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# Gaming Law 2022

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## **Australia: Law & Practice**

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Addisons

# AUSTRALIA

## Law and Practice

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## 1. Introduction

### 1.1 Current Outlook

#### Legislative and Regulatory Review

2022 has seen the conclusion of various inquiries into the business operations of licensed casino operators. Findings were made in New South Wales, Victoria, Queensland and Western Australia that resulted in the relevant casino operator (and related companies) being declared unsuitable.

These inquiries have led to significant changes being made to the legislative regime in relation to the regulation of casinos. Many of these amendments reflect the recommendations made in the reports from the Crown inquiries (see **1.2 Recent Changes**).

Further, as a result of these inquiries, the structure, powers and responsibilities of gambling regulators have been reviewed. This has resulted in a new regulator for New South Wales that specialises solely in the regulation of the casinos in New South Wales. It has also led to the separation of regulatory powers in Victoria – a new regulator is now responsible for liquor regulation, whereas the pre-existing regulator has been reformed to focus solely on the regulation of gambling.

All three Crown inquiries recommended the appointment of independent monitors to oversee the operations of the Crown casinos in their jurisdiction and to report on the operator's progress towards becoming suitable. This recommendation has been implemented in each jurisdiction in a different form.

Subsequently, inquiries have been conducted in both New South Wales and Queensland into the operation by The Star of its casino(s) in the

relevant state. Each of these inquiries (and the findings in the relevant report) have resulted in The Star Entertainment Group and various associated entities being found unsuitable to hold casino licences (see **1.2 Recent Changes**).

At the same time as these inquiries, the Australian federal regulator responsible for ensuring compliance with AML/CTF laws (the Australian Transaction Reports and Analysis Centre (AUSTRAC)) began investigations into the operations of the leading Australian casinos. The investigations into the Crown Casino have concluded and the pecuniary enforcement process has begun in the Australian Federal Court against Crown Melbourne and Crown Perth for alleged serious and systemic non-compliance with AML/CTF laws.

The casino inquiries have had consequential effects on other gambling sectors in Australia. A trial has commenced in New South Wales where cashless methods are being tested for play on gaming machines. The technology being tested in the trial is relevant to determining whether cashless methods would minimise money laundering risks, as well as making responsible gambling tools more readily available.

In the online wagering sector, more stringent requirements have been implemented. It is quite possible that regulators will implement a requirement for operators to complete customer verification in advance of any betting activity taking place. As a result of recent changes, customer identification verification must currently be completed within 72 hours of an account being opened with a betting operator.

AUSTRAC is also reviewing the procedures of online wagering operators more closely to ensure that they comply with their AML obligations. As a result, AUSTRAC commenced an

enforcement investigation into Entain Australia in September 2022 and in November 2022 ordered the appointment of an external auditor to both Sportsbet and bet365 to assess their compliance with applicable AML laws.

The New South Wales Crime Commission on 26 October 2022 released its report on Money Laundering in Clubs and Hotels. The report makes 12 findings, including the difficulties involved in identifying money laundering with current detection systems. The report also made eight recommendations, including that cashless gaming systems become mandatory statewide and that further AML/CTF training is provided.

## 1.2 Recent Changes

### Crown Inquiries

Crown Resorts Limited, through its subsidiaries (“Crown”), is the holder of licences to operate a casino in three Australian states (New South Wales, Victoria and Western Australia). Following the announcement of a proposed acquisition of the 37% shareholding interest held by parties associated with James Packer by Melco Resorts (a Macau-based gambling operator), and press allegations of money laundering and breaches of laws resulting from the operation of junkets by Crown, each of these states initiated an inquiry into Crown’s suitability and its casino operations. Throughout 2021 and 2022, each of the three inquiries were concluded with reports to the effect that Crown was unsuitable to hold a licence to operate a casino in each of the three jurisdictions.

#### *New South Wales Inquiry*

The New South Wales casino regulator, the Independent Liquor and Gaming Authority (ILGA), conducted an inquiry (the “NSW Inquiry”) in 2020 into Crown Sydney, the operator licensed to operate the second casino in Sydney, which

was due to launch in December 2020. The Commissioner conducting the NSW Inquiry was asked to consider the manner in which casinos should be regulated, taking into account best practice regulatory frameworks globally.

Hearings of the NSW Inquiry revealed a considerable number of concerns regarding 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 from marketing activities conducted in China by Crown representatives.

The Commissioner delivered her report on 1 February 2021. Among other things, the report found that:

- Crown was no longer suitable to hold the licence issued to it in New South Wales; and
- Crown Resorts is not a suitable person to be a close associate of the licensee.

The Commissioner noted that the changes required to render Crown suitable would need to be determined by the ILGA. However, various measures were the subject of recommendations that, if implemented by Crown, would assist it in demonstrating its suitability. These measures included board renewals, audit of Crown’s accounts, and the submission by Crown of a remediation plan.

Following the report, the ILGA continued to assess Crown’s suitability to determine whether Crown should be permitted to open its casino in New South Wales. Following numerous changes involving Crown (including changes to its board of directors and its ownership), as well as the implementation of changes to address the concerns raised in the report, the ILGA determined

that Crown could open its Sydney Casino on 8 August 2022.

