

THE
GAMBLING LAW
REVIEW

SIXTH EDITION

Editor
Carl Rohsler

THE LAWREVIEWS

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REVIEW

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This article was first published in May 2021
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Editor
Carl Rohsler

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PUBLISHER

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Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK
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Enquiries concerning editorial content should be directed
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ISBN 978-1-83862-781-2

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ADDISONS

A KARITZIS & ASSOCIATES LLC

ANDERSON MÖRI & TOMOTSUNE

BIRD & BIRD

BRÆKHUS ADVOKATFIRMA DA

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PREFACE

Again, the public showed that they would bear their share in these things; the very Court, which was then gay and luxurious, put on a face of just concern for the public danger. All the plays and interludes which, after the manner of the French Court, had been set up, and began to increase among us, were forbid to act; the gaming-tables, public dancing-rooms, and music-houses, which multiplied and began to debauch the manners of the people, were shut up and suppressed; and the jack-puddings, merry-andrews, puppet-shows, rope-dancers, and such-like doings, which had bewitched the poor common people, shut up their shops, finding indeed no trade; for the minds of the people were agitated with other things, and a kind of sadness and horror at these things sat upon the countenances even of the common people. Death was before their eyes, and everybody began to think of their graves, not of mirth and diversions.

Daniel Defoe. *A Journal of the Plague Year*

A year ago, I began the preface to the fifth edition by reminding readers of the most famous epidemic that ever troubled Britain: the Great Plague of 1665, which closed the theatres and silenced the ‘jack puddings and merry Andrews’ in London for a whole year. Writing of that same event years later, Daniel Defoe reminds us that despite the passing centuries, the human impact of plague has actually not changed that much. In another passage from his journal, he remarks how he could only pass along the king’s highway if he obtained a paper from a magistrate to say that he was in full health. The judiciary may have been replaced by the PCR swab or the vaccine passport, but the feeling that the public does not enjoy its normal liberties is scarcely different then than now. Another point that Defoe notes, and which we should not ignore, is that the effect of plagues is marked not in inconvenient days or months, but in decades. ‘Plague Bills’ showing the number of deaths in each parish were first published 1665, and the practice was not formally discontinued until 1679. And so, I begin the preface to the sixth edition of *The Gambling Law Review* in similar terms and circumstances as those of last year.

There have been many changes in gambling law and practice over the last 12 months, but, with perhaps a few exceptions (such as Ukraine), they have been of a minor nature, reflecting perhaps that governments have been so overwhelmed by the social and economic impact of the covid-19 pandemic, that they have simply not had the time to revise the intricacies of betting and gaming regulation. So, in many cases, the legal frameworks that applied in 2020 will still apply in 2021. But the chapters that we each write are designed not only to focus on the details of regulatory change but also to canvas broader themes and directions for the future, and so our authors have all had to try to describe what the future will hold, as well as the past 12 months.

Following that theme, I want in this Preface to talk not so much about gambling, but about the state of the world in which gambling exists and the macro-changes that we now face. In that regard, it seems to me that the question so often asked: ‘when things will get back to normal?’ is not really appropriate anymore. The pandemic has had such a sweeping change on the lives of those in the developed world, that not only have we been forced to break our old habits, but have had enough time to discover and develop new ones. So, no doubt we will go back to restaurants and bars again, and sometimes enjoy high street shopping or a trip to the gym. But there will also, undoubtedly, be permanent changes.

In short, the pandemic, like a world war or a crisis of resources, has created a paradigm shift, a step change. We could go back to our old habits and ways of working. But would that really be such a good idea? Should we want to? The First World War, for all its tragic loss of life, brought us into the modern world and forced societal change at the deepest level. The peace in 1918 brought with it a number of social and legislative changes in the UK of key importance in the century that followed. The Education Act of 1918 enforced a compulsory school-leaving age of 14, recognised special educational needs for the first time and introduced school meals. The Representation of the People Act 1918 allowed (certain) women the right to vote for the first time, and the Sex Disqualification (Removal) Act of 1919 prohibited an employer from excluding someone from a job on the basis of gender. The Ministry of Health Act 1919 created for the first time a minister of Health and made the health of citizens a government responsibility. These pieces of legislation were not the immediate effect of war, but the indicators of underlying changes in the way that society had come to view health, education and the role of women in light of the changes that war had wrought on the collective mind. There was no way back to the innocence of 1914, but there was also much to be gained from recognising that the pre-war period contained injustices and social unfairness that could no longer be tolerated in the post-war world.

If we assume that the current pandemic will resonate in socio-economic terms as loud and long as a major war then, as we emerge from its grip, it is useful to identify and predict the things that may change, and the opportunities that exist to establish new habits that will make our lives better and fairer. Identifying such changes and opportunities is very difficult. My own views are shaped by my perspective – which is a middle-aged professional asked to shoulder the minor inconvenience of homeworking, not a young bar-worker furloughed for almost a year, or a nurse on the front line of treatment and still less a Chinese worker from Wuhan – but let’s nonetheless try to uncover some of the themes.

i Geography – tectonic shifts in our domestic plan

Home/work

The most important collective discovery of the pandemic was our own homes. For millions, it ceased to be the place just to spend evenings and weekends and became the only focus of our lives. Many of us have toyed with the idea of working from home, (or rehearsed the uncomfortable conversation with our bosses about why we do not always need to be in the office). We always thought that we might be more efficient place to work, without a long commute, but there was never the empirical data to justify those theories. Now we have discovered what a year of work without a place of work feels like. The ‘To Let’ boards are springing up in urban centres, and thousands of professionals have experienced the freedoms and inconveniences of a different workplace: our bedrooms, studies, and kitchens. In 2019,

30 per cent of the UK's workforce had experienced working from home. By March 2021, the proportion had grown to 60 per cent.

The implications of this change are in my view very profound. While some are now advocating a return to office life in the summer of 2021, there is increasing evidence that the pandemic will lead to a permanent shift in the workforce away from urban centres and to more suburban and rural settings. Houses with space are more popular and generally cheaper than equivalent houses in towns. The need for large numbers of commuters to move each day to urban centres has been significantly reduced. In short, people will want to work from home more, and homes will feature as more important and valuable resources in our lives. Provided that the communications infrastructure can allow it, more of us will reduce our time in traditional places of work, and very substantially reduce the time travelling to our workplaces. This will have implications ranging from reduction in transport and carbon usage, to the development of smaller towns at the expense of larger cities. We will become a more disaggregated workforce. Over time, that disaggregation may not just challenge existing notions of work–life balance but also blur national boundaries. Once reliance on a physical workplace is diminished, and contributions to working life routinely come via remote communication, then one's workforce can not only be scattered across a country, but just as easily across a continent. We will need to see how employment and tax law deal with these challenges. But in some professional sectors at least, working from home is going to become part of the new normality. That poses challenges for government and infrastructure providers to ensure that our communications networks provide adequate bandwidth outside urban centres as well as within.

Homelschool

The transition away from concentrated work spaces, to disaggregated working and living has some interesting impacts from a technological point of view. We have all become more adept at managing our own domestic IT systems, and fortunately by 2020 most companies' IT systems had developed the resilience to operate on a remote basis. So the transition to home working did not actually require very much in the way of new technology, just a greater acceptance of technology that was already there. To give one indicia, the number of daily active users of Microsoft Teams rose from 13 million in July 2019 to 115 million by October 2020.

