ADDISONS

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Gambling Law & Regulation

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Overview

Welcome to Addisons' August 2014 Gambling Law Newsletter.

This Newsletter covers some of the many developments affecting Gambling Law and Regulation in Australia which have occurred in the first half of 2014. Our difficulty has been limiting the topics that could be covered by our Newsletter.

Of particular note in the first half of 2014 are:

- The differing results in the claims brought by each of Tatts and Tabcorp against the Victorian Government resulting from the decision of the Victorian Government to proceed with a new regulatory regime relating to the supply of gaming machines to venues in Victoria. It is not just the size of the claims brought, which total in excess of $1 billion, that makes these decisions interesting, but more the recognition that scope does exist for disputes between gaming licensees and governments to become the subject of litigation. It is not often the case that dealings between governments and gaming licensees, at least in the Australian environment, are the subject of examination by a Court. These cases are particularly interesting as they confirm the uncertainty and insecurity associated with gambling licences due to the concept of sovereign risk. These issues are assessed in this Newsletter in "Gambling Licences. With One Hand a Licence May Be Given By Government, with the Other Hand, the Licence May Be Taken Away."
- With the election of the Federal Coalition Government in late 2013, the previous Government's reforms relating to gaming machines and its mandatory pre-commitment policy were at risk. This was confirmed in legislation passed by the Federal Parliament earlier this year, which is examined in this Newsletter in "Poker Machines and (No More) Mandatory Pre-Commitment: Federal Government Repeals National Gambling Reform Legislation."
- Australian privacy law reforms have also had impact on the gambling sector. One aspect of those reforms not contemplated previously relates to the potential application of those reforms to gambling operators providing credit to customers. This issue is examined in "Privacy Law and Credit Reporting: Do You Offer Your Customers Credit Betting? You May Be a "Credit Provider"!"
- The issue of sports integrity affects an increasing number of our clients. There has been significant publicity given to this issue in Australia, including with the arrest that took place at the Australian Open in January relating to "courtsiding" (which resulted in a prosecution later being withdrawn) and successful prosecutions being brought in Victoria under specific match fixing legislation. Our article entitled "Match-Fixing and Betting on Semi-Professional/Amateur Leagues: The Challenge Facing Australian Sport" examines those prosecutions (which relate to matches involving the Southern Stars Football Club), the relationship between sports integrity and wagering operators in the Australian environment, and the conundrum that exists between sports betting, sports integrity and the involvement of amateur sport.
- The UK Gambling Commission has introduced reforms which will alter the licensing scheme to one of 'point of consumption' rather than 'point of supply'. It remains unclear whether applicants for UK gambling licences who provide services to residents of countries outside the UK who wish to advertise their brand in the UK (for example, by sponsoring a Premier League team) will be required to "please explain" to the Commission the legality of their provision of services outside the UK. In the case of applicants providing services to Australian residents, this will require consideration of the Interactive Gambling Act and other relevant laws. This issue is discussed in further detail in "From Liverpool FC to Australia: The Long Arm of the UK Gambling Reforms. How will Operators Offering Online Gambling Services to Australians be Affected?"

- Our final articles, "Changes to the Laws Relating to Gambling Advertising in South Australia: What Does Your Marketing Manager Need to Know Before You Advertise Wagering Services in South Australia?" and "The Australian Taxation System: What Do Wagering Operators Need To Know?" summarise, respectively, the Australian taxation system and how it applies to wagering operators, and issues that arise in conducting nationwide advertising campaigns for wagering operators and addressing specific legislative requirements in South Australia.

Unfortunately, we were not left with enough space to address other developments that have occurred recently in the Australian gambling environment. These developments include:

- The approval of Crown, and key personnel, by the New South Wales Independent Liquor and Gambling Authority, in connection with its application lodged almost 18 months ago to operate a casino as part of the Sydney Barangaroo development;
- The decision by the Queensland Government to select a shortlist of potential operators of new casinos in Queensland;
- The involvement of the ACCC in two different gambling matters, namely:
  - its investigation of the acquisition by the developer of a recently announced casino resort in Cairns of the existing Cairns casino; and
  - the request for authorisation by Tabcorp of the proposed international pooling arrangements involving the pari-mutuel pools managed by Tabcorp (which covers Victorian and New South Wales pools) with overseas pari-mutuel pools;
- The extension of the Victorian sports betting model to New South Wales; and
- Changes in the racefields policies of many Australian racing bodies.

We will endeavour to cover these topics and others in our next Newsletter. For further information relating to any of the matters in this Newsletter or any other Gambling Law Newsletter, please feel free to contact one of the Addisons' Media and Gambling Team.

NOTE THE DATE

Jamie Nettleton and Professor I. Nelson Rose will be presenting a Gambling and the Law course at the University of Melbourne from 18–22 May 2015.

For further information, please contact Hayden Opie at the University of Melbourne Law School on +61 3 8344 6197 or at hopie@unimelb.edu.au.

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Gambling Licences. With One Hand a Licence May Be Given By Government, with the Other Hand, the Licence May Be Taken Away

Author: Jamie Nettleton

Lessons for Gambling Licensees from Tatts v Victoria[1] and Tabcorp v Victoria[2], recent decisions of the Victorian Supreme Court.

Last month, two apparently conflicting court decisions were handed down in Australia involving disputes between a state government and its principal gambling licensees. In a decision which will send shockwaves through Australian governments and regulators, Tattersalls (or Tatts) was successful in its claim against the Victorian Government, arising from the termination by that Government of Tatts' gaming machine licences.

A Notice of Appeal has been lodged by the Victorian Government. If this decision is confirmed on appeal, Tatts will recover an amount in excess of $500 million from the State of Victoria.

The Tatts decision was awarded by the Victorian Supreme Court on the same day as the Court's decision in the claim brought by Tabcorp. However, in that case, the Court came to a different conclusion, finding in favour of the Victorian Government. Accordingly, the claim brought by Tabcorp to recover over $650 million was unsuccessful. Tabcorp has since lodged a Notice of Appeal to the Victorian Court of Appeal.

