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Gaming Law

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1. Introduction

1.1 Current Outlook

COVID-19

COVID-19 has had a material effect on the Australian gambling sector. Both the online and land-based segments have been impacted negatively by the pandemic (and the community measures introduced to combat the pandemic).

The closure of gambling venues and the suspension of sporting events have been direct results of community measures introduced to combat the virus and had an immediate negative impact on the gambling sector.

Regulatory action was also taken to address the adverse business consequences resulting from COVID-19. Various Australian regulators have issued policies and directives to address the unprecedented circumstances, and to provide financial relief to operators; for example, through deferred payment of fees and taxes, payable by gambling venues. Regulators have had to re-evaluate their main areas of focus and have introduced measures to address the unexpected challenges brought by the pandemic.

Although some of the measures introduced – for example, the closure of venues and the implementation of social distancing measures – have affected the operation of gambling venues, these measures are unlikely to continue once business returns to normal.

However, other measures, such as the announcement of measures to facilitate the digitisation of transactions in gaming venues, are likely to remain in place.

Gaming Venues

A draft bill has been published in New South Wales that proposes to put in place a range of harm minimisation measures to address gambling harm suffered by players of gaming machines. Among the measures proposed are formal exclusion processes. These exclusion processes would be capable of being activated by the individual gambler (through a form of self-exclusion process) as well as by an interested third party.

These proposals have been circulated for comment, with the consultation process due to end on 11 December 2020. Separately from this process, the relevant NSW Minister has announced that consideration will be given to the introduction of facial technology, which would have the effect that no consumer can access a gaming venue without identification through the application of a facial technology verification process. This proposal has only been announced by way of policy, without any details, and is, at least initially, being resisted strongly by the associations that represent gaming venues.

Both of these proposals are likely to affect, materially, the manner in which gaming is conducted in physical venues in New South Wales and, to the extent that they are followed in other Australian jurisdictions, throughout the rest of Australia.

1.2 Recent Changes

Crown Inquiry

The New South Wales casino regulator, the Independent Liquor & Gaming Authority (ILGA), has been conducting an inquiry in the course of 2020 relating to matters involving Crown Sydney, the operator of the second casino in Sydney, which is due to launch in December 2020. Among other things, this inquiry was commissioned to investigate the proposed acquisition of the 37% shareholding interest held by parties associated with James Packer by Melco Resorts (a Macau-based gambling operator). Other matters being investigated include allegations raised in press reports of money laundering and breaches of laws resulting from the operation of junkets by Crown in respect of its other casinos. The inquiry has been requested, in completing its report, to consider the manner in which casinos should be regulated, taking into account best practice regulatory frameworks globally.

Hearings of the inquiry have revealed a considerable number of concerns relating to the influence of the interests associated with James Packer and the failure of senior management, including the board, to have visibility and exercise control over various operational matters, including legal risks arising through marketing activities conducted by representatives of Crown in China.

This inquiry is due to release its report in February 2021. Apart from making various findings concerning the suitability of Crown and its management to operate its Sydney casino (which are likely to have ramifications for the manner in which the suitability of a gambling operator will be assessed by gambling regulators in Australia in the future), the report is likely to make recommendations concerning the regulatory framework that should be adapted in respect of casinos and other forms of gambling in Australia.

New Zealand

Although New Zealand is a separate jurisdiction from Australia, it is important to note that New Zealand has reviewed its regulatory framework relating to online gambling.

The Racing Industry Act came into force on 1 July 2020 and introduced a point of consumption tax (being a tax payable by offshore online betting operators in respect of bets taken from New Zealand residents) and an information use charge (to be paid by online betting operators in respect of bets taken on various New Zealand racing and sporting events).

Although details of the relevant fees have not yet been announced, it is clear that the objective of the New Zealand authorities is to ensure that betting operators providing services to New Zealand residents are subject to an obligation to pay a charge for providing those services and that a fair return, along the lines of a product fee, is payable in respect of bets taken on New Zealand racing and sporting events.

These fees are in addition to the obligation to pay New Zealand Goods and Services Tax (GST).

Despite the introduction of these obligations, it is not clear in practice how New Zealand will be able to enforce these obligations against overseas betting operators and it may be, as is the case in Australia, that the principal step that can be taken by the New Zealand authorities is to encourage compliance with these payment obligations.

