

The Senate

Environment and Communications
Legislation Committee

Interactive Gambling Amendment Bill 2016
[Provisions]

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Chapter 1

Introduction

1.1 On 10 November 2016, the Senate referred the provisions of the Interactive Gambling Amendment Bill 2016 to the Senate Environment and Communications Legislation Committee for inquiry and report by 30 November 2016.¹

Overview and purpose of the bill

1.2 The bill contains proposed amendments to the *Interactive Gambling Act 2001* (IGA), the *Australian Communications and Media Authority Act 2005* (ACMA Act) and the regulations made under the IGA. The proposed amendments are designed to clarify the law regarding illegal offshore gambling and strengthen the enforcement mechanisms under the IGA and represent the first stage of the Australian government's process to implement recommendations of the 2015 *Review of the impact of illegal offshore wagering* (the Review).²

1.3 The minister's second reading speech on the bill explained that the Review found 'that the amount of money being spent on illegal wagering services could be as high as \$400 million annually with a further \$100 million in lost taxation revenue and product fees'. The minister made the following observations:

Offshore gambling has detrimental effects on the Australian wagering, racing and sporting industries, problem and at-risk gamblers, consumers and government. Offshore gambling operators do not pay Australian taxes, racing or sporting fees; they do not share information regarding suspicious betting activity with law enforcement or sporting bodies, which risks the integrity of Australian sport; they offer gambling services prohibited under Australian law; they can be used for money laundering and other criminal activities; and they provide minimal to no harm minimisation and consumer protection controls, which poses a threat to problem and at-risk gamblers.³

1.4 The IGA currently provides that providing an interactive gambling service to customers in Australia is an offence, although a range of services are excluded, such as telephone betting services.⁴ However, there is uncertainty around the legality of services under the IGA and enforcement has been minimal, with no prosecutions since the legislation was enacted in 2001 'despite a considerable number of complaints

1 *Journals of the Senate*, 10 November 2016, p. 448.

2 The Hon Alan Tudge MP, Minister for Human Services, *Proof House of Representatives Hansard*, 10 November 2016, p. 1. The review is also known as the 'O'Farrell Review', named after its lead reviewer, the Hon Barry O'Farrell.

3 The Hon Alan Tudge MP, *Proof House of Representatives Hansard*, 10 November 2016, p. 1.

4 *Interactive Gambling Act 2001*, ss. 5(3) and 15.

made by Australians in relation to illegal online gambling services'.⁵ Consequently, the minister explained that stakeholders consider 'that offshore operators ignore the provisions of the IGA'. The minister continued:

Criminal prosecution is considered likely to be unsuccessful or ineffective due to the competing priorities of the Australian Federal Police, uncertainty around the legality of services under the...[IGA], evidence requirements and the offshore location of gambling operators'.⁶

1.5 The minister further explained that the Review cited research that found interactive gamblers are more likely to be problem gamblers than other gamblers, with 2.7 per cent of interactive gamblers being problem gamblers, compared to 0.9 per cent of all gamblers.⁷

1.6 The amendments in the bill relate to the government's response to recommendations 3 and 17 of the Review. In response to those recommendations, the government agreed to 'clarify the legality of services and strengthen the enforcement of the IGA including providing greater powers to the Australian Communications and Media Authority (the ACMA)'.⁸ The bill also contains disruption and deterrent measures.

1.7 Specifically, the bill would:

- (a) clarify that it is illegal for overseas gambling companies to offer gambling products to Australians unless the person or company holds a licence issued by a state or territory;
- (b) introduce a new civil penalty and infringement notice regime to be administered by the ACMA;
- (c) prohibit 'click-to-call' in-play betting services, which are 'services where a customer can place a bet during a sporting event without speaking to a human operator' (that is, a service that enables a voice call to be made online using a recorded or synthetic voice)—the bill would require that dealings with customers to be wholly by way of spoken conversations between individuals (or an equivalent for a customer with a disability);⁹

5 The Hon Alan Tudge MP, *Proof House of Representatives Hansard*, 10 November 2016, p. 2.

6 The Hon Alan Tudge MP, *Proof House of Representatives Hansard*, 10 November 2016, p. 2.

7 The Hon Alan Tudge MP, *Proof House of Representatives Hansard*, 10 November 2016, pp. 1–2. See B O'Farrell, *Review of illegal offshore wagering: Report to the Ministers for Social Services and the Minister for Communication and the Arts*, December 2015, p. 38.

8 Explanatory Memorandum (EM), p. 1.

9 EM, pp. 4, 6. In his second reading speech, the minister stated that Australian licensed wagering operators began offering 'click to call' in-play betting services in 2015. Although the ACMA assessed that these services are 'potentially a prohibited interactive gambling service', the Australian Federal Police 'declined to investigate due to competing priorities and ambiguity around the legality of these services under the...[IGA]'. The Hon Alan Tudge MP, *Proof House of Representatives Hansard*, 10 November 2016, p. 2.

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- (d) amend the complaint handling process by providing that the ACMA is responsible for all stages of the complaint handling process, with the current mandatory requirements for the ACMA to refer matters to an Australian police force to be removed;
 - (e) enable the minister to determine by legislative instrument that, for the purposes of the IGA, a specific thing is, or is not, a 'sporting event';
 - (f) require the ACMA to maintain a register of eligible regulated interactive gambling services to 'to raise awareness among Australian customers of interactive gambling services that should be avoided, as evidenced by their non-inclusion on the register';¹⁰
 - (g) introduce measures relating to illegal offshore gambling activity that would allow the ACMA to disclose information obtained through the exercise of its powers under Parts 3, 4 and 5 of the IGA to the Department of Immigration and Border Protection¹¹ and foreign regulators; and
 - (h) remove the requirement for a report to be prepared and tabled in Parliament each calendar year on contraventions of Part 7A of the IGA—the EM advised that 'this information will be included in the ACMA's annual report, which is also tabled in Parliament'.¹²

1.8 To clarify that the provision of regulated interactive gambling services by unlicensed operators is prohibited (see paragraph 1.7(a) above), the bill proposes that two types of interactive gambling services would be recognised in the IGA:

- 'prohibited interactive gambling services', which would replace the term 'interactive gambling service' that is currently used in the IGA; and
- 'regulated interactive gambling services'.¹³

1.9 Following these amendments, the IGA would stipulate that a person is prohibited from providing regulated interactive gambling services to Australians unless the person holds a licence under the law of an Australian state or territory. An offence and civil penalty would exist for contraventions of this provision.

