



## Minister for Housing; Racing and Gaming

Our ref: 27-28016

Senator David Bushby  
Chair  
Environment and Communications Legislation Committee  
PO Box 6100  
PARLIAMENT House  
CANBERRA ACT 2600

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Dear Mr Bushby

### THE INTERACTIVE GAMBLING AMENDMENT BILL 2016

I refer to your letter of 10 November 2016 to the Premier, the Hon Colin Barnett MLA, inviting the Western Australian Government to make a written submission to the Environment and Communications Legislation Committee on the Interactive Gambling Amendment Bill.

As the Parliamentary Secretary to the Western Australian Minister for Racing and Gaming, racing industry stakeholders constantly express their concern at the impact of offshore wagering providers accepting bets on Australian racing events without appropriate authorisation. Action on this matter is not only critical for the future integrity and viability of the Australian racing industry but it will also ensure that Australian wagering consumers are protected from unlicensed overseas wagering operators.

The Australasian Racing Ministers' Conference has on a number of occasions written to Federal ministers seeking action by the Federal Government to minimise the threats posed to Australia's racing industry by unauthorised offshore wagering/gambling service providers. I understand that this matter has also been raised with the Federal Government by the Australian Racing Board and other racing industry stakeholders.

The vulnerability of Australian racing to unauthorised betting activities of off shore wagering providers is demonstrated in **attachment 1** where Racing Victoria confirmed in a media release issued 13 February 2014 that UK online betting agency Canbet was not approved to publish and use Victorian thoroughbred race fields. Racing Victoria also confirmed that Canbet had been making no payments to the Victorian racing industry, nor had it been complying with Racing Victoria integrity requirements, as required by Victorian legislation.

The international experience has demonstrated that sovereign nations can take a range of actions to address the issue of unauthorised wagering providers. Through the implementation and enforcement of its *Online Gaming Act 2010 (France)*, the French Government has used financial and telecommunications laws to prohibit unauthorised wagering providers from conducting business in France.

At **attachment 2** is a legal analysis published on the iGaming Business site which noted that the steps taken by French authorities have significantly reduced the operations of unauthorised wagering providers in France, from 75 per cent to just 20 per cent of the market.

It therefore follows that I support the Bill. I also note that the Bill does not propose any changes to the prohibition on the provision of on-line casino style gaming to persons in Australia; this is very important to Western Australia given our prohibition on the playing of electronic gaming machines outside the casino.

I nominate Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor as the contact person, phone \_\_\_\_\_ and email \_\_\_\_\_.

I look forward to the proclamation of the Amendment Act.

Yours sincerely

 **Hon Colin Holt MLC**  
**PARLIAMENTARY SECRETARY**

Racing Victoria - Racing Victoria Limited - CEO Statement on Canbet



Thursday 13.02.2014 [Print](#)  
CEO Statement on Canbet

Racing Victoria CEO Bernard Saundry responds to concerns about UK-licensed online bookmaker Canbet

Racing Victoria (RV) has released a statement regarding the UK-licensed online bookmaker Canbet whose operations were the subject of a News Limited article today.

Canbet, which is not currently licensed in Australia, suspended trading in December 2013 and the article alleges that numerous clients are still to be paid funds owed.



RV Chief Executive, Bernard Saundry, confirmed that Canbet was not currently approved to wager on Victorian thoroughbred racing and appears to have been non-compliant with Victorian race fields legislation prior to its trading suspension.

"This situation again highlights the risk for punters who choose to invest their money with unapproved bookmakers, particularly those based offshore," Saundry said.

"Canbet are not approved to publish and use Victorian thoroughbred race fields and appear to have been in breach of Victorian race fields legislation prior to their recent trading suspension.

"They have been paying no returns to the Victorian racing industry for the use of our product, nor were they complying with our integrity requirements as approved wagering operators are obligated to do.

"Unfortunately, this is not the first time that we've heard allegations of punters being unable to withdraw funds from an unapproved offshore bookmaker.