These claims arose from the decision of the Victorian Government in 2008 to change the regulatory structure relating to gaming machine licensing in Victoria. Among the changes effected was the replacement of the duopoly held by Tatts and Tabcorp relating to the supply and operation of gaming machines with arrangements under which venues would hold operating licences directly. At the same time, it was announced that neither Tabcorp nor Tatts would be entitled to any compensation arising from the expiration of their licences in 2012.

Needless to say, claims were made by each of Tatts and Tabcorp to recover the monies paid under their licences to the Victorian Government. At first blush, it might seem odd that different decisions were reached in respect of the two claims. Even though this disparity may not occur once the appeals are determined, the Court held that the dealings of each of Tatts and Tabcorp with the Victorian Government were different. This led to different results.

The factual matrix is unusual as it arose from the following combination of factors:

- the legalisation of gaming machines in Victoria;
- how best to roll out gaming machines in a manner that was in the best public interest;
- the necessity to maximise the sales proceeds upon the privatisation of the Victorian TAB; and
- the basis on which existing licensees may be prepared to make payments in respect of current gaming licences even though granted initially for no consideration (on the basis that significant investment was required).

Yet, these decisions are illuminating as they provide useful guidance for regulators, governments, prospective gambling licensees and their advisers facing similar issues.

A chronology of the background to the decision is available on request.[3]

[1] *Tatts Group Limited ACN 108 686 040 v The State of Victoria* [2014] VSC 302.
[2] *Tabcorp Holdings Limited ACN 063 780 709 v The State of Victoria* [2014] VSC 301.
[3] Please contact Jamie Nettleton at jamie.nettleton@addisonslawyers.com.au to request a copy.

We set out below some of the core principles stated in the decisions of the Court:

- Any gambling licence, and the underlying legislation, is subject to change, or even cancellation of the licence, if the government changes its policy. This concept of 'sovereign risk' must be recognised generally – parties to a contract with government must understand that a government cannot commit itself to future executive or legislative action.
- Governments granting gambling licences may seek to maximise the sales proceeds/monetary compensation payable by the licensee in respect of any licence, perhaps on the basis of certain rights or undertakings given to the licensee by the government. Care should be taken by a licensee in placing reliance on any statutory provision to obtain a level of comfort that the government will honour its side of the bargain.
- It is possible for a gaming licensee to hold concurrent statutory and contractual entitlements.
- Contracts, including with government, should be interpreted in a manner so as to avoid commercial nonsense or to give rise to commercial inconvenience.
- If language of a contract may be given two different constructions, it is preferable to give effect to an interpretation which avoids consequences that are capricious, unreasonable, inconvenient or unjust.
- A statutory entitlement may be repealed by subsequent legislation. This does not mean automatically that a concurrent contractual entitlement is cancelled.

The decisions in the two cases are easier to reconcile on a closer read. In summary:

- Neither Tatts nor Tabcorp had a claim under statute to recover compensation following the introduction of a new statutory licensing regime relating to gaming machines upon the expiration of their respective licences.
- This right did not exist despite specific statutory provisions being enacted which contemplated a payment being made to the respective pre-existing licensee (i.e. Tatts and Tabcorp) upon new licences being granted.
- Prior to the enactment of the relevant statutory provisions, Tatts had entered into an agreement with the Victorian government under which the State committed to make a payment to Tatts if a new gaming operator's licence were not issued to Tatts upon expiration of its current licence. (It was agreed that no payment would be due if no licence were issued.)
- No binding agreement of this nature was entered into between the Victorian government and Tabcorp.
- The contract between Tatts and the government operated concurrently with the statute – it was not affected by subsequent legislation.

Much of the reasoning of the Court is dependent on specific principles of statutory and contractual interpretation and the detailed wording of the relevant contract and the statutory provisions.

Yet, due to the complexity of the issues under consideration, a significant number of findings were made by the Court, with many of them being interdependent. Both for this reason and due to the amounts involved, it was anticipated that appeals would be lodged from the Court's findings. This has proved correct, with Tabcorp lodging an appeal on 9 July 2014 – the Victorian Government has also lodged an appeal in respect of the decision in favour of Tatts.

Poker Machines and (No More) Mandatory Pre-Commitment: Federal Government Repeals National Gambling Reform Legislation

Authors: Jamie Nettleton, Jessica Azzi and Karina Chong

The Coalition Federal Government has made it clear that, in relation to the Australian gambling industry, they will be undertaking a *"different approach to addressing problem gambling, reducing bureaucracy and the duplication of functions between the Australian Government and State and Territory Governments"*[1] One of the first acts of the Federal Government following its election in September 2013 was to repeal a number of the national gambling reforms that were enacted by the former Labor government in 2012.[2]

We have previously written about the *Social Services and Other Legislation Amendment Bill 2013* (Cth) in our Focus Paper, "Australia: Gambling Law Developments – Federal Government Proposes to Repeal National Gambling Reforms".[3] This Bill was passed earlier this year (the **Amendment Act**) and it took effect on 31 March 2014.

The Amendment Act repeals both the *National Gambling Reform (Related Matters) Acts (No.1) and (No.2).* This legislation had been enacted by the previous Federal Labor government under the *National Gambling Reform Act* 2012 (Cth) (the **NGR Act** and, collectively, the **NGR Legislation**). The Amendment Act also renames the NGR Act as the *Gambling Measures Act* 2012 (Cth) (**New Legislation**).

How does the Amendment Act amend Australian gambling law?