National Consumer Protection Framework (NCPF)

Following the agreement reached between the Australian federal government and all the Australian states and territories in December 2018, online gambling operators are subject to the measures established in the NCPF as they are implemented by the states and territories.

The purpose of the NCPF was to introduce ten 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. A number of the measures came into effect in May 2019, others have been introduced since, while others remain outstanding.

As a result of COVID-19, regulators were required to shift their focus and resources to other urgent issues. This has led to a delay in the implementation of the outstanding NCPF measures.

As part of the implementation of the NCPF measures, the Interactive Gambling Act (IGA) was amended in December 2019 to set the legal framework for the establishment of the national self-exclusion register for online betting. Following these amendments, the Australian Communications and Media Authority (ACMA) commenced the process to create and implement the register; however, it is not expected that the register will be operational until the second half of 2021.

Once the register is implemented, individuals will be able to request exclusion from participation in Australian licensed online betting services for either a temporary period or on a permanent basis.

Licensed betting operators will be subject to various obligations, including an obligation to ensure that self-exclusion is effec-

tive through ensuring that individuals who request exclusion are not provided services and/or offered promotions or offers to use their services. Breaches by licensed operators will incur substantial penalties.

Australian Sports Wagering Scheme (ASWS)

A discussion paper was released by the Federal Department of Health in May 2020 calling for submissions relating to the proposal to implement the ASWS (with a closing date of 17 July 2020).

In essence, the ASWS is contemplated as a model designed to implement a consistent approach nationally in addressing sports integrity threats. The discussion paper proposed several options for the ASWS, which ranged from streamlining the current framework to introducing radical changes to that framework.

Excluded from consideration were online in-play wagering, criminalisation of match-fixing, offshore wagering and racing.

It was anticipated that a final Regulatory Impact Statement (RIS) (setting out the preferred option for the ASWS) would be released by the end of 2020 (after a draft had been released for public comment), with the ASWS to come into effect in July 2021.

The process has undoubtedly been delayed by COVID-19 but it is expected that the ASWS process will resume in 2021.

2. Jurisdictional Overview

2.1 Online

Online gambling is regulated at the federal level in Australia 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.

Casinos

The offering of online casinos 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 is 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; and
- 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 under the IGA and would not require a licence to be offered.

Poker

Under the IGA, poker is considered a gambling service and is prohibited. It 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. 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.)

In each state and territory, licensed entities 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, a sales process in respect of this entity is continuing.

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.

Casinos

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 that 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 relevant 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. Lottery tickets are available for purchase through newsagents and convenience stores, as well as online.

3. Legislative Framework

3.1 Key Legislation

Federal:

- Interactive Gambling Act 2001.

New South Wales (NSW):

- Betting and Racing Act 1998;
- Betting and Racing Regulation 2012;
- Betting Tax Act 2001;
- Casino Control Act 1992;
- Casino Control Regulation 2019;
- Community Gaming Act 2018;
- Community Gaming Regulation 2020;
- Gambling (Two-Up) Act 1998;
- Gaming and Liquor Administration Act 2007;
- Gaming and Liquor Administration Regulation 2016;
- Gaming Machines Act 2001;
- Gaming Machines Regulation 2019;
- Gaming Machine Tax Act 2001;
- Public Lotteries Act 1996;
- Public Lotteries Regulation 2016;
- Totalizator Act 1997;
- Totalizator Regulation 2012;
- Totalizator Agency Board Privatisation Act 1997;
- Unlawful Gambling Act 1998;
- Unlawful Gambling Regulation 2016; and
- Bookmaker Declared Betting Event Rules.

