



A U S T R A L I A N  
W A G E R I N G  
C O U N C I L

SUBMISSION

Draft Report  
of the  
*Review of the Australian  
Communications and Media Authority*

June 2016

## Introductory Remarks

The Australian Wagering Council (**AWC**) welcomes the opportunity to comment on the draft proposals outlined in the *Draft Report - Review of the Australian Communications and Media Authority (the Report)*.

The AWC is the peak industry body representing licensed online wagering operators in Australia. AWC members provide betting on racing and sporting events to over 2 million Australians balancing the legitimate right of consumers to wager on racing and sporting events with industry responsibility to provide effective consumer protection and harm minimisation measures.

The current operating framework for providers of online gambling services is the *Interactive Gambling Act 2001 (IGA)*, which is administered by the Australian Communications and Media Authority (**ACMA**).

ACMA is also responsible for registering the broadcast industry codes (free-to-air, subscription TV and radio) by which Australian licensed wagering operators must abide. For example, the *Commercial Television Industry Code of Practice*<sup>1</sup> was again recently reviewed after an extensive community consultation period.

## General Comments

The AWC places on record three overarching concerns before addressing two of the draft proposals (Draft Proposals 8 and 26) that pertain to the Australian licensed online wagering industry.

***The regulatory framework of the IGA - which the ACMA administers and by which ACMA considers complaints - has not kept pace with the shifts in the online wagering environment.***

Since the introduction of the IGA in 2001 - fifteen years ago - changing consumer preferences, technological developments and the convergence of previously distinct communications platforms has drastically altered the wagering landscape resulting in the rapid development of an international online gambling market.

The AWC contends that the IGA has become antiquated, inconsistent and largely unenforceable given the global nature of the internet. It fails to regulate the service and instead focuses on the methods and platforms by which those services are delivered (e.g. telephone, internet).

<sup>1</sup> <http://www.acma.gov.au/Industry/Broadcast/Television/TV-content-regulation/commercial-television-code-of-practice-tv-content-regulation-i-acma>.

Regulation by prohibition, such as the ban on Australian licensed operators offering online in-play products, has proven not to work in the global online environment and despite the recent Review of Illegal Offshore Wagering conducted by Barry O'Farrell<sup>2</sup>, the AWC contends that the IGA will continue to be largely ineffective in preventing high participation rates by Australians on offshore online gambling services<sup>3</sup>. Indeed, it would be unsurprising to the AWC if participation rates on offshore gambling actually increased as a consequence of the forced cessation of 'click-to-call' technologies.

***The Federal Government should be aiming to deliver modern, fit for purpose wagering reform rather than piecemeal government agency functions changes.***

Australians deserve a single proper, rational and unified reform package to ensure an effective national framework is in place for regulation of wagering in Australia.

Rather than undertaking piecemeal amendments to agency functions, the AWC calls on the Government to undertake a full review of the IGA to ensure that a safe, competitive, open and fair wagering market is in place.

A modern fit-for-purpose regulatory framework should achieve wide reaching benefits that:

- *Reflect the choices available to Australian customers to wager in a global market.* Consumer choice and the internet have changed wagering. Ideally, customers would always bet with Australian licensed operators but, if they can't get products they want here, customers gamble with offshore providers. Reform means letting licensed operators compete properly with offshore providers, including through online in-play wagering (where sports controlling bodies approve the bet type) in a regulated framework.
- *Protect vulnerable people.* Nationally consistent harm minimisation and responsible gambling standards are necessary. They prevent harm and they benefit consumers and the wagering industry, where the responsible delivery of wagering services is fundamental to acceptability.
- *Foster legal and licensed onshore wagering at the expense of offshore competitors.* Strong, Australian licensed wagering businesses (irrespective of their country of origin) provide a better climate for innovation and investment, add real value to the economy, via taxation, high tech job creation, product fees to racing and sport and highly skilled job creation.
- Strengthen the integrity of Australian racing and sport. There is little that is more important to Australians than a sense of fair play, both on and off the sporting field. The economic product fee contributions and information-sharing capabilities of Australian licensed wagering operators (unlike offshore operators) should be part of a national approach to fight the threats of match-fixing and sports corruption, at home and internationally. Current alleged match-fixing investigations of large bets

<sup>2</sup> O'Farrell Review of Illegal Offshore Wagering, Available at <https://www.dss.gov.au/communities-and-vulnerable-people/programmes-services/gambling/review-of-illegal-offshore-wagering>

<sup>3</sup> Offshore gambling firms take billions and Australian authorities cannot act. Michael Carayannis, The Daily Telegraph (online) 12 June 2016. Available at: <http://www.dailytelegraph.com.au/news/nsw/offshore-gambling-firms-take-billions-and-australian-authorities-cannot-act/news-story/f160dcc4b26861158a87dcc776d0f79c>

being placed with offshore operators by Australians on NRL contingencies<sup>4</sup>, which keep these activities invisible to regulators, provide clear evidence of this.