Home also became school for many. Where once we worried about the number of hours our children were spending online, we were suddenly grateful that they were at least ready-trained digital natives. A whole young generation whose internet experience was limited to fun and games, began to use their PCs for lessons, exams, projects, Powerpoint presentations and multiparty video conferences with an ease that many of their parents could only envy. Perhaps we need to re-examine whether 'limiting screen time' is really an achievable or even desirable aim. And a young generation will have spent a formative year both working from home, and seeing their parents do the same. That generation has already had its 'home/workplace norms' set differently to the generation before. Thousands have seen the concept of leaving home to go to university completely altered – something that again may be a permanent shift, as we have all discovered that learning yoga, cookery or French are all perfectly possible at a distance. Examinations and ways of rating achievement more generally will also permanently change. The lesson for our educators, is that some types of

experience that had previously considered only to be suitable for ‘real world’ teaching could in fact be engaged with adequately (or even optimally) through remote technology. Again, it is not that these things were not possible before the pandemic – but just that they are now a widely accepted alternative.

Home – the new entertainment hub

This conveniently brings us to highlight home as the new hub of entertainment. Of course, our living spaces and mobile devices had become the venues for streamed music, entertainment, sport (and increasingly gambling). But in 2020, home also became our shopping mall, restaurant and bar. In the UK, between November 2019 and November 2020 online food delivery increased by 107 per cent. Conversely, by comparison with the number of seated diners in February 2020, the UK figures for February 2021 were reduced by 99.88 per cent. Even when and if those restaurants return, it seems to me that they will be differently regarded. Expectations in terms of what constitutes value for money will have been reset.

Shopping is both a necessary activity and for many a form of entertainment. So far as its necessities are concerned, we have moved profoundly from a ‘travel and browse’ to a ‘click and receive’ model. The level of service provided by online retailers supported by a much enhanced and digitally managed supply chain has provoked a revolution in the way that we shop. It will be interesting to see the effect that this has on what might be called ‘leisure shopping’ – including for lifestyle goods and clothes. Again, a decline in land-based retail has been occurring over the last decade, but the pandemic has surely had a permanent impact. As restrictions are removed there will no doubt be a resurgence of interest in the high street – but probably not to the levels seen before. While there will still be strong demand for public places to enjoy retail experiences, certain types of shopping (for example normal grocery shopping) may well permanently move to an online model. The question then is how, without the support of traditional tenants like supermarkets, fashion, consumer goods and bookmakers will be able to maintain their presence on the high street and in shopping centres.

What does this mean for land-based gambling? As with shopping generally, we have seen certain types of gambling product transfer substantially from a land-based to an online model. To take one example, National Lottery ticket sales that were predominantly retail based, declined by 18 per cent with the onset of the pandemic, but online registrations subsequently rose by more than 1.3 million. This change is actually a win-win situation for lottery operators and customer alike. The operator now has a direct relationship with customers and does not have to use a retail network to sell tickets or pay commissions. It can know its customer better, check spending patterns, cross market and observe potentially damaging behaviour. For the customer, purchase of tickets is rendered simple, tickets are never lost and numbers are automatically checked. In short, a product that was always very suitable for a remote medium has been pushed by circumstances from retail to online, and it seems unlikely that it will ever go back again. Will the same be true of betting shops adult gaming centres and casinos? I think that it seems clear that casinos will still be seen as entertainment destinations. But the future for adult gaming centres and retail bookmakers seems less certain.

Travel away from home

One sector that has been disproportionately affected by the pandemic is that of international travel. The future of that industry is very interestingly poised. On the one hand, there is

clearly a very large pent-up demand for tourist travel but, on the other, international travel brings with it a host of difficulties in terms of containment of the virus, and may also involve the public stepping outside its comfort zone. For every tourist eager to get back to normal holidays, there are others concerned by new variants. Restrictions on travel generally have had a significant impact on the world's carbon emissions (indeed we have seen the largest annual decrease in carbon emissions since 1900). So will we go back to a life of weekend breaks and convenience tourism? I think that the answer is probably 'yes, we will'. After all, at least for those in the northern parts of Europe and America, holiday travel involves one type of experience that cannot yet be delivered online – sunshine!

The picture for travel therefore seems a nuanced one: it will be harder to justify business travel, when we are not even commuting as much, but it seems likely that tourism will quickly revive to its pre-pandemic levels. Such travel will of course include the traditional gambling and sport hotspots, and hopefully attendance at sporting and tourist event will soon recover – something very much needed by many economies that have suffered profoundly in the past year.

ii The richer and poorer

The pandemic has caused a monumental economic shock. The FTSE, Dow Jones and Nikkei all saw huge losses in the early months of 2020, with the FTSE dropping 14.3 per cent during 2020, its worst performance since the credit crisis of 2008. The announcement of vaccines has caused many of the major indices to rise sharply, many to well above pre-pandemic levels, but stock prices are to some extent speculative reflections of future hopes, and do not adequately reflect the huge long term borrowing in which almost every government has had to engage. Those who print money, have placed their reputations on the line, and over the next decade are either going to have to grow or tax their way out of the crisis. Some extra burden will inevitably fall on the public.

At the household level, the pandemic has not treated everybody equally. Hundreds of thousands have lost their jobs, spent their savings and face an uncertain future. The burden has fallen particularly heavily on the young, who are most likely to be those working in the hospitality and leisure industries. By contrast others have done relatively well. In the UK, there are reports of as many as 9 million 'unexpected savers' who have faced a combination of either working from home or having their incomes supplemented by furlough schemes, and at the same time have been unable to spend anything on entertainments. Certainly, unlike other recessions, there is no 'systemic weakness' in the economy. Strangely, 2020 has seen not only record debts, but also record levels of personal savings.

Thus, while currency of all gambling – leisure spend – has been significantly reduced, in many cases it is a question of fun postponed rather than removed altogether. In the UK, the beginning of the pandemic came serious warnings from regulators asking operators to ensure that their customers, often bored, solitary and impoverished by loss of employment, did not succumb to excess gambling. So what happened? The latest statistics from the UK Gambling Commission (January to November 2020) showed no significant increase in gambling, despite the stories peddled by the media. There was, as might be expected, a continued growth in online gambling, and equivalent decline in the use of retail premises for bookmaking. But these trends are probably what one would have expected whether there was a pandemic or not. It is curious how constant gambling behaviour is in our society.

All of us have had our views changed over the past 12 months, and all of us have tried to maintain a sense of normality in unusual circumstances. It will be very interesting to see

how our society changes as a result. But in the meantime, our group of author-lawyers have at least been able to keep busy working to serve our clients, and monitor developments in this fascinating and evolving area of law.

I wish to thank my contributors for their usual careful and detailed analysis of the gambling laws of their individual jurisdictions. *The Gambling Law Review* now contains 33 chapters, and I hope that next year's guide will cover still more. I also add a note of personal thanks to those in my own domestic and work bubble, my partner Vanessa and my son Louis, who have both had to put up with more of me in the last 12 months than anyone rightly should have to suffer, and to whom therefore I dedicate my own part in this year's edition.

