

EXECUTIVE SUMMARY

The Commission's investigation code-named Operation Montecristo arose out of information that the Commission received in an unrelated investigation. Commission investigators were told by a source that Detective Senior Constable Anthony Williams of the NSW Police Force Homicide Squad had asked the source whether he had access to an online betting account with a corporate bookmaker and, if so, whether, in consideration of the payment of some money, he would consent to the account being used for betting by a professional gambler with whom Williams was alleged to have a close association. The professional gambler with whom Williams was alleged to have an association was later identified as being Stephen Fletcher.

After receiving this information the Commission commenced an investigation. The investigation revealed that Williams was involved in gambling activities with Fletcher and Darren Azzopardi.

Williams had first met Fletcher in 2003 and became involved in gambling activities with him in February 2012. On 26 February 2012 an online betting account with a corporate bookmaker Sportingbet, which was in Williams' name, was used by Fletcher, with Williams' consent, to place a number of bets. The net winnings from the bets were substantial and were divided equally between Fletcher and Williams.

After 26 February 2012 Williams provided Fletcher with access to other betting accounts he had with other corporate bookmakers.

Fletcher introduced Williams to Azzopardi, an acquaintance of Fletcher, who was also a professional gambler betting with corporate bookmakers.

Corporate bookmakers form part of the legal gambling industry in Australia. Corporate bookmakers operating in Australia include Sportingbet, Luxbet, Bookmaker and Bet 365. A person wishing to gamble with a corporate bookmaker can open a betting account with the corporate bookmaker and is then able to place bets on the account, either online or by telephone.

There are reasons why a professional gambler such as Fletcher or Azzopardi would want to be able to bet with a corporate bookmaker on an account in a name other than his own.

One reason for a professional gambler wanting to be able to bet on an account in a name other than his own is to preserve his anonymity. If a bet not made at fixed odds can be identified as a bet made by a professional gambler who has a reputation for successful gambling, that bet is likely to be followed by other gamblers, reducing the odds on the horse or greyhound backed by the professional gambler.

Another reason for a professional gambler wanting to be able to bet on an account in a name other than his own is to avoid restrictions which may have been placed by a corporate bookmaker on the bets which it will accept from a person who the bookmaker regards as a successful gambler. Restrictions had been placed by some corporate bookmakers on the bets they would accept from Fletcher and Azzopardi.

In early 2012 Williams approached persons he knew to see if they had an existing betting account with Sportingbet which they would be prepared to allow Fletcher or Azzopardi to use. A number of the persons approached gave their consent to their accounts being used and these accounts were made available to Fletcher or Azzopardi for betting by them.

In 2012 Williams contacted Senior Constable Marc Smith, who was a member of the Tactical Operations Unit of the NSW Police Force, to see if Smith had an account with Sportingbet which he would consent to professional gamblers using.

Subsequently Smith and Williams individually approached other persons they knew to see whether, in return for the payment of some money, they would consent to betting accounts being opened in their names with corporate bookmakers. In order for an account to be opened the person approached would have to provide personal details and identification documents.

Smith approached at least thirteen of his colleagues in the Tactical Operations Unit, namely Senior Constable Benjamin Bessant, 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, Senior Constable Todd Seydler, Senior Constable Michael Innes, Senior Constable Bernard Goonan, Senior Constable Adam Guest, and Senior Constable Michael Foster. He also approached persons who were not police officers. Williams approached some of his family members and at least one of his colleagues in the Homicide Squad Senior Constable Christopher Groves.

All of the persons approached who have been named consented to betting accounts in their names being opened with a corporate bookmaker and provided the personal details and the identification documents required. Accounts with corporate bookmakers were opened in the names of all of these persons, who became the nominal account holders. The accounts were then made available to Fletcher and Azzopardi and used by them for betting.

Each of the accounts opened had a number of unusual features. The account was not conducted for the benefit of the nominal account holder. The nominal account holder did not contribute any of the money that was used for betting on the account. The nominal account holder played no part in determining what bets were placed on the account. The nominal account holder did not give any instructions or directions about the conduct of the account. The nominal account holder did not receive any report of the operations of the account.

In some cases there was direct evidence before the Commission that the nominal account holder was unable to access the account opened in his name, because he was not informed of the identification details and password for the account. The Commission considers that, even where there was no direct evidence, it can infer that this was true of all the accounts.

These unusual features of each account distinguished the arrangement between the nominal account holder and the person actually operating the account from other arrangements which commonly occur in the gambling industry and are regarded as unobjectionable.

