

**Submission by
Sportsbet Pty Ltd**

to the

***Review of the Australian Communications and
Media Authority***

August 2015

The logo for Sportsbet.com.au is displayed on a blue rectangular background. The word "sportsbet" is written in a white, italicized, lowercase sans-serif font, with the "bet" portion in a bold, yellow-orange color. Below "sportsbet", the text ".com.au" is written in a smaller, white, italicized, lowercase sans-serif font.

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Executive Summary

Sportsbet welcomes the review by the Department of Communications (**Department**) of the Australian Communications and Media Authority (**ACMA**) to ensure that regulatory and operating arrangements are efficient, effective and fit for purpose in the current and future communications environment, to achieve the Government's priorities in relation to the communications and media sector and the broader economy.

Sportsbet is a member of the industry peak body, the Australian Wagering Council (**AWC**), which represents the interests of a number of prominent independently operating wagering companies which are licensed in Australia. Sportsbet's submission to this review, notwithstanding its branding, represents and is consistent with the agreed AWC Board policy position on these issues.

The Department rightly acknowledges that the review cannot be considered in isolation from the future regulatory framework for the applicable sector. To this end, Sportsbet's submission focuses on one of the 26 communications Acts that the ACMA administers¹, namely, the *Interactive Gambling Act 2001* (Cth) (**IGA**).

Australia was among the first jurisdictions in the world to express a policy position on online gambling. A key policy driver of the IGA was to ensure it '*balances the protection of Australians with a sensible and enforceable regulatory regime*'² as it was thought that the '*quantum leap in the accessibility of gambling services... could exacerbate problem gambling in Australia*'.

While the IGA has been highly effective in limiting Australian-based operators from providing prohibited 'interactive gambling services' to Australians³, independent reports by the Productivity Commission (2010), Joint Select Committee (2011) and the Department of Broadband, Communication and Digital Economy (**DBCDE**) (2012) have consistently found that the IGA has not been effective in preventing overseas-based gambling operators from providing those prohibited services to Australians.⁴

Since Australia enacted the IGA, online gambling regulation has received increased policy consideration internationally, particularly across Europe, with many European jurisdictions choosing to implement licensing models for a broad range of online gambling services. These international markets have enacted regulations to meet their policy objectives which are platform neutral and therefore do not discriminate whether a consumer accesses online services via a computer, smart phone or over a telephone, and are subject to the same rules and consumer protections, whereas the IGA is not so consistent.

Sportsbet's submission centres on one particular aspect of the IGA which restricts *online* in-play betting (also known as 'live' or 'in-the-run' betting) (hereafter, the **in-play restriction**), but the same form of wagering is permitted on other platforms such as over the telephone and in person at retail TAB venues. For clarity, *online in-play betting* is an established and extremely popular mode of wagering in the global sports-betting industry whereby consumers are able to place bets over the internet on an event after that event has commenced (e.g. betting on the outcome of a sporting event at half time). It is clearly distinguishable from *micro-betting* (i.e. discrete contingencies within a very short period of time⁵ within a broader event such as ball-by-ball betting in cricket, or point-by-point betting in tennis), which Sportsbet believes should be illegal across *all technology platforms* and in retail venues such as TABs. The in-play restriction in the IGA means that the hundreds of thousands of Australians who enjoy online in-play betting are forced to bet with

¹ ACMA, Annual Report 2009-10, pp. 214-5.

² *Interactive Gambling Bill 2001*, Revised Explanatory Memorandum, page 2

³ Both the Productivity Commission and the Joint Select Committee have noted this outcome; see Productivity Commission, *Inquiry Report on Gambling* (2010), p.15.18, and Parliamentary Joint Select Committee on Gambling Reform, *Second report – Interactive and online gambling advertising*; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p.146.

⁴ Parliamentary Joint Select Committee on Gambling Reform, *Second report – Interactive and online gambling advertising*; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p.146.