Carl Rohsler

Memery Crystal

London

May 2021

AUSTRALIA

*Jamie Nettleton, Shanna Protic Dib and Brodie Campbell*¹

I OVERVIEW

i Definitions

In general terms, for an activity to be classified as gambling in Australia, it must involve the staking of money or other valuable consideration of real-world value on the outcome of an event determined in whole, or in part, by chance and with the objective of winning a prize.

Where an activity does not satisfy these criteria, it is not generally considered to be gambling under Australian law.

'Trade promotions', being free-to-enter competitions for the promotion of trade,² are also regulated under gambling legislation in each Australian state and territory. These competitions are subject to specific restrictions and, in certain jurisdictions, are only able to be conducted where a permit has been issued by the relevant regulator.

Fantasy sports operators have existed in the Australian market for some years. Initially, they were regulated as a form of trade promotion, whereas now they are treated by regulators as a form of bookmaking.

No specific regulation of 'pool betting' exists in Australia. Exclusive licences are granted to totalisator operators in all Australian jurisdictions. These operators are licensed to accept bets relating to a contingency (generally, the outcome of a racing or sporting event), which are then contributed to a pool that is paid out by reference to successful bets (after the operator deducts a percentage of the pool as commission, as well as various fees and taxes).

Spread betting and betting on financial products are regulated by the Corporations Act 2001 (Cth). To be conducted legally, operators must obtain an Australian Financial Services Licence. These products are regulated under a different regulatory regime to gambling products; however, in certain circumstances, a sports betting licence may also be obtained.

ii Gambling policy

In Australia, there is a general prohibition in all jurisdictions on the conduct and promotion of gambling. Legislative exemptions exist for gambling activities that are conducted under a licence. These activities include:

- a* lotteries (both in venue and online);
- b* wagering and sports betting (both in venues and online);
- c* electronic gaming machines, slot machines, or 'pokies' (just in venues); and

1 Jamie Nettleton is a partner and Shanna Protic Dib and Brodie Campbell are solicitors at Addisons.

2 It is possible for the purchase of a product or service (at normal retail value) to be a condition of entry.

- d* land-based casinos where casino games, including poker, baccarat and blackjack (among others), can be played.

The paternalistic approach to the regulation of gambling services by Australian federal and state governments is a response to the concerns that arise from the adverse social consequences associated with gambling.

However, gambling has long been a part of Australia's culture and identity and, together with racing and sport, is well established in the national consciousness. State and territory-based regulation of gambling in the early 20th century marked the beginning of the legislative regime in place today. With the introduction of online wagering in the late 20th century, the industry continues to flourish, despite the continuing conflict between the economic returns provided by the gambling sector to state and territory governments, and sporting and racing bodies, and the pressure for governments to take action to minimise problem-gambling behaviour.

iii State control and private enterprise

Historically, lottery and totalisator operators were government-owned entities. Almost all states and territories (Western Australia being the exception in respect of its totalisator and lottery) have corporatised and privatised these gambling operators. All leading gambling businesses in Australia (many of whom are listed) conduct business under a licence granted by a state or territory government (or regulator).

The principal licensed gambling operators are:

- a* Tabcorp Holdings Limited (Tabcorp), which, since combining with Tatts Group Limited (Tatts) (see Section VIII) has the exclusive right to conduct both lotteries and totalisators (and off-course betting) through retail outlets in Queensland, Tasmania, New South Wales, Victoria, South Australia, the Australian Capital Territory and the Northern Territory;
- b* The Star Entertainment Group Limited (The Star), which operates casinos in Sydney and in South East Queensland;
- c* Crown Resorts Limited (Crown Resorts), which operates casinos in Melbourne and Perth (and Sydney; however the gaming floor at Crown Sydney remains closed as at March 2021) and also conducts a betting exchange, Betfair;
- d* Sportsbet Pty Limited (Sportsbet), a sports bookmaker that is owned by Flutter Entertainment;
- e* PointsBet Australia Pty Ltd (Pointsbet), a sports bookmaker; and
- f* Aristocrat Leisure Limited, Ainsworth Game Technology, Scientific Games Australia, Konami Australia, International Game Technology (IGT) and Aruze Australia (all suppliers of gaming machines).

In Western Australia, the totalisator and lottery are conducted through state-owned corporations, respectively operated by Racing and Wagering Western Australia and LotteryWest. However, the Western Australian government announced in late 2018 that it is conducting a tender process in respect of the exclusive licence to operate the state's totalisator. In 2020, negotiations regarding the tender process were postponed until at least 2021.

Separate exclusive licences are also issued in each state and territory in respect of the conduct of keno games in land-based retail venues.

The right to operate a casino has been the subject of an exclusive licence in the relevant jurisdiction, save for Queensland, New South Wales and the Northern Territory. The recent issue of a new casino licence in New South Wales is discussed further in Section II.

Wagering services are not only provided by totalisator operators (who also provide fixed-odds betting services) but also by on-course bookmakers (some of whom also operate online) and corporate bookmakers (mostly licensed in the Northern Territory).

iv Territorial issues

As mentioned above in Section I.iii, licences to conduct gambling are issued by the relevant state or territory government (or regulator) including those listed in Section II. Traditionally, gambling was conducted solely in venues. However, as a result of new technologies and the challenges posed by gambling monopolies in most Australian states and territories, a number of gambling businesses (particularly in the wagering sector) are licensed to conduct gambling remotely. This includes corporate bookmakers, many of whom are subsidiaries of leading European online betting companies.

However, it is generally understood under principles of Australian constitutional law that gambling services provided under a licence issued in any state or territory of Australia are able to be provided to residents of other Australian states and territories. This principle was confirmed by the decision of the High Court of Australia in *Betfair Pty Ltd and another v. Western Australia* (2008) 244 ALR 32.

Each licensing jurisdiction imposes different licence conditions on its licensed operators, by reference to the relevant legislation. Most online corporate bookmakers, for example, are licensed in the Northern Territory by the Northern Territory Racing Commission (NTRC).

v Offshore gambling

In 2001, the federal government enacted the Interactive Gambling Act 2001 (Cth) (IGA) which prohibits the provision of 'interactive' (or online) gambling services with an 'Australian customer link'. The IGA is enforced by the Australian Communications and Media Authority (ACMA) and the Australian Federal Police. In September 2017, the IGA was amended by the Interactive Gambling Amendment Act 2017 (Cth) (IGA Amendment Act) in response to claims that the existing legislation was ineffective as a means of deterring unlicensed offshore gambling operators from providing services to Australian residents.

The amendments, among other things, increased penalties, expanded existing aiding and abetting offences, clarified the prohibition on the use of VoIP technology by licensed wagering operators to facilitate in-play betting services, banned the provision of lines of credit by wagering operators and granted the ACMA greater investigative and enforcement powers, including the power to issue formal warnings and infringement notices.