Queensland:

- Betting Tax Act 2018;
- Breakwater Island Casino Agreement Act 1984;
- Brisbane Casino Agreement Act 1992;
- Cairns Casino Agreement Act 1993;
- Casino Control Act 1982;
- Casino Control Regulation 1999;
- Charitable and Non-Profit Gaming Act 1999;
- Charitable and Non-Profit Gaming Regulation 1999;
- Gaming Machine Act 1991;
- Gaming Machine Regulation 2002;
- Interactive Gambling (Player Protection) Act 1998;
- Interactive Gambling (Player Protection) Regulation 1998;
- Jupiters Casino Agreement Act 1983;
- Keno Act 1996;
- Keno Regulation 2007;
- Lotteries Act 1997;
- Lotteries Regulation 2007;
- Queen's Wharf Brisbane Act 2016;
- Queen's Wharf Brisbane Regulation 2016;

- Racing Act 2002;
- Racing Regulation 2013;
- Wagering Act 1998;
- Wagering Regulation 1999;
- Casino Gaming Rule;
- Charitable and Non-Profit Gaming Rule 2010;
- Keno Rule 2010;
- Lotteries Rule; and
- Wagering Rule 2010.

Victoria:

- Casino (Management Agreement) Act 1993;
- Casino Control Act 1991;
- Casino Control (Fees) Regulations 2015;
- Gambling Regulation Act 2003;
- Gambling Regulations 2015;
- Gambling Regulation (Pre-commitment and Loyalty Scheme) Regulations 2014;
- Gambling Regulation (Premium Customer) Regulations 2011;
- Racing Act 1958;
- Victorian Responsible Gambling Foundation Act 2011; and
- Victorian Ministerial Direction for Responsible Gambling Codes of Conduct.

Northern Territory:

- Gaming Control Act 1993;
- Gaming Control (Community Gaming) Regulations 2006;
- Gaming Control (Gaming Machines) Regulations 1995;
- Gaming Control (Internet Gaming) Regulations 1998;
- Gaming Control (Licensing) Regulations 1995;
- Gaming Control (Reviewable Decisions) Regulations 2014;
- Gaming Control (Taxes and Levies) Regulations 2015;
- Gaming Machine Act 1995;
- Gaming Machine Regulations 1995;
- Gaming Machine Rules 2001;
- Racing and Betting Act 1983;
- Racing and Betting Regulations 1984;
- Totalisator Licensing and Regulation Act 2000;
- Totalisator Licensing and Regulation Regulations 2000;
- Totalisator Licensing and Regulation (Arbitration) Regulations 2000;
- Totalizator Rules 1979;
- Unlawful Betting Act 1989;
- 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.

Australian Capital Territory (ACT):

- Casino Control Act 2006;
- Casino Control Regulation 2006;
- Casino (Electronic Gaming) Act 2017;
- Casino (Electronic Gaming) Regulation 2018;
- Gambling and Racing Control Act 1999;
- Gambling and Racing Control (Code of Practice) Regulation 2002;
- Gaming Machine Act 2004;
- Gaming Machine Regulation 2004;
- Interactive Gambling Act 1998;
- Lotteries Act 1964;
- Pool Betting Act 1964;
- Race and Sports Bookmaking Act 2001;
- Race and Sports Bookmaking Regulation 2001;
- Racing Act 1999;
- Totalisator Act 2014; and
- Unlawful Gambling Act 2009.

South Australia:

- Authorised Betting Operations Act 2000;
- Authorised Betting Operations Regulations 2016;
- Casino Act 1997;
- Casino Regulations 2013;
- Gambling Administration Act 2019;
- Gaming Machines Act 1992;
- Gaming Machines Regulations 2020;
- Lottery and Gaming Act 1936;
- Lottery and Gaming Regulations 2008 (to expire on 1 September 2021);
- Lotteries Act 2019;
- Problem Gambling Family Protection Orders Act 2004;
- State Lotteries Act 1966; and
- Gambling Codes of Practice Notice 2013.

Western Australia:

- Betting Control Act 1954;
- Betting Control Regulations 1978;
- Betting Tax Assessment Act 2018;
- Casino (Burswood Island) Agreement Act 1985;
- Casino Control Act 1984;
- Casino Control Regulations 1999;
- Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985;
- Gaming and Wagering Commission Act 1987;
- Gaming and Wagering Commission Regulations 1988;
- Gaming and Wagering Commission (Continuing Lotteries Levy) Act 2000;

- Gaming and Wagering Commission (Continuing Lotteries Levy) Regulations 2000;
- Gaming and Betting (Contracts and Securities) Act 1985;
- Racing and Wagering Western Australia Act 2003;
- Rules of Wagering 2005;
- Racing and Wagering Western Australia Regulations 2003;
- Racing Restriction Act 2003;
- Racing Bets Levy Act 2009;
- Racing Bets Levy Regulations 2009;
- Racing Penalties (Appeals) Act 1990; and
- Racing Penalties (Appeals) Regulations 1991.

