committed to managing declarable associations in the public interest. This commitment requires that all individuals engaged in activity on behalf of the NSW Police Force:*
>
> - *identify declarable associations*
> - *avoid declarable associations where possible*

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[307] PIC Transcript, 19 November 2013, pp. 67:38-67:39, 69:34-69:36, 71:37-71:38, 74:37-74:39

[308] NSWPF, Declarable Associations Policy, July 2012

- *seek advice if uncertain whether a declarable association exists*
- *report any declarable association regardless of whether or not it can be avoided*
- *cooperate in the management and resolution of declarable associations*
- *report any noticeable change in circumstances relating to a managed declarable association.*

…

Failure to comply

Failure to comply with this policy and related procedures will be considered a breach of the NSW Police Force Code of Conduct and Ethics and may result in management action.

8.452 The *NSW Police Force Procedures to Manage Declarable Associations – Individual Responsibilities* ("the Procedures") also came into operation in July 2012. On page 3 of the Procedures the definition of a *"declarable association"* in the Policy is repeated and a number of examples of declarable associations are given as follows:

Declarable associations can include (but are not limited to):

- *a relationship with a person who has a criminal history (having regard for the recency and seriousness of the history) or their known associates*
- *a relationship with a person suspected to be engaged in criminal activity, including "social" drug use*
- *a relationship with members of groups involved in unlawful activity*
- *membership of, or participation with groups perceived to be involved in unlawful activity*
- *a relationship with a NSW Police Force employee who is suspended or facing charges (with the exception of people performing a legitimate support person role)*
- *a relationship with a former NSW Police Force employee who was dismissed or resigned while under investigation.*

8.453 On page 8 of the Procedures an individual's obligation to identify a declarable association is discussed as follows:

1. Identify declarable associations

An individual is responsible to assess all of their personal associations (including those that may commence in the future) in order to identify associations that need to be declared. Individuals must seek advice from a manager or supervisor if they have any doubt or confusion.

It is your responsibility to identify declarable associations

Individuals are best placed to consider the type, frequency and intensity of their own associations with people, groups and organisations. However, others such as family, friends and work colleagues may recognise relationships and provide a new perspective or supporting information that the individual has not considered.

It is an ongoing responsibility for individuals to consider the people and groups they associate with.

Ask yourself:

- Does this person / group match the criteria of an association as contained in the previous definition?
- If so, do they come under the definition of a declarable association?
- Would a reasonable person perceive there is a conflict of interest in these circumstances?

If you are uncertain whether your circumstances meet the definition of a declarable association seek advice from a manager or supervisor

Consider the perceptions of others

It may not be easy to identify a declarable association in cases where an individual has a long established association, where emotional relationships are involved or where knowledge or information is lacking.

Individuals who believe that their circumstances do not meet the criteria for a declarable association should still consider how a reasonable member of the public would view it. If there are any doubts, seek advice from a manager or supervisor.

Failure to identify a declarable association when the individual involved could have reasonably been expected to, can lead to further management action

8.454 The Commission accepts that the evidence before the Commission shows that Smith did not have a close personal relationship with either Fletcher or Azzopardi and that such dealings as he had with them had largely been through Williams, who acted as the *"middle man".* Smith had met Azzopardi on only one occasion[309] and had met Fletcher socially on only a few occasions and did not

[309] PIC Transcript, D S Azzopardi, 19 December 2013, p. 649:40

have Fletcher's' telephone number.[310] He had worked for Fletcher on one occasion, when he attended the Kembla Grange races.

8.455 The Commission also accepts that neither Fletcher nor Azzopardi would fit within any of the examples of declarable associations given in the Procedures. As the Procedures clearly indicate, the examples given in the Procedures are not exclusive and it remains necessary to apply the general definition of a declarable association in the Policy.

8.456 Smith knew through Williams that Fletcher and Azzopardi were using the accounts that he was providing to Williams. He had been told by Williams that Fletcher had to bet through the accounts he was being provided with, because bets by Fletcher himself would not be accepted by the corporate bookmakers.

8.457 Smith was also aware of news stories and *"whispers"* about Fletcher's possible involvement in criminal activities. In his evidence before the Commission he said that this information had not caused him any concern. The information had not prompted him to break off his association with Fletcher or bring his association with Fletcher to the attention of his supervisors in the NSW Police Force. The reason he gave for not speaking to any senior police officer about the propriety of his association with Fletcher was that he was motivated by the money he hoped to make to fund his gambling habit.[311]

8.458 When asked by Counsel Assisting whether he should have been cautious about facilitating betting by a person about whom he had heard *"whispers"*, Smith said: *"during when this was happening, I think I was a bit blinded by my own sort of willingness and gambling problems. I think I made a lot of bad decisions and that was one of them."*[312]

8.459 The Commission considers that Smith's association with Fletcher was within the general definition of a declarable association in the Policy. Under the definition, *"varying degrees"* of association can amount to a declarable association. In the opinion of the Commission, Fletcher was a person who, even if not actually involved, should have been perceived by Smith to be involved in activity that was incompatible with activity conducted on behalf of the NSWPF and his association with Fletcher should have been declared. The Commission considers that Smith engaged in police misconduct.

8.460 The Commission notes that under the Policy a failure to comply with it is a breach of the Police Force's *Code of Ethics* and may result in management action.

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310 PIC Transcript, S C Fletcher, 5 December 2013, p. 391:2-391:9; PIC Transcript, M J Smith, 19 November 2013, pp. 98:38-98:46, 144:9-144:32

311 PIC Transcript, M J Smith, 19 November 2013, pp. 49:46-50:1

312 PIC Transcript, M J Smith, 19 November 2013, pp. 98:38-98:46

DETECTIVE SENIOR CONSTABLE ANTHONY WILLIAMS

Participating in misconduct by a private hearing witness

8.461 In a previous part of this report the Commission conducted an assessment of the private hearing witnesses, including Groves. The Commission found that Groves had engaged in police misconduct by providing his identification documents to Williams for the purpose of setting up betting accounts in Groves' name.

8.462 The Commission considers that Williams' conduct in participating and indeed instigating such conduct on the part of Groves amounted to police misconduct

8.463 The Commission further considers that it was police misconduct on the part of Williams to provide the accounts which he opened in Groves' name to professional gamblers for use by them in gambling.

Improper association with Stephen Fletcher

8.464 Counsel Assisting submitted that the Commission could form the opinion that Williams engaged in police misconduct by having an *"improper association with Stephen Fletcher, in circumstances where he knew or suspected that Stephen Fletcher may have been engaged in improper conduct, contrary to the Declarable Associations Policy of the NSW Police Force".*

8.465 Counsel for Williams submitted that his client did not have an improper association with Fletcher and that his obligations under the NSW Police Force's *"Declarable Association's Policy … were only enlivened if he perceived that Mr Fletcher may have been involved in activity that was incompatible with activity conducted by NSW police".* It was submitted that there was no evidence that Williams believed or had any reason to believe that Fletcher was anything other than a successful gambler.

8.466 As stated in the earlier part of this report in which the Commission considered a similar allegation of misconduct against Smith, the current NSW Police Force's *Declarable Associations Policy* ("the Policy") and *Procedures to Manage Declarable Associations – Individual Responsibilities* ("the Procedures") use the term "*declarable associations"* and not *"improper associations"* but this change in terminology does not alter the thrust of Counsel Assisting's submissions.

8.467 Parts of the Policy and the Procedures have already been set out earlier in this report when the Commission was considering the similar submission made by Counsel Assisting about Smith.

8.468 The evidence before the Commission showed that Williams met and became friendly with Fletcher in 2003 and became involved in gambling activities with him in February 2012.

8.469 Shortly after becoming involved, Williams began to obtain betting accounts for Fletcher to use for the placing of bets. He did so in circumstances where, according to his own evidence, he believed that Fletcher could not bet with

some of the corporate bookmakers. In his evidence before the Commission he said that he approached *"quite a few"* people for betting accounts, often by text, email and Facebook.[313] In one Facebook message to Seagg he said that he had "*a mate who is a professional punter / he is that good he can't put bets on through corporate bookmakers".*[314] An inference can readily be drawn that the *"mate"* referred to was Fletcher.

8.470 In the course of giving evidence before the Commission Williams was shown an email he had sent to three friends on 12 April 2012, in which he had stated the following:

> *Seeing sf this arvo – so I will ring and tell you what to put the 5k on. probably some out wide tennis match.*
>
> *quick funny story – he got a tennis player on side a few years ago.*
>
> *Tennis player would ring him and say "Can you have 75 on for me" obviously backing the yob he was playing. Steve would say "yep no worries and quote him overs eg. 2.80 instead of 2.50"*
>
> *Then SF would go and have $500k+ on*
>
> *Then he got this blokes other mate on side – they both played aust open.*
>
> *Fletch won 2.5 in the space of 60 minutes*.[315]

8.471 The person referred to as *"SF", "Steve"* and *"Fletch"* is clearly Stephen Fletcher.

8.472 Williams was asked if the email was a reference to some form of *"crookedness in the tennis"* and replied: *"It's just a story that I heard floating around on - I'm not sure if it was true or not. There's a lot of stories about Mr Fletcher and his gambling activities in his previous - his betting history."*[316] Williams described the story he had heard as a *"quick funny story"* and agreed that the substance of the *"quick funny story"* was *"that someone threw a tennis match and that someone else won a lot of money on it".* Williams said: "*Whether or not it's true or not, I don't know. It's probably, like a lot of stories about Mr Fletcher, not true"*.[317]

8.473 The following questions and answers occurred on the subject of whether Williams had any concern about his association with Fletcher:

> *Q. Did it concern you that he had this reputation and you were, yourself, involved, along with a number of friends, including a number of police officers, in allowing him to bet through your accounts, if there was even the slightest whiff of dishonesty in the betting?*

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313 PIC Transcript, A P Williams, 20 November 2013, p. 204:29-204:46

314 Ex 110 AC, Facebook message between Anthony Williams and Matthew Seagg

315 Ex 292 AC and Ex 293 AC

316 PIC Transcript, A P Williams, 17 December 2013, p. 552:38-552:41

317 PIC Transcript, A P Williams, 17 December 2013, p. 553:6-553:9

A. Not at all. It's a story. People - you can't read everything you hear or say. I mean, there's been circumstances in this case where things have been portrayed in the media which are totally incorrect. It's just a story.