In the report, the Commissioner also made recommendations concerning the regulation of casinos in New South Wales. These recommendations included:

- the establishment of an independent and specialist casino regulator;
- amendments to the Casino Control Act 1992 (New South Wales) (ie, the statute regulating casinos in New South Wales), such as:
  - (a) prohibiting casino licensees from engaging with junket operators;
  - (b) the requirement for each casino licensee to engage an independent and appropriately qualified compliance auditor to report annually on the licensee's compliance with its obligations;
  - (c) clarifying when regulatory approval would be required for transactions that involve an interest in a casino licensee; and
  - (d) imposing an obligation for a casino licensee to monitor customer accounts and perform heightened customer due diligence.

The New South Wales government confirmed its support for all the Commissioner's recommendations and has taken action to implement the recommendations. The new independent and specialist casino regulator was set up and is named the New South Wales Independent Casino Commission (NICC).

### *Royal Commissions in Victoria and Western Australia*

Following the report of the NSW Inquiry, Victoria and Western Australia initiated Royal Commissions to review Crown's suitability to operate its licensed casino in that state.

### *Victorian Royal Commission*

The Royal Commission in Victoria delivered its report on 15 October 2021. The Royal Commission found that Crown was unsuitable to hold a casino licence in Victoria owing to legal breaches and misconduct, a consistent pattern of noncooperation with the Victorian gambling regulator, serious and systematic breaches of responsible gaming obligations, and tax breaches.

The Royal Commission, however, considered that these failings were not sufficient for the immediate cancellation of Crown's licence, in light of the real risk of significant harm to the Victorian economy and innocent third parties – not to mention the Royal Commission's belief that Crown had the capacity to reform itself. The Royal Commission recommended that a special manager be appointed for two years and have oversight over Crown's operations.

The Royal Commission made further recommendations in relation to:

- the powers of the regulator and its inspectors;
- the obligations and structure of the casino operator;
- unpaid casino tax;
- the prevention of money laundering; and
- the responsible service of gaming.

Legislation has been passed in Victoria to address and implement the priority recommendations from the Royal Commission and to appoint the special manager. Under separate legislation, the responsibilities of the regulator – now known as the Victorian Gambling and Casino Control Commission (VGCCC) – were confined to gambling (including a dedicated casino division). In addition, a new regulator was created for the regulation of liquor.

## *Western Australian Royal Commission*

A Royal Commission was established in Western Australia to investigate (inter alia) the business operations of Crown Perth, its suitability to operate a casino and to make recommendations regarding the regulation of casinos.

The Western Australian Royal Commission found that Crown Perth was not a suitable person to continue to hold the licence, or to be concerned or associated with the organisation and conduct of the gaming operations of a licensed casino. The Commission also found that Crown Resorts (and other associated Crown entities) was not a suitable person to be associated with the operations of Crown Perth.

In addition to findings of unsuitability, the Western Australian Royal Commission found that Crown Perth:

- facilitated money laundering;
- failed in its communications with the Western Australian gambling regulator, especially with regard to its China-based staff;
- failed to ensure that suspect financial transactions were detected and reported through the implementation of an effective AML/CFT programme; and
- permitted junkets that had links to organised crime.

Subsequently, legislation was passed in Western Australia to address and implement the priority recommendations from the Western Australian Royal Commission and to appoint an independent monitor. In addition, the legislation increases the maximum penalties available under the Casino Control Act 1984 as follows:

- for a breach of the Act, from AUD100,000 to AUD100 million; and

- for non-compliance with a direction issued under the Casino Control Act 1984, from AUD2,000 for an individual and AUD5,000 for a body corporate to AUD100,000 and AUD250,000 respectively.

The special manager has also been appointed.

## *Star Casino Inquiries*

Following the findings of the various Crown inquiries, and concerns about similar inappropriate activities involving potential money laundering in casinos operated by The Star, both New South Wales and Queensland initiated reviews into The Star casinos.

The New South Wales Bell Review into The Star casino found that The Star and its associated entities were, and remain, unsuitable to operate – or be concerned with the management or operation of – a casino in New South Wales.

As a result, the NICC issued The Star Sydney with a show cause notice. Following the NICC's review of the The Star Sydney's response to the show cause notice, the NICC has suspended The Star Sydney's licence and issued The Star Sydney with the maximum fine (AUD100 million) for failing to stem criminal activity and money laundering. This level of regulatory intervention is unprecedented. The NICC also appointed a manager to oversee the operation of the casino until the NICC determines that The Star demonstrates its suitability to hold a casino licence.

Unlike the NSW Inquiry into Crown, which considered the suitability of Crown to operate its casino in New South Wales, the Terms of Reference for the Bell Review did not authorise any assessment of what – if any – changes would be required in order for The Star to demonstrate suitability. The report indicates these are issues

to be considered by the regulator (ie, the newly formed NICC).

The Gotterson Report contained 12 recommendations, which mirror the recommendations in the New South Wales and Victorian casino inquiries, including:

- the appointment of a special manager to increase casino supervision and integrity operations;
- casino licensees to pay a supervision levy as a condition of their licence;
- casinos making reasonable endeavours to exclude persons subject to exclusion orders in other jurisdictions; and
- mandatory carded play throughout casino venues.

The maximum penalty for a breach of the Casino Control Act 1982 (Queensland) that can be imposed on a casino will be raised to AUD100 million.

At the time of writing, The Star casinos in Queensland have each been issued with a show cause notice in response to a finding of unsuitability by the Attorney General following the Gotterson Report. The Star casinos have 21 days to provide their response to the show cause notices issued by the Queensland Office of Liquor and Gaming Regulation (OLGR). Following a review of each of the responses to the show cause notices, the OLGR has the discretion to implement various disciplinary actions, including a fine of up to AUD100 million, the appointment of a special manager, and the cancellation or suspension of the relevant casino licence.