⁵ Typically, less than two minutes.

offshore wagering operators. Thousands of illegal offshore operators provide this product to Australian consumers every day and despite the IGA in-play restriction being in operation for 15 years there have been no prosecutions for companies who offer this service to Australians, let alone other forms of higher risk interactive gambling such as online casino games and slots.

There is strong evidence and support from a wide range of stakeholders including Australia's major sports controlling bodies and leading gambling research academics that due to convergence of previously distinct communication platforms the single IGA provision which imposes the in-play restriction is now very much outdated and is completely ineffective to the detriment of:

- the millions of Australian consumers who enjoy a 'punt' in their leisure time - particularly those at-risk of problem gambling, as it drives Australian consumers to seek out black market offshore wagering operators, without receiving the benefit of the robust harm minimisation and consumer protection measures that Australian licensed wagering service providers are required to have in Australia's highly regulated environment;
- the integrity of Australian sport - as unlike Australian licensed online wagering companies, offshore wagering operators are not required to and typically do not share any wagering information with Australian sports controlling bodies to monitor any unusual betting patterns and do not pay them 'product fees'⁶, used to invest in protecting and enhancing the integrity of Australian sport;
- the Australian government - in terms of tens of millions of dollars of leakage in government revenue in the form of GST and income tax, and broader economic activity;
- the ACMA – in terms of its effectiveness and efficiency of dedicating resources to pursue its regulatory objectives in the sector, including to prevent, or at least curb, the thousands of overseas-based gambling operators providing higher risk prohibited interactive gambling services to Australians; and
- Australian online licensed wagering service providers - who suffer a significant unnecessary regulatory burden which also places them at a significant competitive disadvantage to offshore operators, who are able to offer in-play betting on a platform neutral basis.

In view of the harms and challenges outlined above, Sportsbet urges the Government to adopt two key reforms which will significantly enhance the ACMA's regularly performance:

- **Reform 1:** amend the deterrence and enforcement measures in the IGA to streamline enforcement provisions and ensure operators of prohibited services are aware of the IGA provisions; and
- **Reform 2:** amend the IGA to adopt a platform neutral approach to in-play betting, in line with leading international regulatory regimes.

The wide reaching detriments of the current regulatory approach in the IGA and the compelling case for the Government to implement these reforms and ensure a consistent regulatory approach to match leading international public policy outcomes in this area is discussed below.

⁶ In Australia, wagering service providers are legally obliged to pay product fees to designated sports controlling bodies in return for the right to offer wagering services on events/markets approved by those bodies as within acceptable integrity standards.

About Sportsbet

Sportsbet is an industry-leading digital e-commerce business in the online wagering sector with more than one million Australian customers. Sportsbet accounts for approximately 23% of Australia's online wagering market and is a member of the industry peak body, the Australian Wagering Council (**AWC**), which represents the interests of a number of prominent independently operating wagering companies which are licensed in Australia.

We are strongly committed to responsible gambling and protecting Australian consumers and have extensive harm minimisation and consumer protection programs in place, which are the product of considerable investment, product innovation and collaboration with government and gambling research academics.

Sportsbet is licensed in the Northern Territory and is wholly owned by Paddy Power plc, which is publicly listed on the Ireland and London stock exchanges. Sportsbet employs more than 600 Australians across three States.

Sportsbet offers wagering products on a range of activities to customers across Australia on the internet via Sportsbet's home page (www.sportsbet.com.au), mobile and tablet devices, as well as via telephone operator. Sportsbet's major wagering product is racing (thoroughbred, harness and greyhound). Sportsbet also offers wagering on a wide variety of sports (e.g. NRL, AFL, tennis, etc) and certain novelty markets (e.g. the outcome of a reality television show).

Sportsbet's strong commitment to responsible gambling consumer protection

Although it is vital to minimise the prevalence of problem gambling, it is important to recognise that Australian research has consistently found that problem gambling affects between 0.5%-1% of the population.⁷

Of that group, based on robust research, (including the above mentioned research), the Productivity Commission has estimated that 75%-80% of problem gamblers are directly related to the use of poker machines.⁸ Anti-gambling advocates acknowledge that poker machines are the primary source of problem gambling in Australia. According to Independent Senator Nick Xenophon:

*"We know that the predominant cause of gambling addiction in this country is poker machines."*⁹

It follows that the incidence of problem gambling is extremely low in the online wagering environment and significantly lower again compared to poker machines.