Broadly speaking, the IGA prohibits the provision of 'prohibited interactive gambling services' (the Section 15 Offence) and 'regulated interactive gambling services' without an Australian licence (the Section 15AA Offence), to persons present in Australia (together, the Operational Prohibitions). Regulated interactive gambling services include wagering services (with the exception of online in-play sports betting services and betting on the outcome of lotteries, which are prohibited) and lottery services (with the exception of online instant or scratch lotteries, which are also prohibited). In addition, the IGA prohibits the advertising in Australia of 'prohibited interactive gambling services' and, unless the relevant party is licensed in Australia, 'regulated interactive gambling services' (the Advertising Prohibition).

The IGA targets the supply of online gambling to residents of Australia by offshore operators, but does not prevent Australian residents from accessing those offshore services, or the provision of services by Australian operators to customers in other countries.

A defence is available for an alleged breach of the IGA where the operator did not know, or could not reasonably have known, that their service had an ‘Australian customer link,’ that is, that any or all of the customers of the service were physically present in Australia.

II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence

Australia is a federation. In practice, this means that legislative power is divided between the federal government and the eight constituent states and territories. Traditionally, the power to regulate gambling activities in Australia was reserved by the states and territories.

This changed in 2001 with the enactment of the IGA.

Whereas the IGA regulates interactive (or online) gambling services, state and territory legislation continues to regulate land-based gambling activities³ and sets out different regulatory frameworks for different types of gambling (both remote and land-based gambling), including casinos, sports betting, poker machines and lotteries.

The IGA prevails over state and territory legislation to the extent of any inconsistency. However, even where certain conduct does not contravene the IGA, it may nonetheless be in breach of state and territory gambling laws.

In addition to regulating the manner in which gambling is conducted, legislation in each Australian state and territory also establishes separate regulatory bodies.

Even though the federal government’s proposed poker machine regulation in November 2012 was unsuccessful, there remains the possibility that the federal government may intervene in the future to regulate further land-based gambling, particularly poker machines, or direct state and territory governments to reform particular regulatory frameworks for other types of gambling.

This is clear from the federal government’s critical role in developing and passing the National Consumer Protection Framework (the NCPF), a framework of 10 mandatory minimum standard measures, which is intended to minimise gambling related harm for Australian consumers (see Section VII).

ii The regulator

The key responsibilities assigned to the state and territory regulators include granting licences, monitoring compliance of gambling operators and enforcement of legislation where necessary. The key regulators in each jurisdiction are:

- a* New South Wales: Liquor and Gaming NSW;
- b* Victoria: Victorian Commission for Gambling and Liquor Regulation and the Department of Justice and Community Safety;
- c* Australian Capital Territory: ACT Gambling and Racing Commission;
- d* Northern Territory: the NTRC;
- e* Western Australia: Department of Local Government, Sport and Cultural Industries;

3 There is also specific state and territory legislation regulating interactive gambling, for example, Chapter 7 of the Gambling Regulation Act 2003 (Vic).

- f* South Australia: the Consumer and Business Services Department;
- g* Tasmania: Liquor and Gaming Commission;
- h* Queensland: Office of Liquor and Gaming Regulation; and
- i* Australia-wide: the ACMA.

In certain states and territories, a different regulator is responsible for the regulation of casinos. For example, the Independent Liquor and Gaming Authority (ILGA) is responsible for determining the regulatory arrangements that apply to the operation of casinos in New South Wales. It has recently been recommended, following the investigation by the ILGA into Crown Resorts (see Section VII), that an independent and specialist casino regulator (the Independent Casino Commission) be established to assume responsibility for the regulation of casinos in NSW. It is possible that similar recommendations may be made in Victoria and Western Australia (as part of the recommendations made by the Royal Commissions convened to investigate the operations of Crown in each of those jurisdictions). Additionally, separate government departments are responsible for regulating lower-risk gambling activities such as trade promotions, and certain racing and sporting bodies have been given the right to regulate certain activities of individual and corporate licensed bookmakers.

iii Remote and land-based gambling

The Australian legislative framework for the gambling sector distinguishes between remote and land-based gambling; both are regulated at the federal and state and territory levels.

As indicated in Section I.i, interactive (or online) gambling services are regulated at the federal, and state and territory levels, while land-based gambling is regulated mostly at the state and territory level.

At the state and territory level, the distinction is due in part to the different regulatory frameworks that exist for the different types of gambling services, such as casinos and gaming machines. In addition, the distinction can be attributed to the rapid evolution of the market and the often outdated legislation at the state and territory level. For example, in New South Wales, the Unlawful Gambling Act 1998 (NSW) (NSW UGA) does not contemplate online gambling. However, the preferred position of Liquor and Gaming NSW, the New South Wales regulator, is that the NSW UGA applies equally to both online and offline forms of gambling.

iv Land-based gambling

Land-based gaming is regulated largely by state and territory legislation, which is principally directed at gambling products or services that are venue-based. These include operators of wagering and lottery terminals, and poker machines. However, certain federal laws apply to land-based gambling, such as the laws relating to anti-money laundering and counter-terrorism financing (see Section IV).

Generally, an exclusive licence has been granted in each state or territory to conduct off-course betting in retail venues. Similarly, an exclusive licence has been granted to provide lottery products (which are made available for purchase by consumers from retailers, principally in newsagents).

Further, licensed venue operators are permitted to conduct land-based machine gaming (such as slot machines, known in Australia as poker machines). These venues include casinos, pubs and clubs. The sole exception to this principle is in Western Australia, where poker machines are only permitted in casinos. Certain restrictions are imposed on the operation

of gaming machines by licensed venue operators, such as caps on the total number of poker machines in any particular venue, locality or in the jurisdiction as a whole. The regulatory regime in respect of poker machines differs substantially from jurisdiction to jurisdiction with Victoria, for example, having a mandatory pre-commitment system in place (which players can opt out of).

Until recently, there was a limited number of casino licences granted in each state and territory. However, in recent years, this exclusivity has been relaxed. Previously, in New South Wales, the exclusive casino licence was held by Echo Entertainment Group Ltd (now The Star). In 2014, the New South Wales state government granted a licence to Crown Resorts for the construction and operation of Crown Casino at Barangaroo in Sydney.

v Remote gambling

The IGA prohibits the supply of online gambling services to persons present in Australia, unless they are wagering or lottery services and the service provider is licensed by a regulatory authority in an Australian jurisdiction. However, the ability of wagering operators to provide remotely in-play sports betting is restricted to bets placed over the telephone via a voice call or via a 'place-based betting service', that is, using 'electronic equipment' at the venue of a licensed operator.

Generally speaking, licensed operators may offer remote or online gambling services and no distinction exists between the online platforms or devices on which a gambling product may be offered to customers.

Licences granted to Australian operators to provide gambling services online often impose restrictions on the location and manner in which the licensed operator may conduct its gambling business. For example, gambling operators licensed by the NTRC are required to locate various aspects of their operations in the Northern Territory. In addition, the conditions of the licence have the effect that bets are deemed to be placed, received and accepted in the Northern Territory for the purposes of the licence, irrespective of where the customer placing the bet is located.