It should also be noted that Attorney Gotterson found no reason to reform the current casino regulator. Additionally, while the scope of the

inquiry only focused on The Star casinos, any legislative reform passed as a result of the inquiry will also impact the other casinos operating in Queensland.

### *AUSTRAC investigations*

In 2021, AUSTRAC initiated investigations into:

- Crown's two operating casinos (ie, in Victoria and Western Australia);
- The Star Entertainment Group's casino in New South Wales; and
- SkyCity Entertainment Group's casino in South Australia.

The scope of the investigations is to review if there has been non-compliance with Australia's AML laws and rules (see **8.1 AML Legislation** for further details relating to these laws).

As referred to earlier, in March 2022 AUSTRAC commenced proceedings in the Federal Court against Crown Melbourne and Crown Perth for alleged serious and systemic non-compliance with AML/CTF laws following AUSTRAC's investigation. The allegations include that the Crown companies:

- failed to properly implement an AML/CTF programme;
- allowed 60 customers who presented a high money-laundering risk to bet in excess of AUD70 billion; and
- boards and senior management failed to adopt and maintain appropriate AML/CTF protections.

AUSTRAC has applied for civil penalty orders to be made, including declarations that Crown Melbourne and Crown Perth have breached AML/CTF laws and for penalties and costs to be paid

by both Crown companies. The action is currently ongoing.

The other casino investigation being conducted by AUSTRAC are ongoing.

As referred to in **1.1 Current Outlook**, AUSTRAC has commenced an enforcement investigation into Entain Australia and ordered the appointment of an external auditor to both Sportsbet and bet365 to assess their compliance with AML laws.

### National Consumer Protection Framework

Following the agreement reached between the Australian federal government and all the Australian states and territories in December 2018, online betting operators are subject to the measures established in the National Consumer Protection Framework (NCPF) as implemented by the states and territories.

The purpose of the NCPF was to introduce ten regulatory standards across Australia that 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 and the casino inquiries, 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; however, these are likely to be implemented in the coming months.

As part of the implementation of the NCPF measures, the Interactive Gambling Act (IGA) was amended on 13 December 2019 to set the legal framework for the establishment of the national self-exclusion register (NSER) for online betting.

Following these amendments, the Australian Communications and Media Authority (ACMA) began the process of creating and implementing the register. In June 2021, ACMA confirmed that it had engaged Engine Australia (which is now known as Big Village and is the developer of the United Kingdom's self-exclusion system, GAMSTOP) to develop the NSER, which will be known in Australia as "BetStop".

Following testing and consultation by key stakeholders, it is anticipated that the NSER will be fully operational by early 2023.

The Interactive Gambling (National Self-Exclusion Register) Register Rules 2022 were introduced to outline certain details relating to the NSER, including:

- how a person may apply for a self-exclusion;
- the verification process of an applicant;
- how to nominate a support person;
- how a licensed wagering operator requests access to the register; and
- the obligation for licensed wagering operators to promote the register.

Once the register is implemented, individuals will be able to request exclusion from participation in Australian licensed online betting services for a temporary period or on a permanent basis. The NSER will, however, be separate from existing self-exclusion registers so it is likely that a sports bookmaker licensee will need to maintain separate registers to comply with its requirements under state and territory laws and licence conditions. Furthermore, it is only the individual who can register on the NSER, which will mean that current self-exclusion registers cannot be integrated with the NSER.

Licensed betting operators will be subject to various obligations, including an obligation to guarantee that self-exclusion is effective by ensuring that individuals who request exclusion are not provided services and/or offered promotions to use their services. Breaches by licensed operators will incur substantial penalties.

The NCPF also includes the following measures.

- A requirement for online wagering operators to make available to customers an activity statement that outlines the customer's transactions and activity with the licensed wagering operator. This requirement has been implemented.
- A requirement for online wagering service providers to train all staff who are involved in the provision of wagering services or who have the capacity to influence the wagering service. The training must be in line with the minimum requirements set out in the National Unit of Competency CHCFIN005 Provide responsible online wagering services. This must be implemented by online wagering operators by 31 March 2023.
- A consistent responsible gambling message across all Australian states and territories. This measure has been announced, along with the messages that are to be used. It will be mandatory for licensed wagering operators to use the new responsible gambling messages by 31 March 2023.

## 2. Jurisdictional Overview

### 2.1 Online

Online gambling is regulated at the federal level in Australia under the IGA. However, in accordance with the principles established in the IGA, Australian states and territories separately regu-

late online gambling in their respective jurisdictions under the relevant legislation.

### 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 unable 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.

## 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 pays, or agrees to pay, to play or enter the game.

Generally, the prize element and/or consideration element will not be present in a social game. In such 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 at the final stages.

## 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 – known as poker machines in Australia – 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

The following list of Australian gambling legislation at various levels is not exhaustive.

Various rules, guidelines, directions, orders and standards that are issued by the regulator and/or the responsible minister also apply to the gambling sector and must be complied with.

#### Federal

The following laws apply at the federal level:

- Interactive Gambling Act 2001;
- Interactive Gambling Regulations 2019;
- Interactive Gambling (National Self-Exclusion Register) Register Rules 2022;
- Anti-Money Laundering and Counter-Terrorism Financing Act 2006; and
- Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No 1).

#### New South Wales

The following laws apply in New South Wales:

- Betting and Racing Act 1998;
- Betting and Racing Regulation 2022;
- 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 2021; and
- Bookmaker Declared Betting Events Betting Rules.