Tasmania:

- Gaming Control Act 1993;
- Gaming Control Regulations 2014;
- TT Line Gaming Act 1993;
- TT Line Gaming Regulations 2014; and
- Responsible Gambling Mandatory Code of Practice for Tasmania.

The above list of legislation is not exhaustive.

Various rules, guidelines, directions, orders and standards that are issued either by the regulator and/or the responsible minister are also applicable to the gambling sector and 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. In some cases, skill-based games are treated as gambling.

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. Sources of legislation in various Australian states and territories make reference to an “unlawful game”, rather than specifically defining “gambling”.

Gambling is considered generally 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 (i) the game is played for money or anything else of value, (ii) the game is a game of chance or of mixed chance and skill, and (iii) 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 that 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 AUD1.110 million per day, or up to five times that for a corporation; ie, AUD5.550 million per day; or
- civil offence – for an individual, up to AUD1.665 million per day, or up to five times that for a corporation; ie, AUD8.325 million per day.

3.7 Pending Legislation

There are currently two bills before the Australian Federal Parliament proposing amendments to the IGA:

- the Interactive Gambling Amendment (Banning Social Casinos and Other Measures) Bill 2020 – this Bill was presented on 10 June 2020, and is proposing to amend the IGA so that it prohibits the provision of online social casinos to persons located in Australia; and

- the Interactive Gambling Amendment (Prohibition on Credit Card Use) Bill 2020 – this Bill was presented on 25 August 2020, and is proposing to amend the IGA so that the use of credit cards for betting is prohibited.

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 – the Australian Capital Territory Gambling and Racing Commission;
- New South Wales – Liquor & Gaming NSW, and the Independent Liquor and Gaming Authority;
- Northern Territory – the 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 – the Victorian Commission for Gambling and Liquor Regulation; and the Department of Justice and Community Safety; and
- Western Australia – the Gaming and Wagering Commission, and the Department of Local Government, Sport and Cultural Industries.

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 that are either considered as regulated interactive gambling services that may be licensed, or activities that 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 business-to-customer (B2C) licences.

A personal licence may be required at the state and territory level. For example, in respect of the installation and repair of

gaming machines in the land-based market, gaming machine technician licences may be required.

Companies may also be required to obtain a business-to-business (B2B) licence in the land-based market to offer their services; eg, a gaming machine dealer/supplier's licence, or 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.

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 capping on the number of poker machines that may be available in the state or territory. The authors 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 and there is no limit on the number of online licences that may be granted by the Northern Territory regulator.

4.5 Duration of Licences

Land-Based

The duration of the licences issued for land-based activities vary in each state and territory, but 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 exclusivity 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) 2024 in Victoria (a request for expressions of interest for a term of at least 12 years commencing on 16 August 2024 has been issued);
 - (b) 2098 in Queensland;
 - (c) 2064 in Australian Capital Territory;
 - (d) 2097 in New South Wales; and
 - (e) 2100 in South Australia.
- Online Gambling Licence – The duration of an online gambling licence varies; however, for sports bookmakers, it is generally a five-year term.

4.6 Application Requirements

The basic documentation requirements when applying for a land-based licence or an online licence are similar; documents required when applying for a gambling licence are required irrespective of the type of licence.

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 beneficiary owners. Furthermore, the business plan, financial documents and forecasts, the contribution the gambling business will make to the state or territory and technical documentation will all 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 provide an example, the current wagering and betting licence in Victoria expires in August 2024; however, the Department of Justice and Community Safety has already issued an expression of interest to seek prospective applicants for the next licence to be granted upon the expiration of the current licence.

Online Licence Applications

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

4.8 Application Fees

Land-Based Licences

The licence application fee for land-based licences depends on the relevant state 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 applicable in the Northern Territory are:

- for a sports bookmaker or an online gaming 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 the exclusivity period, and in Queensland a quarterly licence fee of AUD265,100 (indexed annually) is payable for a casino licence.

Online Gambling Licences

In the Northern Territory, sports bookmaker 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 the location of the casino and any conditions relating to the premises in the casino licence conditions.