…

Q. -- the nub of your answer, you weren't concerned at all?

A. No.[318]

8.474 In the course of the Commission's investigation a search warrant was executed at Williams' residence on 7 May 2013. As the search warrant was being executed, Williams telephoned Fletcher and informed him that a search warrant had been executed at his home. During the conversation Williams said to Fletcher: *"Yeah, so, I'm not sure what you've got at your house but yeah"*.[319]

8.475 In his evidence Williams said that he had telephoned Fletcher to find out whether a search warrant had been executed at Fletcher's house. He agreed that he had not asked a question in those terms in the telephone call. When asked what he had meant by the words, *"Yeah, so, I'm not sure what you've got at your house but yeah"*, he said: *"It's just words … I can't remember what I was saying"*.[320]

8.476 The Commission considers that the clear inference to be drawn from what Williams said in the telephone conversation is that Williams was warning Fletcher about the possibility of a search warrant being executed at Fletcher's house and that he should dispose of anything incriminating that he might have in his house, before any search warrant was executed.

8.477 In the opinion of the Commission, Williams' association with Fletcher fell within the general definition of a declarable association in the Policy, of being associated with a person involved in or perceived to be involved in activity that is incompatible with activity conducted on behalf of the NSW Police Force.

8.478 Even if Williams did not believe stories he had heard about Fletcher, he was obliged to consider the perceptions other persons might have about Fletcher. His action in telephoning Fletcher, when the search warrant was executed, indicates that he did in fact place some credence on the stories he had heard about Fletcher.

8.479 Williams did not take steps to avoid his association with Fletcher and did not report his association with Fletcher to his commander or supervisor, as he was required to do by the Procedures. His failure in these respects amounted to police misconduct.

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[318] PIC Transcript, A P Williams, 17 December 2013, p. 555:6-22

[319] Ex 271

[320] PIC Transcript, A P Williams 17 December 2013, pp. 472-473

Acting contrary to the authority he was given by Matthew Seagg

8.480 Counsel Assisting submitted that the Commission could form the opinion that Williams engaged in police misconduct by *"acting contrary to the authority he was given by Matthew Seagg in whose name he set up accounts and by deceiving Mr Seagg and acting contrary to the limits on the authority he gave him".*

8.481 Earlier in this report in its summary of evidence given by Seagg at a private hearing the Commission quoted parts of a Facebook conversation between Williams and Seagg in early 2012 and evidence given by Seagg at the private hearing about the Facebook conversation.

8.482 In the Facebook conversation Williams asked Seagg if he had a betting account with Sportingbet or Luxbet. Seagg replied that he had an account with Sportingbet. Williams said that he had a *"mate"* who was a professional gambler. Williams said: *"He can't put bets on through corporate bookmakers. He puts 10K into your account and bets on it. You get a whack of whatever he wins."*

8.483 Williams asked Seagg to provide details of his bank account and of his user name and password for his account with Sportingbet. Seagg provided Williams with details of his bank account and his Sportingbet account. He was later informed that his Sportingbet account had been used for betting.

8.484 A number of betting accounts with corporate bookmakers were opened in Seagg's name. Seagg said in evidence that he did not authorise the opening of these accounts. It was put to Seagg by Counsel Assisting that there had been no agreement by him that these other accounts should be set up. Seagg answered:

> *A. I did send him my driver's licence and my Police Credit Union copy* [sic], *but I didn't take that to mean opening other accounts. I didn't specifically say "don't" but I don't think it was never brought up in conversation that he was going to*.[321]

8.485 Seagg gave evidence that he was *"vaguely aware"* that other accounts in his name were set up by Williams with corporate bookmakers. He gained this awareness from conversations with Williams and from information in bank account statements he received from his bank. There is no evidence that Seagg complained about the opening of these accounts.

8.486 Williams gave evidence that he *"totally disagreed"* with Seagg's evidence that Seagg had not authorised Williams to open these other accounts. Williams said that there should be emails in his laptop computer, which the Commission had seized, in which Williams said that he would be willing to pay Seagg an additional sum for the setting up of other accounts.

8.487 The Commission does not consider that it should uphold this allegation of police misconduct by Williams. At most, the opening of the other accounts would have

[321] PIC Transcript, Matthew Seagg, 7 November 2013, p. 11:17-11:21

exceeded the authority given by Seagg but was not contrary to the authority given by Seagg. According to Seagg's own evidence, he did not in communications with Williams actually prohibit the opening of further accounts. Seagg accepted that he was *"vaguely aware"* of the opening of the other accounts and, as already stated, there is no evidence that he complained about the opening of these accounts.

Using his influence over his police colleagues

8.488 Counsel Assisting submitted that the Commission could form the opinion that Williams engaged in police misconduct by *"using his influence over his police colleagues to cause them to conduct themselves in a manner contrary to the standards expected of police officers".* Counsel for Williams did not make any submissions in response to this submission.

8.489 On the evidence before the Commission Groves was the only colleague of Williams' in the Police Force in whose name accounts were opened with corporate bookmakers. Both Williams and Groves were attached to the Homicide Squad in the Police Force

8.490 Earlier in this report the Commission summarised the evidence given by Groves at a private hearing, which was subsequently admitted into evidence at the public hearing.

8.491 Groves gave evidence about the circumstances in which he had allowed Williams to open accounts in his name. On the evidence he gave, he was aware of the reason that accounts in his name were to be opened, having been told by Williams that *"his friends had been stopped from using their accounts because they were winning too much".*[322] He knew that Williams' friends were *"professional gamblers"* and knew that Fletcher and Azzopardi were involved.[323]

8.492 Groves gave evidence that he had looked at the terms and conditions of at least one corporate bookmaker*, "to find where it says no one else can use your account",* before deciding to become involved with Williams and was satisfied, on seeing the terms and conditions, that there was nothing that prevented that from occurring.[324]

8.493 The following questions and answers occurred in Groves' evidence before the Commission:

> *Q. In that first conversation, did Mr Williams ask you whether you would be prepared to be involved?*
>
> *A. No, it didn't happen that way. I started to ask questions about it. I asked whether it was legal or not and we spoke about as long as you give - as long as I gave him consent to use those accounts, and it was legal, I asked if it would affect me getting a loan later on down the track in any way.*

[322] Ex 114 AC, PIC Transcript, C F Groves, 5-6 November 2013, pp. 839-9:32

[323] Ex 114 AC, PIC Transcript, C F Groves, 5-6 November 2013, pp. 9:43-10:18

[324] Ex 114 AC, PIC Transcript, C F Groves, 5-6 November 2013, pp. 23:36-24:46

> *These are just questions I'd asked him and he said no. I asked if anyone could do it and he goes - he said yes. I asked "Can I do it?", and he said yes. These are just the sort of things I can remember from the conversation. I asked if his account had been stopped. He said, "What do you think?", which led me to believe it was stopped. I asked the question why these people had their accounts stopped and I think we've gone through that. I asked a number of questions to make sure before I said yes and I did - "Can I be part of this", in that sort of way. I asked a number of questions to make sure it was okay and, as I said, I trusted Tony Williams in what he was telling me.*
>
> *Q. All of those questions that you just asked were designed to satisfy yourself that this was, if you like, above board or legal?*
>
> *A. Yes, yes*. [325]

8.494 Later in his evidence, after saying that, with the benefit of hindsight he had probably made a stupid decision in consenting to the use of betting accounts in his name, Groves said:

> *A… Now, if it was anyone else that approached me to ask me to do that* [allow the use of my accounts]*, I wouldn't have done it, but because it was Tony Williams - as I said, I trusted him, I believed in what he said and, like I said, I looked up to him*.[326]

8.495 The Commission concludes that, in answering Groves' questions in the way in which he did and in giving the assurances that Groves was seeking, Williams did use his influence over Groves to cause Groves to conduct himself in a manner contrary to the standards expected of police officers and this amounted to police misconduct on the part of Williams.

STEPHEN FLETCHER

Using information obtained from employees within the corporate bookmakers

8.496 Counsel Assisting submitted that the Commission could form the opinion that Fletcher engaged in misconduct by *"using information obtained from employees within the betting agencies to facilitate the use of accounts in names other than his own and, in the process, compromising those employees or placing them in a position of conflict of interest".* Counsel for Fletcher did not make any submissions in response to this submission.

8.497 The evidence relied on by Counsel Assisting in his submissions consisted of a number of lawfully intercepted telephone calls between Fletcher and employees of different corporate bookmakers, in which Fletcher sought and obtained information from those employees about the status of betting accounts in other persons' names he was using and advice on how he might continue to use the accounts.[327]

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[325] Ex 114 AC, PIC Transcript, C F Groves, 5-6 November 2013, pp.11:30-12:7

[326] Ex 114 AC, PIC Transcript, C F Groves, 5-6 November 2013, pp. 22:33-23:10

[327] See, for example, Ex 208 AC, Ex 209 AC, Ex 212 AC, Ex 218 AC, Ex 220 AC, Ex 221 AC

8.498 The evidence on which Counsel Assisting focused was the evidence of four telephone conversations between Fletcher and three different employees of the same corporate bookmaker Bet365 about betting accounts in the name of MC9 and Matthew Seagg. Earlier in this report the Commission quoted parts of the telephone conversations. However, it is convenient to repeat here parts of the conversations.

8.499 Parts of the first conversation which occurred on 24 February 2013 (after the betting account in the name of MC9 had been identified) were as follows:

> *SPORTINGBET EMPLOYEE: under review, sharp pro punter linked Steve Fletcher.*
>
> *FLETCHER: Are you serious?*
>
> *…*
>
> *SPORTINGBET EMPLOYEE: Monitored, it's a monitored account.*
>
> *…*
>
> *SPORTINGBET EMPLOYEE: Oh you'll still get on to win a thousand.*
>
> *…*
>
> *FLETCHER: How did they know I wonder?*
>
> *SPORTINGBET EMPLOYEE: How do they know? How do they know?*
>
> *FLETCHER: I think, I think I accidently um, logged into my phone to it once. I think might do it, mightn't it?*[328]

8.500 Parts of the second conversation which occurred on 7 March 2013 were as follows:

> *FLETCHER: Have a look at what it says on the, the account I'm using as a bodgy at the moment, Matty Seaggs. M A, double T, Y, S, can you look at the account, see what it says about it?*
>
> *…*
>
> *BET365 EMPLOYEE: … Alright I'll have a look …*[329]

8.501 In giving evidence before the Commission Fletcher agreed that in this conversation he was attempting to find out information about the account in the name of Seagg by *"using a person inside Bet365"*.[330]

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[328] Ex 220 AC, Transcript of telephone call between Stephen Fletcher and Sportingbet, 24 February 2013

[329] Ex 212 AC, Transcript of telephone call between Stephen Fletcher and Bet365, 7 March 2013

[330] PIC Transcript, S C Fletcher, 6 December 2013, p. 454:16-454:18

8.502 Parts of the third conversation which occurred on the following day 8 March 2013 were as follows:

FLETCHER: Matty, Matty, Matty Seaggs?

BET365 EMPLOYEE: … Yeah he's under review.

