



CrownBet Pty Limited / Betfair Pty Limited

**Submission to the Senate Environment and
Communications Legislation Committee**

Interactive Gambling Amendment Bill 2016

November 2016



CrownBet Pty Limited (CrownBet)

Submission to the Senate Environment and Communications Legislation Committee – Interactive Gambling Amendment Bill 2016

CrownBet welcomes the opportunity to provide comment on the Interactive Gambling Amendment Bill 2016 (**Bill**). The Bill is an integral step in implementing the key recommendations from the Review of Illegal Offshore Wagering (**O'Farrell Review**) and in doing so, reduce the exposure of Australian consumers to illegal, offshore providers who do not offer the exacting standards of consumer protection and harm minimisation offered by the licensed and regulated Australian wagering industry.

This submission represents the views and position of CrownBet Pty Limited and Betfair Pty Limited (**Betfair Australia**). Betfair Australia is a wholly-owned subsidiary of Crown Resorts Limited and offers a unique perspective on the proposed application of the Bill as the only betting exchange operator licensed and regulated in Australia. Because of Betfair Australia's low margin business model and sophisticated customer base it is the domestic operator that is most susceptible to losing custom to offshore operators.

The Government's current reform pathway has the support of the Australian wagering industry and other key stakeholders, including CrownBet and Betfair Australia. Importantly, the Government's plan allows it to rapidly address the key recommendations of the O'Farrell Review to limit the impacts of illegal offshore wagering. It allows further and considered consultation with key stakeholders regarding those recommendations and policy positions which are more complex, including deterrents for offshore operators (dealt with in this Bill) and a nationally-consistent consumer protection and harm-minimisation regime (to be implemented during the course of 2017).

We do not support the proposal to allow online in-play wagering in retail venues. We note that proposal does not reflect the recommendations of the O'Farrell Review, the Government's policy position, or the Minister's public comments on in-play wagering.

We seek also to highlight a small number of implementation issues that should be considered to ensure that the legislation operates in a manner that will allow Australian licensed online operators to compete with illegal, offshore providers, as well as the domestic 'offline' retail industry.

Section 15AA – Unlicensed regulated interactive gambling services not to be provided to customers in Australia

CrownBet agrees with the creation of an offence and civil penalty for operators that provide online gambling services to Australians without a licence issued by an Australian State or Territory. However, we note that some concern that the ACMA will be required that the person "intentionally" provides such a service to



Australian residents.¹ Given the ubiquitous nature of the internet, the ACMA will likely have significant difficulty in establishing the person had an intention to supply services to Australians. In the online space, a positive action is required to restrict people accessing a website from a certain jurisdiction; and in our view, many offshore operators are wilfully ignorant of Australia's gambling laws.

As outlined in our submission to the O'Farrell Review, the creation of a strict liability civil penalty for a breach of the prohibition is recommended as it would provide an effective enforcement mechanism. It would then only be necessary to prove that a gambling service was operated in contravention of the Act rather than requiring the establishment of the operator's intent.

We note that the Bill will also afford the ACMA with the ability to notify international regulators about their licensees who contravene the newly created prohibitions in the Act. Whilst we agree this will be an effective mechanism in improving compliance, it does not overcome our concerns regarding the establishment of the offshore operator's "intent".

Section 8BA - Place-based betting service

New section 8BA of the Bill creates a new type of permitted interactive gambling service, namely a place-based betting service.

A place-based betting service is a gambling service that makes use of electronic equipment that is made available by an operator for use by customers in defined premises (e.g. a casino, hotel or club). The explanatory memorandum indicates that the proposed provision "clarifies that **electronic betting terminals** in premises such as TABs, casinos, hotels and clubs can continue to be provided"² (emphasis added).

The term "electronic betting terminal" has a clear and well-understood meaning. Such terminals are currently provided in the environments described in the explanatory memorandum in that they are fixed installations, provide access only to the retail operator's wagering interface and accept cash and/or a card issued by the relevant operator.

