



Australian Hotels Association

Submission to the Review into Illegal Offshore Wagering

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1 THE REVIEW

Background

The Coalition's 2013 election policy commitment to help problem gamblers states in part:

- Policy responses to problem gambling should cover all types of gambling ... or we risk the obvious outcome where problem gamblers substitute one type of gambling for another
- There are ongoing community concerns that the current laws prohibiting certain forms of online gambling, such as online poker and casino games, are not adequately enforced.
- The Coalition will investigate methods of strengthening the enforcement of the *Interactive Gambling Act 2001* ("IGA") and ensuring Australians are protected from online illegal gambling operators.

Announcement of review

On 7 September 2015, the Hon. Scott Morrison (then Minister for Social Services) announced a review of illegal offshore wagering. The review will be conducted by former NSW Premier the Hon. Barry O'Farrell. Minister Morrison said to the effect that the review was aimed at driving the "development of more effective measures to negate, wherever possible, the adverse social and economic impacts of these new and growing forms of gambling".

Terms of Reference

The terms of reference announced the government is delivering on the commitment it made prior to the 2013 election, to investigate methods of strengthening the Interactive Gambling Act (IGA) and ensuring Australians are protected from illegal online gambling operators. The review will examine:

1. The economic impacts of illegal offshore wagering and associated financial transactions on legitimate Australian wagering businesses, including size of the illegal industry, growth, organisation and interrelationships with other criminal industries and networks.
2. International regulatory regimes or other measures that could be applied in the Australian context.
3. What other technological and legislative options are available to mitigate the costs of illegal offshore wagering
4. The efficacy of approaches to protect the consumer – including warnings, information resources, public information campaigns, and any other measures, regulatory or otherwise, that could mitigate the risk of negative social impacts on consumers.

The Minister advised he had "deliberately left the terms of reference broad to ensure former Premier Barry O'Farrell can look at everything he needs to, with no preconceived notions."

AHA approach

The AHA supports the review. However, on face value, the terms of reference do not include all forms of gambling. The review appears constrained to wagering only (i.e. betting on racing and sports). In line with the Coalition's policy to review all forms of online illegal gambling, and the Minister's statement that the review "can look at everything", the AHA submission will take the wider view of gambling and also include material related to gaming (i.e. online poker, casinos and gaming machines).

2 ABOUT THE AUSTRALIAN HOTELS ASSOCIATION (AHA)

The Australian Hotels Association (AHA) is the national voice of Australia’s vibrant hotel industry. The AHA is an organisation of employers in the hospitality industry, federally registered under the *Fair Work (Registered Organisations) Act 2009*. The AHA represents more than 5,000 members across Australia with a network of branches based in every state and territory.

The overwhelming majority of Australian hotels are owner-operated small businesses serving their local communities, with a proportion of hotels forming part of national or international chains. Hotels are located in every city and town in every electorate in the country. AHA members invest millions in capital infrastructure, employ over 250,000 Australians, assist over 50,000 community groups. Hotels provide a place for people to gather, have a drink, have a bet, meet new friends, enjoy live music, find a bed when away from home, share a meal and relax and enjoy themselves in a safe environment. Gaming and wagering form a key part of the offering many hotels offerings.

3 SUMMARY OF RECOMMENDATIONS

Illegal offshore gambling is growing and affecting legitimate Australian businesses. Illegal gambling providers provide a far lesser set of consumer protections than Australian regulated gambling providers. Up until the digital revolution, Australian state and territory governments had been effective in providing regulatory regimes that minimised negative social impacts on consumers.

State and Territory governments also ensured that businesses providing gambling paid for that opportunity; and that on balance the State, the community and the racing codes benefited from gambling. However, the ingenuity of operators in the new digital economy, and lack of an appropriate federal government framework, has been effective in bypassing the protections, structures and returns set by the states and territories. Illegal operators would also be well aware that the current federal laws are rarely if ever enforced.

During this review, it has become apparent that some parties are pushing for liberalisation of certain provisions of the IGA. If approved, such liberalisation would have the effect of further diminishing integrity and consumer protections. Set out below are the key AHA recommendations.