Various restrictions and requirements exist at the state or territory levels that apply to licensed online wagering operators (even where based in another state or territory). These restrictions set out mandatory requirements relating to advertising, warning messages and pre-commitment and, in many jurisdictions, there exists the requirement to pay a product fee in respect of races and some sporting events that take place in that state or territory and a point of consumption tax (PoC Tax) in respect of revenue generated by customers of a particular state or territory (see Section VII).

vi Ancillary matters

Depending on the gambling service, ancillary licences may be required in addition to the principal licence granted to the operator to conduct the gambling business.

For example, in addition to licences granted to operators that conduct gambling activities in a casino or other land-based venue, separate licences are required to be held by manufacturers and suppliers of poker machines, as well as testing agents.

In most cases, key employees or close associates of licensed operators are required to hold a separate licence, or at least be approved by the regulator prior to commencing their role.

vii Financial payment mechanisms

There are a limited number of financial mechanisms that are prohibited in Australia for use as payment in connection with gambling services. For example, the IGA prohibits licensed online wagering operators from providing to Australian customers, or facilitating the provision through third parties, credit for use in connection with the operator's services. Throughout 2019, various Australian financial institutions introduced a limit on the use of credit cards for gambling-related purposes. Further, the industry body for Australia's leading banks (the Australian Banking Association (ABA)) released a report in December 2020 concerning the use of credit cards for gambling (the ABA Report) (see Section VII).

Additionally, Australian gambling laws do not, at either the federal or state and territory level, contemplate the use of cryptocurrency as a mechanism for payment in connection with online gambling services. However, the NTRC has imposed a restriction on all of its licensed online wagering operators accepting cryptocurrency as a form of payment for bets placed with the operator.

III THE LICENSING PROCESS

i Application and renewal

The process involved in applying for a licence to conduct a gambling business in Australia depends on the type of licence and the jurisdiction in which it is sought. For example, in respect of remote wagering, the Northern Territory is the leading licensing jurisdiction in Australia and licences are granted by the NTRC. While other states and territories have their own licensing regimes, these regimes have not been 'tried and tested' in the same way as the Northern Territory regime.

There are a number of licensing options, depending on the nature of the gambling service to be provided. Licences may be granted to conduct bookmaking and online lotteries. For simplicity, we have limited our response to the process relating to the grant of sports bookmaking licences.

In order to be eligible to obtain a licence, applicants must be registered in Australia, generally, as a corporate entity under the Corporations Act 2001 (Cth). The company and key personnel must also meet suitability and probity requirements prescribed by the relevant licensing authority.

In addition to satisfying the eligibility requirements, an applicant will generally need to provide the following information:

- a* the applicant's certificate of registration and a copy of its constitution;
- b* police check documentation for each key employee;
- c* a business plan;
- d* prescribed financial and personal information, both for the applicant and key employees;
- e* the current prescribed licence fee; and
- f* a deed of release and authorisation to enable the regulator to conduct all necessary inquiries.

The licensing process will typically last for up to nine months.

The duration of the licence will depend on the nature of the gambling service being provided and the agreement reached between the licensing authority and the operator, as set out in the licence conditions.

In light of the investment required in respect of land-based gambling operators, exclusive totalisator and casino licences typically remain in effect for a term exceeding 10 years.

ii Sanctions for non-compliance

Restrictions on the manner in which a gambling business may be conducted are usually contained in the terms and conditions of a licence and the underlying legislation. Failure to comply may lead to sanctions for breach of the licence, contravention of prohibitions set out in the relevant legislation, or both.

This most frequently arises as a result of periodic reviews conducted in connection with the operation of a casino. In many cases, the casino may be found not to have complied fully with the terms of its licence, resulting in the imposition of a fine and other penalties.

As it is beyond the scope of this chapter to outline the full framework for liability, our analysis is set out in general terms. Offences and sanctions in respect of non-compliance with licence conditions and the relevant laws vary between the states and territories.

At the federal level, the operational prohibitions under the IGA carry significant penalties of up to 5,000 penalty units for a criminal offence (equivalent to up to A\$5.55 million for a corporation) and 7,500 penalty units under the civil penalty provision introduced by the IGA Amendment Act (equivalent to up to A\$8.325 million for a corporation).

Individuals

Generally, liability is placed on the operator of a prohibited gambling service rather than the customer for the participation in such services. However, liability may be placed on individual users of gambling services in limited circumstances. For example, gambling legislation in New South Wales and Western Australia prohibits the placement of a bet on an Australian race with an unlicensed wagering operator. Notwithstanding these prohibitions, we consider it unlikely from a policy perspective that authorities will prosecute individuals under these provisions.

Overseas operators

An overseas operator may be found liable where an offence provision is stated expressly to have extraterritorial effect. The offence provisions in the IGA are expressed to apply extraterritorially. However, the practical difficulties that exist in enforcing Australian legislation against overseas operators under the IGA were addressed by the IGA Amendment Act. New powers were conferred on the ACMA, including the ability to notify international regulators of licensees acting in contravention of the IGA.

Directors and officers

There is no general principle extending liability to directors or officers of a gambling operator for the acts of a company. However, in cases where there is a prohibition on certain activities, certain legislation extends these prohibitions to the directors and officers of the company in line with the aiding and abetting provisions of Australia's criminal laws. For example,

Section 53 of the NSW UGA stipulates that a director of a corporation that is in breach of the NSW UGA will commit an offence where the director ‘aids, abets, counsels or procures the commission of the corporate offence’.

At the federal level, directors and officers of operators acting in contravention of the IGA can also be nominated by the ACMA to a ‘Movement Alert List’ maintained by the Department of Immigration and Border Protection, with the aim of restricting their travel to or from Australia.

Agents

As a general principle, various parties may be found liable under the aiding and abetting provisions of Australia’s criminal laws. The broad language of the advertising prohibition also extends liability to marketing affiliates.

The IGA Amendment Act also extended liability under the IGA to parties such as business-to-business (B2B) service providers, who may be considered to have ‘aided and abetted’ the commission of either civil or criminal offences under the IGA (see Section I). This will also extend to include directors and officers.

Payment processors and internet service providers

Although the statutory prohibitions do not extend liability expressly to entities involved in money transfers where money is used for gambling purposes, payment processors need to be aware that there is risk in certain circumstances that liability may arise under the aiding and abetting provisions of Australia’s criminal laws, as set out above.

There is currently no legislative requirement placed on payment service providers and internet service providers (ISPs) to implement technical measures (such as geo-blocking) to prevent Australians from accessing a site permitting access to prohibited gambling content (including services provided by an illegal, unlicensed offshore operator).

However, in 2015 the federal government ordered a review of the IGA (the O’Farrell Review) in advance of the introduction of the IGA Amendment Act. In its response to the recommendations of the O’Farrell Review, the government indicated that it would discuss with banks and ISPs options for the introduction of payment blocking and ISP blocking technologies as a means of restricting the access of persons located in Australia to illegal interactive gambling services as part of a three-stage plan proposed by the federal government to implement the recommendations of the O’Farrell Review.

Since November 2019, the ACMA has instituted a process of blocking access to illegal offshore gambling websites pursuant to its powers under the Telecommunications Act 1997 (Cth) (the Telecom Act). Under the Telecom Act, the ACMA may request ISPs to block access to offshore online gambling operators considered to be operating illegally in Australia. The ACMA maintains a list of illegal gambling websites which have been blocked. As at March 2021, 238 websites have been blocked by the ACMA.