Rather than the Bill adopting a definition of electronic betting terminals that achieves the Government's stated objectives of allowing their continued use in the retail environment, we note that:

- "electronic equipment made available to customers at that place" is a much broader concept than an electronic betting terminal. The proposed broad definition of "electronic equipment" (including an electronic device or apparatus) would clearly extend to the provision of personal electronic devices, such as tablets and mobile devices, which would be available for use by customers at such premises;

¹ Section 15AA(1)(a) of the Bill

² Interactive Gambling Amendment Bill 2016 – Outline, p2



- whilst a place-based betting service is as an in-play betting service for the purposes of section 10B, it is not subject to the same prohibition on offering an in-play betting service as traditional online wagering services are. This is because a place-based betting service is not an excluded wagering service for the purposes of section 8A of the Act; and
- there can be no logical distinction drawn between a customer wagering in a retail premises on their own device and on an identical device provided to them by a wagering service provider. However, by virtue of the operation of section 8BA, a customer would be allowed to wager live in-play during a sporting event on a tablet or mobile device provided by a TAB operator, but not on a tablet or mobile device that they own.

The arguments that Government has made in favour of permitting in-play wagering only via retail (traditionally understood to mean face-to-face) and telephone is that they both require human interaction. The Government has cited that such human interaction "...is likely to slow down the betting activity of the customer and therefore reduce the risk to problem and at-risk gamblers".³

However, the breadth of section 8BA allows retail operators to offer in-play betting services that are identical, in terms of the high speed of bet placement, as an online wagering service. There is further no interaction required whatsoever with an operator, and no human supervision, unlike electronic betting terminals, which are permitted only in designated wagering areas and required to be staffed at all times.

This proposed provision therefore undermines the primary reasons that the Government has not sought to prohibit retail or telephone in-play wagering. This is an anomaly that undermines the principles of platform-neutrality and the perceived protections that the Government considers consumers receive when engaging in retail or telephone based wagering.

This approach represents a material expansion in the range of in-play betting services that are permitted in the Act, and we respectfully submit that such an outcome is at-odds with the Government's publicly expressed policy on in-play wagering. There was no recommendation to this effect in the O'Farrell Review, and no policy reason or suggestion that the amendment would reduce the impacts of illegal, offshore wagering. Indeed, the Government's response to the O'Farrell Review clearly stated:

The Government does not intend to further expand the Australian gambling market through enabling the offering of online in-play betting.

Accordingly, CrownBet recommends that the proposed new section 8BA be made subject to the same restrictions as apply to an excluded wagering service and should be prohibited to the extent which it constitutes and in-play betting service. This would ensure that all forms of wagering using "electronic equipment" are

³ Regulatory Impact Statement, p8

treated equally, regardless of the type of device used and would more closely align with the government's response to the O'Farrell Review.

However, should a decision be made to materially increase the level of in-play wagering in Australia and determine that place-based betting services warrant a carve out from the prohibition against offering an in-play betting service, it should be clarified that such an exemption applies only to **electronic betting terminals** (rather than "electronic equipment") that are:

- (a) installed in the premises on a permanent and fixed basis;
- (b) unable to connect to the internet, including the retail operator's website;
- (c) placed only in designated wagering areas within the premises;
- (d) subject to continual supervision by the operator's employees with appropriate levels of training, with one employee to supervise no more than 3 electronic betting terminals at the same time; and
- (e) for use only by customers wagering using cash or a card issued by the operator. Account based wagering, by simply entering a username and password must not be permitted, as this is akin to an online in-play betting service.

Section 10A – Sporting Event

Under the proposed amendments, a new section 10A seeks to clarify the definition of a sporting event and the application of that concept in specific sporting contexts. The Bill attempts to define an in-play betting service to the extent which the service relates to betting on the outcome of a sporting event or a contingency which may or may not happen in the course of a sporting event, where the bets are placed, made, received or accepted after the beginning of the event.

Amendments made to the Bill following the release of an exposure draft now provide the Minister with significant flexibility in determining what is a "sporting event" by way of legislative instrument. We agree that this approach ensures simplicity in the Bill and affords the Minister the flexibility necessary to quickly respond to new or emerging trends.

However, the approach adopted in the Bill necessarily means that once a sporting event has commenced, all wagering online must cease. Whilst this is indeed the appropriate course of action for a football match, we do not agree that it should be the case for single events that are played over multiple days, where play actually stops (typically overnight) and the event is clearly not 'in-play'.

For example,



- (a) the British Open Golf Tournament will be a sporting event, with the consequence that once it has commenced, in-play bets cannot be taken on the outcome of that event (i.e. the ultimate winner of the tournament);
- (b) however, each round is also likely to be declared a sporting event, such that bets can be placed on round 2 prior to the commencement of that round but after the commencement of round 1, without the service being an in-play betting service and therefore prohibited;
- (c) so, combining these elements, at the conclusion of round 3, bets can be taken on round 4, but not (as currently drafted) on the ultimate winner of British Open.