1.10 It is proposed that the amendments in the bill would commence 28 days after Royal Assent.

10 EM, p. 5.

11 The EM noted that these proposed amendments will allow the ACMA to disclose 'the names of directors or principals of offending gambling services so they may be able to be placed on the Movement Alert List, and also so any travel to Australia may be able to be disrupted'. EM, p. 2; schedule 1, items 1, 3 and 5.

12 EM, p. 73.

13 Together, these terms are referred to as 'designated interactive gambling services'.

Conduct of the inquiry

1.11 In accordance with its usual practice, the committee advertised the inquiry on its website and wrote to relevant individuals and organisations inviting submissions. The date for receipt of submissions was 21 November 2016.

1.12 The committee received 27 submissions, which are listed at Appendix 1. Form letters from 13 individuals were also received. The public submissions are available on the committee's website at www.aph.gov.au/senate_ec.

1.13 The committee also conducted a public hearing in Canberra on 28 November 2016. A list of the witnesses who gave evidence at that hearing is at Appendix 2.

1.14 The committee thanks all of the individuals and organisations that contributed to the inquiry.

Reports of other committees

1.15 When examining a bill or draft bill, the committee takes into account any relevant comments published by the Senate Standing Committee for the Scrutiny of Bills. The Scrutiny of Bills Committee assesses legislative proposals against a set of accountability standards that focus on the effect of proposed legislation on individual rights, liberties and obligations, and on parliamentary propriety.

1.16 In its *Alert Digest No. 9 of 2016*, the Scrutiny of Bills Committee stated that it had no comment on the bill.¹⁴

Scope and structure of the report

1.17 This report comprises two chapters. The next chapter outlines the principal issues raised in submissions and provides the committee's findings.

1.18 As noted above, the committee conducted a public hearing on 28 November 2016. The public hearing enabled committee members to seek clarification of aspects of the arguments made by stakeholders and otherwise informed the committee's deliberations. However, the reporting deadline limited the extent to which the evidence taken during the public hearing can be directly cited in this report. Accordingly, the report focuses on the evidence received in submissions.

14 Senate Standing Committee for the Scrutiny of Bills, *Alert digest*, no. 9 of 2016, November 2016, p. 4.

Chapter 2

Key issues

2.1 This chapter examines the evidence received by the committee in submissions to this inquiry. In some places throughout this chapter, the committee has decided to provide comments that respond to specific matters that have been raised. The committee's overall conclusions on the bill are at the end of the chapter.

Overall views on the bill

2.2 Many stakeholders advised that they support amendments to the *Interactive Gambling Act 2001* (IGA) and other legislation contained in the bill, as well as the Australian government's efforts to improve interactive gambling legislation more generally. The Synod of Victoria and Tasmania, Uniting Church in Australia, and Uniting Communities advised that they support the bill¹, as did the WA Parliamentary Secretary to the Minister for Racing and Gaming.² The Royal Australian and New Zealand College of Psychiatrists (RANZCP) commended the government 'for its work in ensuring gambling legislation keeps pace with the rapidly changing gambling industry'. The RANZCP advised that, overall, it 'fully supports proposals to amend the... [IGA] to strengthen enforcement mechanisms related to offshore gambling'.³

2.3 CrownBet and Betfair Australia described the bill as being:

...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.⁴

2.4 In outlining why it supports the bill, the Australian Hotels Association (AHA) explained that issues with the design and enforcement of the IGA mean there is a 'vacuum' in regulation at the Commonwealth level. It explained:

The federal government has limited involvement relating to the regulation of gambling with the...IGA...being its main regulation. However, the ingenuity of illegal foreign operators in the new digital economy, coupled with the lack of an appropriate federal government framework, have seen these operators effective in bypassing the protections, structures and returns

1 Synod of Victoria and Tasmania, Uniting Church in Australia and Uniting Communities, *Submission 4*, p. 1.

2 The Hon Colin Holt MLC, Parliamentary Secretary to the WA Minister for Racing and Gaming, *Submission 3*, p. 3.

3 Royal Australian and New Zealand College of Psychiatrists, *Submission 10*, p. 1.

4 CrownBet and Betfair Australia, *Submission 8*, p. [2].

set by the Commonwealth, states and territories. Illegal operators have also been well aware that the current federal laws are rarely if ever enforced. This Bill is welcomed as it aims to provide a legislative and regulatory framework to replace the current vacuum that exists at a federal level.⁵

2.5 The AHA is of the view that the bill 'will deliver improved harm minimisation for consumers, integrity of sport, and protection of Australian sports and industry'.⁶

2.6 The Communications Alliance and the Australian Mobile Telecommunications Association noted that comments they provided during departmental consultation on the exposure draft of the bill regarding the proposed register of eligible regulated interactive gambling services have been taken into account.⁷ The remainder of the joint submission from these communications industry bodies commented on the government's intent to consult with internet service providers about options to disrupt access to overseas-based online wagering providers who are not licensed in Australia. This is an issue under consideration by the government that is not addressed in the bill.