FLETCHER: What does that mean, th-that's normal though isn't it?

BET365 EMPLOYEE: No it's okay, it's something. (ui) all clients can go under that, betting that big so.

…

BET365 EMPLOYEE: they've checked for computer links and they can't find any.

FLETCHER: Oh lovely.

BET365 EMPLOYEE: It's all clear so he's under review. So that'll run for about a fortnight. So all is (ui), they'll check every, they will check every cent that he has and they will note what price you took (ui) to Betfair. That's how it'll work.

FLETCHER: Is that right? Well it's about time Matty Seaggs had some bad bets.

BET365 EMPLOYEE: Yes. (ui) yeah just don't tell anyone for fuck sake …

…

BET365 EMPLOYEE: So yeah, it's a, doesn't mean he has to lose but you know, you saw the other day with a, it says possibly sharp, possibly sharp with horses. So in other words, just, they'll just note the bet until, and eventually they, if it's okay they'll say client okay take off review well then he goes into the ruck.

FLETCHER: Well I know how to fix Matty.

…

FLETCHER: Just, just punt off the gronk sheet.[331]

8.503 In his evidence Fletcher agreed that a problem had developed in relation to Seagg's account with Bet365. Fletcher said with reference to the third telephone conversation: *"Yes, well, just it looks like it's going to be shut down if - unless we start losing some serious money to it."*[332] Fletcher agreed that by saying *"just punt off the gronk sheet"* he meant deliberately placing bets which

[331] PIC Transcript, S C Fletcher, 6 December 2013, p. 453:9-453:10

[332] PIC Transcript, S C Fletcher, 6 December 2013, p. 453:9-453:10

were likely to lose (although sometimes it would happen that a bet intended to be a losing bet would win).[333]

8.504 Parts of the fourth conversation which occurred 18 March 2013 were as follows:

> *FLETCHER: Boss.*
>
> *BET365: Yeah it says under review possible (ui) horses.*
>
> *FLETCHER: Oh look but I'm still in high roller aren't I?*
>
> *BET365: High roller one, it's not the best thing yeah, who, who is the bloke?*
>
> *FLETCHER: Oh just like one of the Inspector Detective's mates, so*
>
> *BET365: Alright.*
>
> *FLETCHER: what does that mean? Ah, um, I'm not, I'm not*
>
> *BET365: It says here under, you're high roller one, so you probably still get bets at the moment, you can get on right, but it says here, ah, where are we s-, trader (ui). It says, under review two weeks, possible sh-, sharp horses. They're not sure.*
>
> *FLETCHER: So you reckon if I just bet badly for two weeks I'll be sweet?*
>
> *BET365: Yeah probably …*[334]

8.505 In his evidence Fletcher agreed that this telephone conversation also related to the viability of Seagg's betting account. The person Fletcher was speaking to was a friend who was letting Fletcher know that Seagg's account was *"basically on its last legs".* Before the conversation took place Fletcher would have asked his friend: *"Can you just check to see if this account is worthwhile or is finished, has been terminated?"*[335]

8.506 The Commission considers that it is clear that the employees of Bet365 divulged information to Fletcher which their obligations to their employer would have required them to keep confidential and that Fletcher encouraged the employees to divulge the information and thereby prefer Fletcher's interests to those of their employer. The Commission considers that this was misconduct by Fletcher.

Using his influence over two police officers (Williams and Smith)

8.507 Counsel Assisting submitted that the Commission could form the opinion that Fletcher engaged in misconduct, by *"using his influence over two police*

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[333] PIC Transcript, S C Fletcher, 6 December 2013, p. 453:12-453:22

[334] Ex 208 AC, Transcript of telephone call between Stephen Fletcher and Bet365, 18 March 2013

[335] PIC Transcript, S C Fletcher, 6 December 2013, p. 451:31-452:27

officers (Williams and Smith) to cause them to conduct themselves in a manner contrary to the standards expected of police officers, including by obtaining personal information of other officers and associates and setting up betting accounts for the use of Fletcher and Azzopardi". This submission was not developed by Counsel Assisting in his written submissions.

8.508 One submission made by Counsel for Fletcher was based on evidence given by Smith early in his evidence to the effect that the idea of setting up accounts in the names of police officers and providing those accounts to Fletcher or Azzopardi occurred, only after Smith had, quite independently of Fletcher or Azzopardi, commenced the setting up of accounts in the names of police officers for the purpose of obtaining free bets.

8.509 As was demonstrated in an earlier part of this report in which the Commission summarised parts of Smith's evidence under the heading *"Reason for setting up accounts"*, Smith in later evidence contradicted the evidence he had given earlier, being the evidence relied on by Counsel for Fletcher. Smith agreed with a question put by Counsel Assisting: *"Q. …The reality is that all of this started with a phone call from Mr Williams asking you if you could allow his professional gambling friends to use you as a front for money; isn't that what happened?"*[336]

8.510 Later still in his evidence Smith agreed with the following question by Counsel Assisting: *"Q. … The reality is that the first thing that happened is that you agreed with Mr Williams to take money to be a front for Mr Fletcher and it was months and months and months later that you came up with the idea of the free bets?"*[337]

8.511 A number of other submissions were made by Counsel for Fletcher. The main submission was that there was insufficient evidence for the Commission to form the opinion that Fletcher had influence over Williams and Smith and had used that influence to cause Williams and Smith to act in a manner contrary to the standards expected of police officers.

8.512 The Commission considers that this submission made by Counsel for Fletcher should be accepted. There was little evidence of contact between Fletcher and Smith. There was more evidence of contact between Fletcher and Williams. However, there was insufficient evidence with respect to either Smith or Williams to warrant a conclusion that Fletcher had influence over either officer which he exploited so as to cause the officer to act in the manner in which he did. The Commission notes that Smith and Williams set up betting accounts and provided them to Fletcher or Azzopardi for their own financial benefit and that the officers set up other betting accounts for use by themselves, quite independently of Fletcher or Azzopardi.

8.513 The Commission does not consider that this allegation of misconduct against Fletcher has been established.

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[336] PIC Transcript, M J Smith, 16 November 2013, p. 35:25-35:32

[337] PIC Transcript, M J Smith, 16 November 2013, p. 51:3-51:7

Section 193Q of the *Crimes Act 1900*

8.514 Counsel Assisting submitted that the Commission could form an opinion that Fletcher had engaged in misconduct in that he had possessed *"inside information"* when betting on a horse named Mosheen to lose in a horse racing event held on 20 October 2012, contrary to s 193Q(2) of the *Crimes Act 1900.*

8.515 Section 193Q of the *Crimes Act 1900* had come into operation on 13 September 2012. Section 193Q provides, so far as is relevant, as follows:

> *(2) A person who possesses information in connection with an event that is inside information, and who knows or is reckless as to whether the information is inside information, is guilty of an offence if the person:*
>
> *(a) bets on the event*
>
> *…*
>
> *Maximum penalty: Imprisonment for 2 years.*
>
> *…*
>
> *(4) Information in connection with an event is "inside information" if the information:*
>
> *(a) is not generally available, and*
>
> *(b) if it were generally available, would, or would be likely to, influence persons who commonly bet on the event in deciding whether or not to bet on the event or making any other betting decision.*
>
> *(5) Information is "generally available" if:*
>
> *(a) it consists of matter that is readily observable by the public, or*
>
> *(b) it has been made known in a manner that would, or would be likely to, bring it to the attention of the public, or*
>
> *(c) it consists of deductions, conclusions or inferences made or drawn from information referred to in paragraph (a) or (b).*

8.516 For present purposes the elements of the offence under s 193Q(2) can be stated as follows:

- A person possesses information in connection with an event:

  (a) that is not generally available, and

  (b) if it were generally available, would, or would be likely to, influence persons who commonly bet on the event in deciding whether or not to bet on the event or making any other betting decision,

- The person knows or is reckless about whether the information is *"inside information"*, and
- The person bets on the event.

8.517 The principal, but not the only, evidence about whether the alleged misconduct had occurred consisted of two lawfully intercepted telephone conversations between Fletcher and a person code-named MC17. Parts of the terms of the two conversations have been set out earlier in this report but it is convenient to set out the conversations more fully here.

8.518 The first telephone conversation occurred at 9:57:25 on 20 October 2012 and included the following:

MC17: No I've got one that can't win that's favourite

FLETCHER: Which one?

MC17: Mosheen

FLECTHER: Mosheen?

MC17: Yep.

FLETCHER: What was wrong with it?

MC17: Your phone's not bugged is it?

FLETCHER: I don't know, could be

…

MC17: I'm, my, well I'm working for [MC18][338] at the moment right, and he's like a chiroprac-, he does all their backs and shit.

FLETCHER: And it, and it's, it's in a bit of pain is it?

MC17: Well he done it the other week and said that it, went around and said that it would just win first up.

FLETCHER: Yeah

MC17: And now, and then today we said well will we back her again? And he goes, well I'm not supposed to tell anyone, but it's, it's, it's not right, it can't fuckin' win

FLETCHER: It's a sore horse?

MC17: Mm

[338] There is a non-publication order over this person's name

FLETCHER: Well I thought, I was actually, when it pulled up, after it won the other day when it was pulling up, I thought it looked a little bit sore then.

MC17: Mm

FLETCHER: So that doesn't surprise me.

MC17: Well that's what he said, he said its back's good, but it's not right.

FLETCHER: Yeah right I'm with you

MC17: There's something wrong with it, mm.

…

FLETCHER: Alright matey, well I'll fiddle around with Mosheen, yeah I didn't like it but I'll, I'll, I'll pot it more.

MC17: Yeah.

FLETCHER: Good boy.[339]

8.519 The second telephone conversation occurred at 13:51:57 on 21 October 2012 and included the following:

FLETCHER: [MC17]

MC17: What's going on mate?

FLETCHER: That was a good result

MC17: Yes, yes

FLETCHER: What do you got today, you've more? Any chiropractic mail?

MC17: Um, no we have to win the next at Seymour, Brendan's horse.

FLETCHER: What have you got?