1. So as to ensure consumer protection, sport integrity, and returns to government, any wagering or gaming operators taking bets from Australian residents must be licensed in Australia
2. On-line gaming, poker and casino gambling games are not able to offer best practice consumer protection and must not be legalised
3. Credit betting is prohibited in the retail gambling environment due to its lack of adequate consumer protection and should be prohibited for all other operators as well (except on course bookmakers)
4. The speed of in play betting on sport or racing can be relatively controlled in the retail and telephone environment (where it is currently legal) and should not be extended to the on-line environment, where the speed of betting is uncontrolled
5. The current wagering taxation regimes between “bricks and mortar” retail wagering operators and “on-line and telephone” operators are inequitable and must be levelled so as to ensure regulatory neutrality
6. The advertising of gambling is invasive and unregulated and should be restricted
7. Gambling laws should be capable of being enforced and should be enforced

The above recommendations are consistent with the report of the Department of Broadband, Communications and the Digital Economy (DBCDE) released in March 2013. That report found that the current IGA was ineffective and may be exacerbating the risk of harm due to the high level of usage of prohibited internet gambling services. The recommendations of the DBCDE report included:

- Enabling and encouraging prohibited service providers to become licensed in Australia
- Introducing a national standard for harm minimisation and consumer protection
- Enhancing enforcement and deterrence measures against prohibited offshore internet gambling providers

4 HARM MINIMISATION

TAB wagering and electronic gaming are gambling products offered by hotels as part of a wider entertainment product mix. Hotel based TAB wagering (Pub Tabs) and electronic gaming is legal and heavily regulated and closely supervised by Government agencies.

Industry, regulators and community groups have worked closely to develop and refine a wide range of responsible gambling measures aimed at minimizing harms associated with wagering and gaming, and providing help services to those who do or may have a problem with gambling.

State/Territory governments ensure that, on balance, the racing codes, the State and the community as a whole benefit from gambling. The balance is achieved by allowing gaming machine gambling subject to a system of regulation and control designed to protect players and the community through ensuring the integrity and fairness of games; ensuring the probity of those involved in the conduct of gaming machine gambling; and minimising the potential for harm from gambling.

State/Territory jurisdictions have researched, developed and implemented a comprehensive and sophisticated range of patron care measures involving educative, preventative, funding, compliance, intervention, and direct assistance measures aimed at minimizing the chances of patrons becoming problem gamblers.

On the whole, over the past decade, problem gambling has shown a downward trend in Australia, with evidence that rates have fallen.¹ However, problem gambling prevalence among interactive gamblers was three times higher than among non-interactive gamblers.²

Hotel gaming and wagering is subject to strong consumer protection under highly proscriptive state legislation which imposes strict conditions upon the practices and technology used in gaming activities and its promotion.

All gaming machines are computer-monitored to ensure safety and compliance with the law. Gaming machine protections include rates of return to players, limits on numbers of reels, numbers of machines per venue, global 'caps' on the number of gaming machines in a jurisdiction, types of coins or notes that can be used in gaming machines and literally hundreds of other requirements.

¹ Productivity Commission (2010) Gambling, Report No 50

² Interactive Gambling – Commissioned by Gambling Research Australia published by the Office of OLGR, Victoria. Hing, Gainsbury, Blasszczynski, Lubman, & Russell. March 2014.

5 IMPACTS OF ILLEGAL GAMBLING

The *Australian National Policy on Match Fixing in Sport* states, “Irregular and fraudulent sports betting is on the rise around the globe. Figures provided by Interpol on illegal and irregular sports betting state that over US\$140 billion is generated annually by illegal betting. This is threatening the credibility of sports around the world.”³ In the Australian context, there seems general agreement amongst the licensed wagering and gaming operators that illegal offshore gambling revenue is in the vicinity of:

- Racing \$700 Million
- Gaming \$1 Billion to \$1.6 Billion

Consequently, the impact of illegal gambling includes:

- Less consumer protections
- Loss of sporting code revenue
- Loss of state government revenue including GST
- Inability for integrity enforcement officers to “follow the money”

6 WHY CONSUMERS USE ILLEGAL OPERATORS

Australian residents are attracted to illegal operators for reasons including:

Item	Reason
Availability of credit	Lines of credit and credit cards prohibited at retail outlets such as Pub Tabs. Gamblers bet with money they don't have
Anonymity	Preferred by consumers who are seeking to hide betting activity from Australian enforcement and integrity officials. Problem gamblers may gamble in secret and in private
Price	Illegal gambling operators do not pay any regulatory fees such as copyright, product fees, state taxes, company taxes, and compliance costs. This gives them an unfair competitive advantage against legitimate operators.
More product types	Bet types prohibited in Australia can be offered by illegal operators thus enabling them to offer more betting products, which is attractive to consumers, e.g. micro betting, betting on minors, etc
Website appearance	Illegal websites appear legitimate to consumers
Solitary play	Increased potential to dissociate and lose track of time / money gambled
Lack of consumer knowledge	Lack of consumer knowledge as to illegality of unlicensed operators
Play under the influence of Drugs & Alcohol	Responsible Service of Alcohol laws do not apply in the home
Accessibility & Convenience	No time travel required, may lead to greater frequency of play
Electronic payments	May have a lower psychological value than cash, resulting in greater amounts wagered

³ <http://www.health.gov.au/internet/main/publishing.nsf/Content/national-policy-on-match-fixing-in-sport>

7 CURRENT ENFORCEMENT MEASURES UNDER THE IGA

Australian Communications and Media Authority (ACMA)

The current means of enforcement of illegal on line gambling is via the Australian Communications and Media Authority (ACMA). Where ACMA has concerns, they are referred to the Australian Federal Police for further assessment and possible prosecution. Despite the vast number of transactions being illegally wagered, there is rarely a prosecution. In the period from July 2010 to June 2011, ACMA completed 48 investigations of allegations of operators providing internet gambling illegally to Australian residents. No prosecutions were made.⁴

In August 2015, the ACMA referred William Hill to the Australian Federal Police over a betting loophole “Click to Call” which allows punters to bet live on sports via their smart phones. The AFP confirmed it was not proceeding with the investigation and stated, “Following evaluation, in line with the AFP’s case categorisation and prioritisation model, this matter was not accepted by the AFP for further investigation”. ACMA stated that, “Notwithstanding the AFP’s decision, the ACMA remains concerned about the potentially prohibited internet gambling content complained of, and may refer future complaints about similar Australian hosted content to the AFP”.

It can only be guessed that the reference to “evaluation in line with the AFP categorisation and prioritisation model” meant that the AFP did not have the resources to properly investigate the alleged breach.

National Integrity of Sport Unit

In recognition of the need for national coordination, monitoring and reporting, the Commonwealth Government has established a National Policy on Match-Fixing in Sport and National Integrity of Sport Unit. However, the National Integrity of Sport Unit is a policy vehicle only and not involved with investigation and prosecution of allegations of match fixing. Match-fixing involves the manipulation of an outcome or contingency by competitors, teams, sports agents, support staff, referees and officials and venue staff. Such conduct includes:

- the deliberate fixing of the result of a contest, or of an occurrence within the contest, or of a points spread
- deliberate underperformance
- withdrawal (tanking)
- an official's deliberate misapplication of the rules of the contest
- interference with the play or playing surfaces by venue staff, and
- abuse of insider information to support a bet placed by any of the above or placed by a gambler who has recruited such people to manipulate an outcome or contingency

The National Policy on Match-Fixing in Sport provides that Sport Controlling Bodies are approved by state/territory regulators to deal with betting agencies including arrangements for financial return to the sport. Sport Controlling Bodies are required to adopt an anti-match-fixing/anti-corruption code of conduct develop and enter into national integrity agreements with betting organisations. Racing has by far the most proven and effective integrity measures, however the integrity enforcement arrangements of the other sports, especially as they relate to wagering, are less well known.

⁴ Interactive Gambling – Commissioned by Gambling Research Australia published by the Office of OLGR, Victoria. Hing, Gainsbury, Blasszczynski, Lubman, & Russell. March 2014

Conclusion regarding enforcement

It is obvious that a new means of investigative and prosecutorial enforcement is necessary, especially given the anticipated growth in on line betting. Given that the returns from gambling flow to state governments, there is little financial advantage for the federal government to pursue illegal operators. Nonetheless, the current laws should be enforced. The way forward on funding an appropriate investigative and prosecutorial body is not clear, but may require discussion between state and federal governments.

8 MEASURES TO IMPROVE ENFORCEMENT OF THE IGA

The AHA understands there are various legal and political complexities surrounding increasing enforcement. However, we understand the options to increase enforcement of the IGA include, e.g.