The principal effect of the Amendment Act is to reflect the Federal Government's preference and support for the national implementation of a voluntary pre-commitment scheme. This position is in contrast to the former Labor government's preference and support for a mandatory pre-commitment scheme, which was set out in the NGR Legislation. In addition, the Amendment Act abolished:

- the National Gambling Regulator and the associated supervisory and gaming machine regulation levies;
- the requirement that ATMs on gaming premises (except casinos) must impose a daily limit, restricting an individual from withdrawing more than $250 in cash using one card in a 24 hour period;
- the obligation on manufacturers and importers of electronic gaming machines to ensure that their machines are capable of implementing pre-commitment systems;
- the requirement to implement the state-linked trials on mandatory pre-commitment capability;
- the requirement for dynamic warning messages to be displayed on gaming machines;
- the requirement to refer certain matters to the Productivity Commission for review and report; and

[1] Explanatory Memorandum, Social Services and Other Legislation Amendment Bill 2013, p. 1.
[2] For further information about the Labor government national gambling reforms, please see our Focus Paper "Gaming Machines and Pre-Commitment: National Gambling Reforms Become Law – National Gambling Reform Act 2012, National Gambling Reform (Related Matters) Act (No. 1) 2012 and National Gambling Reform (Related Matters) Act (No. 2) 2012: http://www.addisonslawyers.com.au/knowledge/assetdoc/c9685756ad57bbc8/gaming%20machine.pdf.
[3] See: http://www.addisonslawyers.com.au/knowledge/Australia__Gambling_Law_Developments_-_Federal_Government_Proposes_to_Repeal_National_Gambling_Reforms539.aspx.

- all compliance and enforcement provisions relating to the above.It is important to note that Victoria has decided to proceed with a mandatory pre-commitment scheme for gaming machines. This is provided for by the *Gambling Regulation Amendment (Pre-commitment) Act* 2014 (Vic), which was enacted in February 2014. The Victorian pre-commitment scheme will remain in effect irrespective of the Amendment Act.The Victorian government is proceeding with the preparatory stages of implementing the pre-commitment scheme which will come into effect on December 2015.

What impact will this have on the Australian gambling industry?

As set out above, the Amendment Act abolishes many of the mandatory requirements that would have been placed on stakeholders in the gambling industry by the NGR Legislation.

As a result, the focus of the New Legislation is limited to the following:

a) the Federal Government's intention to work closely with the State and Territory Governments, the gaming industry, academics, and the broader community, to develop and implement a voluntary pre-commitment system nationally and develop a realistic timetable for implementing this system; and

b) facilitating research into problem gambling. The New Legislation extends the responsibilities of the Australian Institute of Family Studies (the **Institute**) to carrying out research into problem gambling. When carrying out this research, the Institute will be referred to as the Australian Gambling Research Centre (the **Centre**). The New Legislation also establishes the Expert Advisory Group on Gambling to advise the Centre in respect of this research.

What does this mean for online gambling?

Finally, while the Federal Government's approach towards the gambling sector appears to be focused on terrestrial based electronic gaming machines, it has previously indicated its interest in introducing stronger restrictions in the online gambling sector.

Given the former Labor government's extensive review of the regulatory framework relating to the online gambling sector, including its review of, and numerous recommendations relating to, the *Interactive Gambling Act* 2001 (Cth), it will be important to monitor closely the Federal Government's attitudes towards possible changes to the regulatory regime in respect of online gambling.

Privacy Law and Credit Reporting: Do You Offer Your Customers Credit Betting? You May Be a 'Credit Provider'!

Authors: Jamie Nettleton, Cate Sendall

While most gambling operators offering credit to customers will not attract the credit laws under the *National Consumer Credit Protection Act* 2009 (Cth), they may be a credit provider for the purposes of the *Privacy Act* 1988 (Cth).

During the April 2014 hearings of the New South Wales Parliamentary Select Committee on the Impact of Gambling, the issue of gambling operators providing credit to customers was raised. Most Australian licensed gambling operators do not offer credit in a manner that will attract the responsible lending laws under the *National Consumer Credit Protection Act* 2009 (Cth) and the associated National Credit Code. However, any gambling operator offering credit should be aware that the recent changes to the *Privacy Act* 1988 (Cth) (the **Privacy Act**) include credit reporting reforms which may apply.

Are you a credit provider?

That a gambling operator's credit facilities do not fall under the National Credit Code is irrelevant to the question of whether that gambling business would be considered a credit provider for the purpose of the Privacy Act.

Under the recent Privacy Act reforms, any organisation which offers goods or services to individuals on terms where payment is deferred for more than seven days will be considered a credit provider. In other words, these provisions apply to parties other than traditional credit providers, such as banks and finance companies.

This means that gambling operators who provide credit facilities to customers, even if credit is provided for only a small amount, will be considered to be credit providers if repayment is deferred for more than seven days.

What do you need to do to comply with the Privacy Act credit reporting reforms?

Broadly speaking, if your business is considered to be a "credit provider", you must have in place practices, procedures and systems which are reasonable, given the size and complexity of the business, and that are designed to meet your obligations under the Privacy Act, the *Privacy Regulations* 2013 (the **Regulations**) and the *Privacy (Credit Reporting) Code* (the **CR Code**).

Any gambling operator which is a credit provider is required to:

- have a credit reporting policy (this may form part of its Privacy Policy or be a separate document);
- have a statement of notifiable matters (only where there is likely to be disclosure of personal information to a credit reporting body, for instance to obtain a credit report);
- address additional matters concerning credit information in their privacy collection statements when collecting personal information; and
- be a member of an external dispute resolution scheme (where it wishes to disclose credit information about an individual to a credit reporting body):
    - when providing consumer credit – now; and

[1] Please note that the Privacy Act, Regulations and Credit Reporting Code also include a number of other obligations including relating to disclosure, notification of refusal of an application for consumer credit, integrity credit-related information and access and correction of credit-related information. If you would like further information regarding your privacy obligations, please contact us.

- when providing commercial credit – with effect from 11 March 2015 (although this target date may be delayed).[1]

Credit Reporting Policy

Credit reporting policies must contain the following information (among others):

- the kinds of credit information (as well as credit eligibility information and credit provider derived information[2]) collected and held by a business;
- the purpose for which a business collects, holds, uses and discloses credit information and credit eligibility information;
- how an individual may access and seek correction of this information;
- how an individual may complain about a failure by a business to comply with the Privacy Act, the Regulations and/or the CR Code; and
- whether a business is likely to disclose credit information or credit eligibility information to entities that do not have an Australian link, and if so (and if practicable), the countries in which those entities are located.