MC17: Brendan's horse will win the ne-, (ui) win the next at Seymour.[340]

8.520 In his evidence before the Commission Fletcher said that he *"imagined"* that he had *"layed"* Mosheen to lose. He disputed that the information he had received from MC17 was inside information and denied having *"layed"* Mosheen *"on the basis of that information."* He claimed that he had himself observed the state of health of Mosheen and that it would have been *"fairly obvious to most"*.[341]

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[339] Ex 132 AC, Transcript of telephone call between Stephen Fletcher and another person, 20 October 2012

[340] Ex 134 AC, Transcript of telephone call between Stephen Fletcher and another person, 21 October 2012

[341] P. 360

8.521 In his submissions Counsel Assisting stated that:

> *A difficulty that would confront a prosecution under this section concerns proof that Fletcher actually placed a bet on Mosheen. There is no evidence in the betting account records that he did so although this is probably explained by the fact that Fletcher used many other bowler accounts about which the Commission has no knowledge.*

8.522 In the apparent absence of any direct evidence that Fletcher had placed a bet on Mosheen Counsel Assisting sought to rely on circumstantial evidence, namely the terms of the second telephone conversation that Fletcher had with MC17, which Counsel Assisting submitted *"gives rise to the inference that Fletcher won on the horse".*

8.523 Counsel for Fletcher submitted that the Commission should not make a recommendation that consideration should be given to the prosecution of Fletcher for an offence under s 193Q, for the following reasons:

a. *That the alleged conduct falls outside the Commission's scope of inquiry*

b. *That there is insufficient evidence to prove that Mt Fletcher placed the bet* [on the horse Mosheen]

c. *That there is insufficient evidence that the alleged inside information was not generally available*

d. *That there is no evidence that the alleged information was accurate*

e. *That there is evidence available that the inside information was not relied on, or credible, to Mr Fletcher*

f. *That there would be no reasonable prospects of conviction for the offence*

g. *That general discretionary factors militate against prosecution*.[342]

8.524 Counsel for Fletcher also submitted that the elements of an offence under s 193Q *"appear to be far more readily established against the person who provided Fletcher with the information"* (MC17) and that the failure by Counsel Assisting to recommend that that person be considered for prosecution *"raised the prospect that there is a particular personal or political agenda operating against Mr Fletcher"*.

[342] Submissions on behalf of Stephen Fletcher, paragraph 44

Assessment

8.525 The Commission will now consider the submissions made on behalf of Fletcher.

a. That the alleged conduct falls outside the Commission's scope of inquiry

8.526 It is accepted by the Commission that the bets placed by Fletcher on Mosheen were placed on an account in his own name and not an account in the name of any police officer. However, it is within the scope of the Commission's investigation to inquire whether, for reasons including the conduct of Fletcher, the association between the police officers and Fletcher was one which the police officers should have avoided. The Commission considers that the alleged use of inside information by Fletcher was accordingly within the scope and purpose of the Commission's investigation.

b. That there is insufficient evidence to prove that Mt Fletcher placed the bet on the horse Mosheen

8.527 As already stated, Counsel Assisting in his submissions said that there was no direct evidence that Fletcher had bet on (against) Mosheen and that this would present a *"difficulty"* in any prosecution of Fletcher for an offence under s 193Q. Counsel submitted that an inference could be drawn from the circumstantial evidence that Fletcher had placed a bet. Counsel for Fletcher submitted that the circumstantial evidence relied on by Counsel Assisting was insufficient to establish the inference.

8.528 Contrary to the submissions made by Counsel Assisting, there is evidence that Fletcher placed a bet and, indeed, two bets on Mosheen. He backed Mosheen to win and layed Mosheen to lose for a much greater amount. The evidence consists of records of an account in Fletcher's name with the corporate bookmaker Betfair.

8.529 The records for Fletcher's Betfair account show that the following bets were placed at 15:53 on 20 October 2012 on the race in which Mosheen ran (Caulfield, Race 9, 1400m Grp2): [343]

Selection	Min Price Taken	Max Price Taken	Layed	Backed
4. Red Tracer	5	6.63	$0.00	$7,356.59
7. Miss Stellabelle	11.5	12.5	$0.00	$1,500.00
2. Streama	12	12	$0.00	$1,000.01
1. Mosheen	2.78	3.55	$10,773.90	$2,000.00
8. Appearance	21	21	$0.00	$400.00
3. Pear Tart	16	17	$0.00	$6,000.00
11. Soft Stand	7.8	7.8	$0.00	$1,000.00

8.530 The Commission had obtained this evidence before the public hearing but, by an oversight, the evidence was not tendered at the public hearing. The Commission discovered this oversight after the public hearing had concluded

[343] Record of Fletcher's Betfair betting account

and after submissions had been received from Counsel Assisting and Counsel for the various parties.

8.531 By a letter dated 24 April 2014 the Commission wrote to the solicitors representing Fletcher, giving notice of the Commission's intention that the records be tendered and admitted into evidence. The letter requested that the Commission be informed, if it was desired that Fletcher be recalled as a witness for the purpose of being questioned about the records or if it was to be submitted that the records should not be admitted into evidence.

8.532 By a letter dated 15 May 2014 the solicitors for Fletcher notified the Commission that they did not seek to make any submissions in relation to the matters which had been raised by the Commission in its letter of 24 April 2014.

8.533 After the Commission had received the letter of 15 May 2014 the records of Fletcher's Betfair account showing the bets on Mosheen were admitted into evidence.

8.534 The records of Fletcher's Betfair account show that a wager on Mosheen to lose was placed at 15:53 on 20 October 2012, that is, later on the same day as Fletcher's first conversation with MC17, that conversation having taken place at 9:57 on 20 October 2012.

c. That there is insufficient evidence that the alleged inside information was not generally available

8.535 It was submitted by Counsel for Fletcher that there was not sufficient evidence to establish that the information conveyed by MC17 in the first telephone conversation was not generally available. Counsel for Fletcher referred to the part of the conversation in which Fletcher referred to observations which he said he had himself made of Mosheen when it was *"pulling up"* after winning at its previous start.

8.536 The Commission considers that there is sufficient evidence that the information that Mosheen had a sore back was not generally available. It is noteworthy that Mosheen had started as favourite in the event on 20 October 2012, which strongly suggests that any information that Mosheen had a sore back was not generally available.

8.537 Furthermore, the terms of the first conversation between Fletcher and MC17 strongly indicate that such information was not generally available. In the conversation MC17 said, among other things*, "I've got one that can't win", "your phone's not bugged"* and *"I'm not supposed to tell anyone".*

8.538 The series of questions asked by Fletcher indicate that Fletcher was seeking information he was not already in possession of. Fletcher asked MC17: *"What was wrong with it?", "And … it's in a bit of pain is it?", "It's a sore horse?"* It can be taken that Fletcher was well informed regarding such information about Mosheen as was generally available. Furthermore, the information conveyed by MC17 to Fletcher was not merely that Mosheen had a sore back but that

the horse had been seen by a chiropractor. This last piece of information was clearly not generally available.

8.539 It is true that Fletcher commented in the first conversation with MC17 that he had observed that Mosheen had *"looked a little bit sore"* when it had *"pulled up"* after winning *"the other day".* However, this was said after a number of things had already been said to Fletcher by MC17 about Mosheen not being able to win.

8.540 As to s 193Q(4)(b), that is, whether the information if it were "*generally available, would, or would be likely to, influence persons who commonly bet on the event in deciding whether or not to bet on the event or making any other betting decision",* Fletcher claimed in his evidence that he had placed no credence in MC17 and that he would have relied on his own avenues of information, for example his professional rating service.

8.541 This claim is refuted by the terms of the first conversation, Fletcher's obvious interest during the conversation in what he was being told by MC17 and especially by Fletcher's remark, having heard MC17's information about Mosheen, *"I didn't like it but I'll … pot it more".* The claim is also refuted by the terms of the second conversation in which, after the running of the race in which Mosheen had been beaten, Fletcher commented, *"that was a good result"* and asked MC17 if he had any more information, "*Any chiropractic mail?"* Fletcher then received further information from MC17.

8.542 The Commission is satisfied that the information that was communicated by MC17 influenced Fletcher in making a betting decision, if only to bet more money on Mosheen losing than he had originally intended. Fletcher is a person who commonly bets on events of the type in which Mosheen ran. That the information in fact influenced Fletcher in making a betting decision is some evidence that the information would have been likely to influence persons who commonly bet on events of that type.

d. That there is no evidence that the alleged information was accurate

8.543 It was submitted on behalf of Fletcher that it would be necessary for the prosecution at a trial for an alleged offence under s 193Q to prove that the information he received from MC17 was *"accurate".* It was conceded that such a requirement is not expressly provided in the section and it appears to the Commission that information could fall within both limbs of the definition of *"inside information"* in s 193Q(4), even if the information was inaccurate.

e. That there is evidence available that the inside information was not relied on, or credible, to Mr Fletcher

8.544 In the Commission's opinion, the evidence of the terms of the two conversations between Fletcher and MC17 is strong evidence that Fletcher believed and relied on the information about Mosheen which MC 17 supplied to Fletcher.

f. That there would be no reasonable prospects of conviction for the offence & g. That general discretionary factors militate against prosecution.

8.545 As already stated elsewhere in this report, the Commission is not a prosecuting authority and, in deciding whether to recommend to the Director of Public Prosecutions that consideration be given to a prosecution, the Commission has regard to what appears to the Commission to be the sufficiency of the evidence to establish an offence but does not take into account discretionary factors which it is the function of the Director of Public Prosecutions to take into account in his capacity as a prosecuting authority.

8.546 The Commission considers that it was appropriate for Counsel Assisting not to make any submission that consideration should be given to the prosecution of MC17 for an offence under s 193Q of the *Crimes Act*. MC17 did not give evidence before the Commission and was not legally represented.

8.547 Having regard to all of the circumstances, the Commission considers that Fletcher engaged in misconduct.

8.548 The Commission considers that it should make a recommendation that consideration be given to the prosecution of Fletcher for an offence under s 193Q of the *Crimes Act.*

FINANCIAL TRANSACTION REPORTS ACT 1988 (CTH)

8.549 In his submissions Counsel Assisting set out the terms of s 24 of the *Financial Transaction Reports Act 1988* (Cth) ("the Act") and submitted that Smith, Williams and Azzopardi had engaged in conduct which would amount to a contravention of the Act. Submissions in response to Counsel Assisting's submissions were made by Counsel for Smith and Counsel for Azzopardi. No submissions were made on behalf of Williams. No submissions were made by Counsel Assisting that Fletcher had engaged in conduct which would amount to a contravention of the Act by Fletcher and, accordingly, no submissions about the Act were made by Counsel for Fletcher.

8.550 Section 24 of the *Financial Transaction Reports Act 1988* provides, so far as is relevant, that:

> *(1) A person shall not open an account with a cash dealer in a false name.*
>
> *(2) A person shall not operate an account with a cash dealer in a false name.*
>
> *…*
>
> *(7) For the purposes of this section:*
>
> > *(a) a person opens an account in a false name if the person, in opening the account, or becoming a signatory to the account, uses a name other than a name by which the person is commonly known; and*

> *(b) a person operates an account in a false name if the person does any act or thing in relation to the account (whether by way of making a deposit or withdrawal or by way of communication with the cash dealer concerned or otherwise) and, in doing so, uses a name other than a name by which the person is commonly known; and*
>
> *(c) an account is in a false name if it was opened in a false name, whether before or after the commencement of this paragraph.*

8.551 Counsel Assisting submitted that each of Smith, Williams and Azzopardi had opened or operated an account with a cash dealer in a false name.

