

GAMBLING

Inquiry into the Interactive Gambling and
Broadcasting Amendment (Online
Transactions and Other Measures) Bill 2011

Submission of

AUSTRALIAN RACING BOARD

INDEX

Introduction	3
(i) Prohibitions on corporations offering gambling services ...	3
(ii) Financial transactions for interactive gambling payments .	3
(iii) Inducements to gamble	4
(iv) Limits on broadcasters advertising betting venues and broadcasting betting odds	4
(a) Commercial television	4
(b) Commercial radio	6
(c) Subscription television	7
(v) Amendments about obtaining a financial advantage by deception in relation to a code of sport	7
(vi) Other amendments to deal with unauthorised wagering operators	7
Further proposed amendments to IGA	9

Introduction

We welcome the opportunity to provide comment on the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011. In this submission we address each of the five elements of the bill:

- (i) prohibiting certain bet types e.g. spot betting;
- (ii) enabling customers to tell their financial services provider to cancel transactions with illegal gambling operators (provided the transaction is still not completed);
- (iii) prohibiting gambling services which consist of games which are inducements to subsequently gamble;
- (iv) limits on broadcasters advertising betting venues and broadcasting betting odds; and
- (v) an amendment to the Criminal Code making match-fixing a crime.

We also suggest further provisions which should be added to the bill to address the issue of unauthorised wagering operators evading harm minimisation measures, probity controls, industry funding and taxation.

(i) Prohibitions on corporations offering gambling services

We note and generally support the rationale for this provision.

We believe that it would be desirable to see consultation take place with sporting bodies and racing on the drafting of the regulations, recognising their capacity to provide useful advice on the types of bets which have potential to cause integrity problems.

(ii) Financial transactions for interactive gambling payments

As noted in our original submission, the approach to using financial transactions controls to combat illegal gambling which has been taken in the USA is to compel financial institutions to identify and block restricted gambling transactions. (A notable recent development here has been the FBI's use of information supplied by Australian internet entrepreneur, Daniel Tzvetkoff, to lay charges of bank fraud, money laundering and illegal gambling against the founders of the 3 largest US online poker companies. A scheme to deceive banks about the true nature of transactions with them, and so evade the financial transactions controls of the UIGEA, is at the heart of these prosecutions. The three poker sites - PokerStars, Full Tilt Poker and Absolute Poker – have all been shut down as a result.)

We continue to believe that this is the optimal model for using financial transactions as a means of combating illegal gambling. In the Australian context one way of implementing this more systematic response could be to empower APRA to require Australian financial institutions to not facilitate transactions with known unauthorised gambling service providers. These arrangements should include unauthorised wagering service providers.

We note that the bill takes a different approach, *viz.* it enables a customer to request his or her financial transaction provider to cancel payment in respect of any interactive gambling service, provided the transaction is not at that point already completed. The bill exempts the financial transaction provider from any liability in proceedings brought against it by the unpaid gambling operator.

The second reading speech sets out the rationale for this measure:

“This bill will most likely lead the sites to ban Australian gamblers, because they know if they lose they won’t pay up.”

We note in passing that the clause 15B (2) provides that:

*“the customer ...may **request** a financial transaction provider giving effect to the transaction to suspend or cancel the transaction.”* (our emphasis)

The bill does not make any provision for what a financial transaction provider should do upon receiving such a request. It is likely that market forces will influence financial transactions providers to act on such requests. Even so consideration might be given to going further than the bill does at present and spelling out the legal requirements that apply to financial transaction providers where a request is made pursuant to clause 15B.

Finally, we note that clause 15B as currently drafted would have no application to wagering operators: it would only apply to interactive gambling services, and the IGA defines these so as to exclude wagering.

In the attached document we have drafted a provision that would extend the measure to unauthorised wagering operators (being operators that are taking bets on Australian racing without the approval of the relevant racing body.)

(iii) Inducements to gamble

As per the comments provided in our original submission.