It is CrownBet's view that prohibiting online wagering during an overnight break in a golf tournament, or a cricket test match is nonsensical. This is because it causes confusion for operators and customers, and does not align with the government's expressed policy position. We remain uncertain as to why this approach is necessary, or why re-opening betting on the 'tournament' at the conclusion of a round is in any way anathema to the objects of the IGA.

As the Committee is aware, the prohibition on online in-play betting was introduced to stop repetitive wagering on live sport based on concerns that it would impact problem or at-risk gamblers. In his second reading speech, the Minister for Communications, Information Technology and the Arts, Senator Alston said:

*The ban will apply to online casino gaming and similar services, and these include current and future services such as Internet casinos, Internet poker machines, **ball by ball wagering on sporting events via a digital broadcast** and online instant lotteries. All of these services have repetitive and potentially addictive qualities which are associated with problem gambling. **Interactive betting after a sporting event has commenced will be within the prohibition. This means, for example, that customers will not be able to place bets on a football, tennis or cricket match after the match has commenced** (emphasis added).*

The proposed amendments to section 10A introduces concepts which we believe are ill-tailored to this concern. This is principally because wagering on the end result of a sporting event such as a golf tournament, or a cricket test match, once the tournament or match has commenced, is prohibited. This is despite the fact that these events feature lengthy scheduled breaks, during which there is no sporting activity and no opportunity for repetitive wagering of the type the IGA was initially introduced to address.

CrownBet therefore considers that this anomaly (and other incongruities caused by the proposed amendments) may most appropriately be addressed by introducing the concept of a "Scheduled Extended Play Break". A Scheduled Extended Play Break may be defined to include any hiatus in play which extends overnight, or for more than a prescribed period (e.g 2 hours).

By way of example, a Scheduled Extended Play Break would operate in the following manner on various sporting events.

Sport	Match / Tournament Type	Scheduled Extended Play Break
1	<p>Matches or Races scheduled to complete in one-day (even if unscheduled delay causes the event to extend over multiple days)</p> <p>Australian Rules Football Match American Football Match Baseball Match Basketball Match Boxing Match Hockey Match Ice Hockey Match Mixed Martial Arts Match Netball Match Pool Match Rugby League Match Rugby Union Match Snooker Match Soccer Match Tennis Match</p> <p>Any other sport where competition consists of a match or a race.</p>	<p>None</p> <p>The in-play prohibition applies from the commencement of the Match or Race until the end of the Match or Race.</p>
2	<p>Matches or Races scheduled to complete over multiple days</p> <p>Cricket Test Match Golf Tournament Multi Stage Event (e.g. Cycling)</p>	<p>A Scheduled Extended Break would occur in the following manner:</p> <p>Cricket Test Match: from the conclusion of play on Day 1 until the resumption on Day 2 (but not during lunch or tea)</p> <p>Golf Tournament: from the conclusion of play in Round 3 until the resumption of play in Round 4.</p>

Cycling Event: from the conclusion of Stage 5 until the commencement of Stage 7.

3 Extended Tournaments / Seasons

Australian Open Tennis Tournament
Australian Rules Premiership

The relevant sporting event does not commence until the match or race that will decide the ultimate winner of the tournament or competition,

No Scheduled Extended Breaks.

Australian Open Tennis: the tournament winner market remains open until the commencement of the Final.

Australian Rules Premiership: the premiership winner market remains open until the commencement of the Grand Final.

Wagering online or during a Scheduled Extended Play Break would be carved out of the definition of an "in-play betting service", and thus constitute an excluded wagering service (i.e. one not subject to the prohibition on interactive gambling services). Wagers both on the ultimate winner of the tournament or match, and on other contingencies which may or may not happen during the course of the tournament or match, would be permissible during Scheduled Extended Play Breaks. This change, together with other amendments to simplify the operation of the proposed amendments, would better align section 10A to the initial objects of the IGA.

We consider that this may be achieved through the drafting of a concise bespoke regulation, or (adopting the architecture of the proposed amendments), through the insertion of a definition of a Scheduled Extended Play Break and a new clause 10B(3) which makes clear that a gambling service is not an in-play betting service to the extent to which it is offered during a Scheduled Extended Play Break.

Conclusion

CrownBet would be pleased to appear before the Committee to speak to its submission or provide further information at any stage if it is required.