ASSESSMENT

8.552 A number of the terms in s 24 of the Act are defined in s 3 of the Act, which is headed *"Interpretation".*

8.553 In s 3(1) the term *"cash dealer"* is defined as meaning any one of a long list of persons and institutions, the last of which is *"bookmaker".* Hence, it would appear that a corporate bookmaker is a *"cash dealer"* for the purposes of the Act.

8.554 In s 3(1) the term *"account"* is defined as meaning:

> *(except in Part VIA) any facility or arrangement by which a cash dealer does any of the following:*
>
> *(a) accepts deposits of currency;*
>
> *(b) allows withdrawals of currency;*
>
> *(c) pays cheques or payment orders drawn on the cash dealer by, or collects cheques or payment orders on behalf of, a person other than the cash dealer.*

8.555 Part VIA of the Act relates to the retaining of financial documents and has no application in the circumstances presently being considered.

8.556 The term *"currency"* which occurs in s 3(1)(a) and (b) of the definition of *"account"* is defined by s 3(1) as:

> *the coin and paper money of Australia or of a foreign country that:*
>
> *(a) is designated as legal tender; and*
>
> *(b) circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue.*

8.557 On the evidence before the Commission, none of the corporate bookmakers accepted deposits of coin or paper money or allowed withdrawals of coin or paper money or paid cheques drawn on it or collected cheques or payment orders on behalf of other persons. Accordingly, the Commission considers that

none of the accounts that any of the gamblers had with a corporate bookmaker was an *"account"* within the meaning of that term in the Act and, consequently, that none of the principals could have committed an offence under s 24 of the Act.

TAXATION ISSUES

8.558 The question of whether any of the principals should have paid income tax on the net proceeds of his gambling activities was raised in various parts of Counsel Assisting's submissions.

8.559 In paragraph 7.11 of his submissions Counsel Assisting referred to the only questions Fletcher was asked, when he gave evidence at the public hearing, about his possible liability to pay income tax. These questions and Fletcher's answers were as follows:

> *Q. As a professional gambler, which you stated to be your occupation, I take it that income derived from that occupation is taxable?*
>
> *A. No, not gambling isn't, no.*
>
> *Q. So are records kept?*
>
> *A. No. Well, there would be by the agencies from the bets placed, obviously.*
>
> *Q. But you don't keep any?*
>
> *A. No.*[344]

8.560 Subsequently, in paragraph 7.11 of his submissions, Counsel Assisting asserted that *"Fletcher's failure to pay income tax is remarkable".* Counsel referred to evidence which would suggest that Fletcher was conducting a highly organised business, including that he had employees and agents and engaged in regular, high volume, organised and systematic betting.

8.561 Part 10 of Counsel Assisting's submissions was headed "*Taxation Issues".* In paragraph 10.1 Counsel Assisting referred very briefly to some evidence given by each of the principals that might be relevant to any liability to pay income tax. Counsel Assisting noted that Smith had worked a *"cash job"* for Fletcher to attend the Kembla Grange races, that he acknowledged that he had not kept any records and had not declared as taxable income any of the money he had received, including any of the money he had received for setting up accounts and providing accounts to Williams. Counsel Assisting submitted that Williams had avoided answering a question he was asked about whether he had paid income tax, by saying that *"I was losing just as much as I was winning"* and *"it was just gambling to me".* Counsel Assisting again referred to the evidence given by Fletcher which the Commission has already quoted. Counsel Assisting noted that Azzopardi was not asked any questions at all about taxation on his

[344] PIC Transcript, S C Fletcher, 5 December 2013, p. 323:38-323:47

gambling income. However, Counsel Assisting noted that gambling was Azzopardi's main source of income.

8.562 In paragraphs 10.2 to 10.7 of his submissions Counsel Assisting referred to some court decisions on whether particular taxpayers should be held liable to pay income tax on their winnings from gambling.

8.563 In paragraph 10.8 of his submissions Counsel Assisting stated the following:

> *The money earned by Smith in the employment of Fletcher was clearly income which should have been declared as such. The same applies to the 'commission' received by Smith and Williams for providing the accounts to Fletcher and Azzopardi. However, the money earned by Smith and Williams in gambling did not have the indicia of a business. On the other hand, the Commissioner of Taxation could take the view that Mr Fletcher was operating a business for the purpose of assessing his income. He appeared to have business premises, systematic use of various on-line betting accounts, persons who acted as his agents or employees and his gambling was of a sophisticated and systematic nature. Insufficient evidence is provided to make a similar contention in relation to Mr Azzopardi. However, it is clear that gambling is his main source of income.*

8.564 In paragraph 10.9 of his submissions Counsel Assisting suggested that the Commission might consider referring matters of taxation affecting the four principals to the Commissioner of Taxation and further suggested that the parties affected by this submission, that is all four of the principals, might consider it prudent to make submissions as to why the Commission should not make such a referral.

8.565 In Part 14 of his submissions, which related to compliance by the Commission with s 97 of the *Police Integrity Commission Act 1996* ("the Act"), Counsel Assisting did not submit that any of Smith, Williams or Azzopardi had engaged in misconduct in relation to taxation matters. However, Counsel Assisting did submit that Fletcher had engaged in misconduct by *"failing to declare or pay tax on taxable income, being income he earned as a professional gambler".* In paragraph 14.29 of his submissions Counsel Assisting submitted that the Commission should consider referring taxation issues to the Commissioner of Taxation in relation to all four of the principals.

8.566 Each of the principals made submissions in response to the submissions of Counsel Assisting about the referral of taxation issues to the Commissioner of Taxation.

8.567 In the submissions made on behalf of Smith it was accepted that the money that Smith had earned on the one occasion he went to Kembla Grange races *"could be categorised as taxable income".* However, it was submitted that, having regard to the declaration made in favour of Smith under s 41 of the Act, the Commission would need to consider whether there was *"any admissible evidence which would enable the Commissioner of Taxation to take action"* against Smith in relation to any failure to have paid income tax. As to other monies received by Smith from Fletcher and Azzopardi, it was submitted that the *"payments were in effect winnings from gambling"* or *"reward"* payments.

8.568 In the submissions made on behalf of Williams it was said that, in the absence of any evidence that the money earned by Williams was significant, *"no recommendations ought to be made in connection with any taxation offence".*

8.569 A number of submissions were made on behalf of Fletcher.

8.570 A preliminary submission was made that it was presumed by Counsel for Fletcher that the legislative basis for any referral to the Commissioner of Taxation would be s 83 of the Act and that the Commission had no authority to include a referral made under s 83 in a report by the Commission under s 97 of the Act.

8.571 The substantive submissions made on behalf of Fletcher were as follows:

> a. *That there is insufficient evidence to justify the forming of such an opinion* [that Fletcher had engaged in misconduct]*, or the making of any referral;*
>
> b. *That the taxation issues are so far removed from the expressly stated scope of the hearing as to be irrelevant, or fall outside the Commission's jurisdiction;*
>
> c. *That the submissions by Counsel Assisting do not properly summarise the authorities relating to taxable incomes from gambling or the criteria which might result in a gambler being deemed a professional gambler for taxation purposes.*

8.572 Lengthy submissions were lodged on behalf of Azzopardi on the question of a referral to the Commissioner of Taxation. It was submitted that Azzopardi's *"taxation affairs did not form part of the subject matter of the investigation"* and were not relevant to the investigation and that the referral of Azzopardi to the Commissioner of Taxation would be an invalid exercise of the Commission's powers. It was also submitted that a referral would not be supported by the evidence adduced before the Commission and that there had been no occasion at the public hearing for Azzopardi's legal representatives to appreciate that their client's taxation position was or could become an issue. Finally, it was submitted that a referral would not be supported by court decisions on whether gambling winnings should be regarded as income derived from a business. Counsel for Fletcher in his submissions expressly adopted this last submission made on behalf of Azzopardi.

8.573 It is convenient to deal firstly with the principals other than Fletcher.

ASSESSMENT OF AZZOPARDI, SMITH AND WILLIAMS

8.574 As to Azzopardi, there was much less evidence about his gambling activities than there was about Fletcher's gambling activities. In paragraph 10.8 of his submissions Counsel Assisting conceded that there was not sufficient evidence to make a submission, similar to the submission which he had made about Fletcher, that Azzopardi in his gambling activities was operating a business. Although Azzopardi was given notice by Counsel Assisting's submissions that it would be prudent for him to make submissions why a referral of his taxation affairs to the Commissioner of Taxation should not be made, it is the case that

at the Commission's hearing Azzopardi was not asked a single question about his taxation affairs and thus neither he nor his legal advisers were put on notice at the hearing that his taxation affairs might become an issue. In these circumstances the Commission does not consider that it should express any opinion or make any recommendation on taxation matters in relation to Azzopardi.

8.575 As far as Smith and Williams are concerned, Counsel Assisting conceded in paragraph 10.8 of his submissions that *"the money earned by Smith and Williams in gambling did not have the indicia of a business".* Throughout the whole period covered by the Commission's investigation the occupation of each of Smith and Williams continued to be that of a police officer. On the evidence neither Smith nor Williams was conducting a business of gambling. Each of Smith and Williams sustained his own gambling losses, which presumably would be deductible if any winnings were to be assessable to income tax.

8.576 Each of Smith and Williams sometimes received amounts of money, if Fletcher or Azzopardi had a winning bet on an account which had been provided by Smith or Williams. These amounts appear to have been relatively small and whether they were paid and the amounts of the payments were determined by Fletcher or Azzopardi. Smith gave evidence that he did not recall being paid *"many more times than four times".*[345]

8.577 The Commission considers that the money that Smith received for attending Kembla Grange races should be regarded as taxable income. However, there is no evidence of any other attendance by Smith at a race meeting for which he was remunerated by Fletcher or Azzopardi. It may also be the case that amounts paid to Smith and Williams for providing betting accounts to Fletcher and Azzopardi should also be regarded as taxable income. However, on the evidence, these amounts, while impossible to quantify with any precision, were relatively minor.

8.578 In the circumstances the Commission does not consider that it should express any opinion or make any recommendation on taxation matters in relation to Smith or Williams.

ASSESSMENT OF SUBMISSIONS MADE ON BEHALF OF FLETCHER

Preliminary submission

8.579 The Commission considers that it is doubtful whether any referral of Fletcher's taxation affairs to the Commissioner of Taxation as submitted by Counsel Assisting would be a *"referral"* within Part 5 of Division 2 of the Act, in which s 83 occurs.