In 'one of the most comprehensive research projects undertaken into problem gambling anywhere in the world' for a period spanning eight years, the QLD Government Household Gambling study did not find any increase in the prevalence of problem gambling over the period 2001 to 2009, the period over which we have experienced a significant increase in online wagering. In fact, the studies indicated a decline in problem gambling prevalence over this time, although noted that the decline was not statistically significant.¹⁰

⁷ The Productivity Commission estimated that there were between 0.5 and 1.0% of Australian adults with a significant gambling problem and a further 1.4% to 2.1% of Australian adults that are at a moderate risk of problem gambling: Productivity Commission, Inquiry Report on Gambling (2010), p. 5.1.

⁸ Ibid

⁹ Senate, Hansard, 5 March 2014

¹⁰ Queensland Government's Household Gambling surveys for the period 2001, 2003-04, 2006-07 and 2008-09.

Sportsbet is strongly committed to responsible gambling and people gambling within their means. We use a wide range of responsible gambling measures which go over and above the obligations imposed on Australian licensed WSPs under state and territory-based laws, regulations, codes of practice and advertising standards.

More information about Sportsbet and our strong commitment to responsible gambling and consumer protection can be found at **Annexure 1**.

Context – the Australian online gambling sector - key trends and the growing threat of illegal offshore wagering operators

As the Department rightfully observes in the *Issues Paper*, the Australian communications environment has changed dramatically since the ACMA was established in 2005. The observations and broad trends identified by the Department in describing the Australian communications market are highly relevant context for the submissions outlined by Sportsbet in respect of the global online wagering sector.

Since the inception of the IGA in 2001, the IGA has remained unchanged, yet the global online gambling sector has evolved significantly. The term *gambling* is referred to in this submission as an ‘umbrella’ term to encapsulate online casino games such as roulette, poker, slots as well as *wagering* (or betting), which is a discrete subset of gambling and comprises wagering on racing (i.e. thoroughbred, harness and greyhounds) and sports betting.

Australian online gambling spend

Despite the prohibition on online gambling services, Australians spend in excess of \$1.2 billion per annum on online gambling and KPMG reports that spend by Australians into the illegal online gambling market is expected to grow at an average annual rate of 6.3% to 2.4 billion in 2021 - 22.¹¹

Online wagering spend in Australia

Sports betting accounts for 2.3% of Australia’s total gambling expenditure, with betting on racing accounting for 13.3%.