Further, a business' credit reporting policy must be readily and freely available on its website.

Statement of Notifiable Matters

If a gambling operator is likely to disclose personal information to a credit reporting body (**CRB**), it must also have a statement of notifiable matters. The statement of notifiable matters, which must be displayed prominently on its website, must include (among other matters):

- the name and contact details of the CRBs used by the gambling operator;
- that the CRBs may include the information in reports to other credit providers to assist them to assess the individual's credit worthiness;
- that, if the individual fails to meet their repayment obligations in relation to consumer credit, or commits a serious credit infringement, the gambling operator may be entitled to disclose this to the CRB;
- how the individual may obtain the gambling operator's credit reporting policy; and
- the individual's rights to:
  - access and seek correction of the credit information that the gambling operator holds about them; and
  - make a complaint to the gambling operator.

Collection Statement

Where a gambling operator is a credit provider, additional matters must be set out in its privacy collection statements. These include the following (among other matters):

- that the credit reporting policy contains information about:
  - how the individual may seek access to and/or the correction of credit-related information that it holds;
  - how the individual can make a complaint about a failure to comply with the operator's obligations under the Privacy Act or CR Code and how the operator will deal with the complaint; and
- whether the operator is likely to disclose credit information or credit-eligibility information to entities that do not have an Australian link, and if so (and if practicable), the countries in which those entities are likely to be located.

[2] As defined in s 6 of the Privacy Act.

If the business is required to have a statement of notifiable matters, it must also at, or before, the time of collection of the personal information, notify or otherwise make the individual aware of the following:

- that its website includes information about credit reporting, including the CRBs to which it is likely to disclose the individual's credit information;
- a brief description of the key issues contained in the statement of notifiable matters;
- details of the website (on which the statement of notifiable matters is prominently displayed); and
- that the individual may request a copy of the statement of notifiable matters to be provided in an alternative form, such as in hard copy.

External Dispute Resolution Scheme

If a gambling operator wishes to disclose credit information about an individual to a CRB, and therefore be part of the consumer credit reporting system, the operator must be a member of an external dispute resolution scheme before it discloses credit information.[3] However, gambling operators must not disclose credit eligibility information about an individual to a CRB if that information is derived from the individual's repayment history. Only bodies holding an Australian credit licence under the *National Consumer Credit Protection Act* are permitted to disclose this information to CRBs.

For a list of the currently available and recognised external dispute resolution schemes, please see the Office of the Australian Information Commissioner's website at www.oaic.gov.au.

Next Steps

As a gambling operator providing credit to consumers, you must:

- have a credit reporting policy;
- address various credit related matters in your collection statements;
- if it is likely you will disclose personal information to a CRB, have a statement of notifiable matters; and
- if disclosing credit information about an individual to a CRB, be a member of an external dispute resolution scheme.

If you do not comply with the above requirements, you should take immediate steps to do so.

[3] Commercial credit providers that wish to disclose credit information to CRBs have been given a transitional 12 month exception from this requirement, however, are encouraged by the Office of the Australian Information Commissioner to become a member where there is an external dispute resolution scheme available for them to join.

Match-Fixing and Betting on Semi-Professional/Amateur Leagues: The Challenge Facing Australian Sport

Authors: Jamie Nettleton, Jessica Azzi

Overview

Since 7 February 2013 (which is also known as the "blackest/darkest day in Australian sport"), the vulnerability of Australian sport to match-fixing has never been far from the minds of mainstream Australian sports journalists. This is the day on which the Australian Crime Commission released its report into corruption in Australian sports and suggested a connection between doping (which was the principal subject of the report) and match fixing.

State and territory governments have taken significant legislative steps to address the risk of match-fixing in Australian sports. In particular, a number of states/territories (NSW, Victoria, South Australia, the ACT and the Northern Territory) have passed legislation since 2012 which introduces offences for match-fixing and cheating at sports betting (**Match Fixing Legislation**). At the time of writing, a bill to put similar legislation in place is before the Queensland Parliament. Match Fixing Legislation includes offences in relation to corrupting the betting outcomes of events or event contingences.

Prior to the introduction of Match Fixing Legislation, any allegations of match-fixing referred to the police were dealt with generally under laws relating to fraud or obtaining a financial advantage by deception. For example, the late Ryan Tandy was found guilty of gaining financial advantage by deception, with the Court finding that it was clear that there was a plan to manipulate the first score in a match in August 2010 between the Bulldogs and the North Queensland Cowboys.

Particularly in a World Cup year, media reports will continue to contemplate the threat of match-fixing to sports at the highest and most visible levels. This was illustrated recently by media reports of Ghanaian football officials being willing to discuss the potential for Ghanaian teams to play international matches that were fixed.

Much of the discussion is focussed on teams participating at the highest levels. However, it is also necessary to consider the vulnerability of semi-professional (or amateur) leagues to match-fixing. In general terms, amateur or semi-professional leagues involve players who play part-time, often while engaged in other employment. Amateur players typically do not receive the same level of financial reward (if any) as their counterparts in top divisions. Very few are paid a full time salary in return for their participation in the league.

Recent fixes

This vulnerability is highlighted by the recent successful prosecution of members of the Victorian State League Division 1 team, the Southern Stars Football Club (**SSFC**), which was the first prosecution under Match Fixing Legislation in any Australian jurisdiction.

Similarly, in the UK in June 2014, two businessmen and a player were found guilty by the Birmingham Crown Court of conspiracy to commit bribery in relation to match-fixing.[1]

These convictions followed arrests which took place in April 2014 by the National Crime Agency (**NCA**) in the UK, which arrested 13 footballers associated with a number of teams, including Whitehawk FC. These teams play in lower leagues of English football well below the Premier League.