IV WRONGDOING

i Money-laundering

Under the Anti-Money Laundering and Counter-Terrorism Financing Act (Cth) (2006) and corresponding regulations (collectively the AML/CTF Law), gambling operators in Australia are required to comply with a number of strict reporting and procedural obligations, including, but not limited to:

- a* verification and ongoing due diligence of the identity of all customers who open an account with the operator;
- b* maintaining an anti-money laundering and counter-terrorism financing programme (AML/CTF programme), which outlines how they will comply with their obligations under the AML/CTF Law;
- c* regular reporting to the Australian Transaction Reports and Analysis Centre (AUSTRAC), the body responsible for enforcing the AML/CTF Law, of all suspicious matters, threshold transactions, compliance reports and international fund transfers; and
- d* keeping records of all transactions, electronic funds transfers, customer identification procedures, AML/CTF programmes and due diligence assessments.

Penalties for non-compliance with the AML/CTF Law are significant.

In 2015, AUSTRAC filed an action in the Federal Court against three Tabcorp Group companies for ‘extensive, significant and systemic non-compliance’ with the AML/CTF Law. In March 2017, the Federal Court approved a settlement agreement under which Tabcorp agreed to pay to AUSTRAC a A\$45 million penalty (and costs) for contravention of the AML/CTF Law.

In 2019, various allegations that Crown Resorts and its associates had engaged in money-laundering, and possible links to organised crime, were raised by various media outlets. As a result, the ILGA convened an inquiry to consider the suitability of Crown Resorts and its NSW subsidiary to hold a casino licence. The inquiry ultimately decided that Crown Resorts was not suitable and recommended in respect of Crown Resorts and its NSW subsidiary a number of measures that should be implemented to achieve suitability (see Section VII). Additionally, in October 2020, AUSTRAC also identified potential non-compliance with AML/CTF Laws by Crown Resorts in relation to its casino in Melbourne. This included concerns over customer due diligence and adopting, maintaining and complying with an anti-money laundering and counter-terrorism financing programme. The AUSTRAC investigation is ongoing.

ii Organised crime and match-fixing

In Australia, match-fixing is dealt with under relevant criminal legislation in most jurisdictions, (e.g., in New South Wales, Part 4ACA of the Crimes Act 1900 (NSW)). Under legislation in most Australian jurisdictions, wagering operators are required to enter into integrity agreements with each relevant racing controlling body and the leading sporting bodies on which they offer betting products.⁴ These agreements allow the operator to use the statistical information relating to the sporting or racing events (and participants) in return for a fee and on the condition that they agree to cooperate with these bodies by providing information about their customers’ betting patterns and behaviour to assist in the investigation of match-fixing.

In August 2017, the federal Minister for Sports, the Honourable Greg Hunt, announced a review of Australia’s sports integrity arrangements to be led by the Honourable James Wood AO QC (Wood Review). As part of the federal government’s response to the recommendations that arose from the Wood Review, the Department of Health was given the responsibility of developing a federal regulatory framework for sports integrity. This is

⁴ Generally, these agreements are entered into by wagering operators with the leading sporting bodies on a national basis.

known as the Australian Sports Wagering Scheme (ASWS). The purpose of the ASWS is to safeguard the integrity of Australian sport and provide a sports integrity framework for sports wagering regulation at the federal level. It is anticipated that the ASWS will be operational in late 2021.

V TAXATION

All Australian companies, including gambling operators, are required to pay corporate income tax (currently 30 per cent)⁵ and goods and services tax (GST) of 10 per cent on all sales. GST is also payable by overseas suppliers of goods and services, including offshore gambling services, to Australian customers.

In addition, a number of additional taxes are imposed specifically on gambling operators. These taxes are imposed by the relevant licensing jurisdiction and represent a significant source of revenue for state and territory governments. The nature and extent of these taxes vary significantly, and include:

- a* direct gambling taxes calculated by reference to the gambling revenue of the company (as set out in the laws of the licensing jurisdiction);
- b* licence fees paid initially or on a periodic basis (depending on the licence held). In the case of exclusive licences such as retail totalisators, there is usually a sizeable upfront fee payable;
- c* fees charged by sports or racing control bodies in consideration for the use by wagering operators of race field and sports fixture information. This fee is generally calculated by reference to a percentage of gross revenue or turnover of the wagering operator in connection with the relevant sporting or racing event; and
- d* in the majority of states and territories, a PoC Tax, payable as a percentage of revenue derived from customers located in the relevant jurisdiction (see Section VII).

VI ADVERTISING AND MARKETING

The extent to which advertising of gambling is prohibited (or restricted) depends on the type of gambling in question, the form of the advertising and the jurisdiction in which the advertising is conducted.

There is a complex arrangement of rules that regulate the advertising of gambling, including in state and territory legislation, which varies from jurisdiction to jurisdiction. In addition, there are industry codes (such as the Australian Association of National Advertisers Wagering Advertising & Marketing Communication Code), as well as more broadly applicable laws, such as federal consumer laws (which prohibit misleading and deceptive conduct).

For example, overlapping requirements under state and territory laws make it an offence to publish or otherwise advertise wagering services that, among other things:

- a* encourage a breach of the law;
- b* depict children under the age of 18, or target children under the age of 18;
- c* suggest that winning will be a definite outcome of participating in gambling activities, or exaggerate claims relating to winning;
- d* suggest that participation in gambling activities is likely to improve a person's prospects;

⁵ It is proposed that this will be reduced to 25 per cent for businesses whose annual turnover is less than A\$50 million by 2026–27.

- e* promote the consumption of alcohol while engaging in gambling activities;
- f* are offensive, or are not published in accordance with decency, dignity or good taste; or
- g* offer an inducement to open a betting account or refer a friend to open a betting account, and in New South Wales, Western Australia and South Australia, participate in a gambling activity.

Strict laws apply specifically to gambling advertisements published in traditional media, such as in print and on television and radio, as well as digital media, such as website and social media advertising.

For example, in 2017, the ACMA approved and registered new industry codes banning gambling advertisements during the broadcast of live sports on commercial free-to-air TV, pay-TV and radio. Similar bans were also introduced for online advertising by the Communications Legalisation Amendment (Online Content Services and Other Measures) Act 2017 (Cth).

Additionally, the Victorian government enacted a law in 2018 that introduced prohibitions on the display of gambling advertising on public transport, within 150 metres of a school, and on public roads, road infrastructure and road reserves. These prohibitions cover both static betting advertising (including billboards, banners, rolling static displays and the like) as well as movable and digital billboards displaying moving or video images.

With the implementation of the NCPF, stricter, state-specific advertising laws, particularly with respect to advertisements that are considered to offer an inducement to Australian customers to gamble, are being introduced (see Section VIII).

Land-based advertising in pubs, clubs and hotels where retail betting is offered is also subject to restrictions.

There are also strict requirements relating to the display of responsible gambling messages, which vary greatly from jurisdiction to jurisdiction. These messages are required to be included with all advertising material that is published by a gambling operator, including at physical and virtual points of sale.