(iv) Limits on broadcasters advertising betting venues and broadcasting betting odds

(a) Commercial television

We support the position that has been taken on these matters by the COAG Select Committee on Gambling as announced on 27th May, 2011. Accordingly we broadly support item 1 of schedule 3 of the bill which would amend the *Broadcasting Services Act 1992* to introduce conditions for commercial television broadcasting licences in relation to advertising of betting venues, online gambling sites and gambling sites.

Consistent with the position which has been articulated by the COAG Select Committee on Gambling we believe that because of its essential connection with wagering the racing industry should not be included in these new controls. The current drafting of item 1 of schedule 3 largely achieves this, depending on how

certain terms are subsequently defined in the regulations. However, it would be preferable to specify in the bill itself that:

- The prohibition on a commercial television broadcaster broadcasting betting odds if there is a commercial arrangement between the broadcaster and the betting agency providing the odds does **not** apply to race betting odds. For example, for many years now the major racing carnivals conducted in Melbourne and Sydney have been broadcast on commercial television. It will be readily accepted that these broadcasts could not feasibly be made excluding broadcasting of the betting odds relating to those race meetings. It will also be understood that one or more of the betting agencies generating the betting odds may have a commercial arrangement with the television broadcasting licensee (either to place an advertisement or endorsement within or during a race broadcast, or to advertise at some other time slot). What has been described here has occurred for many years and is not of the same nature and complexion as the recent developments involving betting odds being promoted in cricket, football and other sport. The bill should not destroy these opportunities for iconic Australian sporting events, such as the Melbourne Cup, to be broadcast on commercial television.
- The prohibition on a commercial television broadcaster broadcasting during all sports programs and sports-related programs any advertising of betting venues does **not** include racecourses. Our concern here is that, depending on the definition in the regulations of “betting venue”, there is a risk with the current drafting of schedule 3 that advertising which markets racing will be caught by this prohibition. If the regulations defined “betting venue” to include racecourses then an advertisement encouraging people to attend a race meeting could not be shown during any sports program or sports-related program. Preventing such advertising taking place would not further the objectives of the bill. Accordingly we believe that the bill should be amended to make it clear that “betting venue” does not include racecourses for the purposes of items 1, 2 & 3 of schedule 3.

More generally we note that there appears to be a gap between what is set out in the Explanatory Memorandum to the bill and the items in schedule 3. The Explanatory Memorandum says that schedule 3:

*“requires ACMA to enforce conditions to require commercial television, radio and subscription television broadcasting licencees **not to broadcast betting odds where there is a commercial arrangement** between the licensee (i.e. presenter) **to provide betting odds.**”*(our emphasis)

However, the drafting in items 1, 2 & 3 goes beyond this. For example, item 1 says that the ACMA must impose a condition:

“that has the effect of requiring the licensee of a commercial television broadcasting licence not to broadcast betting odds in relation to a matter if there is a commercial arrangement between the licensee or an agent of the licensee and the betting agency providing the betting odds.”

This casts a wider net than is suggested by the Explanatory Memorandum. A commercial arrangement to provide the betting odds is not required. Instead it is enough that there is a commercial arrangement between the broadcaster and the betting agency. On a plain reading this could be any type of commercial arrangement; indeed it may be a commercial arrangement between other divisions of the two parties and have no connection with betting.

This is not intended to suggest opposition to the bill's intended objective of winding back the recent trend of broadcasts of cricket, football and other sporting fixtures becoming filled with exhortations to gamble. However the drafting approach that the bill employs to achieve this might be further considered.

(b) Commercial radio

We submit that, consistent with the position that has been taken on these matters by the COAG Select Committee on Gambling, item 2 of schedule 3 of the bill should be amended to specifically exclude from its scope radio stations. These currently exist across Australia (including: 2KY in NSW; 3UZ in Victoria; TAB Ozbet in WA; Radio Sport National in Tasmania and the ACT; 4TAB in Queensland; 5TAB in SA and 8TAB in the NT). While several of these are currently narrowcast licences the majority are commercial licences and so, on the current drafting of item 2, would be caught by it.