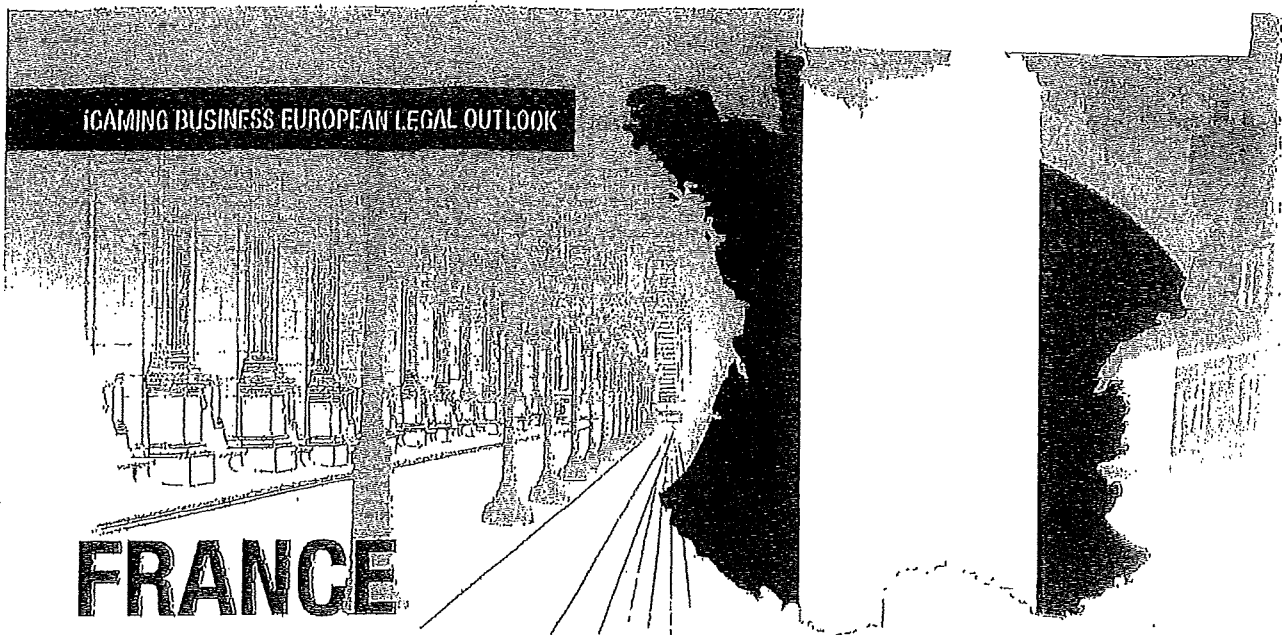
"It should serve as a timely reminder for thoroughbred punters that their best option is to always bet with a wagering operator that is approved to publish and use Victorian thoroughbred race fields and therefore adhering to our conditions of approval."

Saundry explained that more than 250 wagering operators are approved to publish Victorian thoroughbred race fields and wager on the sport.

The full list of RV approved wagering service providers is [available here](#).



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Until the French Online Gambling Act of May 12, 2010 (the Online Gambling Act) which opened to competition for three online gambling activities, La Française des Jeux, a public corporation, and le Pari Mutuel Urbain used to have a monopoly on gambling. The consequence was that 75 percent of online gambling occurred illegally; thus, circumventing state control and taxation. Additionally, the connection between illegal gambling and international criminality was frequently emphasised by French authorities.

However, the French government's decision to modify its online gambling legislation was instigated mainly because of case law from the European Court of Justice (ECJ). The ECJ strongly urged European Union Member States to reform their national legislations regarding online gambling. The French government's decision to modify its online gambling legislation by the Act of May 12, 2010. A year and a half after the Act, legal online gambling represents 80 percent of the market. In 2011, the general trend seems to be that gambling activity is slowing down.

#### A controlled liberalisation of French law

The Online Gambling Act opened three online gambling activities to competition (horserace betting, poker and sports betting). However, the Act did not put an end to the dominance held by La Française des Jeux, Pari Mutuel Urbain and terrestrial casinos as games and bets offered in stores and the remaining online gambling authorities are still under their monopoly.

The legalised online gambling activities include (i) pari-mutuel horserace betting (i.e. all wagers are gathered into a common pool and redistributed to the winners in proportion of their wager), (ii) two types of poker (Texas Hold'em and Omaha) and (iii) sports betting that is live, mutual, or fixed odds. Additionally, bets can only be made on horse races

listed in a regulation issued by the Minister of Agriculture, or on sports mentioned in a regulation issued by the French online gambling regulatory authority, ARJEL. French online gambling licences are granted for a renewable five year term.

ARJEL controls and regularly monitors the licensed operators. If they fail to comply with their obligations, ARJEL's Commission of Sanctions may decide upon the attribution of penalties. The penalties can either be a simple warning, a one year reduction of the licence term, a three month licence suspension, the withdrawal of the licence or a fine (a maximum of five percent of the operator's turnover).