[1] See: http://www.independent.co.uk/news/uk/matchfixing-trio-sent-to-prison-9552097.html.

The Southern Stars prosecution

In December 2013, four players from SSFC, as well as the SSFC coach, were charged with offences relating to the corruption of betting outcomes. At the time of writing, three of these players, as well as one of the ringleaders of the international game fixing syndicate responsible for the fixing of the SSFC games, have been convicted.[2]

Sportradar, a service provider which specialises in monitoring betting trends on behalf of sporting bodies and betting operators alike and which is engaged by a number of Australian sporting bodies including the Football Federation of Australia (**FFA**), notified the FFA when it detected suspicious betting trends in connection with SSFC's games. The FFA notified the police who carried out an investigation that led to charges being laid and successful prosecutions.

The challenge facing Australian sporting bodies

This prosecution highlights the challenges facing semi-professional or amateur leagues in Australia. The interest in betting on Australian sporting events, including those in semi-professional leagues, is strong, particularly in Asian countries where Australian sports make popular betting subjects for a number of reasons. Apart from the time zones being compatible, Australian sports leagues have a reputation, at least when compared to equivalent leagues in other countries, of being free from fixing scandals.

In response to this demand, Australian sporting bodies are, perhaps understandably, cautious when it comes to bets being taken on matches involving amateur teams. In general terms, the reason for this caution is two-fold:

a) sporting bodies do not have sufficient funds to ensure that players in amateur or semi-professional leagues are fully educated about the risks involved in match-fixing; and

b) it could be argued that players in semi-professional leagues, in general terms, have less at stake. They do not have the same reputation as many of their counterparts in professional leagues and do not receive the same level of financial return as these counterparts. Anecdotal evidence suggests that the fee that may be offered by a match-fixer to a player in exchange for a fix is often significantly higher than the payment being made to the player (if any) by the club whom she/he represents.

Professional players are much less likely to be willing to expose themselves to any risk of suffering the consequences of match-fixing. These consequences include:

a) being banned from the sport for life (which is generally automatically imposed by an Australian sporting body as a consequence of a player's involvement in fixing);

b) being found guilty of a criminal offence (under the Match Fixing Legislation); and

c) damage to their reputation.

'Don't Fix It'

The results of a recent survey which is part of the 'Don't Fix It' campaign, an anti-match-fixing partnership between international footballers' association FIFPro, UEFA and Birkbeck, University of London are illuminating.[3] The campaign included a survey of 1,500 players across eight countries.

These participants included 121 English players, 66 of whom were Premier League players. Based on their responses, none of these players:

- had played in a game since identified as fixed;
- had been approached in the previous 12 months to fix a match; and
- believed one or more games in that period had been fixed.

The participants also included 211 Greek players. Based on their responses:

- 29 players had played in a game since identified as fixed;

[2] Another player and the SSFC coach are set to appear at a hearing scheduled for September 2014. See: https://au.news.yahoo.com/vic/a/24486816/match-fixers-demanded-goals-in-vic-games/.
[3] See: http://www.fifpro.org/attachments/article/5362/Don't%20Fix%20It%20-%20Players%20Questionnaire%20Results%20and%20Analysis.pdf.

- 27 players had been approached in the previous 12 months to fix a match; and
- 139 players believed one or more games in that period had been fixed.

Further, 72 Greek players confirmed that they had no knowledge of betting rules. Only 8 English players confirmed that they had no knowledge of betting rules.

This comparison between English participants and Greek participants lends further weight to the caution held by Australian sporting bodies toward amateur betting, on the basis that an analogy can often be drawn between the vulnerability of amateur leagues to integrity issues and the vulnerability of sporting teams from countries that have lesser funding to dedicate to player education.

All bets are off. Is that the solution?

Australian sporting bodies typically do not permit bets to be taken on semi-professional or amateur events. For example, under the standard form product fee and integrity agreement of the Australian Rugby Union (**ARU**), betting operators are not permitted to create markets, or accept bets, on the Shute Shield, a second division competition.

Australian licensed wagering operators are bound by product fee and integrity agreements with leading sporting bodies and these operators accept bets on a particular sport only in accordance with the terms of the relevant agreement (for example, bets may not be offered on any event except matches forming part of the professional competition).

Were bets to be taken by an Australian licensed wagering operator on an amateur event, that operator is required, under the terms of their agreement with the relevant body, to report suspect betting trends to that body and, following the receipt of a request from the body, provide customer records relating to particular events. In the case of the SSFC games, this enabled the FFA to access information in connection with bets placed on the relevant SSFC games.

Australian sport has considerable difficulty in identifying, much less establishing a dialogue with, any betting operator not licensed in Australia for the purposes of entering into an agreement of this sort. Accordingly, an offshore operator conducts betting activity free from:

- any obligation to provide information to the sporting body; and/or
- any restriction on the events or types of bets which it may accept relating to events under the control of that sport.

Given the customer interest in betting on Australian semi-professional events, benefits may arise from Australian sporting bodies allowing Australian licensed operators to accept bets on these events. While this will not eradicate the threat posed by offshore operators accepting bets on these same events, it would mean that:

a) from a commercial perspective, customers, particularly those in Australia, have the option of making those bets with an Australian licensed operator. This minimises the risk that those customers would have no option but to place those bets with an offshore operator beyond the reach of the Australian authorities;

b) the sporting body is more likely to be aware of betting trends relating to amateur leagues, as the Australian licensed operators will be under an obligation to provide information relating to the relevant matches to the sporting body; and

c) the product fee received by the Australian sport from the Australian licensed operator can be used by the sport to educate players in semi-professional leagues (and possibly increase their remuneration), ultimately leading to a reduced risk of match-fixing in these leagues.

From Liverpool FC to Australia: The Long Arm of the UK Gambling Reforms. How will Operators Offering Online Gambling Services to Australians be Affected?

