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# Gaming Law

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# Law and Practice

*Contributed by Addisons*

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**Addisons** has been delivering tailored legal solutions for Australian and international businesses for over 140 years. The firm's services are across diverse industries and sectors, and it is passionate about assisting clients derive positive business outcomes with solutions underpinned by commercially sound legal advice. The gambling sector in Australia faces increasing regulatory challenges and the Addisons Gambling team advises businesses on all aspects of gambling law and regulation. This includes advice on business strategies for international gambling projects, both in-

bound into Australia as well as out-bound to international markets. The firm's gambling industry clients in this area include gaming machine manufacturers, wagering operators, casino operators, and other gambling service providers, whether online or land-based, as well as gambling industry associations and other local and international gambling industry participants. The firm also advises several leading participants in the games sector. The firm's clients range from console games suppliers to casino games and social games websites, including eSports tournament organisers.

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## 1. Introduction

### 1.1 Current Outlook

#### A Focus on Responsible Gambling and Harm Minimisation

Following an agreement reached between the Australian federal government and all the Australian states and territories in December 2018, online gambling operators will be subject to the measures established in the National Consumer Protection Framework (NCPF). The NCPF established ten measures to be adopted by Australian state and territory governments in relation to the conduct of online betting by licensed operators.

The purpose of the NCPF is to introduce various regulatory standards across Australia over a period of 18 months (beginning on 26 November 2018) which focus on responsible gambling and harm minimisation in the conduct of online betting. These measures set out a minimum standard and each state and territory can decide on how they wish to implement them. A number of the measures came into effect in May 2019.

The ten measures address:

- the prohibition of lines of credit for wagering purposes;
- a reduction in the customer verification period;
- consistent responsible gambling messaging;
- greater and clearer accessibility and availability of account closure mechanisms;
- prohibitions on specified inducements;
- the provision of activity statements to customers;
- the discouragement of the use of payday lending for online wagering;
- the implementation of a voluntary opt-out pre-commitment scheme;
- training of staff in the responsible conduct of gambling; and
- the development and implementation of a national self-exclusion register.

#### ISP Blocking for Offshore Gambling Operators

The Australian Communications and Media Authority (the ACMA) confirmed, on 11 November 2019, that it would begin to use powers to block illegal offshore gambling websites through Australian internet service providers (ISP Blocking). This development introduces a requirement for participating internet service providers to block illegal offshore gambling websites that have been noticed by the federal regulator.

### 1.2 Recent Changes

#### National Consumer Protection Framework

Refer to **1.1 Current Outlook** for an overview in respect of the NCPF. Among the measures that have come into effect during 2019 are restrictions on offering certain gambling

inducements. This measure has had a significant impact on the sector, particularly for online betting operators who have had to adapt their marketing strategy to ensure that it complies with the different restrictions in each state and territory.

#### Banning of Lottery Betting

In June 2018, amendments were made to the Interactive Gambling Act 2001 (Cth) (the IGA) to prohibit the provision of services for the placing, making, receiving or acceptance of bets on the outcome of Australian and overseas lottery draws to persons located in Australia. The amendments came into effect from 9 January 2019. This has had a material impact on those betting operators who had provided those services under their licence from an Australian state or territory.

#### Point of Consumption Tax

Australian state and territory governments, with the exception of the Northern Territory and Tasmania, have introduced a point of consumption tax (POC tax) which imposes on online betting operators the requirement to pay tax on bets placed by customers resident in the relevant state or territory. Despite the intention for states and territories to implement the POC tax in a consistent manner, the laws introduced by each state and territory vary significantly as to the tax rate, the tax-free threshold, and the method for calculating taxable revenue. The POC tax was introduced first in 2017 by South Australia and the other states and territories followed suit. Tasmania has confirmed that it will introduce a POC tax from 1 January 2020. The Northern Territory continues to oppose the POC tax.

#### Lottoland Decision

Following its review of the betting products offered under the licence issued to Lottoland by the Northern Territory Racing Commission, the ACMA concluded that Lottoland breached the IGA. The ACMA deemed that a number of Lottoland's products were prohibited interactive gambling services which, therefore, could not be provided. Lottoland disagreed with the ACMA's interpretation and submitted an application to the Supreme Court of New South Wales seeking declarations that these products were not prohibited interactive gambling services.

In its decision of 26 July 2019 in *Lottoland v ACMA*, the Court disagreed with the ACMA's interpretation and found that Lottoland's betting products were not in breach of the IGA and that Lottoland could continue to offer these products.

This judgment provides clarity on the scope of the prohibitions of the IGA on various online gambling services.

## 2. Jurisdictional Overview

### 2.1 Online

Online gambling is regulated at the federal level under the IGA. However, Australian states and territories separately regulate online gambling in their respective jurisdictions under the relevant legislation in accordance with the principles established in the IGA.

#### Betting

Under the IGA, betting is considered to be an “excluded wagering service”. Accordingly, online betting may be provided legally under the IGA as a “regulated interactive gambling service” when offered by an operator that holds a licence granted by an Australian state or territory.

#### Bingo

The treatment of online bingo games is unclear under the IGA. The authorities, however, view online bingo as being prohibited under the IGA and not being able to be provided legally to persons present in Australia.