#### Queensland

The following laws apply in 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;

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- Lotteries Regulation 2007;
- Queen’s Wharf Brisbane Act 2016;
- Queen’s Wharf Brisbane Regulation 2016;
- Racing Act 2002;
- Racing Regulation 2013;
- Racing Integrity Act 2016;
- Racing Integrity Regulation 2016;
- Wagering Act 1998;
- Wagering Regulation 1999;
- Casino Gaming Rule;
- Charitable and Non-Profit Gaming Rule 2010;
- Keno Act 1996;
- Keno Regulation 2007;
- Keno Rule 2010;
- Lotteries Act 1997;
- Lotteries Regulation 2007;
- Lotteries Rule; and
- Wagering Rule 2010.

## Victoria

The following laws apply in 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;
- Racing Act 1958;
- Victorian Responsible Gambling Foundation Act 2011;
- Victorian Ministerial Direction for Responsible Gambling Codes of Conduct; and
- Victorian Ministerial Direction for Harm Minimisation dated 6 July 2022.

## Northern Territory

The following laws apply in the 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

The following laws apply in the Australian Capital Territory:

- 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;
- Gambling Machine (Offset Amounts) Regulation 2018;
- Interactive Gambling Act 1998;
- Interactive Gambling Regulation 1998;
- Lotteries Act 1964;
- Pool Betting Act 1964;
- Race and Sports Bookmaking Act 2001;
- Race and Sports Bookmaking Regulation 2001;
- Racing Act 1999;
- Racing Regulation 2010;
- Totalisator Act 2014;
- Unlawful Gambling Act 2009; and
- Unlawful Gambling Regulation 2010.

## South Australia

The following laws apply in 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 2022);
- Lotteries Act 2019;
- Lotteries Regulation 2021;
- Problem Gambling Family Protection Orders Act 2004;
- State Lotteries Act 1966;
- Gambling Codes of Practice Notice 2013; and
- Authorised Betting Operations Gambling Code of Practice Variation Notice 2022.

## Western Australia

The following laws apply in 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

The following laws apply in 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.

## 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” 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”.

## 3.4 Definition of Online Gambling

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

- for the placing, making, receiving or acceptance of bets;
- the sole or dominant purpose of which is to introduce individuals who wish to make or place bets to individuals who are willing to receive or accept those bets;
- for the conduct of a lottery;
- for the supply of lottery tickets;
- for the conduct of a game, where:
  - (a) the game is played for money or anything else of value;
  - (b) the game is a game of chance or of mixed chance and skill; and
  - (c) a customer of the service gives – or agrees to give – consideration to play or enter the game; or
- that is not covered by any of the above but 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, key offences comprise the conduct, offering, provision and/or facilitation 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 penalties apply under the IGA:

- criminal offence – for an individual, up to AUD1,110,000 per day, or up to five times that for a corporation (ie, AUD5,550,000 per day); or
- civil offence – for an individual, up to AUD1,665,000 per day, or up to five times that for a corporation (ie, AUD8,325,000 per day).

## 3.7 Recent or Forthcoming Legislative Changes

Most of the Australian legislative reform relating to gambling that has occurred in the past year results from several state-based casino inquiries. New South Wales, Victoria, Queensland and Western Australia have all amended their legislation that regulates the conduct of gambling in casinos.

### New South Wales

On 19 August 2022, the Casino Legislation Amendment Act 2022 (New South Wales) became law. The Act amends existing legislation, including the Casino Control Act 1992 (New South Wales), the Casino Control Regula-

tion 2019 (New South Wales) and the Gambling and Liquor Administration Act 2007 (New South Wales). The Act implements all the recommendations made by the NSW Inquiry into the suitability of Crown to hold a casino licence in New South Wales (see **1.2 Recent Changes**).

## Victoria

As a result of the Victorian Royal Commission (referred to in **1.2 Recent Changes**), the Casino Control Act 1991 (Victoria) has been amended three times in 2022. Twice on 28 June 2022 through the enactment of the Casino and Liquor Legislation Amendment Act 2022 and the Gambling and Liquor Legislation Amendment Act 2022, and most recently on 27 September 2022 through the passage of the Casino Legislation Amendment (Royal Commission Implementation and Other Matters) Act 2022. Collectively, these amendments have implemented all of the recommendations made by the Victorian Royal Commission into the Casino Operator and Licence.

## Western Australia

As a result of the Western Australian Royal Commission (referred to in **1.2 Recent Changes**), the Casino Legislation Amendment (Burswood Casino) Act 2022 (Western Australia) was passed in September 2022. The main purpose of this Act is to implement priority legislative amendments arising from the final report of the Western Australian Royal Commission.

## Queensland

The report of the Queensland inquiry into the suitability of The Star to hold casino licences in Queensland was published in October 2022 (see in **1.2 Recent Changes**). The report contains 12 recommendations that are similar to the recommendations made in the New South Wales and Victorian casino inquiries. It is expected that a

bill to amend the Queensland Casino Control Act 1982 will be tabled in late 2022 in the Queensland Parliament, which – if passed – will implement the recommendations made in the report.

## Further Legislative Amendments in Victoria

In June 2022, amendments to the Gambling Regulation Act 2003 (GRA) were passed. Among the amendments made to the GRA was the repeal of Chapter 7 of the GRA. Chapter 7 regulated interactive gaming in Victoria. The repeal came into effect in September 2022 and was introduced to remove uncertainty and inconsistency with the Interactive Gambling Act 2001 (Cth). This amendment changes the regulatory framework for the offering of interactive gaming in Victoria.