2.7 Harness Racing Australia (HRA) explained that it supports the bill, which it considered is 'a first step and reasonable start toward effective legislative reform to curb illegal wagering and minimise harm'. However, the HRA also commented on potential further disruption strategies considered by the Review that are not addressed in the bill.⁸

General comments on enforcement

2.8 Although stakeholders generally supported the proposed enforcement measures, some provided observations on the likely effects of the changes and suggested that additional measures are needed to support the new enforcement regime.

2.9 eCOGRA, which is a London-based organisation that provides self-regulation for members of the online gambling industry, argued that the key measures proposed by the bill need to be supported by:

- the replacement of the current state and territory licensing system with a national licensing scheme and national supervision of licence holders; and
- the implementation of 'national harm minimisation measures and consumer protection arrangements'.⁹

5 Australian Hotels Association (AHA), *Submission 24*, pp. 2–3.

6 AHA, *Submission 24*, p. 3.

7 Communications Alliance and the Australian Mobile Telecommunications Association, *Submission 5*, p. 1.

8 Harness Racing Australia, *Submission 7*, p. 2.

9 eCommerce on-line Gaming Regulation and Assurance (eCOGRA), p. 2.

2.10 In particular, eCOGRA considered that successful investigation and enforcement of the proposed civil penalties will face significant challenges. eCOGRA recognised that the proposed new enforcement regime 'will provide a greater deterrent to some';¹⁰ however, eCOGRA suggested that enforcement would be difficult in situations where the service providers 'are based in countries where the services are legal and are a substantial source of tax revenue for that country'. Furthermore, eCOGRA submitted:

Although civil penalties have a lower burden of proof in Australia, they will generally be no more enforceable in an overseas court than a criminal penalty (as they for the most part are characterised as fines).¹¹

2.11 The Synod of Victoria and Tasmania, Uniting Church in Australia, and Uniting Communities noted that the Australian Communications and Media Authority (ACMA) will need 'to be provided with sufficient resources to carry out enforcement activities'.¹²

Comments on specific measures

2.12 Some submissions expressed opposition to, raised drafting concerns about, or sought clarification on particular proposed amendments. This evidence is examined in the following sections.

Prohibition on providing unlicensed regulated interactive gambling services

2.13 Proposed new subsection 15AA(1) would make it an offence for a person to intentionally provide a regulated interactive gambling service that has an Australian-customer link without holding a relevant licence issued by a state or territory.

2.14 Crownbet and Betfair Australia expressed concern about the inclusion of the term 'intentionally'. Their submission argued:

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.¹³

10 eCOGRA, p. 6.

11 eCOGRA, p. 3.

12 Synod of Victoria and Tasmania, Uniting Church in Australia and Uniting Communities, *Submission 4*, p. 2.

13 CrownBet and Betfair Australia, *Submission 8*, p. [3].

Committee comment

2.15 As a matter of principle, the committee considers that the need to establish criminal intention is appropriate for the offence provision in proposed subsection 15AA(1). The committee notes that the term 'intentionally' is used in existing offences in the IGA, such as in subsection 15(1).

Online in-play sports betting and click to call betting

2.16 The Synod of Victoria and Tasmania, Uniting Church in Australia, and Uniting Communities, welcomed the proposed amendment that would address the issue of 'click to call' in-play betting. Their joint submission stated:

The Synod and Uniting Communities believe the Government is right to be concerned about in-play betting as it moves sports betting and other wagering to be more of a continuous form of gambling. It is the understanding of the Synod and Uniting Communities the continuous forms of gambling are more likely to be associated with harmful gambling behaviours, as noted in the Regulatory Impact Statement. The submitting bodies welcome the amendment to the Interactive Gambling Act to ensure no online wagering business licensed in future through any State or Territory in Australia will be able to offer 'click-to-call' in play betting.¹⁴

2.17 The Australian Psychological Society described the proposed prohibition on 'click to call' in-play betting services as being 'a good example of disruption of ready accessibility as a harm minimisation measure'.¹⁵

2.18 Sportsbet, however, expressed opposition to these proposed amendments. It considered that a ban 'will ultimately drive more Australians to wager with illegal offshore operators'.¹⁶

2.19 Various other stakeholders took the opportunity presented by the inquiry to argue that the prohibition on online in-play betting services should be removed. Bet365 attributed the high usage of illegal offshore wagering services by Australians to the prohibition of online in-play sports betting imposed by the IGA. In developing its argument, Bet365 highlighted the popularity of this service elsewhere:

Online in-play sports-betting, which we obviously do not offer to Australian residents, is by far the largest of bet365's wagering segments and accounts for 75% of our worldwide wagering turnover (even after turnover on racing is taken into account).¹⁷

14 Synod of Victoria and Tasmania, Uniting Church in Australia and Uniting Communities, *Submission 4*, p. 1.

15 Australian Psychological Society, *Submission 2*, p. 2.

16 Sportsbet, *Submission 19*, p. 2.

17 Bet365, *Submission 6*, p. 4.

2.20 Bet365 argued that removing the ban on online in-play sports betting would be the only effective means to reduce substantially the amount of illegal offshore wagering undertaken in Australia. Bet365 submitted:

No other strategy to reduce illegal offshore wagering will suffice—payment blocking and site blocking simply do not work and the offshore leakage in Australia is simply too big, and the resources too small, for other measures to do anything more than tinker around the edges of the problem.¹⁸

Definition of telephone betting service

2.21 The bill would provide that telephone betting services are not a prohibited interactive gambling service. To give effect to the prohibition on 'click to call' in-play betting services, the bill proposes amending the definitions of telephone betting service and voice call.

2.22 Proposed subsection 8AA(1) would provide that a telephone betting service is a gambling service where the service is provided on the basis that dealings with customers are wholly by way of voice calls made using a carriage service, and any conditions determined by the minister have been satisfied.