Pursuant to Article 61 of the Online Gambling Act, the ARJEL may also notify unlicensed operators to cease and desist conducting business in France. If they do not comply with an injunction issued by the ARJEL to stop their illegal activity within eight days, the ARJEL can petition the President of the Paris Civil Court to order:

- Internet Service Providers and hosting providers to block the access to the illegal website;
- any measures in order to prevent any directory or search engine from indexing the unlicensed operators.

Two preliminary judgments have been issued by the Paris Civil Court. On August 6, 2010, the Court ordered Numericable, Orange France, France Telecom, SFR, Free, Bouygues Telecom, Darty Telecom and Auchan Telecom to take all necessary measures, without delay, in order to prevent access to Stan James Gibraltar Ltd's gambling operation, accessible at [www.stanjames.com](http://www.stanjames.com). The online gambling operator in this case was conducting unlicensed business in France and had failed to comply with the ARJEL injunction.

In this case, the defendants (i.e. French Internet Service Providers) appealed the decision claiming that Article 61 of the Online Gambling Act

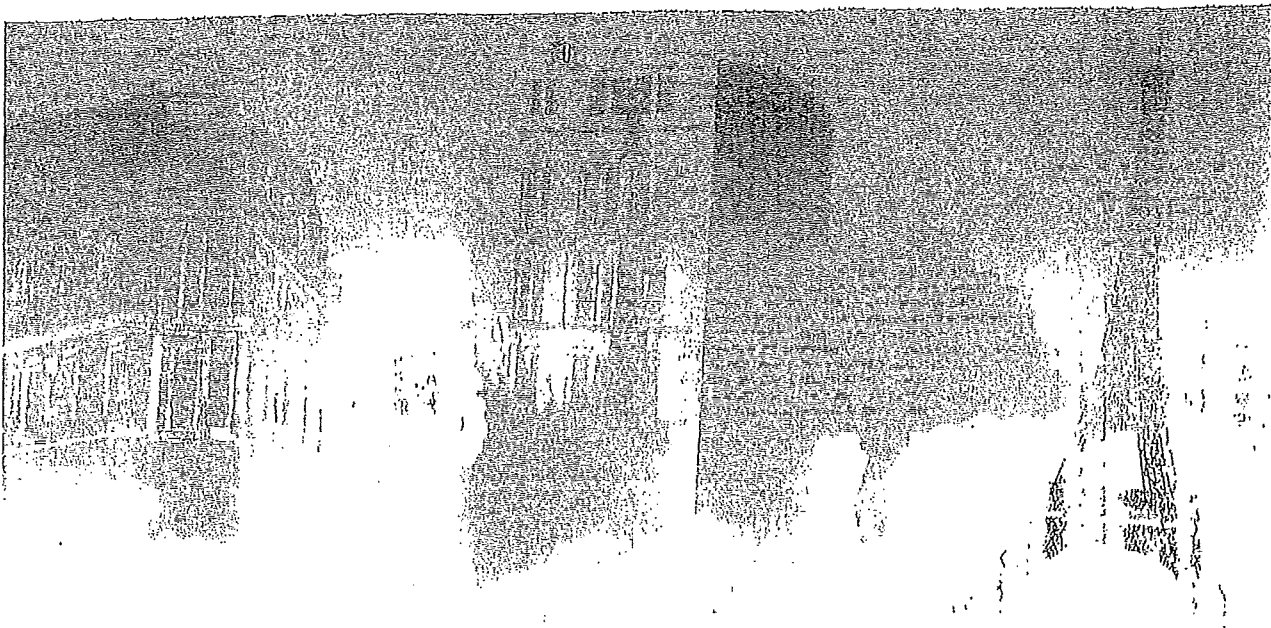
contravened with the presumption of innocence provided in Article 9 of the French Declaration of Human Rights. According to them, the provision was thus unconstitutional as it does not require the ARJEL to demonstrate that the concerned online gambling website is illegal and does not allow the online gambling operator to challenge the ARJEL's claim in a fair trial.

The defendants thus introduced a 'priority preliminary ruling on constitutionality' which allows the submission of a question regarding the constitutionality of a provision to the Constitutional Council. In this case, the Paris Court of Appeal in a decision on June 28, 2011, discarded their claim on the ground that it lacked 'seriousness'.