#### Casino

The offering of online casino games is prohibited under the IGA and cannot be offered legally to persons physically present in Australia.

#### Lotteries

Under the IGA, a lottery will be considered an “excluded lottery service” if it is a service for the conduct of a lottery or a service for the supply of lottery tickets.

Accordingly, online lotteries may be conducted legally as a “regulated interactive gambling service” when offered by an operator that holds a licence granted by an Australian state or territory.

Online scratch lotteries and any other online instant lotteries are specifically excluded from the definition of “excluded lottery service” and are, therefore, prohibited under the IGA.

#### Fantasy Sports

Fantasy sports are treated as a betting activity under Australian law (see the commentary on Betting above).

#### Social Gaming

A game constitutes a gambling service if the following three elements are present:

- prize element – the game is played for money or anything else of value;
- chance element – the game is a game of chance or of mixed chance and skill;
- consideration element – a customer of the service gives, or agrees to give, consideration to play or enter the game.

Generally, either the prize element and/or consideration element will not be present in a social game; in those circumstances, social games would not constitute a gambling service and would not require a licence to be offered.

#### Poker

Under the IGA, poker is considered a gambling service and is prohibited and cannot be offered legally online to persons physically present in Australia.

### 2.2 Land-Based

Land-based gambling is regulated at the state and territory level, and, unlike online gambling, there is no legislation regulating land-based gambling specifically at the federal level. Each state and territory has specific legislation for the regulation of land-based gambling.

#### Betting

Land-based betting can be provided on-course by licensed bookmakers in all Australian states and territories. (Some of these bookmakers also provide services online or over the telephone).

Licenses in each state and territory can conduct off-course betting; however, a subsidiary of Tabcorp Holdings Ltd (a company listed on the Australian Securities Exchange) holds the licence in all states and territories, except for Western Australia. The licensee is also granted a statutory monopoly to conduct totalisator betting. In Western Australia, the licence is held by a government entity; however, this entity has recently been listed for sale.

#### Poker

Licensed casinos can conduct land-based poker. Poker may also be played in hotels and clubs, provided that no third party collects a share or percentage from the amounts paid by the players to participate in the poker game.

#### Bingo

Land-based bingo games are treated differently under the laws of each state and territory. Generally, a licence will not be required if the prize is below a threshold established in the applicable legislation.

#### Casino

Casino games are offered in land-based casinos under the licence/s issued in each state and territory. The games that may be offered under a casino licence are table games (including poker) and gaming machines.

#### Gaming Machines

Gaming machines which offer slots games (which in Australia are known as poker machines) are permitted in land-based casinos licensed in each state and territory. Slots are also permitted in clubs and hotels in all states and territories (except Western Australia) under the specific legislation.

## Lotteries

Land-based lotteries can be conducted in Australia under a licence issued by each state and territory. An exclusive licence is granted in each state and territory to conduct a lottery (except in Western Australia). Lottery tickets are available for purchase through newsagents and convenience stores, as well as online.

## 3. Legislative Framework

### 3.1 Key Legislation

The key legislation that applies to the gambling sector in each state and territory is set out below.

#### Australian Capital Territory

- Casino Control Act 2006 (ACT);
- Casino Control Regulations 2006 (ACT);
- Gaming Machine Act 2004 (ACT);
- Gaming Machine Regulations 2004 (ACT);
- Interactive Gambling Act 1998 (ACT);
- Lotteries Act 1964 (ACT);
- Pool Betting Act 1964 (ACT);
- Race and Sports Bookmaking Act 2001 (ACT);
- Race and Sports Bookmaking Regulation 2001 (ACT);
- Racing Act 1999 (ACT);
- Totalisator Act 2014 (ACT);
- Unlawful Gambling Act 2009 (ACT);
- Gambling and Racing Control Act 1999 (ACT); and
- Gambling and Racing Control (Code of Practice) Regulation 2002.

#### New South Wales

- Betting and Racing Act 1998 (NSW);
- Betting and Racing Regulation 2012 (NSW);
- Casino Control Act 1992 (NSW);
- Casino Control Regulation 2009 (NSW);
- Gaming Machines Act 2001 (NSW);
- Gaming Machines Regulation 2010 (NSW);
- Gaming Machine Tax Act 2001 (NSW);
- Lotteries and Art Unions Act 1901 (NSW) (this will be superseded by the Community Gaming Act 2018 (NSW) once it comes into effect);
- Totalizator Act 1997 (NSW);
- Totalizator Regulation 2012 (NSW);
- Public Lotteries Act 1996 (NSW);
- Registered Clubs Act 1976 (NSW);
- Unlawful Gambling Act (NSW);
- Betting Tax Act 2001 (NSW);
- Gambling (Two-Up) Act 1998 (NSW);
- Gaming and Liquor Administration Act 2007 (NSW);
- Gaming and Liquor Administration Regulation 2016 (NSW); and
- Bookmaker Declared Betting Event Rules.