2.23 Under proposed subsection 8AA(3), a voice call would be defined as follows:

- (a) a voice call (within the ordinary meaning of that expression) the content of which consists wholly of a spoken conversation between individuals; or
- (b) if a call covered by paragraph (a) is not practical for a particular customer with a disability (for example, because the customer has a hearing impairment)—a call that is equivalent to a call covered by that paragraph.

2.24 Calls that include a recorded or synthetic voice or one or more tone signals are not covered by the above definition.¹⁹

2.25 Proposed subsection 8AA(8) would also provide that, despite the definition of a telephone betting service in proposed subsection 8AA(1), a gambling service is not a telephone betting service if the service is provided on the basis that any or all of the following information can be provided by a customer otherwise than by way of a voice call:

- a selection of a bet;
- a selection of a bet type;
- a nomination of a bet amount;
- a confirmation of a bet; and/or

18 Bet365, *Submission 6*, p. 5.

19 Item 25, proposed new subsection 8AA(4).

- information of a kind determined by the minister.

2.26 Tabcorp questioned whether the provision of betting account login information by a customer must be communicated by voice. It advised that this issue 'may not be a problem if it is clear that the list in [sub]section 8AA(8) is non-exhaustive but this aspect of the customer interaction was notable to us by omission'. Tabcorp suggested that, 'if the intention is that account or other identification information must be communicated by voice', then to subsection 8AA(8) should be 'amended accordingly to avoid doubt and ambiguity'.²⁰

Place-based betting service

2.27 The bill would introduce the concept of a place-based betting service and provide that it is an excluded service (that is, it would not be a prohibited interactive gambling service).²¹ The explanatory memorandum (EM) advised that this new definition is intended to clarify 'that electronic betting terminals can continue to be provided in places where the provider is licensed under a law of a State or Territory to provide such services (e.g. TABs, casinos, hotels and clubs)'.²²

2.28 Tabcorp supported the introduction of this measure. It stated:

Tabcorp welcomes the introduction of section 8BA and the recognition that pubs, clubs, TABs and race tracks in particular are accepted by the community as appropriate places to bet. These locations are already heavily regulated by State and Territory laws and operate within well-developed harm minimisation frameworks.²³

2.29 Tabcorp suggested, however, that the definition of a place-based betting service could be tightened by adding the following elements:

- that 'the relevant customer is actually at the particular place at the time the service is conducted'; and
- that 'the licensee is licensed (however described) under the law of the relevant State or Territory in which that place is located that authorises the provision of the service at that place'.²⁴

2.30 Tabcorp provided the following justification for its suggested amendments:

These suggested additions may seem nuanced but are important in the context of preserving the exclusive retail frameworks that apply to Australian totalisator operators. Totalisator operators have the important

20 Tabcorp, *Submission 18*, p. 2.

21 Items 23 and 27; proposed new paragraph 5(3)(aba) and section 8BA.

22 Explanatory Memorandum (EM), p. 2.

23 Tabcorp, *Submission 18*, p. 2.

24 Tabcorp, *Submission 18*, p. 2.

role of funding the Australian racing industry and contributing to various stakeholders including State and Territory governments, hotel and club owners and others.

Experience with the...[IGA] to date has shown that many domestic and international operators will look to exploit any perceived vulnerabilities in this regard.²⁵

2.31 Bet365 advised that it is opposed to the proposal for a place-based betting service to be an excluded service. Bet365 explained:

Whilst bet365 believes that the existing prohibition on online in-play sports-betting should be removed from the...[IGA], it does not believe that, whilst this prohibition remains in place, in-play betting that takes place via self-service terminals and/or tablets and other devices should be allowed. There is no justification for this carve-out.²⁶

2.32 Bet365 added:

This measure, if adopted, will mean that Commonwealth legislation for the first time will make certain types of online in-play betting on sport legal in Australia. There is no justification for why these 'placed based' types of in-play betting will be legal but the prohibition on in-play bets placed online will remain.²⁷

2.33 Bet365 continued that the proposed change 'will retrospectively legitimise the in-play sports-betting functionality on around 5000 self-service betting terminals in TABs, clubs and pubs' and 'will specifically allow for a very rapid expansion—especially by TAB outlets—of tablet/iPad-style devices with in-play sports-betting functionality into many more locations'.²⁸

2.34 CrownBet and Betfair Australia presented similar arguments regarding the proposed exclusion of place-based betting services. It submitted that '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'.²⁹ Furthermore, CrownBet and Betfair Australia argued that:

...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.

25 Tabcorp, *Submission 18*, p. 2.

26 Bet365, *Submission 6*, p. 1.

27 Bet365, *Submission 6*, p. 6.

28 Bet365, *Submission 6*, pp. 5, 7.

29 CrownBet and Betfair Australia, *Submission 8*, p. [4].

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.³⁰

2.35 Crownbet and Betfair Australia recommended that 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'. If, however, the exemption is allowed to remain, CrownBet argued it should be 'limited to electronic betting terminals (rather than "electronic equipment")' and subject to various restrictions.³¹

2.36 The AHA responded to the arguments made against place-based betting. The AHA countered that these arguments are not 'based on principles of harm minimisation or consumer protection'; rather, they are 'simply aimed at neutralising what the corporate bookmakers see as a lost commercial opportunity'. The AHA noted that 'many of the corporate bookmakers originate from the UK where they have always operated place-based wagering services'. The AHA observed:

...it is...open for the corporate bookmakers to gain place-based wagering licences, however they choose not to do so. This is because of the higher entry costs, their strong desire to not pay state based taxes, and the higher capital and servicing costs required to service place-based customers.³²

2.37 The AHA also responded to the arguments put forward about the 'electronic equipment' used in place-based betting. It submitted:

The Bill proposes to the effect to continue allowing place-based customers to use electronic equipment provided by a venue to place bets. It seems that this provision has raised objections amongst corporate bookmakers. The clear distinction between a Pub Tab and a corporate bookmaker is that the Pub Tab still offers better harm minimisation and consumer protection measures than an online corporate bookmaker.