The arrangement was not like a *"punters club."* In the usual *"punters club"* all members of the club are expected to make some contribution to the funds used for betting and all members of the club participate, at least to some extent, in decisions about what bets should be placed.

The arrangement was not like a person asking a friend to place a bet for the person at the TAB. A friend asked to place a bet for someone will usually require to be put in funds or at least be reimbursed for the amount of the bet.

The arrangement was not like any usual agency agreement, where the agent acts for the benefit of the principal, is given instructions by the principal and renders a report or an account to the principal.

At the Commission's public hearing the nominal account holders were sometimes referred to as *"bowlers."* The use of the word *"bowler"* was often coupled with a submission that there was nothing untoward in the setting up and using of the accounts, because the use of *"bowlers"* is widespread in gambling and is generally approved or at least condoned.

It was apparent from the evidence before the Commission that the word *"bowler"* is a word of uncertain import. However, the nominal account holders did not fall within the definitions of the term *"bowler"* given by the two professional gamblers Fletcher and Azzopardi, who both said that a *"bowler"* is a person who places bets on behalf of someone else. None of the nominal account holders placed any bet on behalf of anyone else or, indeed, at all. It was not suggested that the professional gambler using an account could be regarded as a *"bowler."*

It was sometimes suggested in the course of the Commission's investigation that the activities of Smith and Williams and the professional gamblers had merely relieved the nominal account holders of the burden of opening an account and placing bets on the account, things which they could have done themselves. However, it is critical that the nominal account holders did not in fact do these things.

The accounts which had been opened and were made available to Fletcher or Azzopardi were all operated in a similar way.

After an account had been opened, Smith or Williams deposited money, which was provided by Fletcher or Azzopardi, into the nominal account holder's bank account. That money was then transferred to the nominal account holder's betting account with a corporate bookmaker. The money was used to place bets which Fletcher or Azzopardi had decided to make. The bets were placed by Fletcher or Azzopardi. If a bet was placed by telephone Fletcher or Azzopardi represented to the employee of the corporate bookmaker answering the call that he was the nominal account holder.

If a bet was successful, the winnings were paid by the corporate bookmaker into the nominal account holder's bank account. Most of the winnings were then transferred out of the nominal account holder's bank account. Fletcher or Azzopardi, at their discretion, would allow a small part of the winnings to remain in the nominal account holder's bank account for the benefit of the nominal account holder.

The accounts were generally short lived. If a number of successful bets were placed on an account, the corporate bookmaker would be likely to scrutinize the account and either close it or place restrictions on the bets it would accept on the account.

Apart from opening accounts for the purpose of immediately making the accounts available to Fletcher or Azzopardi, Smith and Williams opened some accounts for the purpose of obtaining what was described as a “*free bet*” from a corporate bookmaker.

A “*free bet*” was an incentive offered by a corporate bookmaker to a person opening an account with the corporate bookmaker for the first time. The corporate bookmaker would match, either in whole or in part, the amount of the new customer’s initial deposit or bet. The amount of the “*free bet*” could then be used for betting.

It was a condition of eligibility for a “*free bet*” that a person opening an account had not previously had an account with the corporate bookmaker. Both Smith and Williams already had accounts with the corporate bookmakers and hence were not eligible to receive free bets on any new accounts opened in their own names.

The Commission considers that in opening an account with a corporate bookmaker in the name of another person in order to obtain a “*free bet*” Smith or Williams represented to the corporate bookmaker that the person who was to be the nominal account holder was the true owner of the account and as a new customer was eligible to receive a “*free bet*.” However, all of the accounts had the unusual features which have already been described. Furthermore, if a free bet was obtained, the application of the amount of the free bet was determined solely by Smith or Williams, without any consultation with the nominal account holder. In these circumstances the Commission considers that Smith or Williams, and not the nominal account holders, were the true owners of the accounts.

THE COMMISSION’S INVESTIGATION

The Commission held private and public hearings over thirteen days in November and December 2013. The general scope and purpose of the hearings was: “*To investigate whether Detective Senior Constable Anthony Paul Williams, or Senior Constable Marc James Smith, or any other member of the NSW Police Force or person associated with either of them, is or has been involved in police misconduct or criminal activity*”.