## Federal

There is currently one bill before the Australian Federal Parliament in relation to the regulation of online gambling. This is the Anti-Money Laundering and Counter Terrorism-Financing Amendment (Making Gambling Businesses Accountable) Bill 2022. This Bill, introduced by Andrew Wilkie MP (an anti-gambling advocate), seeks to:

- require gambling operators to report to AUSTRAC if they reasonably consider that a customer proposes to use monies obtained illegally for gambling; and
- render the gambling operator liable to compensation orders if services are provided to customers when there are reasonable grounds to suspect that such customers are using illegally obtained monies.

## 4. Licensing and Regulatory Framework

### 4.1 Regulatory Authority

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

- Australia (ie, the federal regulator) – the ACMA;
- Australian Capital Territory – the Australian Capital Territory Gambling and Racing Commission;
- New South Wales – Liquor & Gaming NSW, the ILGA and the NICC;
- 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 VGCCC 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 regarding 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 considered regulated interactive gambling services that may be licensed; or
- are not considered to be prohibited interactive gambling services.

Generally, the state and territory regulatory authorities adopt a more prescriptive and inter-

ventionist approach in their legislative scheme in order to minimise gambling harm.

### 4.3 Recent or Forthcoming Changes

The NTRC is undertaking a consultation process to review whether licensed online wagering operators should be permitted to allow cryptocurrency to be used in the course of their licensed wagering services. To initiate the consultation process, the NTRC issued a draft guidance document relating to the use of cryptocurrency as part of the licensed online wagering service.

It is anticipated that the NTRC will make an announcement in 2023 regarding this consultation and whether cryptocurrency can be used in the course of wagering services provided by their licensed wagering operators.

Racing Victoria and the Victorian Bookmakers Association have introduced changes that contemplate the grant of bookmakers' licences to corporate bookmakers. Previously, it was difficult for individuals who had not been approved as a bookmaker in their personal capacity to be a shareholder or director in a corporate bookmaker licensed in Victoria.

The casino inquiries have resulted in changes in the gambling regulators in New South Wales and Victoria. As previously mentioned, a new regulator (the NICC) has been created solely to focus on the regulation of casinos. The NICC will work closely with the ILGA and other state-based regulatory bodies, while maintaining independent decision-making capabilities for casino licensing and disciplinary matters. In Victoria, the Victorian Commission for Gambling and Liquor Regulation has been renamed the Victorian Gambling and Casino Control Commission (VGCCC). The VGCCC is focused on the regulation of all types of gambling in Victoria. A separate body

has been formed in order to assume responsibility for the regulation of liquor. Please see **1.2 Recent Changes** for further details.

## 4.4 Types of Licences

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

A personal licence may be required at the state and territory level. When it comes to the installation and repair of gaming machines in the land-based market, for example, gaming machine technician licences may be required.

Companies may also be required to obtain a 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.

## 4.5 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. An increasing number of New South Wales and Victorian on-course bookmakers have also moved online since early 2020.

## 4.6 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. The following examples detail 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 the South Australian licence expires in 2052. Both are granted on an exclusive basis.
- Gaming machine licence – licences for gaming machines are not usually granted for a specified period and are valid until the gaming machine licence is surrendered or cancelled.
- Wagering licence – the expiry dates for 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 was issued on 15 June 2022, with the deadline of 18 August 2022 for expressions of interest to be submitted);

- (b) 2098 in Queensland;
  - (c) 2064 in the Australian Capital Territory;
  - (d) 2097 in New South Wales; and
  - (e) 2100 in South Australia.
- The Western Australian TAB operating licence expires in August 2024 and a decision to announce the subsequent operator is likely to be made soon.
  - Two keno licences in Victoria have been granted, each for a 20-year term commencing 15 April 2022.

## Online Gambling Licence

The duration of an online gambling licence varies; however, for sports bookmakers, it is generally a five-year term.

## 4.7 Application Requirements

The basic documentation requirements when applying for either a land-based licence or an online licence are similar; documents are required when applying for a gambling licence 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, technical documentation, and the contribution the gambling business will make to the state or territory will all be assessed in respect of any gambling licence (whether land-based or online).

Further detailed information – for example, 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 case 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 it may be 5% or lower.

## 4.8 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 issued an expression of interest in 2021 to seek prospective applicants for the next licence to be granted upon the expiry of the current licence.

### Online Licence Applications

The period that will elapse before the application for an online sports bookmaker licence in the Northern Territory is granted is usually nine months (but may be a shorter or longer period).

## 4.9 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 – AUD25,400; and
- for a betting exchange licence – AUD254,000.

## 4.10 Ongoing Annual Fees

### Land-Based Licences

Fees payable with regard to 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. In New South Wales, for example, a one-off payment of AUD256 million was paid in 1995 for a 12-year exclusivity period for the casino licence and a further AUD100 million was paid in 2007 for a 12-year extension of the exclusivity period. Meanwhile, in Queensland a quarterly licence fee of AUD276,300 (indexed annually) is payable for a casino licence.

### Online Gambling Licences

In the Northern Territory, online sports bookmakers and online gaming licensees pay an annual licence fee of AUD25,400, whereas betting exchange licensees pay an annual licence fee of AUD254,000.

## 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

The conduct of land-based gambling has been materially affected by the casino inquiries and the legislative amendments introduced as a result of their outcome. Although the principal effect was on gambling conducted in casinos, stricter responsible gambling measures that apply to other land-based gambling activities (eg, AML controls, cashless gaming and facial recognition requirements) are in the course of being introduced. Further information can be found in **3.7 Recent or Forthcoming Legislative Changes**.