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.

Furthermore, as indicated above, an inquiry is being conducted in New South Wales following allegations regarding the conduct of Crown Casino. The inquiry is examining the NSW casino regulatory framework and recommendations may be made that could affect the manner in which casinos are regulated in Australia.

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's systems may, however, be subject to review or approval processes as a condition of the licence granted to the B2C operator that uses their system.

6.3 Affiliates

A licensed bookmaker must request the NTRC's approval 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 a result of COVID-19, and the implementation of the National Self-Exclusion Register. For details on these changes, please refer to **1.2 Recent Changes**.

6.6 Technical Measures

Australian ISPs are required to block illegal offshore gambling websites notified by the ACMA.

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; however, there is an initiative to harmonise such measures with the implementation of the NCPF's ten measures (referred to in **1.2 Recent Changes**). Further requirements will be implemented once the National Self-Exclusion Register is implemented (for further details, please also refer to **1.2 Recent Changes**).

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 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, which means that licensed operators are considered "reporting entities" and, as such, are subject to obligations under the AML/CTF Act, including:

- 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.

AUSTRAC has commenced an investigation into Crown Casino in respect of potential breaches of its obligations under the AML/CTF Act arising from some of its practices being investigated in the NSW Casino Inquiry (see **1.2 Recent Changes**).

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 Local Government, Sport and Cultural Industries; and
- 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 captures online gambling advertisements.

In NSW, 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; or
- the whole or part of a trade mark in respect of a prohibited or unlicensed online gambling service; or
- 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 of 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, the Spam Act 2003 (Cth) and the Broadcasting Services Act 1992 (Cth).

9.4 Restrictions on Advertising

Land-Based Gambling

Land-based gambling advertisements are generally permitted in Australia. However, there are strict restrictions in respect of what can be included in an advertisement and when advertising is permitted.

As outlined at **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 that 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/or
- 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/or
- 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 (refer to **1.2 Recent Changes**).

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 NSW, 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) is AUD110,000 for a corporation and AUD11,000 for an individual.

At the federal level, in respect of contraventions of the provisions relating to advertising in the IGA, fines of up to AUD39,960 for an individual and AUD199,800 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 vary 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 a 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 NSW, the purchaser will be required to disclose all information required for the regulator 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 and obtain regulatory approval in the relevant jurisdiction. For example, the licensee and the purchaser in any transfer of shares that exceeds the threshold (eg, 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 Investor 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 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 the operator's breaches of the IGA; and/or
- 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 and, where required, vary licence conditions, or suspend or cancel the licence.

11.2 Sanctions

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

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 that they have at their disposal to implement and enforce these sanctions.

There have been numerous cases where the court has imposed fines on operators. In February 2020, fines totalling AUD207,000 were imposed by the New South Wales Local Court for breaches of advertising prohibitions under NSW law by Ladbrokes and Neds (which is owned by Ladbrokes), which is the largest fine issued in NSW. 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

COVID-19 has had a significant impact on the gambling sector due to lockdown and closure requirements, social distancing requirements, suspension of sporting events, and other measures. This has impacted all licensed gambling activities (possibly with the exception of lotteries). Online sports bookmakers had no mainstream sporting events on which bets could be placed due to the suspension or cancellation of the events and then had to adjust to the condensed timetable for the sporting events that were played, and the land-based market has been forced to close and, once it was permitted to reopen, has had to adjust to cater for social distancing requirements and increased compliance requirements (eg, increased hygiene, and appointing appropriate marshals, limiting persons who may participate in land-based gambling events).

Also, as a result of gambling trends during the pandemic, bills have been introduced proposing amendments to the IGA (refer to **3.7 Pending Legislation**).

12.2 Esports

Esports Regulation in Australia

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

Action Taken in Australia

Australian police in Victoria conducted an investigation into esports match-fixing in relation to CS:GO. The investigation has resulted in five men having been charged with match-fixing offences.

Esports continues to be an activity that is also growing in popularity in Australia and developments in respect of esports betting should be expected with the growth of the esports sector. This was enhanced by COVID-19, where esports was given more prominence since events could continue to be provided and more operators invested in understanding and providing betting on esports.