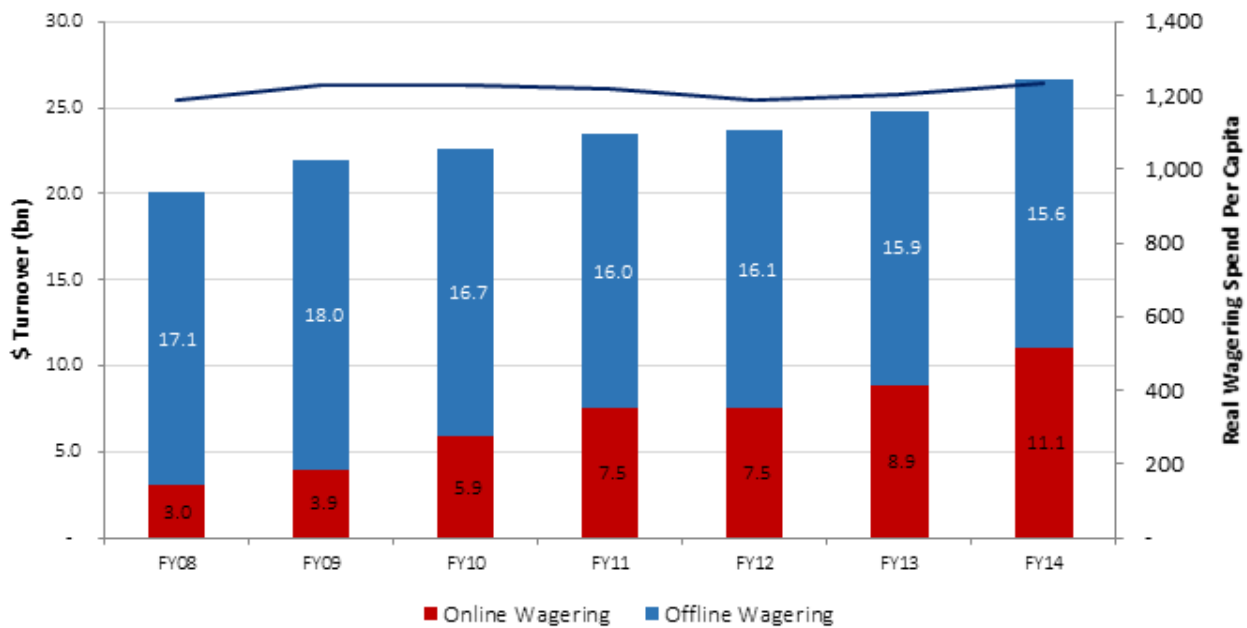
While there has been only moderate growth in wagering turnover in Australia from 2007, broadly in line with CPI increases, there has been a material shift in the betting channels where that spend is occurring. Vastly improved technology including the high uptake by Australians of digital devices such as smartphones, and tablets¹², and better innovation has seen a shift from the more traditional wagering channels (i.e. retail outlets, on-course and phone operator) to online channels such as the Internet and smart phones.

Figure 1 below shows total wagering turnover from 2008 to 2014 and the relative contributions of the on-course, retail, phone operator and internet channels and illustrates the growth in the internet and mobile channel and the decline in the retail and phone channels.

¹¹ *Estimating the potential size of online tournament poker and in-play wagering markets in Australia*, KPMG, November 2012, Pg 4

¹² 70% of Australians go online using a smart phone and 50% with a tablet, see *ACMA Report 1 – Australians’ digital lives*, March 2015.

Figure 1 – Australian Wagering Industry - Turnover by Channel



Australian consumers are taking full advantage of new digital technologies and the mobile platform is now overwhelmingly Australian consumer’s preferred betting platform.

Offshore wagering by Australians and the growing threat of illegal offshore wagering operators

Of the estimated \$1.2 billion spent by Australians on online gambling each year, it’s estimated that offshore wagering operators currently enjoy revenue of approximately \$400m a year in respect of amounts wagered by Australian punters and this is resulting in over \$40m in GST leakage per annum to the Government, as well as significant lost product fees for Australian racing and sports controlling bodies.

This \$400m in revenue being enjoyed annually by illegal offshore operators is expected to grow rapidly with the 2014 Victorian Police Sports Integrity Symposium reporting approximately 2,500 illegal offshore operators, in Asia alone, targeting and offering online in-play wagering to Australian customers, along with thousands of other illegal offshore gambling operators offering higher risk forms of interactive gambling such as online roulette and casino games.¹³

There is only limited product loyalty in the online wagering industry and consumers can easily and do compare prices and switch providers. Although Australians have demonstrated that they would prefer to transact with regulated onshore wagering service providers, given the borderless nature of the internet, if online wagering consumers do not find the products or prices they require in the locally regulated online market, they will seek alternative products offshore.

Alarming, a representative survey of Australian consumers who hold a betting account with an online wagering service provider has found that 1 in 5 (20%) Australian punters have opened an account and bet with an offshore wagering operator. Moreover, in 2014, leading gambling researcher, H2 Gambling Capital, estimated in excess of 20% of Australian expenditure on online wagering goes to offshore operators.

¹³ The Joint Select Committee on Gambling Reform (2011) suggested more than 2000 gambling websites were available to Australians, figures backed up by the 2014 *Interactive Gambling Report*, which indicated a figure in excess of 2300 illegal operators.