- Enforcement of current laws
- Creating a specific enforcement agency with investigative and prosecution powers
- Blocking ISP/websites for illegal operators
- Financial transaction blocking for illegal operators (as occurs in some US jurisdictions)
- Penalties for banks and financial institutions that process transaction with illegal operators
- Advising illegal operators they are on the “movement list” denying access to an Australian visa
- Penalties for the advertising of illegal services to Australian residents through digital platforms e.g. Google, mobile phone apps, Facebook
- Adopt similar laws to the *Copyright Amendment (Online Infringement) Act 2015*

Copyright Amendment (Online Infringement) Act 2015

The *Copyright Act 1968* was recently amended to include “anti-piracy” provisions to protect the producers of Australian films and music. The Act enables the owner of a copyright to apply to the Federal Court of Australia for an order requiring a Carriage Service Provider (CSP) to block access to an online location that has the primary purpose of infringing copyright. The explanatory memorandum for the Bill stated:

“Copyright protection provides an essential mechanism for ensuring the viability and success of creative industries by incentivising and rewarding creators. Online copyright infringement poses a significant threat to these incentives and rewards, due to the ease in which copyright material can be copied and shared through digital means without authorisation. Where online copyright infringement occurs on a large scale, copyright owners need an efficient mechanism to disrupt the business models of online locations operated outside Australia that distribute infringing copyright material to Australian consumers.”

The anti-piracy elements relating to film and music above also apply to the Australian racing industry, and the hotels that support it, e.g.

- Large scale Australian industry
- Significant threat to that industry
- Use of IP without authorisation

Each of the Australian states and territories has enacted “race field legislation”, which in essence protects their copyright in racing information. The right to charge fees based on that right was ratified by a full bench of the High Court in *Betfair Pty Ltd v Racing New South Wales [2012] HCA 12 (30 March 2012)*.

9 POLICY OBJECTIVES OF WAGERING AND GAMING ACTS

The policy objectives of state and territory gambling laws generally relate to “bricks and mortar” venues where on premise gambling occurs such as:

- TAB agencies
- Hotels
- Clubs
- Racecourses
- Casinos

The objects of the various state/territory wagering, gaming and racing Acts include:

- Minimise harm associated with the misuse of gambling activities
- Foster responsible conduct in relation to gambling
- Facilitate the balanced development, in the public interest, of the gaming industry
- Ensure the integrity of the gaming industry
- Ensure the integrity of racing in the public interest
- Ensure that certain betting activities by licensed bookmakers are conducted properly
- Protect a source of public revenue

10 BEST PRACTICE

Each Australian state and territory achieves their policy objectives by having a variety of enforceable best practice legislation, regulations and codes of conduct aimed at ensuring responsible gambling. In comparison to the states & territories, there is a vacuum at the federal level.

A liberalising of federal laws without best practice protections to the standard currently enforced by states and territories would create less protection for consumers an unfair two level playing field for business. Current harm minimisation and consumer protections enacted at state/territory level include, e.g.

Measure	Australian Hotels	On line
Compliance inspections by Australian regulatory authorities	Compulsory	Only if licensed in Australia
Taxes and fees paid to government and sport	Compulsory	Only if licensed in Australia
Operator licensed in Australia	Compulsory	Voluntary
Advertising and promotions – bans & restrictions	Compulsory	Voluntary
Responsible Service of Alcohol	Compulsory	No
ATM/EFTPOS – withdrawal limits and restrictions upon placement in the venue	Compulsory	No
Caps on EGM numbers	Compulsory	No
Effective prohibition of minors	Compulsory	No
Bans on credit	Compulsory	Voluntary

Compulsory restrictions on inducements to gamble	Compulsory	Voluntary
Player information requirements (e.g. display of odds on winning, return to player, warnings, notifications regarding problem gambling)	Compulsory	Voluntary
Rate of play restrictions	Compulsory	Voluntary
Responsible gambling codes of conduct requirements	Compulsory	Voluntary
Self-exclusion and Exclusion provisions	Compulsory	Voluntary
Staff training in responsible gambling and problem gambling assistance	Compulsory	Voluntary

If the Federal government is of a mind to liberalise gambling on line, it should match the “best practice” of on premise state/territory laws, and enforce them.