#### Northern Territory

- Gaming Control Act 1993 (NT);
- Gaming Control (Community Gaming) Regulation 2006 (NT);
- Gaming Control (Gaming Machines) Regulations 1995 (NT);
- Gaming Control (Internet Gaming) Regulations 1998 (NT);
- Gaming Control (Licensing) Regulations 1995 (NT);
- Gaming Control (Reviewable Decisions) Regulations 2014 (NT);
- Gaming Control (Taxes and Levies) Regulations 2015 (NT);
- Gaming Machine Act 1995 (NT);
- Gaming Machines Regulations 1995 (NT);
- Gaming Machines Rules 2001 (NT);
- Racing and Betting Act 1983 (NT);
- Racing and Betting Regulations 1984 (NT);
- Totalisator Licensing and Regulation Act 2000 (NT);
- Totalisator Licensing and Regulation Regulations 2000 (NT);
- Totalisator Licensing and Regulation (Arbitration) Regulations 2000 (NT);
- Totalisator Licensing and Regulation (Wagering) Rules 2011 (NT);
- Unlawful Betting Act 1989 (NT);
- Northern Territory Code of Practice for Responsible Gambling 2016;
- Northern Territory Code of Practice for Responsible Online Gambling 2019; and
- Northern Territory Code of Practice for Responsible Service of Online Gambling 2019.

#### Queensland

- Casino Control Act 1982 (Qld);
- Casino Control Regulation 1999 (Qld);
- Casino Gaming Rule 2010 (Qld);
- Breakwater Island Casino Agreement Act 1984 (Qld);
- Brisbane Casino Agreement Act 1992 (Qld);
- Cairns Casino Agreement Act 1993 (Qld);
- Charitable and Non-Profit Gaming Act 1999 (Qld);
- Charitable and Non-Profit Gaming Regulation 1999 (Qld);
- Gaming Machine Act 1991 (Qld);
- Gaming Machine Regulation 2002 (Qld);
- Interactive Gambling (Player Protection) Act 1998 (Qld);
- Interactive Gambling (Player Protection) Regulation 1998 (Qld);
- Jupiters Casino Agreement Act 1983 (Qld);
- Keno Act 1996 (Qld);
- Keno Regulation 2007 (Qld);
- Lotteries Act 1997 (Qld);
- Lotteries Regulation 2007 (Qld);
- Queen's Wharf Brisbane Act 2016 (Qld);
- Wagering Act 1998 (Qld);
- Wagering Regulation 1999 (Qld);

- Racing Act 2002 (Qld);
- Racing Regulation 2013 (Qld);
- Casino Gaming Rule 2010;
- Charitable and Non-Profit Gaming Rule 2010;
- Keno Rule 2010;
- Lotteries Rule 2010; and
- Wagering Rule 2010.

#### South Australia

- Authorised Betting Operations Act 2000 (SA);
- Casino Act 1997 (SA);
- Gaming Machines Act 1992 (SA);
- Lottery and Gaming Act 1936 (SA);
- Gambling Administration Act 1995 (SA);
- Problem Gambling Family Protection Orders Act 2004 (SA);
- Racing (Proprietary Business Licensing) Act 2000 (SA);
- State Lotteries Act 1966 (SA); and
- Gambling Codes of Practice Notice 2013.

#### Tasmania

- Gaming Control Act 1993 (Tas);
- Gaming Control Regulations 2014 (Tas);
- Gaming Control (Infringement Notices) Amendment Regulations 2015 (Tas);
- TT Line Gaming Act 1993 (Tas);
- TT Line Gaming Regulations 2014 (Tas); and
- Responsible Gambling Mandatory Code of Practice for Tasmania.

#### Victoria

- Casino (Management Agreement) Act 1993 (Vic);
- Casino Control Act 1991 (Vic);
- Casino Control (Boundary Redefinition Fee) Regulations 2005 (Vic);
- Gambling Regulation Act 2003 (Vic);
- Gambling Regulations 2015 (Vic);
- Gambling Regulation (Pre-commitment and Loyalty Scheme) Regulations 2014 (Vic);
- Racing Act 1958 (Vic);
- Racing (Racing Integrity Assurance) Regulations 2010;
- Victorian Responsible Gambling Foundation Act 2011 (Vic); and
- Victorian Ministerial Direction for Responsible Gambling Codes of Conduct.

There are also various directions, guidelines and orders issued by the relevant Minister and the Victorian Commission for Gambling and Liquor Regulation which need to be complied with.

#### Western Australia

- Betting Control Act 1954 (WA);
- Betting Control Regulations 1978 (WA);
- Bookmakers Betting Levy Act 1954 (WA);
- Casino (Burswood Island) Agreement Act 1985 (WA);

- Casino Control Act 1984 (WA);
- Gaming & Wagering Commission Act 1987 (WA);
- Gaming & Wagering Commission (Continuing Lotteries Levy) Act 2000 (WA);
- Gaming and Betting (Contracts and Securities) Act 1985 (WA);
- Racing and Wagering Western Australia Act 2003 (WA);
- Racing and Wagering WA Tax Act 2003 (WA);
- Racing Restriction Act 2003 (WA);
- Racing Bets Levy Act 2009 (WA); and
- Racing Penalties Appeal Act 1990 (WA).

There are also various rules and standards which need to be complied with.

### 3.2 Definition of Gambling

As explained in **2.1 Online**, only online gambling is defined at the federal level, under the IGA.

The laws of the Australian states and territories broadly define the term “gambling” in order to capture land-based and online gambling that has a connection with the relevant state or territory.