For example, a key distinction between Pub Tabs and corporate bookmakers is that any bet placed with a Pub Tab by way of electronic equipment is that they must be by way of cash or a cash based card; credit card betting is expressly prohibited. In comparison, corporate bookmakers take deposits via credit card, thus enabling punters to bet with money they don't have.³³

30 CrownBet and Betfair Australia, *Submission 8*, p. [4].

31 CrownBet and Betfair Australia, *Submission 8*, pp. [4]–[5].

32 AHA, *Submission 24*, p. 4.

33 AHA, *Submission 24*, p. 5.

Definition of sporting events

2.38 The bill would enable the minister to determine by legislative instrument that a specific thing is, or is not, a 'sporting event'. Proposed subsection 10A(4) provides a list of 'examples of things' that the minister may specify are to be taken as a sporting event or not to be taken as a sporting event.³⁴

2.39 Free TV Australia advised that it does not support the approach taken in the bill to defining a sporting event. Free TV considers that the drafting:

...leaves a core regulatory obligation to be determined by the Minister, creates significant uncertainty regarding the impact of the Bill and exposes regulated parties to potentially significant regulatory change on short notice.³⁵

2.40 Free TV argued that the bill 'should be amended to include a definition of sporting event or alternatively, the proposed legislative instrument should accompany the bill'.³⁶

2.41 Tabcorp supported the proposed ministerial discretion for determining what is a sporting event. Tabcorp submitted that this approach 'is well-considered and provides appropriate flexibility to accommodate changes and new events over time'.³⁷ Nevertheless, Tabcorp called for an exposure draft of the legislative instrument to be released 'in the near term'. It submitted:

The changes being instituted by the Bill will require changes to current systems and processes for Tabcorp and other operators. Early insight in relation to the proposed outcome will allow for the requisite transition planning to occur.³⁸

2.42 Crownbet and Betfair also expressed support for the ministerial determination proposal, although it expressed concerns about the definition of a sporting event. Crownbet and Betfair submitted:

...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'.³⁹

34 The list comprises the following: a match; a series of matches; a race; a series of races; a stage; a time trial; a qualification session; a tournament; and a round.

35 Free TV Australia, *Submission 11*, pp. 1–2.

36 Free TV Australia, *Submission 11*, p. 2.

37 Tabcorp, *Submission 18*, p. 3.

38 Tabcorp, *Submission 18*, p. 3.

39 CrownBet and Betfair Australia, *Submission 8*, p. [5].

2.43 Crownbet and Betfair used a golf tournament to illustrate their concerns:

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.⁴⁰

2.44 CrownBet and Betfair argued that events such as golf tournaments and test cricket matches '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'. Accordingly, CrownBet and Betfair recommended that the bill be amended to introduce a new concept of a 'scheduled extended play break', which would be used to 'provide 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'. It was suggested that a scheduled extended play break could be defined 'to include any hiatus in play which extends overnight, or for more than a prescribed period (e.g. 2 hours)'.⁴¹

2.45 Sportsbet raised similar concerns and also suggested that the bill be amended to introduce the concept of a scheduled extended play break, which it considered should be 'defined to include any hiatus in play which extends for a prescribed period of more than 1 hour'.⁴²

2.46 The EM envisaged that arguments about the nature of sporting events would be put forward. The following statement in the EM addressed this issue and emphasised that the ministerial determination would enable flexibility where needed:

From time to time, gambling operators claim that parts of sporting events, such as the innings of a test cricket match, are sporting events in their own right. It is therefore necessary to provide clear direction about what is to be treated as a sporting event in particular for the purposes of the prohibition against in-play betting on sporting events. Sporting events and betting markets continually evolve both in Australia and overseas so it is also necessary that specific rules can be developed in a timely fashion for new forms of a current sport or new sports. Allowing for the making of

40 CrownBet and Betfair Australia, *Submission 8*, pp. [5]–[6].

41 CrownBet and Betfair Australia, *Submission 8*, p. [6].

42 Sportsbet, *Submission 19*, p. 2.

legislative instruments on this matter enables direction to be provided while allowing sufficient flexibility to deal with change.⁴³

2.47 Finally, Free TV Australia queried the status of horse, harness and greyhound racing events. The ban on in-play betting does not apply to horse, harness and greyhound racing events; however, Free TV suggested that the minister could include these racing events in a ministerial determination of what is, and what is not, a sporting event. The effect of this, according to Free TV, would be the introduction of 'a new ban on bets taken after a horse race, harness race or greyhound race have commenced'. Free TV argued that the bill should be amended to 'make it clear that horse, harness and greyhound races are not and cannot be sporting events and, therefore, continue to be excluded from the ban on in-play betting'.⁴⁴

Committee comment

2.48 The committee draws the evidence regarding the status of events such as golf tournaments and cricket matches to the government's attention for consideration as to whether amendments are required.

2.49 In relation to the concerns about the status of in-play betting on horse, harness and greyhound races, the committee makes the following observations. Proposed new subsections 8A(1) and (2) expressly provide that a service is an excluded wagering service to the extent to which the service relates to betting on, or on a series of, a horse race, a harness race or a greyhound race so long as the other conditions (if any) determined by the minister have been satisfied.⁴⁵ The bill then separately deals with sporting events in proposed new subsections 8A(3) and (4). The bill provides that a service is an excluded wagering service in relation to a sporting event, among other things, to the extent that the service is not an in-play betting service. The bill does not apply this requirement to the races specified in proposed subsection 8A(1).