Authors: Jamie Nettleton, Jessica Azzi and Elizabeth Cameron

Introduction

The UK Gambling Commission (the **Commission**) licenses betting and wagering operators in the UK. The Commission is in the final stages of preparing for the implementation of a raft of reforms to the rules relating to gambling licences, taxation and advertising which will result in a system of online gambling licensing oriented towards 'point of consumption', rather than 'point of supply', regulation.[1]

The *Gambling (Licensing and Advertising) Act* 2013 – 2014 (the **Act**) received Royal Assent on 14 May 2014 and amends the *Gambling Act* 2005 (UK). Its provisions will come into force on 1 October 2014.[2] One of the key policy changes that will be brought into effect by the Act is the requirement that all gambling operators who have customers in the UK must have a licence. This requirement exists even if those operators do not have any equipment located in the UK, as the proposed reforms make provision for 'remote operating licences'.[3]

In this respect, the changes indicate that the UK's policy is no different from Australia's policy, as reflected in the *Interactive Gambling Act* 2001 (Cth) (the **IGA**). The IGA applies to overseas operators that provide relevant gambling services to persons in Australia; however, the key difference between Australia and the UK is that Australia does not allow online gaming services to be provided or marketed to Australians and, therefore, an Australian licensing scheme (which allows online gaming services to be provided to Australians) is not contemplated in the IGA.

The UK reforms will have far-reaching implications for many of the most significant global players in the online gambling sector. They are likely to impact the Australian regulatory landscape through the requirement that providers of gambling services who wish to obtain a UK licence must demonstrate in certain cases that they or other group members provide gaming services legally to Australians. This may be difficult due to the prohibitions under Australian law on the supply of online in-play betting and online gaming services to Australians.

Point of Consumption

The UK reforms cause foreign operators to fall within the scope of the regulatory regime administered by the Commission by altering the licensing scheme to one of 'point of consumption' rather than 'point of supply'. The requirements of the new licensing regime carry implications for many overseas online gambling operators who have been prominent sponsors of UK events, venues and sports teams and so appear to be 'targeting' the UK market. For example, many Premier League teams are sponsored by betting operators that have not previously been licensed by the Commission. By sponsoring a Premier League team, many of these operators have been targeting customers in markets outside the UK. For example, 188Bet's relationship with Liverpool FC appears to reflect a marketing strategy aimed primarily at the team's Brazilian and Asian fan-bases.

[1] House of Commons Culture, Media and Sport Committee, 'Pre-legislative scrutiny of the Draft Gambling (Licensing and Advertising) Bill' (25 April 2013): http://www.publications.parliament.uk/pa/cm201213/cmselect/cmcumeds/905/905.pdf.
[2] 'New regulatory framework for remote gambling in Great Britain receives parliamentary approval', Out-Law.com: http://www.out-law.com/en/articles/2014/april/new-regulatory-framework-for-remote-gambling-in-great-britain-receives-parliamentary-approval/.
[3] House of Commons Culture, Media and Sport Committee, 'Pre-legislative scrutiny of the Draft Gambling (Licensing and Advertising) Bill' (25 April 2013): http://www.publications.parliament.uk/pa/cm201213/cmselect/cmcumeds/905/905.pdf.

Given that the Commission has indicated that it is not willing to issue 'advertising-only' licences, it would not be sufficient for operators such as 188Bet simply to block UK customers and continue to sponsor English Premier league teams.

Rather, it is now apparent that these operators are required to obtain a UK gambling licence. Obtaining and maintaining a licence constitutes a significant regulatory burden (see below) which these operators must consider if they wish to maintain these high profile sponsorships. In some cases, they may not be willing to do so and some industry commentators have expressed concerns that the new approach will have a negative impact on sports sponsorship, particularly in relation to the Premier League, as it will force foreign operators to obtain a UK licence or cease advertising in the UK.

In May 2014, the UK government requested various regulatory bodies to review the existing regulation of gambling advertising, perhaps signalling an awareness of concerns surrounding the potential prejudice to various sponsorships relating to the English Premier League as a result of the new licensing regime.

The Regulatory Burden of a UK Gambling Licence

In April 2014, the Commission announced that it will require customer-facing betting operators which are currently, or hope to be, licensed in the UK to confirm the legality of their provision of gambling services into any market outside the UK from which they:

- derive 3% or more of their revenue; or
- in the case of operators with annual revenue totalling less than £5 million, derive 10% or more of their revenue.[4]

Emphasising that operators must conduct their own diligence checks and are responsible for their own market controls, the Commission will not issue a 'list' of those jurisdictions where the operator can provide services, or where the operator must not provide services.[5]

Instead, as part of the licence application process, the Commission requires detailed information about the operator's activities in foreign market/s. The Commission will ask operators to 'please explain' why their provision of gambling services in each relevant foreign market is permitted or, at least, not illegal.

It remains unclear how broadly the 'please explain' test will apply. It is not yet clear whether an applicant for a UK licence will be required to 'please explain' the legality not only of their own provision of services into markets outside the UK, but also the legality of the provision of services into these markets by the applicant's related entities. In any event, this approval appears similar to the stance taken by the Nevada Gaming Commission (**NGC**). In 2012, the NGC took the view that a relevant factor in determining the suitability of an applicant to hold a licence in Nevada was whether its related entities provided services to Australian residents in breach of Australian law.[6]

What about Australia?

Many operators licensed in the UK, or who may wish to become licensed in the UK under the new 'point of consumption' regime, have customers in Australia. As set out above, the provision of online gaming and in-play betting on sports events to Australian customers is in breach of Australian law. Operators providing any service to Australians may be required to subject themselves to the 'please explain' integrity test. It is important to note that this 'please explain' legality test may need to be considered by reference to all of the online gambling services being provided to Australian customers.

What is not clear, however, is whether this test will require consideration only of Australian federal law, or also of Australian state and territory laws.