### 3.3 Definition of Land-Based Gambling

It is necessary to refer to the relevant legislation in each state and territory for a definition of land-based gambling. Legislation in various Australian states and territories make reference to an “unlawful game” rather than specifically defining “gambling”.

Gambling is generally considered to take place when a game consists of each of the following three elements:

- consideration – a customer of the service gives, or agrees to give, consideration to play or enter the game;
- chance – the outcome of the game is determined by chance or a mix of chance and skill; and
- prize – the game is played for money or anything else of value.

### 3.4 Definition of Online Gambling

Section 4 of the IGA defines a “gambling service” as a service:

- for the placing, making, receiving or acceptance of bets;
- the sole or dominant purpose of which is to introduce individuals who wish to make or place bets to individuals who are willing to receive or accept those bets;
- for the conduct of a lottery;
- for the supply of lottery tickets;
- for the conduct of a game, where:
  - (a) the game is played for money or anything else of value;
  - (b) the game is a game of chance or of mixed chance and skill; and
  - (c) a customer of the service gives, or agrees to give,

- consideration to play or enter the game; or
- that is not covered by any of the above, but which is understood to be a gambling service within the ordinary meaning of that expression.

### 3.5 Key Offences

The key offences vary from one jurisdiction to another. However, generally, the key offence comprises the conduct, offering, provision, and/or facilitation of the provision of unlawful gambling services or prohibited gambling services.

### 3.6 Penalties for Unlawful Gambling

Penalties that apply in respect of the conduct, offer, provision, and/or facilitation of the provision of unlawful gambling or prohibited gambling services, vary between Australian jurisdictions.

The penalties for a contravention of the IGA are substantial. The following are the penalties under the IGA:

- criminal offence – for an individual, up to AUD1.05 million per day, or up to five times that for a corporation (ie, AUD5.25 million per day); or
- civil offence – for an individual, up to AUD1.575 million per day, or up to five times that for a corporation (ie, AUD7.875 million per day).

### 3.7 Pending Legislation

There is currently no pending federal legislation.

At the state and territory level, the most significant pending legislation is that in the New South Wales Parliament which, if passed, will impose further restrictions on the advertisement and the offer of inducements by online betting operators to persons located in New South Wales.

## 4. Licensing and Regulatory Framework

### 4.1 Regulatory Authority

The key regulatory bodies responsible for supervising gambling in Australia are:

- Australia (the federal regulator): the Australian Communications and Media Authority (ACMA).
- Australian Capital Territory: Australian Capital Territory Gambling and Racing Commission.
- New South Wales: Liquor & Gaming NSW; and the Independent Liquor and Gaming Authority.
- Northern Territory: Northern Territory Racing Commission (NTRC).
- Queensland: the Office of Liquor and Gaming Regulation.
- South Australia: Consumer and Business Services.
- Tasmania: the Liquor and Gaming Commission.

- Victoria: Victorian Commission for Gambling and Liquor Regulation; and the Department of Justice and Regulation.
- Western Australia: Gaming and Wagering Commission; and the Department of Racing, Gaming and Liquor.

### 4.2 Regulatory Approach

The IGA takes a prohibitionist approach in respect of the regulation of online gambling in Australia. The IGA is drafted in a manner that prohibits all online gambling in Australia except for those activities which are either considered as regulated interactive gambling services, which may be licensed, or activities which are not considered to be prohibited interactive gambling services.

Generally, the state and territory regulatory authorities adopt a more prescriptive and interventionist approach in their legislative scheme, with the objective of minimising gambling harm.

### 4.3 Types of Licences

The licences that are issued by states and territories to conduct gambling, either online or land-based (as defined in the respective state or territory), are generally B2C licences.

A personal licence may be required at a state and territory level, for example, in respect of gambling operators/venues which are in the land-based market, for – eg, gaming machine technician licences.

Companies may also be required to obtain a B2B licence in the land-based market to offer their services, for – eg, a gaming machine dealer/supplier's licence, and a gaming machine testing facility licence.

Permits or approvals must be granted by the regulatory body in most states or territories to operate gaming machines in licensed premises.

### 4.4 Availability of Licences

Land-based licences relating to casinos, lotteries and betting are not readily available. The licences for these activities are for a long term and may be granted on an exclusive basis. These licences are subject to an onerous and lengthy licensing process and to the payment of substantial licence fees and taxes. Certain licences, especially those relating to casinos, are usually granted as part of a larger project. To give an example, presently the only prospect of opening a new land-based casino in Australia is in Queensland, where expressions of interest have been issued by the Queensland Government.

Approvals or permits to provide land-based poker machines in clubs and/or hotels are more readily available; however, there may be restrictions or a cap on the number of poker machines that may be available in a state or territory. We

note that poker machines in Western Australia are installed only in the casino.

Online licences for sports bookmakers and/or lotteries are more readily available. The Northern Territory is the leading online gambling licensing authority in Australia. There is no limit on the number of online licences that may be granted by the Northern Territory.