2.50 Accordingly, the committee does not agree that the bill can be interpreted to enable the minister, through a legislative instrument that determines sporting events, to affect the treatment of horse, harness and greyhound races.

Advertising

2.51 Section 61FD of the IGA provides that licensees under the *Broadcasting Services Act 1992* are subject to the condition that they will not broadcast an interactive gambling service advertisement. The bill would change this requirement to provide that a licensee cannot broadcast a designated interactive gambling service advertisement. This includes both prohibited interactive gambling services and unlicensed regulated interactive gambling services.

43 EM, p. 4.

44 Free TV Australia, *Submission 11*, p. 3.

45 Item 26, proposed new subsections 8A(1) and (2).

2.52 Free TV Australia noted that unlicensed regulated interactive gambling services 'include foreign state operated or licensed totalisators, lotto and lotteries as well as foreign bookmakers', some of which are 'likely to appear as sponsors of racing and sporting events broadcast in Australia'.⁴⁶ Free TV argued that the proposed amendment 'means that broadcasting of foreign content and live coverage of overseas sport will carry substantial increased risk'.⁴⁷ It added:

While we note the exceptions in relation to accidental or incidental publication and publication by persons not receiving any benefit (at ss 61ED and 61EE), the expanded advertising prohibition and licence condition significantly increases the number of brands and sponsors made subject to the ban that must be recognised by broadcasters, and will potentially prohibit content for which no consideration has been received by the broadcasters, if the content does not fall within the narrow confines of 'accidental or incidental'. For example, bona fide news and sports coverage could potentially be captured if it includes a direct intentional reference to a lottery or bookmaker that was licensed in the relevant country of origin.⁴⁸

2.53 Free TV also referred the committee to section 92 of the *Regulatory Powers (Standard Provisions) Act 2014*, which, among other things, states that a person must not 'aid, abet, counsel or procure a contravention of a civil penalty provision'. A person who contravenes this requirement relation to a civil penalty provision is taken to have contravened the provision. Free TV expressed concerns that the proposed civil penalty provisions would mean that:

...any person involved with the publication of footage which contains a reference to an unlicensed gambling service, may find themselves in breach of the relevant civil penalty provision under the IGA.⁴⁹

Committee comment

2.54 The committee notes that the intention of the advertising restrictions is to prevent designated interactive gambling services being advertised to Australians. The committee also notes that when the advertising restrictions were originally introduced, it was acknowledged that unintended consequences of the advertising prohibition could arise.⁵⁰ Accordingly, section 61BGA provides a regulation-making power that can exempt particular types of advertisements. If the government considers the concerns about the implications of the bill for broadcasters have merit, the regulation-making power could be used to provide certainty to broadcasters.

46 Free TV Australia, *Submission 11*, p. 2.

47 Free TV Australia, *Submission 11*, p. 3.

48 Free TV Australia, *Submission 11*, p. 2.

49 Free TV Australia, *Submission 11*, p. 3.

50 Explanatory Memorandum, Interactive Gambling Amendment Bill 2001.

'Other events or contingencies'

2.55 Under proposed section 8A, excluded wagering services are determined with reference to three categories: betting on racing, on sporting events and on other events or contingencies. Regarding the third category, proposed paragraph 8A(5)(a) refers to 'an event', 'a series of events' or 'a contingency'. Free TV submitted:

...the Bill seems to permit betting on the outcome of a series of events that are 'actual or contemplated' but does not permit betting on whether or not particular events will happen (i.e. contingencies). Accordingly, it appears unclear how the provision applies to services which relate to betting on a series of contingencies, for example, such as commonly occur in fantasy sports and novelty bets. Fantasy sport and novelty betting are recognised forms of wagering.

The selection of a successful fantasy sports team requires a close familiarity with players and relative player performance. It involves betting on a combination of events and contingencies but does not involve impulsive or in-play betting. This form of wagering is very popular in the United States and the UK and of increasing popularity in Australia. The amended law and EM should make clearer that Australian licensed fantasy wagering services and novelty bets are excluded wagering services for the purposes of the Act.⁵¹

2.56 Free TV recommended that the bill be amended:

- so that the definition of excluded wagering service in proposed paragraph 8A(5)(a) also includes 'a series of contingencies'; and
- to provide that betting on events and contingencies, or a series of events and contingencies 'individually or in combination, including as may occur in a sporting event or series of sporting events' is permitted.⁵²

Committee comment

2.57 The EM noted that the amendments to the definition of excluded wagering services in proposed section 8A are, with some exceptions, 'largely intended to simplify the drafting of the definition, without substantially changing the effect of the provisions'.⁵³

2.58 The IGA currently uses the terms 'an event', 'a series of events' and 'a contingency' to refer to betting on things other than a horse race, a harness race, a greyhound race or a sporting event. The committee notes that the overall intent of this amendment is to simplify the existing drafting; however, the committee draws the

51 Free TV Australia, *Submission 11*, p. 4.

52 Free TV Australia, *Submission 11*, p. 4.

53 EM, p. 52.

evidence received from Free TV Australia to the government's attention in case further amendments would be desirable to update the legislation.

Online poker services

2.59 The committee received a small number of submissions and form letters from individuals expressing concern about the consequences of the bill for online poker services. Online casino-style gaming services of chance or mixed skill and chance, such as poker, which are played for money or anything else of value, are currently prohibited services under the IGA.⁵⁴ The submissions called for the bill to be amended to enable reputable operators of online poker services to be licensed to offer online poker in Australia. In support of this argument, submitters noted the following:

...thousands of Australians enjoy playing online poker recreationally as an entertaining gambling game of skill, as opposed to other forms of gambling like online slots/pokies that are games of chance with no skill aspect, no social aspect and increased risks of problem gambling for consumers.⁵⁵

2.60 The following extract from the submissions is the crux of the issue:

We believe it is our right as consenting adults to participate in a game of skill with our money for entertainment if we choose to do so.⁵⁶

Committee comment

2.61 The submissions relating to online poker services demonstrate the balance between individual freedoms and harm minimisation that gambling regulation strikes. People who gamble responsibly and are willing to take responsibility for their own actions understandably object to their activities being restricted. However, the regulatory framework recognises that problem and at-risk gamblers can be exposed to significant danger. Problem gambling affects not just the individuals concerned; there are considerable flow-on effects for others in society.