8.580 Part 5 of the Act is headed *"Referral of matters by Commission".* Division 1 of Part 5 is headed *"Referral to police or NSW Crime Commission".* Division 2 of Part 5 is headed *"Referral to other authorities or persons".* Section 82 in Division 2 defines the term *"authority"* as meaning *" any person or authority, but*

[345] PIC Transcript, M J Smith, p. 67

does not include the New South Wales Crime Commission, a police officer, the NSW Police Force or any unit or other part of the NSW Police Force."

8.581 Some of the provisions of Division 2 of Part 5 of the Act would appear to be inconsistent with the Commissioner of Taxation being an authority to whom the Commission could refer a matter under s 83. These provisions include the following.

8.582 When referring a matter, the Commission may, by virtue of s 83(3), *"recommend what action should be taken by the relevant authority and the time within which it should be taken".* Section 83(5) provides that: "the *Commission must not refer a matter to an authority except after appropriate consultation with the authority and with the concurrence of the authority".*

8.583 Section 85, which is in Division 2 of Part 5, provides that the Commission "*may, when referring a matter under this Division, request the relevant authority to submit to the Commission a report or reports in relation to the matter and the action taken by the relevant authority."*

8.584 Section 86(1), which is in Division 2 of Part 5, provides that: *"if the Commission is not satisfied that a relevant authority has duly and properly taken action in connection with a matter referred under this Division, the Commission must inform the relevant authority of the grounds of the Commission's dissatisfaction and must give the relevant authority an opportunity to comment within a specified time."* Section 86(2) provides that: *"if, after considering any comments received from the relevant authority within the specified time, the Commission is still not satisfied, the Commission may submit a report to the Minister for the relevant authority setting out the recommendation concerned and the grounds of dissatisfaction, together with any comments from the relevant authority and the Commission."*

8.585 The reference in s 86(2) to *"the Minister for the relevant authority"* would suggest that only a State government authority for whom there is a responsible Minister in the NSW Government, and not a Commonwealth authority, can be an *"authority"* within Division 2 of Part 5.

8.586 Whether or not the Commission would have power to make a referral of Fletcher's taxation affairs to the Commissioner of Taxation, the Commission clearly has power to disseminate information to such persons and bodies, whether or not in or of the State of NSW, as the Commission thinks appropriate (s 18 of the Act).

8.587 As was accepted by Counsel for Fletcher, the Commission clearly has power to make an assessment or form an opinion (s 16 of the Act) and to include a statement of that assessment or opinion in a report under ss 96 and 97 of the Act.

Substantive submissions on behalf of Fletcher

8.588 It is convenient to consider these submissions in a somewhat different order from that in which they were made by Counsel for Fletcher.

Submission that the taxation issues are irrelevant or outside the Commission's jurisdiction

8.589 The stated scope and purpose of the Commission's investigation is to investigate whether Williams or Smith or any other member of the NSW Police Force or any person associated with either of Williams or Smith is or has been involved in serious police misconduct or criminal activity.

8.590 The association between the police officers and the professional gamblers was a focus of the Commission's investigation. Fletcher was clearly a person having some association with both Williams and Smith. What activities Fletcher engaged in and whether in conducting those activities he complied with his legal obligations are matters which are relevant to determining whether the association between each of the police officers and Fletcher was an association which a police officer should not have formed.

Submission that there is insufficient evidence

8.591 The Commission accepts that the only questions Fletcher was asked when he gave evidence at the public hearing, which expressly related to his possible liability to pay income tax on his gambling winnings, were the questions which have already been quoted and that, after Fletcher answered those questions, the subject of his liability to pay income tax was not pursued by Counsel Assisting in his examination of Fletcher.

8.592 However, in the course of the hearing a substantial amount of evidence was given which, while not expressly linked to the issue of Fletcher's possible liability to pay income tax on any profit from his gambling, was relevant to that issue.

8.593 One of the first questions Fletcher was asked by Counsel Assisting was, *"And your occupation"?"* to which Fletcher replied, *"professional gambler"*.[346] Elsewhere in his evidence Fletcher also referred to himself as a *"professional gambler".*[347]

8.594 Fletcher bet large amounts of money. In his evidence he identified certain bets in records of a corporate bookmaker as not having been made by himself, but by someone else such as Williams, because the amounts were not large enough to have been made by him.[348]

8.595 Fletcher was asked what advantage there was for him in using *"bowlers"* and he gave the following answer:

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[346] PIC Transcript, S C Fletcher, 5 December 2013, pp. 313:48-314:2

[347] For example, see PIC Transcript, SC Fletcher, 5 December 2013, pp. 332:14, 336:32.

[348] PIC Transcript, S C Fletcher, 6 December 2013, p. 465:3-465:23

> *A. I have a lot of bets I have to place every day. I have a lot of staff. I send people to every racetrack. I utilise commission agents. I have a lot of people who rely on me to get their money. It's just economically not possible to do it, a one-man show, so I need to utilise commission agents to place the bets.*[349]

8.596 At one stage in his evidence Fletcher said *"I do millions of bets a week".* This was obviously an exaggeration, as Fletcher agreed a little later in his evidence. However, he then readily agreed that he was *"placing many, many bets"* every week.[350] Fletcher did not keep any records of the bets he placed.[351]

8.597 Fletcher gave evidence that he got *"professional ratings"* of horses running in events in which he might place bets.[352]

8.598 Fletcher gave evidence that he *"generally"* bet at *"fixed odds"* on horse racing events[353] (which would be likely to be more favourable than the odds obtained by betting on the totalisator).

8.599 There was evidence by Fletcher that he pursued sophisticated betting strategies to maximize his winnings by obtaining the most favourable odds. An example was the lawful manipulation of the tote pool which he had arranged in the case of the greyhound *"Lucy's Light"*, a strategy which he repeated when betting, partly for Williams' benefit, on 26 February 2012.[354]

Submission on the authorities relating to taxation of income from gambling

8.600 A number of cases were referred to by Counsel Assisting and Counsel for Azzopardi relating to the subject of taxation of income from gambling. It is clear from those cases that there are a number of relevant factors to be considered in determining the question of whether a taxpayer is carrying on a business of gambling with the consequence that his profit from gambling is taxable, and that no single factor is decisive. Some of the relevant factors are discussed in *Evans v Federal Commissioner of Taxation* (1989) 20 ATR 922 (Hill J, Federal Court) and in *Brajkovich v Federal Commissioner of Taxation* (1989) 20 ATR 1570 (Full Court of the Federal Court).

8.601 In *Evans,* Hill J said that *"if…a punter is to be held to be carrying on a business it will be because his activities of betting will be systematically conducted so as to get the most favourable odds obtainable"* (p. 492). Hill J held that the taxpayer was not a professional gambler because, while he had engaged in large scale gambling, "*his gambling activities lacked the element of system or organisation which is a necessary characteristic of a business".* Hill J noted that the taxpayer he did not maintain an office or employ staff or keep any records or excessively study the form of horses. It was of *"considerable significance"* that the taxpayer predominantly did his betting with the TAB or an on-course totalisator rather than with bookmakers. Hill J also observed that *"where the*

[349] PIC Transcript, S C Fletcher, 5 December 2013, p. 316:5-316:9
[350] PIC Transcript, S C Fletcher, 5 December 2013, pp. 347:25-348:35
[351] PIC Transcript, S C Fletcher, 5 December 2013, p. 348:37-348:43
[352] PIC Transcript, S C Fletcher, 5 December 2013, p. 357:33
[353] PIC Transcript, S C Fletcher, 5 December 2013, p. 407:35
[354] PIC Transcript, S C Fletcher, 5 December 2013, p. 319:41-319:48

activity of gambling is closely associated with some other business such as that of bookmaking, breeding or training horses, the courts will more readily find that the gambling will constitute a business activity" (p. 492).

8.602 In *Brajkovich,* the full Court of the Federal Court held (at p. 576) that:

> *The principal criteria by which questions of the present sort appear to have been judged are the following:*
>
> 1. *Whether the betting is conducted in a systematic, organised and "business-like" way;*
>
> 2. *Its scale: ie the size of the wins and losses;*
>
> 3. *Whether the betting is related to, or part of, other activities of a business-like character, eg breeding horses;*
>
> 4. *Whether the bettor appears to engage in his activity principally for profit or principally for pleasure;*
>
> 5. *Whether the form of betting chosen is likely to reward skill and judgment or depends purely on chance;*
>
> 6. *Whether the gambling activity in question is of a kind which is ordinarily thought of as a hobby or pastime.*

8.603 In the present case there is evidence to some of which the Commission has referred which falls within the criteria identified in *Evans* or *Brajkovich* and which might support a conclusion that Fletcher carried on, or did not carry on, a business of gambling.

8.604 However, a number of factors which on the authorities are relevant to the issue of whether a person is carrying on a business of gambling were not explored at the public hearing, for example, whether Fletcher's betting activities were related to, or part of, other activities of a business-like character.

8.605 In the circumstances, the Commission considers that it should not form an opinion, as submitted by Counsel Assisting, that Fletcher engaged in misconduct by *"failing to declare or pay tax on taxable income, being income he earned as a professional gambler"*. However, having regard to the substantial amount of evidence before the Commission which could be relevant to the issue of whether Fletcher should be liable to pay income tax on any profits from his gambling, the Commission has formed the opinion that the information from the investigation should be disseminated to the Commissioner of Taxation for his consideration.

9. AFFECTED PERSONS

9.1 In this part of the report the Commission will comply with its statutory reporting obligations under s 97 of the *Police Integrity Commission Act 1996* ("the Act").

9.2 In part 3 of this report the Commission set out relevant provisions of the Act dealing with the contents of reports made by the Commission to Parliament, including s 16, by which, among other things, the Commission may make assessments and form opinions, on the basis of its investigations, as to whether police misconduct or other misconduct has or may have occurred and make recommendations as to whether consideration should or should not be given to the prosecution of particular persons or the taking of action under Part 9 of the *Police Act 1990* against police officers.