#### 4.5 Duration of Licences

##### Land-Based

The duration of the licences issued for land-based activities vary in each state and territory, however, they are usually for a long duration. Below are examples of the duration of licences that have been granted:

- Casino licence – licences have been granted for a term of up to 99 years. Certain licences have been granted on an exclusive basis for a substantial period and/or for a certain area of the state or territory. For example, the licence granted in the Australian Capital Territory was issued in 1992 for a term of 99 years which included a period of exclusivity.
- Lottery licence – the licence in New South Wales expires in 2050; and in South Australia in 2052. Both are granted on an exclusive basis.
- Gaming machine licence - licences for gaming machines are not usually granted for a specified period of time and are valid until the gaming machine licence is surrendered or cancelled.
- Wagering licence - the expiration dates of some of the exclusive wagering licences are:
  - (a) 2098 in Queensland;
  - (b) 2064 in Australian Capital Territory;
  - (c) 2097 in New South Wales; and
  - (d) 2100 in South Australia.

##### Online

The duration of an online gambling licence varies, but is generally five years (for sports bookmakers).

#### 4.6 Application Requirements

The basic documentation requirements, whether applying for a land-based licence or an online licence, are similar in the sense that the documents required when applying for a gambling licence are required irrespective of the type of licence. Therefore, due diligence will be conducted to determine the suitability of the applicant company, its shareholders and directors, and that of the holding companies and ultimate beneficial owners. The business plan, the financial document and forecasts, the contribution the gambling business will make to the state or territory and the technical documentation will be assessed in respect of any gambling licence (land-based or online).

Further detailed information, such as details of the premises to be used to offer the gambling services, and the impact the operation will have on the state and territory may also be required in respect of any land-based licence application.

Further documentation may be required in respect of an application for a gambling licence where the gambling service is part of a larger project.

The documents that directors and owners are required to submit include details of their employment history, a statement of their assets and liabilities, supporting documents, and police clearance certificates.

The disclosure thresholds for shareholders differ between the states and territories (and the type of gambling licence); generally, the applicable percentage is 10% but, in certain cases, may be 5% or lower.

#### 4.7 Application Timing

##### Land-Based Licence Applications

The timescale for a land-based licence application will vary between the states and territories, and also depends on the type of licence for which the application is being made. To give an example, a casino licence application involves a lengthy and complex application process which usually also includes a formal tendering process. This may take some years.

##### Online Licence Applications

The period that will elapse in respect of an application for a sports bookmaker's licence in the Northern Territory before that application is granted is nine months.

#### 4.8 Application Fees

##### Land-Based Licences

The application fee for land-based licences depends on the relevant state and/or territory and the gambling activity to which the application relates. As explained, land-based licences for casinos, lotteries and wagering activities are granted (in the majority of cases) on an exclusive basis, therefore, any fees are usually substantial.

##### Online Gambling licences

The application fees currently applicable in the Northern Territory are:

- for a sports bookmaker's or an online gambling licence – AUD24,200; and
- for a betting exchange licence – AUD242,000.

#### 4.9 Ongoing Annual Fees

##### Land-Based Licences

Fees payable in respect of land-based licences vary depending on:

- the type of land-based licence (casinos or other gambling venues);
- the relevant state or territory in which the licence is granted;
- whether exclusivity is granted; and
- the manner of payment (upfront or on an annual basis).

This varies materially. For example: in New South Wales a one-off payment of AUD256 million was paid in 1995 for a 12 year exclusivity period in respect of the casino licence and a further AUD100 million was paid in 2007 for a 12 year extension of that exclusivity period; and in Queensland a quarterly licence fee of AUD241,600 (indexed annually) is payable for the casino licence.

## Online Gambling Licences

In the Northern Territory, sports bookmakers and online gambling licensees pay an annual licence fee of AUD24,200, while betting exchange licensees pay an annual licence fee of AUD242,000.

## 5. Land-Based Gambling

### 5.1 Premises Licensing

The licensing requirements relating to premises will vary depending on the form of land-based gambling, and the state or territory.

In respect of casinos, most states and territories will include, in the casino-licence conditions, the location of the casino and any conditions relating to the premises.

Clubs and hotels may, under their respective licences, operate gaming machines; however, the gaming machines must be approved in order for them to be operated in the premises.

### 5.2 Recent or Forthcoming Changes

There have been no recent changes to the land-based gambling sector; however, further casino licences may be granted in Queensland. Furthermore, an enquiry is being conducted in New South Wales which is examining the casino regulatory framework and recommendations may be made which could affect the manner in which casinos are regulated in Australia in the future.

## 6. Online Gambling

### 6.1 B2C Licences

B2C operators may be licensed in Australia to offer a regulated interactive gambling service (ie, lotteries, betting). A licence, issued in any state or territory in Australia, enables the licensee to provide the licensed services throughout Australia without the requirement to obtain a licence from any other state or territory.

### 6.2 B2B Licences (Suppliers, Software, etc)

B2B providers will not generally require a licence to offer their services to Australian operators. The B2B provider's systems may, however, be subject to review or approval processes as a condition of the licence granted to the B2C operator which uses their system.

### 6.3 Affiliates

A licensed bookmaker must request the approval of the Northern Territory Racing Commission (NTRC) for any partnerships entered into where the licensed operator and the other party receive income jointly and carry on business as partners relating to the licensed activities. Therefore, if the arrangement with an affiliate satisfies these requirements, approval may be required from the NTRC.