The significant and growing threat posed by illegal offshore wagering operators to the integrity and viability of Australia's racing and sporting landscape and to Australian consumers is well known, and Sportsbet applaud the Federal Government's initiative to establish the *Illegal Offshore Wagering Working Group* to tackle the scourge of illegal offshore operators targeting Australians¹⁴.

All estimates clearly demonstrate the significant and growing size of the illegal offshore gambling market:

- in 2010 the *Productivity Commission Report* estimated \$1 billion was lost annually to illegal offshore operators;
- the DBCDE estimated in its *Final Report 2012 – Review of the Interactive Gambling Act (2012 Review of the IGA)* that Australia's interactive gambling spend was \$1.6 billion, with 60% spent with illegal offshore operators¹⁵;
- Global Betting and Gaming Consultants (2014) estimated, internationally, the online gambling market is expected to reach US\$50 billion by 2017; and
- the Joint Select Committee on Gambling Reform (2011) suggested more than 2000 illegal gambling websites were available to Australians, figures backed up by the *2014 Interactive Gambling Report*, which indicated a figure in excess of 2,300 illegal operators.

There are countless examples of the increasing scourge of offshore illegal wagering operators targeting Australian residents and the serious social, economic and integrity threats such operators pose to Australia, such as the recent AFP and QLD police investigations into the alleged illegal activities of Vanuatu-based operator, Betjack.¹⁶

The current Australian regulatory framework in respect of the *Interactive Gambling Act*

As the Department recognises, while the main focus of the review is the future shape and responsibilities of the ACMA, the regulatory regime the ACMA administers is a relevant factor in considering its performance, and to achieve the Government's priorities in relation to the sector and the broader economy.

The regulatory regime identifies the 'harms' that the ACMA is required to deter, as well as the regulatory tools it uses to reduce these harms or enable new activities.

We note that the ACMA has published a series of papers highlighting the pressure placed on the regulatory regime by the convergence of previously distinct communication platforms.¹⁷ The ACMA points out that many laws are now quite dated and that the concept behind many, that content could be controlled by how it is delivered, is breaking-down.

Sportsbet's submission centres on the in-play restriction and, among other things, how the current regulation is working counter intuitively to the 'harms' that ACMA is seeking to deter on different levels, including those at-risk of problem gambling.

¹⁴ Hon Kevin Andrews MP, *National Group to Target Illegal Offshore Wagering*, Media Release, 30 October 2014

¹⁵ *Final Report of the Review of the Interactive Gambling Act 2001*, p29

¹⁶ Nino Bucci, Patrick Bartley, Nick McKenzie, *Police Raid Vanuatu Bookmaker with Melbourne Underworld Links*, The Age, 18 May 2015, <http://m.theage.com.au/victoria/police-raid-vanuatu-bookmaker-with-melbourne-underworld-links-20150518-gh3ivb>, Accessed 19 May 2015

¹⁷ ACMA (2011), 'Broken Concepts—the Australian communications legislative landscape'. <http://www.acma.gov.au/theACMA/About/The-ACMA-story/Connected-regulation/broken-concepts>

The IGA was introduced to minimise the scope for problem gambling online among Australians by limiting provision of online gambling services to Australians through interactive technologies such as the internet.¹⁸ The IGA imposes a broad general prohibition on the provision of *'interactive gambling services'* to customers in Australia, including various online casino games such as roulette and poker.¹⁹ There are a number of exceptions to this general prohibition, including:

- a general exception for telephone betting services; and
- an exception for services that relate to betting on horse races, harness races, greyhound races or sporting events.

However, the exception for betting on sporting events does not apply to in-play betting over the internet. The relevant provisions of the IGA that deal with this topic are extracted in **Annexure 2**.

The net result of the in-play restriction is to create an inconsistent (*non-platform neutral*) regulatory regime under which in-play betting can be offered to Australian consumers:

- for horse, harness or greyhound races;
- through a telephone betting service; and
- through traditional land-based venues such as TAB retail stores,

but is not allowed on sporting events where the bets are placed online.