2.62 The bill does not change the existing policy decisions about what services should be available and how they should be regulated. Rather, the bill seeks to enforce the original intent of the IGA, which is to minimise the scope of problem gambling amongst Australians. Whether particular services should no longer be restricted under the IGA is a separate question that this committee was not asked to consider as part of this inquiry.

54 Explanatory Memorandum, p. 13.

55 *Form Letter 1*, p. 1.

56 *Form Letter 1*, p. 1.

Committee view

2.63 The IGA was enacted in 2001 following concerns that online gambling services had 'the potential to greatly increase the accessibility to gambling and exacerbate problem gambling among Australians'.⁵⁷ It is apparent that this prediction has been realised. The overall online wagering market in Australia has had an annual growth rate of 15 per cent since 2004. Although the amount of gambling expenditure by Australians on offshore websites is difficult to estimate, upper estimates place it at \$400 million per year. In addition, evidence suggests that the rate of problem gambling among interactive gamblers is higher than the rate among all gamblers.⁵⁸

2.64 In light of these findings, the committee considers that any identified weaknesses in the existing regulatory framework need to be addressed promptly. The bill contains important amendments to the IGA in this regard. Following the in principle agreement between the Australian, state and territory governments reached on 25 November 2016, the bill will also be supplemented by a national consumer protection framework for online wagering. Among other things, the framework will include:

- a national self-exclusion register for online wagering;
- a voluntary pre-commitment scheme for online wagering; and
- prohibition of lines of credit being offered by wagering providers.⁵⁹

2.65 The amendments proposed in the bill will enable consumers to be better informed, allow enforcement that is more effective and will enhance the deterrent effect of the IGA. In particular, the bill would address the ambiguity around the legality of gambling services under the IGA and would introduce a civil penalty regime that will support the existing criminal provisions. Consumers also benefit from other proposed measures that will improve complaints handling processes and ensure information indicating which operators are providing legal services is readily available.

2.66 Nevertheless, the committee recognises that if the proposed changes are enacted, it is likely that successful enforcement of the IGA will continue to be challenging. As the requirement for an annual report to Parliament on contraventions of Part 7A of the IGA will be repealed by the bill, it is particularly important that the ACMA includes useful information about the enforcement of the IGA in its annual report to enable senators and policymakers to monitor the effectiveness of the legislation.

57 Explanatory Memorandum, Interactive Gambling Bill 2001, p. 1.

58 B O'Farrell, *Review of illegal offshore wagering: Report to the Ministers for Social Services and the Minister for Communication and the Arts*, December 2015, pp. 38, 46 and 52.

59 The Hon Alan Tudge MP, 'Gambling Ministers agree to consumer protection framework for online wagering', *Media release*, 25 November 2016.

2.67 Although the committee agrees with the overall approach and drafting of the bill, the committee acknowledges that some stakeholders have raised technical issues or are seeking clarification on specific matters. These technical drafting matters do not change the committee's overall view on the bill: the committee recommends that the bill be passed as it contains sensible measures that should be in force as soon as possible. Nevertheless, in this report the committee has highlighted the drafting matters and specifically drawn some issues to the government's attention for consideration before the bill is debated in the Senate. In addition, the committee notes that parts of the explanatory memorandum could be revised to provide the clarification sought by stakeholders.

Recommendation 1

2.68 The committee recommends that the bill be passed.

Senator David Bushby
Chair

Additional comments from the Nick Xenophon Team

Use of electronic devices in licensed venues

1.1 The Nick Xenophon Team (NXT) are concerned that provisions in the Interactive Gambling Amendment Bill 2016 provide further opportunities for licensed betting venues to offer electronic betting devices. Section 8BA of the proposed amendment provides for venues to loan customers electronic equipment for gambling use.¹ The NXT has concerns that this bill allows for place-based electronic betting through the introduction or expansion of electronic devices such as tablets and smartphones, which provide for in-play betting, and allow fast betting opportunities.

1.2 In the bill's Explanatory Memorandum, the definition of 'electronic device' is not explained or expanded upon.² This definition currently includes venue kiosks, but is not restricted to such devices.

1.3 As raised by Bet365 in their submission, this amendment allows for the expansion of the use of electronic devices including tablets and smartphones with an in-play betting function within licensed betting venues.³ In response to our question on notice regarding concerns about the continued availability of in-play betting, the Department stated that:

The 'place-based betting service' exemption in proposed section 8BA is intended to permit betting services, including potentially in-play betting services, to be provided on electronic equipment (which may include easy betting terminals and/or tablets) made available to customers in places such as TABs, casinos and clubs.⁴

1.4 In response to concerns raised by Senator Kakoschke-Moore during a public hearing, the Department stated they have in fact done no modelling to determine whether this amendment will lead to an uptake of betting in venues, due to the increased availability of these electronic devices:

Senator KAKOSCHKE-MOORE: Have you done any modelling to anticipate the increase in uptake of betting in venues via the increased availability of smartphones or tablets?

Dr Pelling: No, but I think the point is, as we have said, this is about making sure that we clarify in the act that services which are already

1 Interactive Gambling Amendment Bill 2016, s. 8BA.

2 Explanatory Memorandum (EM), p. 5.

3 Bet365, *Submission 6*, p. 2.

4 Department of Communications and the Arts, Answers to questions on notice, 28 November 2016 (received 29 November 2016).

available continue to be available where they are licensed by states and territories in those sorts of venues.⁵

1.5 The NXT is concerned that it appears as if the amendment will expand the opportunities for in-play betting, without addressing any of the concerns that this may increase opportunities for gambling, and create faster betting options.