One example is the bill that was introduced in the Tasmanian parliament in September 2022, which will make card-based gaming mandatory

for all players by the end of 2024. Players will need to set daily loss limits of up to AUD100, monthly limits of up to AUD500, and annual limits of up to AUD5,000, which can only be set higher should the person have a proven ability to afford the higher limit. Once the limit is reached, the player will have to wait until the next period starts before they can play again.

A trial for the use of cashless gaming is underway in clubs in New South Wales (see **7.2 Recent or Forthcoming Changes**).

## 6. Online Gambling

### 6.1 B2C Licences

B2C operators may be licensed in Australia to offer a regulated interactive gambling service (ie, lotteries and betting). A licence that is 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 out business as partners with regard to the licensed activities. Therefore, if the arrangement with an affiliate satisfies

these requirements, approval is 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 will 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 and forthcoming changes to online gambling are a result of the implementation of further NCPF measures. 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.

The ACMA has been active in using this measure. Since its implementation in November 2019, the ACMA has requested that more than 600 websites (including of affiliates) are blocked. A list of all these websites is available on the ACMA's website.

## 7. Responsible Gambling (RG), Also Known as Safer Gambling (SG)

### 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 these by implementing the NCPF's ten measures (referred to in **1.2 Recent Changes**). Further measures will be implemented once the BetStop NSER is operational (for details regarding these further measures, please also refer to **1.2 Recent Changes**).

Further details regarding other responsible gambling measures are referred to in **5.2 Recent or Forthcoming Changes** and **7.2 Recent or Forthcoming Changes**.

## 7.2 Recent or Forthcoming Changes

The NCPF has been the catalyst for the introduction of various responsible gambling measures affecting the wagering sector during the past four years. There have been various developments in the implementation of the remaining NCPF measures, including the NSER. Please refer to **1.2 Recent Changes** for further details.

The NTRC issued a consultation in relation to its code of practice to reduce gambling harm. The purpose of the consultation was for the NTRC to develop a new code of practice, which would update or replace the code of practice that currently applies to licensed online wagering operators.

In New South Wales, a trial has begun in clubs in which customers are allowed to use cashless methods to play on gaming machines. The technology being trialled connects the gaming machine to a customer's mobile phone, from which the customers access their digital wallet to transfer money for their game play. The customers may also make use of responsible gambling tools that allow them to set time or spending limits, take a break, self-exclude from gambling, and access real-time data regarding their spending. This trial is intended to promote responsible gambling and minimise the risk of money laundering.

In South Australia, there is a requirement that venues operating more than 30 gaming machines must have facial recognition technology to identify problem gamblers. Clubs and hotels in New South Wales are also implementing facial recognition technology to identify individuals that have applied for an exclusion from gambling on gaming machines.

## 7.3 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 (AML)

## 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"). This 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.

The Attorney General has indicated that a review of the AML/CTF regime will be undertaken within the coming 12 months.

## 8.2 Recent or Forthcoming Changes

Under changes to Australia's AML/CTF laws, online wagering operators are required to verify a new customer within 72 hours of the customer creating an account.

The AML/CTF Act was amended to allow for parties to rely on KYC checks conducted by third parties on the basis that such checks abide by the requirements present under the AML/CTF regime. This also applies to KYC procedures conducted by external jurisdictions if the procedure meets all the requirements prescribed under the AML/CTF rules.

The trial using cashless methods to play on gaming machines in clubs in New South Wales (referred to in **7.2 Recent or Forthcoming Changes**) is intended to reduce the risk of money laundering arising from the use of gaming machines.

Casinos are taking measures to implement cashless gaming as required under the new legislative requirements in New South Wales, Victoria, Queensland and Western Australia.

## 8.3 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". As such, they are subject to obligations under the AML/CTF Act, including:

- enrolling, for the purpose of Australian AML laws, with AUSTRAC;

- reporting certain business activities and transactions;
- keeping records;
- having AML and CTF programmes;
- reporting suspicious transactions; and
- putting in place certain KYC requirements.

AUSTRAC has commenced a civil penalty action against Crown Casino for alleged breaches of its obligations under the AML/CTF Act as a result of some of its practices investigated in the NSW Inquiry, the Victorian Royal Commission, and the Western Australian Royal Commission. AUSTRAC is also investigating The Star casino in New South Wales and SkyCity's casino in South Australia (see **1.2 Recent Changes**). AUSTRAC commenced an enforcement investigation against the Australian entity of the Entain group and has ordered the appointment of an external auditor to both Sportsbet and bet365 to assess their compliance with AML laws (see **1.1 Current Outlook**). Finally, there is a Bill before the Australian Federal Parliament (refer to **3.7 Recent or Forthcoming Legislative Changes**).

## 9. Advertising

### 9.1 Regulatory/Supervisory Agency

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

- federal – the ACMA;
- Australian Capital Territory – the ACT Gambling and Racing Commission;
- New South Wales – Liquor & Gaming NSW;
- Northern Territory – the NTRC;
- Queensland – Office of Liquor and Gaming Regulation;
- South Australia – Consumer and Business Services;

- Tasmania – the Tasmanian Liquor and Gaming Commission;
- Victoria – the VGCCC;
- 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 New South Wales, a “gambling advertisement” is defined under the Betting and Racing Act 1998 (New South Wales) (the “Betting and Racing Act”) 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”. This is defined as any writing, still or moving picture, sign, symbol or other visual image, or audible message (or any combination of two or more of these things) that either gives publicity to or is intended to promote:

- prohibited or unlicensed online gambling services;
- the whole or part of a trade mark in respect of a prohibited or unlicensed online gambling service;
- a domain name or URL that relates to a prohibited or unlicensed online gambling service; or

- any words that are closely associated with a prohibited or unlicensed online gambling service (whether or not they are also closely associated with other kinds of services or products).