12.3 Fantasy Sports

Where it is recognised as a gambling service, fantasy sports in Australia are usually provided under a sports bookmaker licence to be provided legally, and, as such, are 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 make it difficult for an operator to offer skill games throughout Australia and an in-depth understanding of the regulatory framework is required prior to making skill games available. In some states or territories, skill-based gaming online is prohibited, which 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

Refer to **3.7 Pending Legislation**.

The legislative amendments that implement the NCPF (referred to in **1.2 Recent Changes**) in each state and territory will continue to be made over the coming months.

Following the introduction of ISP blocking, the ACMA has used this enforcement mechanism regularly.

Other

Sports Integrity Australia (SIA) is a new regulatory body that launched on 1 July 2020. SIA is also likely to be responsible for the ASWS (see **1.2 Recent Changes**) and is expected to be 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

NSW

The gaming tax paid by The Star Entertainment Group in respect of The Star in Sydney for the period January 2019 to December 2019 was, on average, 31.5% including GST and a Responsible Gambling Levy (RGL).

Lotteries tax

Queensland

Under the Lotteries Regulation 2007 (QLD), the lottery tax payable is 73.48% of the lottery operator's gross monthly revenue minus the lower of:

- the global GST amount; or
- the gross tax amount for the month.

Victoria

Under the Gambling Regulation Act 2003 (VIC), the lottery tax payable by the lottery operator is:

- 79.4% of the player loss in respect of supplies on which GST is payable; and
- 90% of player loss in respect of supplies on which GST is payable.

Wagering tax

NSW

Under the Betting Tax Act 2001 No 43 (NSW), the tax payable in respect of totalisator (on-course and off-course) for the period 1 July 2019 to 30 June 2020 is 10.7% of player losses.

Race Fields fees

The applicable rates vary between each state and territory. Certain states and territories have established a fixed rate for the applicable fees; however, in other states and territories the applicable rates vary depending on the category of race on which bets are taken.

Online Gambling

The gambling tax that is applicable in the Northern Territory is as follows.

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

An online betting operator, irrespective of the jurisdiction in which it is licensed, will also be subject to a point of consumption (POC) tax, which is 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%;
- Western Australia – 15%; and
- Tasmania – 15%.

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

Addisons has a gambling team that advises businesses on all aspects of gaming and gambling law and regulation. This includes advice on business strategies for international gambling projects, both inbound into Australia as well as outbound 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 as-

sociations and other local and international gambling industry participants. The team also advises a number of leading participants in the games sector. Clients range from console games suppliers to social games websites, as well as a number of esports tournament organisers. Addisons delivers commercially sound legal solutions of the highest standard that help drive the business success of Australian and international clients.

Authors



Jamie Nettleton heads the gambling law practice of Addisons. Both Australian and international businesses rely on Jamie's expertise to advise on all aspects of gambling operations, including the potential application of gambling law to innovative products and concepts, as well as their investments in gambling businesses. It is Jamie's global reputation that sees him sought after to advise gaming machine manufacturers, wagering operators, casinos, social media, online gambling and other gambling and gaming service providers. Jamie's advice includes licensing, regulatory and compliance issues; sports and racing integrity; consumer, advertising and privacy law issues; and, more generally, the potential application of gambling law to new technologies. Jamie's advice to international gambling operators setting up business in Australia extends to the development of their Australian business strategies and providing them with a complete understanding of the Australian gambling regulatory environment (from both the legal and policy perspective). Jamie's position at the forefront of gambling law saw Jamie elected as president of the International Masters of Gaming Law for 2018 and 2019, and his role as a senior fellow at the University of Melbourne as a lecturer in Gambling and the Law.



Samuel Gauci is a lawyer focused on gambling law with over 14 years of legal experience. Sam joined Addisons in early 2019 when he moved to Australia from Malta, where he is admitted to the Bar as a warranted advocate. Sam's background in gambling law stems from his experience and roles with the Maltese regulator, the Malta Gaming Authority (MGA), and in private practice as a senior associate with a leading law firm in Malta. Sam's experience of advising and assisting international land-based and online gambling operators, varying in size from start-ups to large companies, provides great value to Addisons' clients in relation to their operations both in Australia and internationally. Furthermore, his regulatory background is beneficial for clients in their interactions with international and Australian regulators and for advising on compliance matters.

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