Harm minimisation

1.6 In their submission, CrownBet and Betfair Australia described the bill as being a step forward to ensuring that all Australian consumers are protected by the same harm minimisation strategies as 'offered by the licensed and regulated Australian wagering industry'.⁶ The NXT has concerns that as the current harm minimisation tactics used within licensed venues are inadequate, these new strategies will be largely ineffective.

1.7 During the public hearing, Senator Kakoschke-Moore asked the Department whether they were satisfied that the harm minimisation strategies, which are in place at hotels and pubs, are actually working. Dr Simon Pelling, a First Assistant Secretary of the Department of Communications and the Arts, stated that ensuring harm minimisation strategies are effective is a matter for the states and territories.⁷ The NXT believes more can be done at a federal level to improve harm minimisation.

1.8 In their submission, the Australian Hotels Association (AHA) also regarded the bill as a vehicle to improve harm minimisation for consumers.⁸ It appears this amendment provides for the expansion of the gambling market as more betting devices will be available for use within venues. We note it could hardly be argued that the expansion of the gambling market would result in better outcomes for problem gamblers, and people prone to gambling addiction.

1.9 NXT notes that when Senator Xenophon asked what responsible gambling codes of practices the AHA rely upon to ensure that there are strategies to deal with problem gambling, the representative from AHA was unable to name one. It is concerning that the representative from AHA supports in-play betting within licensed venues as he believes that current harm minimisation strategies are effective, without being able to recall a guideline or code of practice:⁹

Senator XENOPHON:...Finally, there is always an issue about how to deal with problem gambling and safeguards in terms of determining whether

5 *Committee Hansard*, 28 November 2016, p. 10.

6 CrownBet and Betfair Australia, *Submission 8*, p. [2].

7 Dr Simon Pelling, First Assistant Secretary, Department of Communications and the Arts, *Committee Hansard*, 28 November 2016, p. 11.

8 Australian Hotels Associations (AHA), *Submission 24*, p. 2.

9 Mr Stephen Ferguson, Chief Executive Officer, Australian Hotels Association, *Committee Hansard*, 28 November 2016, p. 3.

someone is a problem gambler. Can you please provide on notice, given that this is going to be a new service, the code of practice, the responsible gambling code that you rely on or your training manuals for how you determine whether someone within a venue has gambling problems and how you intervene? Presumably, you have manuals.

Mr Ferguson: To clarify: betting in play in hotels is not a new service. This has been occurring since 2001 and did not form part of this review. The answer to the question would be that every venue has practices in place that are often—

Senator XENOPHON: There is no uniform practice?

Mr Ferguson: It is state by state, territory by territory.

Senator XENOPHON: What about one or two jurisdictions, if you can? Just point us to them and how they deal with it. That is all I ask.

Mr Ferguson: I do not have that with me.¹⁰

1.10 The lack of a definition for 'electronic devices' within the amendment appears to provide an opportunity for gambling services to expand their bet-placing opportunities within licensed venues, allow in-play betting within an electronic device, and decrease waiting times to place bets.

1.11 The NXT are concerned about the impact these amendments might have on problem gamblers, and the lack of protection the amendment provides. In our experience working with problem gamblers, staff rarely intervene in betting venues when they believe a customer is struggling to control their gambling. These promoted 'harm minimisation' strategies rarely achieve their desired results, and with the proposed expansion of betting devices within venues due to this amendment, the NXT considers that this amendment is problematic.

Senator Nick Xenophon
Senator for South Australia

Senator Skye Kakoschke-Moore
Senator for South Australia

Appendix 1

Submissions and additional information received by the committee

Submissions

- 1 eCOGRA
- 2 Australian Psychological Society
- 3 Government of Western Australia
- 4 Synod of Victoria and Tasmania, Uniting Church in Australia, and Uniting Communities
- 5 Communications Alliance and Australian Mobile Telecommunications Association
- 6 Hillside (Australia New Media) Pty Ltd t/a bet365
- 7 Harness Racing Australia
- 8 CrownBet and Betfair Australia
- 9 Name Withheld
- 10 The Royal Australian and New Zealand College of Psychiatrists
- 11 FreeTV Australia
- 13 Name Withheld
- 14 Mr Martin Kozlov
- 15 Name Withheld
- 16 Mr Shane Murray
- 17 Mr Ricky Vikas
- 18 Tabcorp Holdings Limited
- 19 Sportsbet Pty Ltd
- 20 Forsius Consulting (Australia) on behalf of Netsweeper
- 21 Name Withheld
- 22 Mr Chris Morosini
- 23 Mr Michael Bannar-Martin
- 24 Australian Hotels Association
 - Correction to submission
- 25 Name Withheld
- 26 Name Withheld
- 27 Mr Cohen Borgault Van De Coudray
- 28 Mr Dylan Parker

Form letters

Form letter type 1: 13 received

Answers to questions on notice

Australian Hotels Association – answers to written questions on notice, received 29 November 2016

Australian Hotels Association – 'Tabcorp Wagering Responsible Gambling Code of Conduct', provided as an answer to a question taken on notice, received 29 November 2016

Department of Communications and the Arts – answers to written questions on notice, received 29 November 2016

Appendix 2

Public hearing

Monday, 28 November 2016 – Canberra

Australian Hotels Association

Mr Stephen Ferguson, Chief Executive Officer

Department of Communications and the Arts

Dr Simon Pelling, First Assistant Secretary, Content Division

Mr Andrew Verdon, Manager, Online Gambling