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

## 9.3 Key Legal, Regulatory and Licensing Provisions

The key legal and regulatory provisions with regard to 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 with regard to 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 above-mentioned restrictions 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 with regard to breaches of advertising restrictions

vary significantly depending on the laws of the relevant jurisdiction and the nature of the contravention.

In New South Wales, for example, the maximum penalty prescribed for an online betting operator that publishes a gambling advertisement in contravention of the Betting and Racing Act is AUD222,000 for a corporation and AUD22,200 for an individual.

At the federal level, contraventions of the provisions relating to advertising in the IGA may result in fines of up to AUD39,960 for an individual and AUD199,800 for a corporation.

In February 2022, following an ACMA investigation, an Australian wagering operator was fined AUD2.5 million and committed to refund customers approximately AUD1.2 million. The penalty related to a breach of Australia's anti-spam laws. In particular, the ACMA investigation found that electronic marketing messages had been sent by the wagering operator without an unsubscribe function or to customers who had previously tried to unsubscribe. This is the largest penalty imposed by the ACMA for breaches of federal spam laws.

In April 2022, the ACMA commenced proceedings in the Federal Court of Australia against two individuals and one company in relation to alleged contraventions of the IGA. The ACMA is alleging that the relevant individuals and entity provided or promoted prohibited interactive gambling services to customers located in Australia.

## 9.6 Recent or Forthcoming Changes

The implementation of nationally consistent changes to gambling messaging as part of the

NCPF is likely to be required by 31 March 2023 (see **7.2 Recent or Forthcoming Changes**).

The NTRC consultation regarding the code of practice to reduce gambling harm (referred to in **7.2 Recent or Forthcoming Changes**) also addresses inducements and marketing activities. It is anticipated that the NTRC will implement additional requirements relating to advertising with which its licensed online wagering operators must comply.

A penalty notice scheme has been introduced in New South Wales enabling the regulator to issue a criminal penalty notice which requires the payment of a fine if a breach occurs. This differs from the previous scheme under which penalties would only be imposed by the regulator through action in court proceedings. A similar scheme has been introduced in Victoria. This supplements the procedure under which penalties were only imposed by the regulator through action in court proceedings.

South Australia has a new *Authorised Betting Operations Gambling Code of Practice* and *Gambling Administration Guidelines*. The codes apply to all South Australian licensed bookmakers and registered interstate betting operators. This code contains a broader range of requirements relating to inducements and the manner in which they can be advertised. Operators are also required to keep a copy of their advertising material for 12 months following the conclusion of the campaign.

## 10. Acquisitions and Changes of Control

### 10.1 Disclosure Requirements

The disclosure requirements for 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 scenario, 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. In New South Wales, for example, the purchaser must disclose all information required for the regulator to conduct an investigation into the suitability of the purchaser.

Online lottery and wagering licences 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. The licensee and the purchaser in any transfer of shares that exceeds the threshold (eg, 10%) must disclose the information that the regulator needs to consider whether approval should be granted for 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 change of interest provisions that require the notifica-

tion or approval of the purchaser and associated persons.

### 10.3 Passive Investor Requirements

Passive investors will not usually 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, including 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. In general, state and territory regulators also have broad investigatory and enforcement powers and can 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 about ensuring that operators comply with the applicable laws and will proceed to take enforcement action when required.

When considering whether to impose sanctions (eg, suspending or revoking a licence, or varying licence conditions), regulators will take into account 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 (reduced to AUD159,000 plus costs on appeal) were imposed by the New South Wales Local Court for breaches of advertising prohibitions under New South Wales law by Ladbrokes and Neds (which is owned by Ladbrokes). This is the largest fine issued in New South Wales and the cases were initiated by Liquor & Gaming NSW. Since 2015, Liquor & Gaming NSW has successfully prosecuted more than 35 matters for prohibited gambling advertising, resulting in more than AUD640,000 in fines.

### 11.3 Financial Penalties

All state-based regulators have the authority to undertake enforcement action against wagering operators. The New South Wales regulator, Liquor & Gaming NSW, is the most active regulator when it comes to taking enforcement action with regard to advertising breaches. When determining the penalty, a court will take into consideration various factors, such as:

- the medium of the publication;
- the intended audience and context of the advertisement;
- whether persons were actually induced by the advertisement (ie, whether they signed up for an account);
- the offending history/record of the publisher; and
- the number of people in New South Wales who viewed the advertisement.

A separate penalty may be imposed for each separate publication and, therefore, a separate breach. Recently, amendments have been made to the relevant statute to permit Liquor & Gaming NSW to issue fines in respect of advertising breaches (see **9.6 Recent or Forthcoming Changes**).

Penalties for an advertising breach under the IGA are imposed following civil or criminal court proceedings and the amount of the penalty is determined by the court in accordance with the amount of the penalty under the relevant provision of the IGA.

Following the various casino inquiries that have found that each of the relevant casinos acted in an inappropriate manner, amendments have been made to relevant legislation to provide for a substantial increase in penalties. Fines of up to AUD100 million may now be imposed (and have been).