### 6.4 White Labels

Generally, white-label providers are not required to be licensed, however, agreements between bookmakers and white-label providers may need to be approved by the NTRC if they meet the requirements set out in **6.3 Affiliates**.

### 6.5 Recent or Forthcoming Changes

The most significant recent changes to online gambling are the NCPF, ISP blocking, the imposition of a POC tax, and the banning of lottery betting services. For details on these changes please refer to **1.1 Current Outlook** and **1.2 Recent Changes**.

### 6.6 Technical Measures

Please refer to ISP Blocking in **1.1 Current Outlook**, which requires Australian ISPs to block illegal offshore gambling websites.

## 7. Responsible Gambling

### 7.1 RG Requirements

Responsible gambling requirements that apply to land-based gambling operators vary depending on the type of licence held by the operator, and the state and/or territory in which the operator is licensed.

Generally, a gambling service provider will be required to display certain responsible gambling messages and warnings in designated areas, and provide customers with:

- an option to self-exclude from the gambling services provided by an operator;
- options for imposing voluntary pre-commitment limits; and
- information about responsible gambling support services.

In respect of online gambling, each state and territory has separate requirements and these are in the process of being

harmonised with the implementation of the NCPF's 10 measures (referred to in **1.1 Current Outlook**).

## 7.2 Gambling Management Tools

The tools available to players to manage their gambling activities are referred to in **7.1 RG Requirements**.

# 8. Anti-money Laundering

## 8.1 AML Legislation

The key piece of anti-money laundering (AML) legislation in Australia is the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) (the AML/CTF Act). The AML/CTF Act is supplemented by the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No 1) which provides further detail in relation to specific requirements under the AML/CTF Act.

## 8.2 AML Requirements

Gambling (excluding the provision of a lottery) is considered a "designated service" under the AML/CTF Act. This means that licensed operators are considered "reporting entities" and, as such, are subject to obligations under the AML/CTF Act including, among other things:

- enrolling, for the purpose of Australian anti-money laundering laws, with the Australian Transaction Reports and Analysis Centre (AUSTRAC);
- reporting certain business activities and transactions;
- keeping records;
- having anti-money laundering and counter-terrorism financing programmes;
- reporting suspicious transactions; and
- putting in place certain know-your-customer (KYC) requirements.

# 9. Advertising

## 9.1 Regulatory/Supervisory Agency

The relevant regulatory and supervisory agencies in respect of gambling advertising include:

- Federal: ACMA.
- Australian Capital Territory: ACT Gambling and Racing Commission.
- New South Wales: Liquor & Gaming NSW.
- Northern Territory: Northern Territory Racing Commission.
- Queensland: Office of Liquor and Gaming Regulation.
- South Australia: Consumer and Business Services.
- Tasmania: Tasmanian Liquor and Gaming Commission.
- Victoria: Victorian Commission for Gambling and Liquor Regulation.

- Western Australia: Department of Racing, Gaming and Liquor.
- Industry body: Ad Standards.

## 9.2 Definition of Advertising

### Land-Based Gambling Advertisements

Land-based gambling advertisements are regulated under the relevant state and territory laws. The definition of advertising in the respective legislation in the states and territories also capture online gambling advertisements.

In New South Wales, a "gambling advertisement" is defined under the Betting and Racing Act 1998 (NSW) to mean an advertisement that gives publicity to, or otherwise promotes or is intended to promote, participation in gambling activities. Other state and territory statutes provide similar definitions of "gambling advertisement".

### Online Gambling Advertisements

The IGA prohibits "designated interactive gambling service advertisements" which is defined to include any writing, still or moving picture, sign, symbol or other visual image, or any audible message or any combination of two or more of those things that gives publicity to or is intended to promote:

- prohibited or unlicensed online gambling services;
- the whole or part of a trademark in respect of a prohibited or unlicensed online gambling service;
- a domain name or URL that relates to a prohibited or unlicensed online gambling service; or
- any words that are closely associated with a prohibited or unlicensed online gambling service (whether also closely associated with other kinds of services or products).

This prohibition generally applies to the advertising of gambling services that are prohibited, unlicensed, or provided by offshore gambling operators.

## 9.3 Key Legal, Regulatory and Licensing Provisions

The key legal and regulatory provisions in respect of advertising vary depending on the type of gambling services being provided and the state or territory in which they are provided. There are no licensing provisions in respect of advertising.

Gambling operators' advertising is also subject to federal laws, including the Australian Consumer Law in Schedule 2 of the Competition and Consumer Act 2010 (Cth), the Spam Act 2003 (Cth) and the Broadcasting Services Act 1992 (Cth).

## 9.4 Restrictions on Advertising

### Land-Based Gambling

Advertisements for land-based gambling are generally permitted in Australia. However, there are strict restrictions in respect of what can be included in an advertisement and

when advertising is allowed. In general terms, linked promotion of gambling activities is permitted.

As outlined in **9.2 Definition of Advertising**, the advertising of gambling services is regulated at the state and territory level and the requirements vary from one jurisdiction to another. There are also industry codes of practice which outline the manner in which gambling services can be advertised on various media platforms.