The following persons appeared before the Commission and gave evidence at the private hearings: Senior Constable Benjamin Besant; Jason Immens; Joshua Kasun; Mark Peresson; Matthew Zeibots; Scott Robertson; Adam Mundy; Blake Reily; Christopher Groves; Todd Seydler; Michael Innes; Bernard Goonan; Adam Guest; Michael Foster; Scott Muller; Jason Cursley; Matthew Seagg; Darren Kolosque.

The following persons appeared before the Commission and gave evidence at the public hearing: Marc Smith; Anthony Williams; Stephen Fletcher; Darren Azzopardi; Bradley Smyth; and Anthony Quinn. Bradley Smyth was an employee of the corporate bookmaker Sportingbet. Anthony Quinn was an employee of the corporate bookmaker Luxbet.

The transcripts of evidence that had been given at the private hearings were admitted as exhibits at the public hearing.

A number of allegations of police misconduct or other misconduct were made against each of the witnesses who gave evidence at the private hearings and each of Smith, Williams, Fletcher and Azzopardi.

As to each police officer who gave evidence at the private hearings, it was alleged that the police officer engaged in police misconduct by providing his identification documents and details to Smith or Williams for the purpose of enabling Smith or Williams to set up and use betting accounts in the police officer's name. It was further alleged that the police officer did not conduct himself in a manner consistent with the standards expected of police, by providing his personal details and identification documents to Smith or Williams in reckless disregard of the obvious risks in doing so.

As to each witness who gave evidence at the private hearings who was not police officer, it was alleged that the witness engaged in misconduct by providing his existing betting account to Williams for the purpose of enabling professional gamblers to place bets on his account or engaged in misconduct by providing his identification documents and details to Smith or Williams for the purpose of enabling Smith or Williams to set up and use betting accounts in the name of the witness.

As to each of Smith, Williams, Fletcher and Azzopardi, it was alleged that each of them had engaged in conduct amounting to a contravention of s 192E of the *Crimes Act 1900*.

Section 192E of the *Crimes Act* is headed "*fraud*" and provides, so far as is relevant, that a person is guilty of an offence under the section if a person, by any deception, dishonestly obtains any financial advantage.

As to each of Smith, Williams, Fletcher and Azzopardi, it was alleged that each of them had also engaged in a conspiracy to defraud.

As to Smith, Williams and Azzopardi, it was alleged that each of them had engaged in conduct amounting to a contravention of s 24 of the *Financial Transaction Reports Act 1988 (Cth)*.

As to Fletcher, it was alleged that he had engaged in conduct amounting to a contravention of s 193Q(2) of the *Crimes Act* and that he had engaged in misconduct by failing to declare or pay tax on money he received as a professional gambler.

As to each of Smith, Williams and Fletcher, other specific allegations of police misconduct or other misconduct were also made.

ASSESSMENT

For the reasons given in this report, the Commission has reached the following conclusions.

As to each police officer who gave evidence at the private hearings (Besant, Immens, Kasun, Peresson, Zeibots, Robertson, Mundy, Reily, Groves, Seydler, Innes, Goonan, Guest, Foster), the Commission is of the opinion that the police officer 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 or Williams for the purpose of enabling Smith or Williams to set up and use betting accounts in the police officer's name, in reckless disregard of the obvious risks in doing so.

As to each witness who gave evidence at the private hearings who was not a police officer (Muller, Cursley, Seagg, Kolosque), the Commission is of the opinion that the witness engaged in misconduct either by providing his existing betting account to Williams for the purpose of enabling professional gamblers to place bets on an account in the name of the witness (Seagg, Kolosque) or by providing his identification documents and details to Smith for the purpose of enabling Smith to set and use betting accounts in the name of the witness (Muller, Cursley).

The Commission is not of the opinion that consideration should give to the prosecution of any witness who gave evidence at the private hearings.

As to the police officers who gave evidence at the private hearings, the Commission is of the opinion that consideration should be given to the taking of non-reviewable action against each police officer under s 173 *Police Act 1990*.

As to each of Smith, Williams, Fletcher and Azzopardi, the Commission has formed the following opinions.

SENIOR CONSTABLE MARC SMITH

For the reasons given in 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.

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*, 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.

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 under s 97(2) of the Act does not arise.

DETECTIVE SENIOR CONSTABLE ANTHONY WILLIAMS

For the reasons given in 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.

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*, 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* or, alternatively, the taking of reviewable action against him under s 173 of the *Police Act*.

STEPHEN FLETCHER

For the reasons given in 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.

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*, 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*.

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

For the reasons set out earlier in 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.

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*, 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.