## 11.4 Personal Sanctions

Both the federal and state regimes allow for criminal and civil penalties to be enforced against individuals for relevant breaches.

On a federal level, the IGA provides that the body corporate and/or a director, employee or agent of the body corporate may be liable for any conduct engaged in on behalf of the body corporate. Therefore, both the company and individuals may be liable for a breach of the IGA.

On a state level, all states and territories have provisions either in the gambling law and/or in the criminal law that allow for executive officers and senior management to be considered in contravention of the same provision as that contravened by the body corporate. On this basis, they can be held liable for the contraven-

tion and subject to appropriate civil and criminal penalties.

## 12. Recent Trends

### 12.1 Social Gaming

In September 2022 the House of Representatives Standing Committee on Social Policy and Legal Affairs initiated a Parliamentary Inquiry into online gambling and its impacts on people with gambling problems. A specific term of reference for the inquiry is whether the definition of “gambling service” as defined in the Interactive Gambling Act 2001 (Cth) should be expanded to capture additional gambling-like activities (eg, loot boxes and social casino games). The committee is likely to publish the results of the inquiry in early 2023.

### 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

In 2020, Australian police in Victoria conducted an investigation into esports match fixing in relation to Counter-Strike: Global Offensive. The investigation resulted in five men being charged with match-fixing offences.

In 2022, two Victorian men were charged with match fixing following an investigation into suspicious betting activity around an esports tournament. The men pleaded guilty and the penalty included repaying their winnings to the online betting operator, as well as an order that both

men would be subject to 12-month good behaviour bonds.

Esports continues to be an activity that is growing in popularity in Australia and developments regarding esports betting should be expected with the growth of the esports sector. This was enhanced by the COVID-19 pandemic, during which esports gained more prominence, as events could continue to be provided and more operators invested in understanding and providing betting on esports.

### 12.3 Fantasy Sports

Where recognised as a gambling service, fantasy sports in Australia are usually provided under a sports bookmaker licence in order to be legal, 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, online games of skill are prohibited, which may be a reason why operators are hesitant in making their skill games available in Australia.

### 12.5 Blockchain or Cryptocurrency

The use of blockchain technology in gambling is not permitted in Australia. Recently, there has been an increasing number of online operators seeking to offer gambling-style services in Australia involving the use of non-fungible tokens (NFTs).

The NTRC has clarified that it prohibits its licensees from accepting cryptocurrency as a form of payment. However, the NTRC is undertaking a consultation process in relation to the use of cryptocurrency as part of the provision of licensed wagering services (referred to in 4.3 **Recent or Forthcoming Changes**).

## 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 in which 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*

##### *New South Wales*

In June 2020, The Star Entertainment Group and the New South Wales government reached an agreement regarding gaming taxes applicable until the end of FY 2041. From FY 2022 onwards, gaming tax is calculated by reference to flat rates as a percentage of revenue.

#### *Lotteries tax*

##### *Queensland*

Under the Lotteries Regulation 2007 (Queensland), the lottery tax payable is 73.48% of the

lottery operator's gross monthly revenue minus the lower of:

- the global Goods and Services Tax (GST) amount; or
- the gross tax amount for the month.

## *Victoria*

Under the Gambling Regulation Act 2003 (Victoria):

- the tax payable by online keno operators is 24.24% on net keno revenue in respect of that month; and
- the lottery tax payable by the lottery operator is:
  - (a) 79.4% of the player loss in respect of supplies on which GST is payable; and
  - (b) 90% of the player loss in respect of supplies on which GST is not payable.

## *Wagering tax*

### *New South Wales*

Under the Betting Tax Act 2001 No 43 (New South Wales), the tax payable in respect of totalisator on-course and off-course betting from 1 July 2022 is 3.49% of totalisator commissions on fixed-odds racing.

### *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:

- for online gaming – the tax rate is determined by formal agreement with the relevant minister; and
- for the bookmaker – the tax payable is:
  - (a) 5% of gross monthly profit; and
  - (b) currently capped at AUD1.27 million per financial year.

An online betting operator, irrespective of the jurisdiction in which it is licensed, will also be subject to a point of consumption tax. This is charged based on net wagering revenue in the following states and territories (subject to certain thresholds being achieved):

- South Australia – 15%;
- New South Wales – 15%;
- Victoria – 10%;
- Queensland – 20%;
- 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.

## **14. Anticipated Reform**

### **14.1 Anticipated Reform**

Several reforms are anticipated in the coming months.

These reforms are outlined in different sections of this chapter under the title **Recent or Forthcoming Changes**.

**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

associations 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, which 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 expert advice in 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. Jamie's advice includes licensing, regulatory and compliance issues, sports and racing integrity, consumer, advertising and privacy law issues, and new technologies. Jamie's position at the forefront of gambling law saw him elected as President of the International Masters of Gaming Law in 2018 and 2019. He is also a senior fellow at the University of Melbourne, where he has lectured on Gambling and the Law.



**Samuel Gauci** brings more than 14 years of legal experience to **Addisons**, which he joined in early 2019 when he moved to Australia from Malta. His background in gambling law

stems from roles with the Maltese regulator, the Malta Gaming Authority, and in private practice as a senior associate with a leading Maltese law firm. Samuel's experience of advising and assisting international land-based and online gambling operators – 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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Ryan joined Addisons in late 2021 and has developed his passion for gambling regulation ever since. He has assisted in advising a variety of clients on a wide variety of gambling regulatory issues.

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