Racing enthusiasts and industry participants have enjoyed, and relied upon, radio coverage since the inception of radio broadcasting in the early 1920s. Indeed, it is estimated that more than 1.6 million adults listen to racing radio stations during a typical week, with audience levels increasing substantially when major carnivals are being conducted.

By way of example, Radio Sport National (3UZ Pty Ltd) is a commercial radio broadcaster, licensed to serve the Melbourne metropolitan region. Its licence holder also owns and operates a network of 20 relay services into all major Victorian regional and rural markets utilising a mix of Commercial, High Power & Low Power Open Narrowcast class broadcast licences. Radio Sport National is owned by the racing industry itself (its shareholders are: Country Racing Victoria, Melbourne Racing Club, Harness Racing Victoria, Victoria Racing Club, Greyhound Racing Victoria and Moonee Valley Racing Club).

The racing radio networks around Australia exist to provide live broadcast coverage and commentary of race meetings and events as well as the provision of associated betting information, in order to satisfy the very significant consumer demand that exists for the service across metropolitan, regional and rural markets. The radio broadcast coverage provided by racing radio networks is of fundamental importance to the Australian racing industry.

In these circumstances we submit that the racing radio stations should be exempted from item 2.

(c) Subscription television

We submit that, consistent with the position that has been taken on these matters by the COAG Select Committee on Gambling, item 3 of schedule 3 of the bill should be amended to specifically exclude from its scope subscription television broadcasting licences where more than 50% of their program content is racing related.

There are currently two of these licences: Sky Channel and TVN.

- Sky Channel is the principal telecaster of racing in Australia, providing live telecasts of more than 5,000 race meetings each year. Sky Channel covers all three race codes and races from all Australia States and Territories. Sky Channel provides several racing services including: the “Sky Channel Commercial Service” which is provided on a subscription basis to more than 5,000 TAB outlets, hotels, clubs and other commercial venues across Australia; and the “Sky Racing Domestic Pay Television Service”: which is available on Foxtel, Optus, Austar and other domestic pay television services.
- Specialised racing telecasts are also provided by ThoroughVision (TVN) which provides live telecasts of Victorian thoroughbred racing and Sydney metropolitan thoroughbred racing and selected other events. TVN provides a subscription service to TAB outlets, hotels, clubs and other commercial venues, domestic pay television service and internet coverage.

(v) Amendments about obtaining a financial advantage by deception in relation to a code of sport

We support schedule 4 of the bill amending the *Criminal code Act 1995* to create a new offence, namely obtaining a financial advantage by deception in relation to a code of sport, and providing for significant penalties for its breach.

We submit that the term “sporting match” should be defined in the regulations to include a horse race. Racing faces at least the same level of risk of its integrity being undermined for gambling-related purposes as other sports. Accordingly the protection that is given to sport by this new criminal offence should apply also to racing events.

(vi) Other amendments to deal with unauthorised wagering operators

The bill’s second reading speech made by Senator Xenophon sets out the rationale for this legislation:

“Overseas operators have used generous loopholes to push their products here in Australia, and this Bill seeks to close those loopholes.”

We agree that there are significant loopholes in the current legislation dealing with online gambling, principally the IGA. We broadly support the measures that the bill introduces to close some of these loopholes.

However, one area of considerable importance which has not been addressed is the issue of wagering operators basing themselves offshore to evade harm minimisation measures, probity controls, industry funding and taxation.

As our initial submission noted this is not an abstract concern. Australia experienced this in the 1980s and 1990s with betting shops basing themselves in Vanuatu to avoid the Australian regulatory framework. In the 1990s the Vanuatu-based bookmaker operation, the Number One Betting Shop, was said (anecdotally) to have a turnover of between AUS \$300 and \$600 million. When it was acquired by Sportingbet and relocated to the Northern Territory, Sportingbet announced that it would be acquiring a client database of 25,000 Australian clients, 20 per cent of which were active at that time.