The Australian Competition and Consumer Commission (ACCC) has also brought a successful action against an Australian online wagering operator for advertising that was deemed to be misleading and deceptive by the Federal Court.⁶

Importantly, the NTRC (being the regulator responsible for licensing and compliance of most sports bookmakers in Australia) recently considered its jurisdiction in connection with the engagement by an Australian licensed sports bookmaker in misleading or deceptive conduct in advertising and marketing materials. The NTRC has held that its jurisdiction does not extend to these issues.

VII THE YEAR IN REVIEW

i Point of consumption taxes

Since 2017, each Australian State and Territory (save for the Northern Territory) has introduced separate PoC Taxes.

⁶ *Australian Competition and Consumer Commission (ACCC) v. Hillside (Australia New Media) Pty Ltd t/as Bet365* [2015] FCA 1007.

In July 2017, South Australia introduced a PoC Tax payable by betting operators on bets placed by customers in South Australia at a rate of 15 per cent of net wagering revenue. During 2018, Queensland, Victoria, New South Wales, Western Australia and the Australian Capital Territory announced the introduction of a similar PoC Tax framework, each with different nuances specific to the relevant jurisdiction. More recently, in 2019, Tasmania followed suit to also implement a PoC Tax framework.

The Northern Territory has expressed opposition to the introduction of a PoC Tax.

Under the PoC Tax regimes, betting operators are required to pay tax on revenue generated from the state in which bets are placed, rather than from the state in which the operator is licensed. Despite initial attempts to harmonise the gambling taxation regime for wagering operators in Australia, the PoC Tax framework in each state and territory varies significantly in relation to the tax-free threshold, tax rate and importantly, the method for calculating taxable revenue.

Generally, the PoC Tax rates range from 8 per cent (Victoria; however this will increase to 10 per cent from 1 July 2021) to 15 per cent (South Australia, Western Australia, Queensland, the Australian Capital Territory and Tasmania).

The effect of the PoC Tax on the viability of the wagering market in Australia has not been the subject of any significant empirical study. Accordingly, the repercussions for the Australian racing and bookmaking industries are largely unknown; however, it is likely to impact materially on the costs of the smaller Australian licensed wagering operators and is likely to lead to greater consolidation (see Section VIII). In February 2021, the NSW Treasury released a consultation paper regarding a review of the PoC Tax regime in NSW. It is expected that the NSW Treasury will finalise its review by July 2021.

ii The Lottoland case

Following amendments that came into effect in January 2019, the IGA has prohibited 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

As a result, various Australian operators that had previously provided lottery betting services under a sports bookmaker licence ceased to supply that betting product. Among those Australian operators that had provided this form of betting product was Lottoland, which transitioned its betting product offering from lottery betting to other betting services which it referred to as ‘jackpot betting’.

In early 2019, the ACMA conducted a review of the jackpot betting product offered by Lottoland. The ACMA came to the view that Lottoland’s product was a game (rather than a betting product) and Lottoland was therefore providing a prohibited interactive gambling service in breach of the IGA. Lottoland disagreed with the ACMA’s interpretation of the IGA and commenced proceedings in the Supreme Court of New South Wales to seek a declaration that its product was a betting product and therefore Lottoland was not providing a prohibited interactive gambling service in breach of the IGA.

The Supreme Court analysed the distinction between a ‘bet’ and a ‘game’ in the context of the IGA, as well as case law. On 26 July 2019, the court held that Lottoland’s products are betting products and Lottoland was providing a lawful gambling service in compliance with the IGA.

In August 2020, the NTRC, following a direction from the Northern Territory Minister for Racing, Gaming and Licensing, provided final notice of its intention to impose two additional conditions onto the licences of all sports bookmakers licensed by

the NTRC. If effected, these conditions would prohibit Lottoland from offering its ‘jackpot betting’ products under its Northern Territory licence. These conditions came into effect on 31 October 2020 for all Northern Territory licensees (other than Lottoland). In September 2020, Lottoland commenced proceedings in the Northern Territory Supreme Court against the NTRC and the Northern Territory Minister challenging the validity of the conditions and the decision to impose them. On 1 October 2020, Lottoland was granted an injunction pending the outcome of the substantive dispute to restrain the imposition of the conditions onto its licence. The matter is currently set down for further hearing in 2021.

iii The Crown inquiry

In July 2014, the New South Wales government granted a restricted casino licence to Crown Sydney Gaming Pty Limited (Crown Sydney) for the construction and operation of a casino at Barangaroo in Sydney (see Section II). Crown Sydney is a wholly owned subsidiary of Crown Resorts.

In one of the agreements underlying its licence, Crown Sydney undertook to ensure that it would prevent Stanley Ho, or an associate of Stanley Ho, from acquiring a direct or indirect interest, or beneficial interest, in Crown Sydney, Crown Resorts or a subsidiary of those companies.

In mid-2019, actual and proposed transactions involving Crown Resorts (and its related entities) and Melco Resorts & Entertainment Limited (Melco) (and its related entities) were publicly announced (the Transactions). At the same time, there were also media allegations of unlawful and improper conduct by Crown. These included allegations of money laundering, links to organised crime and that Crown had knowledge that its personnel were acting in contravention of Chinese law (see Section IV).

In response, the ILGA announced the establishment of an inquiry in August 2019 into Crown Resorts, Crown Sydney and its related entities (the NSW Casino Inquiry).

On 23 June 2020, the terms of reference for the NSW Casino Inquiry were amended to reflect changes to the nature of the Transactions, including the sale by Melco of its shares in Crown Resorts. The amended terms of reference requested that the Honourable Patricia Bergin SC (the Commissioner) inquire into:

- a* the suitability of Crown Resorts and Crown Sydney and whether the Transactions caused a breach of Crown Sydney’s licence or any other regulatory agreement; and
- b* the regulatory framework applicable to casinos in NSW; the Commissioner was asked to make recommendations to enhance ILGA’s future capability as a casino regulator.

In February 2021, the NSW Casino Inquiry report (the Report) was tabled in NSW Parliament. In the Report, the Commissioner found that:

- Crown Sydney is not a suitable person to continue to give effect to the NSW licence;
- a* Crown Resorts is not a suitable person to be a close associate of Crown Sydney; and
 - b* the Transactions did not constitute a breach of the NSW licence or any other regulatory agreement.

The Commissioner notes in the Report that the changes required to render Crown Sydney and Crown suitable persons is a matter for the ILGA.

However, the Report suggests several measures that, at a minimum, should be implemented in order for Crown Sydney and Crown Resorts to demonstrate to the ILGA

that they are suitable persons. These measures include a full and wide-ranging audit of Crown Resorts' accounts, enforceable undertakings along with a remediation action plan and board 'renewals' for both Crown Resorts and Crown Sydney.

The Report is currently being considered by the ILGA and the NSW government. The ILGA will soon provide a formal response to the Report, which will provide guidance as to the extent to which the recommendations of the Report will be implemented.

Following the release of the Report, each of the Victorian and Western Australian governments has convened a Royal Commission to determine the suitability of Crown Resorts and its relevant subsidiary to operate casinos in their respective jurisdictions. It is expected that these Royal Commissions will hand down their decisions in 2021.

iv Credit cards

Throughout 2019, various Australian financial institutions implemented limits on the use of credit cards for gambling-related purposes. These financial institutions included Macquarie Bank, Citibank, Suncorp, Bank of Queensland, Virgin Money, American Express and Latitude Financial.