9.3 In this part of the report it is convenient to repeat the terms of subsections (2), (3) and (4) of s 97 of the Act, which are as follows:

> *(2) The report must include, in respect of each "affected" person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:*
>
> > *(a) the prosecution of a person for a specified criminal offence,*
> >
> > *(b) the taking of action against the person for a specified disciplinary offence,*
> >
> > *(c) the taking of action (including the making of an order under section 181D of the Police Act 1990) against the person as a police officer on specified grounds, with a view to dismissing, dispensing with the services or otherwise terminating the services of the police officer,*
> >
> > *(d) the taking of reviewable action within the meaning of section 173 of the Police Act 1990 against the person as a police officer.*
>
> *(3) An "affected" person is a person against whom, in the Commission's opinion, substantial allegations have been made in the course of or in connection with the investigation concerned.*
>
> *(4) Subsection (2) does not limit the kind of statement that a report can contain concerning any such "affected" person and does not prevent a report from containing a statement described in that subsection in respect of any other person.*

9.4 After taking into account relevant matters, the Commission is of the opinion that the following persons are *"affected"* persons, being persons against whom, in the Commission's opinion, substantial allegations of misconduct have been made in the course of the investigation:

- Senior Constable Benjamin Besant;
- Senior Constable Jason Immens;
- Senior Constable Joshua Kasun;

- Senior Constable Mark Peresson;
- Senior Constable Matthew Zeibots;
- Senior Constable Scott Robertson;
- Senior Constable Adam Mundy;
- Sergeant Blake Reily;
- Detective Senior Constable Christopher Groves;
- Senior Constable Todd Seydler;
- Senior Constable Michael Innes;
- Senior Constable Bernard Goonan;
- Senior Constable Adam Guest;
- Senior Constable Michael Foster;
- Scott Muller;
- Jason Cursley;
- Matthew Seagg;
- Darren Kolosque;
- Senior Constable Marc Smith;
- Detective Senior Constable Anthony Williams;
- Stephen Fletcher;
- Darren Azzopardi.

SENIOR CONSTABLE BENJAMIN BESANT

9.5 For the reasons set out in part 7 of this report, the Commission is of the opinion that Besant engaged in police misconduct by not conducting himself in a manner consistent with the standards expected of police officers, by providing his personal details and identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts in Besant's name, in reckless disregard of the obvious risks in doing so.

9.6 In all of the circumstances, the Commission is not of the opinion that consideration should be given to:

- the prosecution of Besant for a specified criminal offence; or
- the taking of action against Besant under s 181D of *the Police Act 1990*; or
- the taking of reviewable action against Besant under s 173 of the *Police Act 1990*.

9.7 However, the Commission is of the opinion that consideration should be given to the taking of non-reviewable action against Besant under s 173 of the *Police Act 1990.*

SENIOR CONSTABLE JASON IMMENS

9.8 For the reasons set out in part 7 of this report, the Commission is of the opinion that Immens engaged in police misconduct by not conducting himself in a manner consistent with the standards expected of police officers, by providing his personal details and identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts in Immens' name, in reckless disregard of the obvious risks in doing so.

9.9 In all of the circumstances, the Commission is not of the opinion that consideration should be given to:

- the prosecution of Immens for a specified criminal offence; or
- the taking of action against Immens under s 181D of *the Police Act 1990*; or
- the taking of reviewable action against Immens under s 173 of the *Police Act 1990*.

9.10 However, the Commission is of the opinion that consideration should be given to the taking of non-reviewable action against Immens under s 173 of the *Police Act 1990.*

SENIOR CONSTABLE JOSHUA KASUN

9.11 For the reasons set out in part 7 of this report, the Commission is of the opinion that Kasun engaged in police misconduct by not conducting himself in a manner consistent with the standards expected of police officers, by providing his personal details and identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts in Kasun's name, in reckless disregard of the obvious risks in doing so.

9.12 In all of the circumstances, the Commission is not of the opinion that consideration should be given to:

- the prosecution of Kasun for a specified criminal offence; or
- the taking of action against Kasun under s 181D of *the Police Act 1990*; or
- the taking of reviewable action against Joshua Kasun under s 173 of the *Police Act 1990*.

9.13 However, the Commission is of the opinion that consideration should be given to the taking of non-reviewable action against Kasun under s 173 of the *Police Act 1990.*

SENIOR CONSTABLE MARK PERESSON

9.14 For the reasons set out in part 7 of this report, the Commission is of the opinion that Peresson engaged in police misconduct by not conducting himself in a manner consistent with the standards expected of police officers, by providing his personal details and identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts in Peresson's name, in reckless disregard of the obvious risks in doing so.

9.15 In all of the circumstances, the Commission is not of the opinion that consideration should be given to:

- the prosecution of Peresson for a specified criminal offence; or
- the taking of action against Peresson under s 181D of *the Police Act 1990*; or
- the taking of reviewable action against Peresson under s 173 of the *Police Act 1990*.

9.16 However, the Commission is of the opinion that consideration should be given to the taking of non-reviewable action against Peresson under s 173 of the *Police Act 1990.*

SENIOR CONSTABLE MATTHEW ZEIBOTS

9.17 For the reasons set out in part 7 of this report, the Commission is of the opinion that Zeibots engaged in police misconduct by not conducting himself in a manner consistent with the standards expected of police officers, by providing his personal details and identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts in Zeibots' name, in reckless disregard of the obvious risks in doing so.

9.18 In all of the circumstances, the Commission is not of the opinion that consideration should be given to:

- the prosecution of Zeibots for a specified criminal offence; or
- the taking of action against Zeibots under s 181D of *the Police Act 1990*; or
- the taking of reviewable action against Zeibots under s 173 of the *Police Act 1990*.

9.19 However, the Commission is of the opinion that consideration should be given to the taking of non-reviewable action against Zeibots under s 173 of the *Police Act 1990.*

SENIOR CONSTABLE SCOTT ROBERTSON

9.20 For the reasons set out in part 7 of this report, the Commission is of the opinion that Robertson engaged in police misconduct by not conducting himself in a manner consistent with the standards expected of police officers, by providing

his personal details and identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts in Robertson's name, in reckless disregard of the obvious risks in doing so.

9.21 In all of the circumstances, the Commission is not of the opinion that consideration should be given to:

- the prosecution of Robertson for a specified criminal offence; or
- the taking of action against Robertson under s 181D of *the Police Act 1990*; or
- the taking of reviewable action against Robertson under s 173 of the *Police Act 1990*.

9.22 However, the Commission is of the opinion that consideration should be given to the taking of non-reviewable action against Robertson under s 173 of the *Police Act 1990.*

SENIOR CONSTABLE ADAM MUNDY

9.23 For the reasons set out in part 7 of this report, the Commission is of the opinion that Mundy engaged in police misconduct by not conducting himself in a manner consistent with the standards expected of police officers, by providing his personal details and identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts in Mundy's name, in reckless disregard of the obvious risks in doing so.

9.24 In all of the circumstances, the Commission is not of the opinion that consideration should be given to:

- the prosecution of Mundy for a specified criminal offence; or
- the taking of action against Mundy under s 181D of *the Police Act 1990*; or
- the taking of reviewable action against Mundy under s 173 of the *Police Act 1990*.

9.25 However, the Commission is of the opinion that consideration should be given to the taking of non-reviewable action against Mundy under s 173 of the *Police Act 1990.*

SERGEANT BLAKE REILY

9.26 For the reasons set out in part 7 of this report, the Commission is of the opinion that Reily engaged in police misconduct by not conducting himself in a manner consistent with the standards expected of police officers, by providing his personal details and identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts in Reily's name, in reckless disregard of the obvious risks in doing so.

9.27 In all of the circumstances, the Commission is not of the opinion that consideration should be given to:

- the prosecution of Reily for a specified criminal offence; or
- the taking of action against Reily under s 181D of *the Police Act 1990*; or
- the taking of reviewable action against Reily under s 173 of the *Police Act 1990*.

9.28 However, the Commission is of the opinion that consideration should be given to the taking of non-reviewable action against Reily under s 173 of the *Police Act 1990.*

DETECTIVE SENIOR CONSTABLE CHRISTOPHER GROVES

9.29 For the reasons set out in part 7 of this report, the Commission is of the opinion that Groves engaged in police misconduct by not conducting himself in a manner consistent with the standards expected of police officers, by providing his personal details and identification documents to Williams for the purpose of enabling Williams to set up and use betting accounts in Groves' name, in reckless disregard of the obvious risks in doing so.

9.30 In all of the circumstances, the Commission is not of the opinion that consideration should be given to:

- the prosecution of Groves for a specified criminal offence; or
- the taking of action against Groves under s 181D of *the Police Act 1990*; or
- the taking of reviewable action against Groves under s 173 of the *Police Act 1990*.

9.31 However, the Commission is of the opinion that consideration should be given to the taking of non-reviewable action against Groves under s 173 of the *Police Act 1990.*

SENIOR CONSTABLE TODD SEYDLER

9.32 For the reasons set out in part 7 of this report, the Commission is of the opinion that Seydler engaged in police misconduct by not conducting himself in a manner consistent with the standards expected of police officers, by providing his personal details and identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts in Seydler's name, in reckless disregard of the obvious risks in doing so.

9.33 In all of the circumstances, the Commission is not of the opinion that consideration should be given to:

- the prosecution of Seydler for a specified criminal offence; or
- the taking of action against Seydler under s 181D of the *Police Act 1990*; or

- the taking of reviewable action against Seydler under s 173 of the *Police Act 1990*.

9.34 However, the Commission is of the opinion that consideration should be given to the taking of non-reviewable action against Seydler under s 173 of the *Police Act 1990.*

SENIOR CONSTABLE MICHAEL INNES

9.35 For the reasons set out in part 7 of this report, the Commission is of the opinion that Innes engaged in police misconduct by not conducting himself in a manner consistent with the standards expected of police officers, by providing his personal details and identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts in Innes' name, in reckless disregard of the obvious risks in doing so.

9.36 In all of the circumstances, the Commission is not of the opinion that consideration should be given to:

- the prosecution of Innes for a specified criminal offence; or
- the taking of action against Innes under s 181D of *the Police Act 1990*; or
- the taking of reviewable action against Innes under s 173 of the *Police Act 1990*.

9.37 However, the Commission is of the opinion that consideration should be given to the taking of non-reviewable action against Innes under s 173 of the *Police Act 1990.*

SENIOR CONSTABLE BERNARD GOONAN

9.38 For the reasons set out in part 7 of this report, the Commission is of the opinion that Goonan engaged in police misconduct by not conducting himself in a manner consistent with the standards expected of police officers, by providing his personal details and identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts in Goonan's name, in reckless disregard of the obvious risks in doing so.

9.39 In all of the circumstances, the Commission is not of the opinion that consideration should be given to:

- the prosecution of Goonan for a specified criminal offence; or
- the taking of action against Goonan under s 181D of *the Police Act 1990*; or
- the taking of reviewable action against Bernard Goonan under s 173 of the *Police Act 1990*.

9.40 However, the Commission is of the opinion that consideration should be given to the taking of non-reviewable action against Goonan under s 173 of the *Police Act 1990.*

SENIOR CONSTABLE ADAM GUEST

9.41 For the reasons set out in part 7 of this report, the Commission is of the opinion that Guest engaged in police misconduct by not conducting himself in a manner consistent with the standards expected of police officers, by providing his personal details and identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts in Guest's name, in reckless disregard of the obvious risks in doing so.