In our initial submission to the Joint Select Committee we provided material on the most recent developments in the UK, where all of the major wagering operators have moved their online operations offshore to bases such as Malta and Gibraltar.

In these circumstances we believe that the bill should have added to it provisions which address this issue. While some of our suggested provisions have a similar effect as existing State and Territory “race fields” legislation, we believe the bill’s proposed strengthening of the national framework which is established by the IGA would be incomplete if it did not deal also with unauthorised wagering operators.

In overview these provisions would:

- define unauthorised wagering as wagering on Australia races by operators which do not have approval of the relevant racing body;
- make it an offence to offer unauthorised wagering;
- make it an offence to advertise unauthorised wagering;
- enable customers to cancel payments to unauthorised wagering operators;
- enable the racing bodies to notify unauthorised wagering operators to the ACMA; and
- require internet service providers to use ISP level filters to block access to the websites of unauthorised wagering operators.

Amendments

Interactive Gambling Act 2001

A. Definitions

Controlling body for racing means a body either established or recognised by State or Territory legislation as the entity responsible for regulating thoroughbred, harness or greyhound racing in its territory.

Unauthorised wagering provider means a wagering provider that offers a wagering service on a thoroughbred, harness or greyhound race run in Australia without the approval of the controlling body for racing in the State or Territory in which the race is run.

Unauthorised wagering service means a wagering service offered by an unauthorised wagering provider.

Wagering service means:

- (a) a service for the placing, making, receiving or acceptance of wagers; or
- (b) a service the sole or dominant purpose of which is to introduce individuals who wish to make or place wagers to individuals who are willing to receive or accept those bets.

B. Prohibition on unauthorised wagering service

- (1) A person is guilty of an offence if the person offers a wagering service on a thoroughbred, harness or greyhound race run in Australia without the approval of the controlling body for racing in the State or Territory in which the race is run.

Penalty: 10,000 penalty units

- (2) A person who contravenes subsection (1) is guilty of a separate offence in respect of each day (including the day of a conviction for the offence or any later day) during which the contravention continues.

C. Prohibition on advertising by unauthorised wagering providers

- (1) A person is guilty of an offence if the person publishes an unauthorised wagering service advertisement in Australia.

Penalty: 1000 penalty units.

- (2) A person is guilty of an offence if the person authorises or causes an unauthorised wagering service advertisement to be published in Australia

Penalty: 1000 penalty units.

- (3) For the purposes of this section, a wagering service advertisement that is included on a website is taken to be published in Australia if, and only if:
- (a) the website is accessed, or is available for access, by end-users in Australia: and
 - (b) having regard to:
 - (i) the content of the website; and
 - (ii) the way the website is advertised or promoted;

it would be concluded that it is likely that a majority of persons who access the website are physically present in Australia.

D. Financial transactions for unauthorised wagering service payments

- (1) This section applies to:
- (a) a regulated transaction that has commenced but has not been completed ; or
 - (b) a series of 2 or more connected financial transactions ,including at least one regulated transaction, that has commenced but has not been completed.
- (2) If a payment which is being made for an unauthorised wagering service is being made by way of the transaction or transactions, the customer who initiated the payment (or on whose behalf the payment was initiated, as the case may be) may require a financial transaction provider giving effect to the transaction to suspend or cancel the transaction.
- (3) If a financial transaction provider suspends or cancels a transaction in accordance with this section, the provider is not liable in any proceedings about the suspension or cancellation taken by or on behalf of an unauthorised wagering service provider.

E. ISP blocking of unauthorised wagering service providers

- (1) A controlling body may notify the ACMA that a wagering service provider is an unauthorised wagering service provider.
- (2) The ACMA must give each internet service provider known to it a written notice directing the provider to use ISP-level filtering to prevent end-users from accessing the internet content of an unauthorised wagering service provider.