In December 2019, the ABA released a consultation paper on the use of credit cards for gambling-related purposes. The ABA considered whether the use of credit cards for gambling-related purposes should be banned or whether practices should be adopted across the financial industry to minimise harm from gambling (including, for example, customer-directed credit blocks and specialist gambling support services). In the ABA Report, the ABA announced that there was a degree of general community support for either daily caps on credit card usage for gambling or a complete ban on credit card use.

Although there has been a prohibition at law on the provision of credit to customers by licensed gambling operators since 2017, restrictions on the use of credit cards for gambling-related purposes have not been implemented legally. Although this has also been a policy-led initiative that has been adopted by industry participants, it is now the subject of a bill before the federal Parliament (namely the Interactive Gambling Amendment (Prohibition on Credit Card Use) Bill 2020 (Cth)).

VIII OUTLOOK

i National Consumer Protection Framework

On 16 December 2018, following years of discussion, it was announced that all Australian state and territory governments and the Australian federal government had reached agreement in relation to the implementation of the NCPF. The NCPF will apply to all Australian licensed online wagering operators and, to a certain extent, third-party service providers such as payment processors. The NCPF is a regulatory framework that sets 10 mandatory measures and is intended to minimise gambling-related harm through providing greater protection for Australian consumers. The measures are viewed as a minimum standard only and scope exists for the states and territories to introduce additional or more onerous measures.

The measures include, among others, the prohibition on the supply of lines of credit by wagering operators, prohibitions on specific advertising inducements, the implementation of a voluntary opt-out pre-commitment scheme, consistent responsible gambling messages in gambling advertisements and the development of a national self-exclusion register.

All of these measures were anticipated to come into effect gradually over a period of 18 months, beginning on 26 November 2018. Although various NCPF measures are already in place (such as the prohibition on the supply of lines of credit by wagering operators and the prohibition on specific advertising inducements), various measures are in the process of being implemented. For example, in December 2019, the Interactive Gambling Amendment (National Self-exclusion Register) Act 2019 and the National Self-exclusion Register (Cost Recovery Levy) Act 2019 were introduced to amend the IGA to establish a regulatory framework for the national self-exclusion register. Although these Acts have been passed, and assented to, by the Federal Parliament, the ACMA as the regulator responsible for the administration of the national self-exclusion register has advised that it will not be operational until at least June 2021.

ii Advertising restrictions

As indicated in Section IV, a suite of reforms have been introduced since 2017 that has significantly changed the way in which sports betting operators are permitted to advertise their services.

In particular, as part of the NCPF, each Australian state and territory has introduced laws that prohibit specific advertising inducements. In essence, a sports betting operator is prohibited from publishing to the world at large an advertisement that offers a credit, voucher or reward to a person as an inducement either to open a betting account or refer another person to open a betting account. In New South Wales, Western Australia and South Australia, the scope of these prohibitions extend further to prohibit sports betting operators from publishing an advertisement that offers a reward, benefit or consideration to a person to participate or continue to participate in a gambling activity.

There are limited exceptions to the prohibitions on specific advertising inducements. An example of this is in circumstances where an advertising inducement is offered to an existing account holder of the sports betting operator in direct marketing or, in certain jurisdictions, where promoted on a racing platform.

Additionally, sports betting operators are prohibited from offering a bonus bet to a person unless the winnings from a bet made with that bonus bet can be withdrawn immediately without being subject to a requirement that the account holder continue to bet with those winnings.

iii Consolidation

In December 2017, Tabcorp Holdings Limited (Tabcorp) and Tatts Group Limited (Tatts) merged after receiving the approval of the Australian Competition Tribunal.

Facing increasing regulatory costs and the greater competition posed by the merged entity that comprises Tabcorp and Tatts, who hold the exclusive right to offer retail wagering services across Australia, it is likely that many Australian licensed wagering operators will look to the international market for support, which is likely to result in further consolidation. This is evidenced by the acquisition in March 2018 of CrownBet and William Hill Australia by The Stars Group, which is listed on the Toronto Stock Exchange, and the acquisition in November 2018 of Australian wagering operator Neds by Ladbrokes Australia, whose parent company GVC Holdings is listed on the London Stock Exchange. More recently, in May 2020, Flutter Entertainment (which owns Sportsbet) merged with The Stars Group (which owned BetEasy). The merger of Flutter Entertainment and The Stars Group resulted in Sportsbet absorbing the BetEasy business.

Further, it has been reported that Tabcorp has received offers from various entities, including the Entain Group (the operator of the Ladbrokes and Neds bookmaking businesses in Australia) to purchase Tabcorp's wagering business. Although those offers have been rejected, it is contemplated that there will be further significant changes in the Australian wagering sector in the course of 2021.

ABOUT THE AUTHORS

JAMIE NETTLETON

Addisons

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.

Jamie's advice to international gambling operators setting up business in Australia extends to the preparation of prospectuses. Jamie works closely with these clients in developing their Australian business strategies, particularly in connection with new technologies.

Jamie's position at the forefront of gambling law saw him elected as president of the International Masters of Gaming Law for 2018 and 2019, and led to his role as a senior fellow at the University of Melbourne as a lecturer in gambling and the law. He has also been ranked as a leading gambling lawyer by *Chambers Global* every year since 2008.

SHANNA PROTIC DIB

Addisons

Shanna is a solicitor in the gambling law practice of Addisons. Shanna works closely with both local and international companies on all regulatory and commercial matters relating to the conduct of their business within the gambling and gaming industries.

Shanna advises gambling operators, media, entertainment and technology companies and affiliates on the evolving Australian legal landscape relating to gambling and gaming, with clients ranging from start-ups to large multinationals. Shanna has a particular focus on regulatory and policy issues, licensing and compliance issues, and general commercial matters. The diverse legal and commercial issues that arise in this context require Shanna to advise across a broad range of areas of law, including gambling, consumer, advertising and marketing, privacy, e-commerce and technology law.

Shanna has had previous experience working in-house with one of Australia's leading media companies, providing her with a unique perspective, which allows her to provide advice to clients that is both practical and commercially relevant.

BRODIE CAMPBELL

Addisons

As a solicitor in Addisons' gambling law practice, Brodie advises a diverse array of clients both domestic and overseas. Brodie's experience lies in providing advice to both online and land-based gambling operators regarding licensing and regulation, consumer issues, such as advertising and privacy law, and general commercial and corporate matters.

With experience in litigation, Brodie advises corporate bookmakers in relation to all stages of the Australian judicial process. Brodie also advises foreign companies, as well as new start-ups, who have sought to enter the Australian market to understand the legal and regulatory restrictions to conducting a gambling business in Australia.

ADDISONS

Level 12

60 Carrington Street

Sydney NSW 2000

Australia

Tel: +61 2 8915 1000

jamie.nettleton@addisons.com

shanna.proticdib@addisons.com

brodie.campbell@addisons.com

www.addisons.com

an LBR business

ISBN 978-1-83862-781-2