In a similar case, on April 28, 2011, the Court ordered the same Internet Service Providers to take all available measures in order to prevent access to Fivedimes' illegal gambling offer accessible at <http://www.fivedimes.com> and <http://www.fivedimes.com>. Unless they complied with the injunction within 15 days of the Court's decision notification, they had to pay a €10,000 daily penalty during the month following such notification.

Since the creation of the ARJEL, 550 online gambling websites have been issued cease and desist notices regarding the conduct of their business in France and have complied with these injunctions by preventing access to their websites to players located in France. The President of the Paris Civil Court has been petitioned over fifteen times regarding websites which failed to comply with the ARJEL's injunctions immediately; only in the two cases mentioned have the websites had their access blocked following a Court order as the others have complied with the injunctions during the proceedings.

This illustrates that the ARJEL is actively enforcing the Online Gambling Act and that the sanctions specified by the law appear to be an effective deterrent for illegal online gambling.



operators. Additionally, upon the proposal of the ARJEL, the Minister of Budget may decide to prohibit any transfer of funds to or from accounts identified as held by unlicensed operators. This ban can last six months and is renewable.

Licensing criteria and requirements are very strict, and are sanctioned accordingly, thus demonstrating that the Online Gambling Act creates a controlled and restricted liberalisation of online gambling. Any unlicensed operator engaging in online gaming activity in France is subject to a three year prison sentence and a €90,000 fine. If the operator is a corporate body or acting in an organised group, the amount of the fine and the prison sentence shall be increased. Moreover, any advertisement by unlicensed operators shall be punished by a €100,000 fine.

These strict conditions and sanctions are justified by the legislator's intention to protect certain overriding interests as specified in the Act, namely:

- preventing gaming addiction;
- preventing fraud, the funding of criminal activities and money laundering;
- protecting the under aged;
- ensuring the integrity, reliability and transparency of gaming operations;
- ensuring the balanced and equitable development of different types of games to avoid destabilising the concerned economic sector;

In order to protect those interests, the legislator has implemented (in the Act) numerous mandatory guidelines that online gambling operators must comply with.

These mandatory guidelines include, for instance, to prevent gaming addiction, that operators must (i) implement mechanisms enabling players to exclude themselves, moderate or limit wagers, (ii) constantly communicate to them the balance of their account, and (iii) warn them of the risks of excessive or

pathological gambling; and in order to protect under aged, that operators (i) must bar them from online gambling websites, and (ii) are not allowed to fund or sponsor any event targeting under aged persons.

According to ARJEL, since the implementation of the Online Gambling Act, €1014 billion in bets has been accounted for from around three million player accounts. According to the figures published by ARJEL in June 2011, over a year after the opening of the market to competition, the French online gambling market appears to have slowed down. The decrease mainly concerns sports betting for which ARJEL assesses a 26.5 percent fall in wagers during the first quarter of 2011. On the contrary, horserace betting has slightly increased and wagers on online poker have remained even.

**The future of online gambling in France**  
Pursuant to the Online Gambling Act, two reports shall be established by the French government and submitted to the French Parliament before December 31, 2011; one on the implementation of the Act and the second on the pathological gambling prevention policy.

In 2011, the French Parliament has contributed to the government's reflection on this matter by issuing two reports on the implementation of the Online Gambling Act. They identified various topics to be addressed such as the low level of profitability for licensed operators, the cause of which could be, according to the operators, the applicable tax regulation. The government's report regarding the implementation of the Act was submitted to the French Parliament in October 2011, and details 49 recommendations, including the following:

With respect to the tax regulation applicable to licensed operators, the report does not, at this stage, opt for any modification of the current system. Concerning the reinforcement of the prevention of illegal online gambling, the government

recommends:

- to increase ARJEL's powers and efficiency regarding its investigative prerogatives;
- that the label 'licensed by ARJEL' should be systematically visible on licensed online gambling websites;
- in order to fight against professional players participating in the illegal gambling market, to encourage the tax administration to search and disclose any information pertaining to the illegal nature of the earnings of such players;
- to subject illegal operators to a tax on online gambling wagers;
- to grant ARJEL's President the ability to bring proceedings against all advertisements promoting illegal online websites.

The French government concluded its report by stating that it shall implement, without delay, all its recommendations and shall amend the Online Gambling Act and its associated regulations accordingly. However, no such revision has been officially announced and there is no foretelling what the French Parliament will implement.