Generally, gambling advertising will be prohibited or considered unlawful if, among other things, the advertisement:

- encourages a breach of the law;
- depicts or targets persons under the age of 18;
- misrepresents the likelihood of winning;
- relates to a gambling service that is unlawful;
- does not include the requisite responsible gambling messages;
- represents gambling as a means of financial betterment; and
- depicts the consumption of alcohol.

Further advertising restrictions are imposed on wagering operators in respect of, among others, the:

- offering of inducements to participate in wagering activities or open a betting account;
- advertising of live odds during sporting events; and
- promotion of gambling services on television and radio during peak times.

Land-based operators are also required to display responsible gambling messages. However, the requirements around the display of such messages vary significantly from one jurisdiction to another.

### Online Gambling

The restrictions referred to above also apply to online gambling operators. However, further advertising restrictions are imposed on online gambling operators by means of the NCPF (see **1.1 Current Outlook**).

### 9.5 Sanctions/Penalties

The sanctions and penalties that apply in respect of breaches of advertising restrictions vary significantly depending on the laws of the relevant jurisdiction and the nature of the contravention.

In New South Wales, for example, the maximum penalty prescribed for an online betting operator that publishes a gambling advertisement in contravention of the Betting and Racing Act 1998 (NSW), or offers an inducement to participate (or participate frequently) in gambling activity, is AUD55,000 for a corporation, and AUD5,500 for an individual.

At the federal level, in respect of contraventions of the provisions relating to advertising in the IGA, fines of up to AUD37,800 for an individual and AUD189,000 for a corporation may be imposed.

## 10. Acquisitions and Changes of Control

### 10.1 Disclosure Requirements

The disclosure requirements in respect of acquisitions of an interest and/or a change of control in respect of a gambling operator varies from one jurisdiction to another. Accordingly, it is necessary to refer to the provisions of the relevant legislation in the state or territory in which the relevant entity holds its licence.

Land-based casino licences cannot be transferred. Another company may, however, acquire shares in the licensee. In this circumstance, if the share sale exceeds a certain threshold (usually 5% or 10% of the issued shares), the purchaser will need to notify, and obtain approval from, the relevant regulator. For example, in New South Wales, the purchaser will be required to disclose all information required for the regulator to enable it to conduct an investigation into the suitability of the purchaser.

Online lottery and wagering licences also cannot be transferred. Another company may, however, acquire shares in the licensee. If the transfer of shares exceeds a certain threshold (usually 5% or 10% of the issued shares), the purchaser will need to notify the regulator and obtain regulatory approval in the relevant jurisdiction. For example, the licensee and the purchaser in a transfer of shares which exceeds the threshold (say 10%) will be required to disclose the information required by the regulator to consider whether approval should be granted in respect of the transfer of shares in the licensed company.

### 10.2 Change of Corporate Control Triggers

Generally, an acquisition of shares (directly or indirectly) that exceeds 5% or 10% of the issued shares in the licensee will trigger the relevant change of control provisions, whereby notification and approval of the purchaser and associated persons will be required.

### 10.3 Passive Investors Requirements

Generally, passive investors will not be excluded from the requirements relating to change of control if they exceed the percentage threshold.

## 11. Enforcement

### 11.1 Powers

The ACMA (the federal regulator) has broad investigative and enforcement powers under the IGA. For example, the ACMA has powers to:

- issue formal warnings;
- issue infringement notices;
- notify the Department of Home Affairs (Australia's immigration and border protection agency) of the names of directors to be included on the Movement Alert List;
- notify foreign regulators of an operator's breaches of the IGA; and
- seek an order from the Federal Court of Australia for the imposition of substantial civil penalties.

The regulatory bodies' enforcement powers vary between the states and territories. Generally, state and territory regulators also have broad investigatory and enforcement powers and have powers to commence civil and criminal proceedings (where relevant); conduct licence reviews; where required, vary licence conditions; and/or suspend or cancel the licence.

### 11.2 Sanctions

Regulators are vigilant to ensure that operators comply with the applicable laws, and, when required, the regulators will proceed to take enforcement action.

In considering whether to impose sanctions, such as suspending or revoking a licence, or varying licence conditions, regulators will have regard to the administrative and legislative tools which they have at their disposal to implement and enforce these sanctions.

There have been numerous recent cases where the court has imposed fines on operators following court proceedings being initiated by the relevant regulator. Online sports-betting operators, Sportsbet and Neds were issued a fine of AUD10,000 and AUD18,000 respectively by the New South Wales Court for a breach of advertising provisions. The cases were initiated by Liquor & Gaming NSW.

### 11.3 Financial Penalties

Where the regulatory body is granted powers under the relevant legislation to impose financial penalties, the regulatory body issues the fines as prescribed in the legislation. However, when the regulatory body does not have the power to impose fines under the respective legislation, the financial penalties are imposed and enforced by a court decision.

## 12. Recent Trends

### 12.1 Social Gaming

Refer to **2.1 Online** for an overview of the legal position relating to social gaming in Australia. In view of this legal position, social games have become more popular and licensed land-based casino operators have invested in social games to complement their casino offering.

### 12.2 eSports

#### eSports Regulation in Australia

Sports bookmakers licensed in the Northern Territory are permitted to take bets on certain official eSports tournaments and/or competitions. However, some states do not permit betting on eSports.