This approach is in line with the Department of Communication's own view that '*Markets should be open and competitive so as to encourage investment, innovation and diversity of choice. Regulatory settings should embody competitive neutrality across platforms and among market participants and minimise potential market distortions.*'<sup>5</sup>

### ***Need for a National Regulatory Framework***

The AWC contend that a single properly resourced national regulatory body would be best placed to implement, oversee and enforce a consistent regulatory framework for wagering across Australia. Such regulation should be credible, effective and national. It should also be technology neutral, consistent and enforced.

As previously outlined, the current operating framework under the IGA is administered by ACMA. As such ACMA could feasibly serve as a broader regulatory body for the online wagering industry overseeing the provision of harm minimisation measures and examining probity measures as well.

The AWC contends that a single national regulator dedicated to gambling would be best placed to prioritise enforcement of the IGA.

## **Specific Draft Proposals**

### ***Draft Proposal 8 – Amend the Interactive Gambling Act***

The AWC notes that Draft Proposal 8 is aimed at amending a range of functional changes within the IGA to improve their efficiency and performance.

*Draft Proposal 8. That the Interactive Gambling Act 2001 be amended to require the ACMA to:*

- *Handle all complaints relating to interactive gambling services and advertisements;*
- *Conduct the same investigation process irrespective of whether the content is hosted in Australia or overseas; and*
- *Enforce civil penalties for breaches of the Act.*

The AWC contends that, given the global nature of the internet and the competing priorities of enforcement authorities, the existing approach to enforcement has not presented a sufficient deterrent to unregulated offshore wagering operators who continue to act contrary to the Act and beyond the regulatory reach of the ACMA - evidenced by the lack of prosecutions over the past 15 years.

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<sup>4</sup> Huge NRL bets being placed offshore, cops fear. SMH - Wednesday, 8 Jun 2016 - Page 40

<sup>5</sup> Deregulation in the Communications Portfolio Framing Paper November 2013

The AWC is on record and has publically advocated for the strengthening of deterrence and enforcement powers under the IGA to minimise the damage that results from the practices of unregulated, offshore wagering operators who operate in contravention of Australian law. These include:

- extending responsibility to ACMA for administering civil penalties for the provision of prohibited gambling services hosted in Australia, as defined in the IGA;
- issuing take-down notices;
- applying to the Federal Court for injunctive relief; and
- requiring ACMA to publish a list of known illegal/unregulated websites providing services to Australians together with information about the dangers of illegal/unregulated websites.

As such, these amendments to the IGA, in the absence of any fuller review of the Act, are supported.

### ***Draft Proposal 26 - Resourcing of Reforms***

The AWC notes that Draft proposal 26 focuses on resourcing the proposed reforms.

*Draft Proposal 26: That the ACMA should further analyse its cost base, in light of the proposed function changes, to ensure it is efficiently delivering on its responsibilities and minimising costs to industry.*

It is imperative that sufficient resources be allocated to ensure that the ACMA can respond effectively to the opportunities and challenges presented by the future communications environment should the proposed reform proposals be adopted.

Importantly, ACMA must be sufficiently resourced to effectively prioritise the targeting of the scourge of offshore unlicensed online wagering operators whilst minimizing cost to the Australian licensed industry.

This approach is also in keeping with the Australian Government's deregulatory agenda of reducing the regulatory cost burden for business and the community while maintaining necessary consumer and other safeguards.<sup>6</sup>

## **Next steps**

The AWC appreciates the opportunity to contribute to the stakeholder consultation process and looks forward to working with the Federal Government to constructively assist in the matters raised in this submission.

Ian Fletcher  
CEO

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<sup>6</sup> Australian Government Guide to Regulation, March 2014