[4] Gambling Commission, 'Implementing the Gambling (Licensing and Advertising) Bill FAQs – June 2014': http://www.gamblingcommission.gov.uk/PDF/Implementing%20the%20Gambling%20(licensing%20and%20advertising)%20Bill%20FAQs%2025%20June.pdf.
[5] Ibid.
[6] Chris Sieroty, 'William Hill shuts down Australian betting website', Las Vegas Review Journal (June 5 2012): http://www.reviewjournal.com/business/casinos-gaming/william-hill-shuts-down-australian-betting-website.

Further, if the Commission adopts an approach which is as broad as that taken by the NGC, the operator may also be subjected to the same enquiry in respect of the provision of services to Australian customers by its related entities.

What next?

It remains to be seen how the Commission will enforce this integrity test and what impact this will have on any gambling operator seeking to obtain a licence in the UK that:

- accepts customers from Australia; and/or
- promotes and/or provides their services within Australia; and/or
- has related entities which fit into either of the above categories.

Early indications of how the reforms will be enforced suggest the Commission will adopt a very strict approach. During the parliamentary debate relating to the Bill, it was revealed that the Commission has orchestrated an agreement with major payment systems to block UK customers from transacting at all with unlicensed operators. It is also worth monitoring whether other regulators adopt the same approach, especially given the liberalisation of online gambling in some states in the USA.

Addisons will continue to carefully assess the implications of the reforms for online gambling operators which seek to obtain a licence in the United Kingdom and also provide services to Australians. It is premature to speculate, but it may be that the steps being taken by the Commission constitute the most effective steps taken to date to enforce the IGA.

Changes to the Laws Relating to Gambling Advertising in South Australia: What Does Your Marketing Manager Need to Know Before You Advertise Wagering Services in South Australia?

Authors: Jamie Nettleton, Jessica Azzi

Introduction

On 1 March 2014, the South Australian Gambling Codes of Practice Notice 2013 (the **Notice**) came into effect. The Notice sets out requirements that relate to, for example, gambling advertising, pre-commitment, gambling venue operations and applies to all gambling operators that operate in South Australia and/or market their services to South Australians.[1]

Despite the Notice having been in force for some months, some wagering operators have experienced difficulties implementing the requirements set out in the Notice.

In practical terms, compliance with the South Australian requirements means that wagering operators (and their advertising agencies) often have to choose between one of three options:

a) prepare a version of their marketing collateral which is South Australia specific. However, this may not be practical if an operator wishes to advertise on subscription television as, unlike free-to-air television, advertisers wishing to advertise on subscription television cannot exclude certain states/territories – all commercials broadcast on subscription television are broadcast nationally; or

b) ensure that all advertising complies with South Australian requirements; or

c) cease advertising in South Australia. Again, this may be impossible if an advertiser wishes to broadcast television commercials (**TVCs**) on subscription television.

Each of these gives rise to various commercial difficulties (and resulting costs) and it is clear that the Notice has resulted in an increased compliance cost for nationwide marketing for most Australian wagering operators.

Set out below are some of the key points for the marketing team of each wagering operator (and their advertising agencies) to understand when advertising in South Australia.

The Notice applies to ALL forms of advertising

"Gambling advertising" is defined broadly and extends to advertising across all channels, including radio, television, venues, online and also marketing via text messages.

The Notice contains both:a general requirement that all advertising must include the "expanded" warning message[2] unless it would be unreasonable or impracticable, in which case the "condensed" warning message[3] must be displayed (clauses 17 and 18); and

a) additional requirements that are specific to different forms of advertising.

To illustrate, distinctions exist depending on the type of television advertising. For example, the requirements that apply to the display of the warning message during a plug featuring a celebrity are different to the requirements that apply to a plug that does not feature a celebrity. Separate requirements apply to TVCs other than plugs – see below.

[1] It is arguable that a wagering operator who is not an "authorised interstate betting operator" under South Australian law but nonetheless promotes and provides services to South Australians is not required to comply with the Notice.
[2] The Notice sets out the expanded warning messages, which change every six months. For the period 1 July 2014 to 31 December 2014 (inclusive), the expanded warning message is "Think of the people who need your support. Gamble responsibly".
[3] The condensed warning message is "Gamble Responsibly".

Additionally, the Notice restricts the hours during which television and radio advertising may be broadcast to South Australians. In effect, these restrictions apply nationally to advertising broadcast on subscription television.

Responsible gambling message – size/space requirements

The Notice contains very specific requirements in respect of the display of the responsible gambling message:

For example, in respect of any advertising in print media, the mandatory warning message:

a) must be presented in a font, in a colour and with sufficient contrast such as to make it distinct; and

b) must occupy at least 10% of the space occupied by the advertising (clause 26).

For a TVC (other than a plug), the message must:

a) occupy at least 25% of the screen area for at least one sixth of the length of the advertisement; or

b) occupy the whole of the screen area for at least one tenth of the length of the advertisement (clause 22).

The South Australian Independent Gambling Authority (**SA IGA**), which is responsible for enforcing the Notice, has expressed the view that, where the Notice requires that a certain amount of space be dedicated to the display of responsible gambling message, that space must not include any other wording. This suggests that wording that has been included in the TVC to comply with the rules of other Australian jurisdictions relating to the display of responsible gambling messages must not be located in the same space as the message required under the Notice.

It is not difficult to see why the Notice has increased the cost of advertising – wagering operators find themselves taking steps to ensure that national advertisements meet the specific requirements of each of South Australia and the other States/Territories.

Is there an exemption? Yes, the requirements may be waived or varied but this must be done formally.

Betting operators covered by the Notice may apply to the SA IGA for a dispensation in respect of certain requirements. Examples of recent applications for dispensation include those in respect of, for example:

a) clause 17(1) of the Notice which stipulates that all gambling advertising must include the expanded warning message; and

b) clause 22(2) of the Notice which sets out onerous requirements on the display of a mandatory warning message as part of a TVC.

The SA IGA grants dispensations typically for a period of a few months. These dispensations may then be renewed (subject to the SA IGA's discretion to grant this renewal).