9.42 In all of the circumstances, the Commission is not of the opinion that consideration should be given to:

- the prosecution of Guest for a specified criminal offence; or
- the taking of action against Guest under s 181D of *the Police Act 1990*; or
- the taking of reviewable action against Guest under s 173 of the *Police Act 1990*.

9.43 However, the Commission is of the opinion that consideration should be given to the taking of non-reviewable action against Guest under s 173 of the *Police Act 1990.*

SENIOR CONSTABLE MICHAEL FOSTER

9.44 For the reasons set out in part 7 of this report, the Commission is of the opinion that Foster engaged in police misconduct by not conducting himself in a manner consistent with the standards expected of police officers, by providing his personal details and identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts in Foster's name, in reckless disregard of the obvious risks in doing so.

9.45 In all of the circumstances, the Commission is not of the opinion that consideration should be given to:

- the prosecution of Foster for a specified criminal offence; or
- the taking of action against Foster under s 181D of *the Police Act 1990*; or
- the taking of reviewable action against Foster under s 173 of the *Police Act 1990*.

9.46 However, the Commission is of the opinion that consideration should be given to the taking of non-reviewable action against Foster under s 173 of the *Police Act 1990.*

SCOTT MULLER

9.47 For the reasons set out in part 7 of this report, the Commission is of the opinion that Muller engaged in misconduct by providing his identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts, and to obtain free bets, in Muller's name, in circumstances where Muller knew or believed that the conduct contemplated by Smith was deceptive, *"probably wrong"* and *"a bit crook"*.

9.48 In all of the circumstances, the Commission is not of the opinion that consideration should be given to the prosecution of Muller for a specified criminal offence or the taking of any other action against him.

JASON CURSLEY

9.49 For the reasons set out in part 7 of this report, the Commission is of the opinion that Cursley engaged in misconduct by providing his identification documents to Smith for the purpose of enabling Smith to set up and use betting accounts, and to obtain free bets, in Cursley's name, in circumstances where Cursley knew that the conduct contemplated by Smith was not appropriate and where he knew that accounts in his name would be used by a person other than Smith.

9.50 In all of the circumstances, the Commission is not of the opinion that consideration should be given to the prosecution of Cursley for a specified criminal offence or the taking of any other action against him.

MATTHEW SEAGG

9.51 For the reasons set out in part 7 of this report, the Commission is of the opinion of that Seagg engaged in misconduct by providing his Sportingbet account to Williams to enable Williams' gambling associates to place bets with a corporate bookmaker they could not otherwise place, in circumstances where Seagg knew that that was the purpose of what was proposed.

9.52 In all of the circumstances, the Commission is not of the opinion that consideration should be given to the prosecution of Seagg for a specified criminal offence or the taking of any other action against him.

DARREN KOLOSQUE

9.53 For the reasons set out in part 7 of this report, the Commission is of the opinion that Kolosque engaged in misconduct by providing his Sportingbet account to Williams for the purpose of enabling professional gamblers to place bets on his account, in circumstances where Kolosque knew that the professional gamblers could not use accounts in their own names to gamble.

9.54 In all of the circumstances, the Commission is not of the opinion that consideration should be given to the prosecution of Kolosque for a specified criminal offence or the taking of any other action against him.

SENIOR CONSTABLE MARC SMITH

9.55 For the reasons set out in part 8 of this report, the Commission is of the opinion that Smith engaged in police misconduct by:

- dishonestly obtaining a financial advantage by deception, in relation to the setting up of betting accounts in the names of the following persons to obtain free bets: Besant, Immens, Kasun, Peresson, Zeibots, Robertson, Mundy, Innes, Goonan, Guest, Foster, Seydler, Muller and Cursley;
- providing his Sportingbet account to Azzopardi for the purpose of enabling Azzopardi to have bets placed on the greyhound Imry Bale which Azzopardi could not have placed in his own name;
- providing betting accounts in the names of the following persons to Williams for the intended use of Fletcher and/or Azzopardi to place bets which Fletcher and/or Azzopardi could not otherwise place: Immens, Seydler, Besant, Zeibots and Foster;
- participating in and instigating misconduct by private hearing witnesses in providing personal details and identification documents for the purpose of setting up betting accounts in the names of the witnesses;
- causing Innes to access the COPS system for an improper purpose and improperly supplying the information he obtained from such access to another person;
- deceiving his police colleagues about the purpose of opening accounts in their names with corporate bookmakers and acting contrary to the authority that he was given by a police officer (Zeibots) in whose name he set up accounts with corporate bookmakers;
- using his influence over his police colleagues to cause them to conduct themselves in a manner contrary to the standards expected of police officers;
- having a declarable association with a professional gambler (Fletcher) which was not declared.

9.56 In all of the circumstances, the Commission is of the opinion that consideration should be given to the prosecution of Smith for criminal offences under s 192E of the *Crimes Act 1900,* being offences in the nature of fraud, in relation to the setting up of betting accounts in the names of the following persons to obtain free bets: Besant, Immens, Kasun, Peresson, Zeibots, Robertson, Mundy, Innes, Goonan, Guest, Foster, Seydler, Muller and Cursley.

9.57 Smith resigned from the NSWPF on 15 August 2014. Accordingly, the question of whether consideration should be given to the taking of disciplinary action against him does not arise under s 97(2) of the Act.

DETECTIVE SENIOR CONSTABLE ANTHONY WILLIAMS

9.58 For the reasons set out in part 8 of this report, the Commission is of the opinion that Williams engaged in police misconduct by:

- dishonestly obtaining or attempting to obtain a financial advantage by deception, in relation to:
    - the attempt to obtain a free bet on a Luxbet betting account opened in the name of Groves by pretending to be Groves,
    - the setting up of betting accounts in the names of the following persons to obtain free bets: his sister [MC22], Groves, Seagg and *"Paul Williams";*
- setting up betting accounts in the name of *"Paul Williams"* and providing those accounts to Azzopardi for his use to place bets which Azzopardi could not otherwise place;
- providing betting accounts in the names of the following persons to Fletcher and/or to Azzopardi for their intended use in placing bets which Fletcher and/or Azzopardi could not otherwise place: Immens, Seydler, Besant, Zeibots, Foster, Williams, Groves, Kolosque, Seagg, MC4, MC5, MC6, MC7, MC8 and MC9;
- pretending to be his sister (MC22) in email communications with the corporate bookmaker Luxbet;
- pretending to be Seagg in email communications with the corporate bookmaker Luxbet;
- participating in police misconduct by a private hearing witness (Groves) in providing his personal details and identification documents for the purpose of setting up betting accounts in the name of the witness;
- having a declarable association with Fletcher which was not declared;
- using his influence over a police colleague (Groves) to cause that colleague to conduct himself in a manner contrary to the standards expected of a police officer.

9.59 In all of the circumstances, the Commission is of the opinion that consideration should be given to:

- the prosecution of Williams for criminal offences under s 192E of the *Crimes Act 1900,* being offences in the nature of fraud, in relation to:
    - the attempt to obtain a free bet on a Luxbet betting account opened in the name of Groves by pretending to be Groves,
    - the setting up of betting accounts in the names of the following persons to obtain free bets: MC22, Groves, Seagg, *"Paul Williams"*;
- the taking of action against Williams under s 181D of the *Police Act 1990* or, alternatively, the taking of reviewable action against him under s 173 of the *Police Act 1990.*

STEPHEN FLETCHER

9.60 For the reasons set out in part 8 of this report, the Commission is of the opinion that Fletcher engaged in misconduct by:

- dishonestly obtaining a financial advantage by deception, in relation to:
    - the use of Immens' Sportingbet account in 20 of 25 telephone calls that Fletcher made to Sportingbet in the period between 28 September 2012 and 17 October 2012, excluding from the 25 telephone calls he made, the telephone calls made at 20:54:26 on 28 September 2012 ("the first telephone call"), 14:14:52 on 29 September 2012 ("the fifth telephone call"), 15:38:49 on 7 October 2012 ("the fifteenth telephone call"), 15:57:40 on 14 October 2012 ("the twenty-fourth telephone call") and 13:52:51 on 17 October 2012 ("the twenty-fifth telephone call"),
    - the use of a Sportingbet account opened in the name of MC14,
    - the use of a Bet365 betting account in the name of Seagg;
- engaging in deceptive conduct in relation to betting accounts in the names of MC13, MC14 and MC16;
- using information obtained from employees within corporate bookmakers to facilitate the use of betting accounts in names other than his own and, in the process, compromising those employees;
- possessing inside information when betting on a horse named *"Mosheen"* to lose in a horse racing event held on 20 October 2012.

9.61 In all of the circumstances, the Commission is of the opinion that consideration should be given to:

- the prosecution of Fletcher for criminal offences under s 192E of the *Crimes Act 1900,* being offences in the nature of fraud, in relation to:
    - the use of Immens' Sportingbet account in 20 of 25 telephone calls that Fletcher made to Sportingbet in the period between 28 September 2012 and 17 October 2012, excluding from the 25 telephone calls he made, the telephone calls made at 20:54:26 on 28 September 2012 ("the first telephone call"), 14:14:52 on 29 September 2012 ("the fifth telephone call"), 15:38:49 on 7 October 2012 ("the fifteenth telephone call"), 15:57:40 on 14 October 2012 ("the twenty-fourth telephone call") and 13:52:51 on 17 October 2012 ("the twenty-fifth telephone call"),
    - the use of a Sportingbet betting account opened in the name of MC14,
    - the use of a Bet 365 betting account in the name of Seagg;
- the prosecution of Fletcher for an offence under s 193Q(2) of the *Crimes Act 1900.*

9.62 The Commission has not formed the opinion that Fletcher engaged in misconduct by failing to declare or pay tax on money he received as a professional gambler. However, having regard to the substantial amount of evidence before the Commission which could be relevant to the issue of whether Fletcher should be liable to pay income tax on any profits from his gambling, the Commission is of opinion that information from the investigation should be disseminated to the Commissioner of Taxation for his consideration.

DARREN AZZOPARDI

9.63 For the reasons set out in part 8 of this report, the Commission is of the opinion that Azzopardi engaged in misconduct by dishonestly obtaining a financial advantage by deception, in relation to:

- the use of the Bookmaker betting account opened by Williams in the name of *"Paul Williams"* and
- the use of the Bookmaker betting account in the name of Seydler.

9.64 In all of the circumstances, the Commission is of the opinion that consideration should be given to the prosecution of Azzopardi for criminal offences under s 192E of the *Crimes Act 1900,* being offences in the nature of fraud, in relation to:

- the use of the Bookmaker betting account opened by Williams in the name of *"Paul Williams"* and
- the use of the Bookmaker betting account in the name of Seydler.

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Police Integrity Commission

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