Advertising of betting information to minors

Television advertising for online wagering operators increased from \$12 million in 2010 to over \$41 million in 2012.⁵ In comparison, wagering and gaming offerings of hotels are rarely displayed on television. The display of betting information is now prominent on various sporting code “apps”. Given that apps are where most minors source information, this probably does not match best practice of not advertising betting to minors. A firm set of guidelines is required in regard to advertising of betting information, especially where it can be seen by minors.

11 IN PLAY BETTING ON SPORT

Harm minimisation

It is understood that the on line bookmakers want the prohibition of “on line in play” wagering on Australian sport in lifted. Part of their argument is apparently that many consumers are already betting on line in play with illegal operators. In other words, “if you can’t beat them join them”. To our mind, that is a weak argument.

Federal Parliament considered on line in play betting when the IGA was enacted. It considered that on line in play betting could exacerbate problem gambling owing to its capacity to “evolve into highly addictive and easily accessible forms of interactive gambling”. Therefore, if the federal government is of a mind to allow on line in play betting, it must show how best practice patron care will be achieved on line to cater for an explosion in on line in play betting.

Mix of racing and sport

The mix of wagering between wagering and sport between Australia and the UK is illuminating. The UK has on line in play betting, but Australia does not.

Bet Volume	Australia	UK
Racing	80%	20%
Sport	30%	70%

⁵ Ebiquity report cited Interactive Gambling – Commissioned by Gambling Research Australia published by the Office of OLGR, Victoria. Hing, Gainsbury, Blasszczyński, Lubman, & Russell. March 2014

If on line in play betting was liberalised in Australia, the Australian market would likely shift to a similar mix as the UK. This will cause significant harm to Australian racing which generates about 1/3 of its TAB revenues via pub tabs. Country racing is likely to be hit hardest along with pubs.

12 LICENSING OF GAMBLING OPERATORS

The AHA believes that “any wagering or gaming operators taking bets from Australian residents must be licensed in Australia”. It is understood that Racing Australia may seek to extend that provision for national Sport Control Bodies to approve operators that do not hold an Australian licence to take bets from Australian residents if they hold a race field authority. AHA disagrees with this proposition. It must be pointed that out that a wagering licence and a race field authority are two very different things.

- In each state/territory, wagering licences are issued by a state authority (often called the Office of Gaming and Racing “OGR”)
- The OGR conducts due diligence as to whether the applicant is “fit and proper” and whether they have sufficient assets to meet liabilities
- The issuing of a wagering licence does not of itself entitle that agency to take bets on racing – after acquiring a licence, the agency must then seek a race fields authority that allows it to use the race fields information owned by the control body

There is no objection to sport control bodies permitting Australian or overseas betting agencies from taking bets from persons overseas. However, it is doubted that the race field authority approval process is a satisfactory proxy for a full government run licence process. It is doubted that a sport control body would have the power to enforce the necessary harm minimisation measures for overseas operators taking bets from Australian residents. Therefore, so as to be able to enforce the appropriate harm minimisation measures, agencies taking bets from Australian residents must be licensed in Australia.

Jurisdiction shopping

If overseas betting agencies not licensed in Australia were able to take bets from Australian residents, more of our Pub Tab punters would “jurisdiction shop”. They would simply open accounts with foreign bookmakers who offered better odds by paying less tax to state/territory governments. Such a provision would be a major issue for Pub Tabs, who are unable to “jurisdiction shop”. Hotels would remain bound in a state based jurisdiction and pay the consequent higher taxes and product fees, thus an uneven playing field.

Not only would punters shift away from Australian businesses, but it is extremely likely that our Australian based wagering operators would “jurisdiction shop” as well and move offshore to whichever country had the most favourable state taxation regime and race field information fees. Domestically, this is already the case with nearly all Australian on line bookmakers “jurisdiction shopping”. Most are licensed in the Northern Territory (and some in Norfolk Island), where government fees and taxes are negligible in comparison to the other states and territories.

The outcome for permitting Australian punters and wagering operators to “jurisdiction shop” overseas is likely to cause severely diminished financial returns for Australian state governments, the racing industry and Australian hotels.

13 CONCLUSION

The review is welcomed but must be extended to include all types of illegal offshore gambling. In making decisions, the federal government must have as its guiding principles:

- Best practice harm minimisation for consumers, integrity of sport, and protection of Australian sports and industry
 - Protection of revenues for Australian state governments, the racing industry and Australian hotels
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