#### Action Taken in Australia

Australian police have recently undertaken an investigation into eSports match-fixing, resulting in six arrests in Victoria in relation to the offence of engaging in conduct that corrupts (or would corrupt) a betting outcome.

eSports, however, continues to be an activity which is growing in popularity in Australia and developments in respect of eSports betting should be expected with the growth of the eSports sector.

### 12.3 Fantasy Sports

Where it is recognised as a gambling service, fantasy sports in Australia is usually provided under a sports bookmaker's licence to be provided legally, and, as such, is regulated under the same provisions that apply to online betting services.

### 12.4 Skill Gaming

The regulatory approach to skill gaming in Australia varies significantly, depending on the state or territory in which the offering is made. It is, therefore, important for an operator to review the applicable legislation and the regulator's policy in each state and territory when considering whether it is legal or permitted to offer skill games. The different approaches adopted to skill gaming makes it difficult for an operator to offer skill games throughout Australia and requires an in-depth understanding of the regulatory framework prior to making skill games available. This may be a reason why operators are hesitant in making their skill games available in Australia.

### 12.5 Blockchain

Blockchain technology in gambling is not permitted in Australia.

The NTRC has clarified that it prohibits its licensees from accepting cryptocurrency as a form of payment.

## 12.6 Reform

### Land-Based Gambling

Refer to 5.2 Recent or Forthcoming Changes.

### Online Gambling

There are currently no significant legislative amendments proposed concerning online gambling. However, legislative amendments which implement the NCPF (referred to in 1.1 Current Outlook) in each state and territory will continue to be made over the coming months.

Also, as outlined above in 1.1 Current Outlook, depending on the outcome of the Federal Government's consideration of an internet filtering scheme, there may be a further restriction on the capability of gambling operators to provide services in Australia.

### Other

Sports Integrity Australia (SIA) is a new regulatory body, that is expected to be fully operational by 2021. SIA will address integrity-related issues in Australian sport, including match-fixing, illegal betting, and organised crime and corruption. Its focus will be on regulation, monitoring and intelligence, policy, and programme delivery, including education and outreach.

## 13. Tax

### 13.1 Tax Rate by Sector

#### Land-Based Gambling

The rate of gambling tax payable by operators varies depending on the state and/or territory where the operator is licensed and the type of land-based gambling activity being provided. To give an indication of the tax rates, reference is made to the following examples:

- Casino tax:
  - (a) NSW – the gaming tax is chargeable by reference to gross revenue and increases annually by 1% up to a rate of 37.41%, with an additional responsible gaming levy of 2% payable on gross revenue;
  - (b) Tasmania – gaming tax is payable at 25.88% on annual gross profit from gaming machines, 0.88% of annual gross table game profit, and 5.88% on annual gross keno profit; and
  - (c) Queensland – there are two tax rates which are applicable to the licensed casinos in Queensland. Two of the licensed casino operators pay 20% of the monthly gross table gaming revenue, and 30% of the monthly gross revenue on gaming machines; and the other two licensed casino operators pay 10% of the monthly gross table gaming revenue, and 20% of the monthly gross revenue on gaming machines.
- Lotteries tax:
  - (a) NSW – tax is chargeable at 76.918% of player loss on

subscriptions and sales commissions (less goods and services tax (GST));

- (b) Queensland – 73.48% of gross revenue; and
  - (c) Victoria – the tax chargeable is either 79.4% or 90% of player loss depending on GST tax considerations.
- Wagering tax:
    - (a) NSW:
      - (i) fixed-odds (TAB racing and sports) – 7.43% of players losses;
      - (ii) totalisator (on-course and off-course) – 13.5% of player losses; and
      - (iii) bookmakers' betting levy on sports – Nil;
    - (b) Queensland:
      - (i) fixed-odds (TAB racing and sports) – 10% of commission;
      - (ii) totalisator (sports, off-course racing, and on course racing) – 14% of commission; and
      - (iii) bookmakers' betting levy (sports) – Nil;
    - (c) race fields bets levies are also applicable in the states and territories, and the applicable rates vary between each state and territory. Certain states and territories have established a fixed rate for the applicable levies; however, in other states and territories the applicable levies are established through commercial agreement between the racing industry and the person using the race field's information.

#### Online Gambling

The gambling tax which is applicable in the Northern Territory is:

- Bookmaker:
  - (a) sports events – up to 10% of gross monthly profit;
  - (b) racing events – 10% of gross monthly profit;
  - (c) The amount of tax payable is currently capped at AUD605,000.
- Online gambling - the tax rate is determined by formal agreement with the relevant Minister.

An online gambling operator, irrespective of the jurisdiction in which it is licensed, will also be subject to a point of consumption (POC) tax (chargeable by reference to net wagering revenue) in the following states and territories (subject to certain thresholds being achieved):

- South Australia – 15%;
- New South Wales – 10%;
- Victoria – 8%;
- Queensland – 15%;
- Australian Capital Territory – 15%; and
- Western Australia – 15%.

The Tasmanian Government has recently announced its intention to introduce a POC tax, effective from 1 January 2020, at a rate of 15% of net wagering revenue.

The Northern Territory has not announced a proposal to introduce a POC tax.

All of the above taxes are calculated in a slightly different manner. Further enquiries should be made to obtain details of the calculations.

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