Some of the requirements in the Notice are identified as being "variable by a management plan". Accordingly, wagering operators may propose a management plan (for approval by

the SA IGA) which sets out the manner in which the relevant operator proposes to address the relevant variable requirements of the Notice. This allows the wagering operator to comply with substitute conditions in place of the express requirements in the Notice. These conditions may mirror the requirements of other Australian jurisdictions or may be requirements that are self-imposed by the wagering operator.

We can help

Given the complexity of the requirements of the Notice, it is not difficult to see why many wagering operators have opted to submit to the SA IGA for approval applications for dispensation and/or proposals for management plans.

The Australian Taxation System: What Do Wagering Operators Need To Know?

Authors: Jamie Nettleton, Arthur Davis and Mary Huang

For wagering operators conducting or wishing to conduct business in Australia, it is important to understand the Australian tax system and the tax obligations which apply.

In many ways, tax in Australia is a complex issue as it is imposed by all three levels of government in Australia (namely Federal, State/Territory, and local governments).

At the same time, Australia's tax-to-GDP ratio is low by international standards, making it one of the most competitive markets in OECD countries. In 2010 (the latest year for which comparable international data is available), Australia had the fifth lowest burden of the OECD countries.[1]

In this paper, we provide guidance on the application of betting tax and key Federal taxes for wagering operators.

Betting Tax

Betting tax is imposed by the relevant State/Territory authority responsible for licensing the wagering operator. The Australian jurisdictions most recognised in licensing online wagering operators are the Northern Territory and Norfolk Island. We provide below a side-by-side comparison of the betting tax payable in respect of licences granted by each of the Northern Territory and Norfolk Island.

Northern Territory	Norfolk Island
10% of gross monthly profit, capped currently at $555,000. "Gross monthly profit" is defined as "the total amount of bets made by persons during the month with the bookmaker, less the total amount paid by the bookmaker to those persons for the bets during that month". The gross monthly profit is calculated by reference to the location of the player and the nature of the events for which bets are taken.	0.25% of monthly turnover, capped annually at $300,000

Product Fees[2]

All States and Territories have imposed legislative product fee regimes in respect of racing. These regimes require all wagering operators to obtain in advance the necessary approvals/permits from the relevant racing administrative body or governmental authority to use race field information (insofar as they take bets on racing events held in that Australian State/Territory). All wagering operators must pay a product fee as part of each approval/permit, irrespective of where the wagering operator is licensed in Australia. (In some cases, the obligation also extends to wagering operators licensed outside Australia who offer bets on racing events held in that State/Territory.)

[1] http://www.treasury.gov.au/~/media/Treasury/Policy%20Topics/Taxation/Pocket%20Guide%20to%20the%20Australian%20Tax%20System/Downloads/Pocket_tax_guide.ashx.

[2] Recently, there have been increases in the fees imposed by numerous racing bodies. Please contact Addisons for further information.

In relation to sporting events, most wagering operators have entered into nationwide product fee arrangements with some of the principal Australian sporting administrators. These are voluntary, except to the extent that they relate to events taking place in Victoria or NSW. Victoria has had in place for some years a statutory product fee regime in relation to sport, while New South Wales has recently introduced a similar product fee regime.

Company Tax

An Australian resident company for tax purposes is subject to tax on its worldwide income and is assessed for income tax at the company tax rate of 30%.[3] This is imposed at the Federal level. An Australian resident company is defined as a company:

- incorporated in Australia;
- that has its management control in Australia; or
- that carries on its business in Australia and is controlled by Australian resident shareholders.

Non-resident companies (including an Australian branch of a non-resident entity) are taxed on their Australian-sourced income at the same rate as Australian resident companies, being the flat rate of 30%.

Dividends

Australia uses a dividend imputation system which eliminates double taxation on company profits by allowing companies to attach franking credits to dividends paid. Each franking credit is a unit of tax paid by companies using the imputation system. Franking credits are then passed onto shareholders with the dividends, which allow the shareholders to offset their income tax payable.

Capital Gains Tax

A capital gain or capital loss is the difference between the purchase price of an asset and the price for which the same asset is sold. Tax is paid on capital gains (generally referred to as capital gains tax) and it forms part of the company's assessable income tax as opposed to a separate tax. Capital losses may be offset against certain capital gains and may generally be carried forward to offset gains in future years.

Goods and Services Tax (GST)[4]

GST is payable on the value of "taxable supplies". This means that GST only applies to the wagering operator's margin and not to the individual betting sales.

The margin is calculated as follows:

- the total amount received in bets for the tax period; less
- the total winnings paid by the wagering operator for the tax period.

The GST payable is one-eleventh of this margin.

PAYG Withholding From Interest, Dividends and Royalties Paid To Non-Residents

If a company pays interest, dividend or royalty payments to a non-resident (including a foreign company), the gross amount of each of those payments is subject to a final withholding tax rate of:

- 10% for interest;
- 30% for dividends (to the extent that dividends are unfranked); and

[3] The Federal Government announced that the corporate tax rate will be reduced from 30% to 28.5% from 1 July 2015. If implemented, imputation credits will also be reduced to 28.5%.
[4] Further information in relation to GST and its application to gambling operators can be found at: https://www.ato.gov.au/Business/Consultation--Business/In-detail/Racing-and-gambling/Publications/GST-guidance-for-gambling-and-gaming-venues/.

- 30% for royalty payments.

However, if the payment is made to a company tax resident in a country with which Australia has a tax treaty, a company may be required to withhold less tax or no tax at all. Tax treaties are special agreements that Australia has entered into with over 40 countries to prevent incomes from being double-taxed. For example, Australia has entered into tax treaties with the United Kingdom and Malta.

If a payee is a non-resident, a company must withhold tax when:

- making an interest, dividend or royalty payment to the payee;
- crediting the interest, dividend or royalty payment to the payee's account; or
- otherwise dealing with the interest, dividend or royalty payment at the direction of the payee, for example, by re-investing.