This has led to significant confusion among Australian punters and means that Australian punters who enjoy online in-play betting, which is an established and extremely popular mode of wagering in the global sports-betting industry, are forced to bet with offshore wagering operators, many of which are illegal or unregulated, who typically operate in a way that is entirely inconsistent with the Australian regulatory environment. For example, Australian consumers are at real risk by betting with illegal offshore operators who have next to no responsible gambling and consumer protection measures. Moreover, the in-play restriction represents a serious threat to the integrity of Australian sport, is resulting in a leakage of millions of dollars to Government in GST and income tax, and also imposes a significant regulatory burden on Australian licensed wagering companies.

These harms and negative outcomes could be mitigated by adopting a platform neutral approach across all betting platforms, so that in-play betting is allowed online in the same way that it is currently allowed by telephone and in land based venues. Each of these matters is discussed in turn below.

Why are Australians increasingly being targeted by Offshore Illegal Wagering Operators and betting offshore?

Sportsbet considers there are two central reasons why Australians are increasingly being targeted by illegal offshore wagering operators and betting offshore:

- first, because of the nature of Australia's enforcement regime under the IGA, and absence of any prosecution over the past 15 years, illegal offshore operators are aware they are largely beyond the regulatory reach of the ACMA for any material adverse action; and

¹⁸ Explanatory Memorandum – *Interactive Gambling Bill 2001* (Cth)

¹⁹ Section 15, IGA

- second, because illegal offshore wagering operators are able to offer Australians in-play betting on a *platform neutral basis* without the regulatory burden of the IGA in-play restriction, placing them at a significant competitive advantage.

Recommended reforms to the IGA to match leading international regulatory regimes

Sportsbet recommends the following two reform measures to the IGA, which will in turn also enhance the regulatory performance of the ACMA:

- **Reform 1:** Strengthen the deterrence and enforcement capacity of the ACMA; and
- **Reform 2:** Adopt a platform neutral approach to in-play betting

Each of these reforms is discussed in turn below.

Reform 1: Strengthen the deterrence and enforcement capacity of the ACMA

Streamlining enforcement provisions in the IGA

Sportsbet concurs with the recommendation in the DCBDE 2012 Review of the IGA that the IGA's enforcement provisions could be improved by the introduction of civil offences and penalty provisions to be enforced by the ACMA²⁰. Civil offences have a lower standard of proof than criminal offences, and can, therefore with will, be more readily enforced. The introduction of civil penalty provisions would also address the issue of potential breaches of the IGA being considered a lower priority for the Australian Federal Police – as the AFP would not be involved in the enforcement of civil penalties.

The inclusion of such penalties would promote a greater level of effective regulation through more easily enforceable sanctions. This greater enforcement capacity would likely serve as a far stronger deterrent to non-compliance with the IGA.

As part of the civil penalty regime for the provision of prohibited services, the ACMA could be provided with the power to issue and act upon take-down notices to remove prohibited content of gambling service providers hosted in Australia in a timely manner. A key part of these powers would also involve the expansion of the ACMA's ability to seek injunctions against parties (and the clarification of the jurisdiction of the Federal Court in such matters). This approach would provide clarity and certainty for the ACMA in exercising its powers. The proposed provisions could be modelled on the sections in the *Spam Act 2003*.

Ensuring operators of prohibited services are aware of the IGA provisions

In order for the deterrence objectives of the IGA to be effective operators of prohibited services must be made aware of the relevant IGA provisions, the penalties involved, the intent of the ACMA and law enforcement to take enforcement action, and the options operators of prohibited services have of becoming licensed in Australia. As the IGA has now been in place for 15 years, with no prosecutions, operators of prohibited services may either be unaware of the Australian law or simply believe they are beyond its reach. If the IGA is to be at all effective, this needs to be addressed.

²⁰ See Recommendation 5 and discussion at pages 66-70.

Sportsbet also endorses the following two recommendations also identified in the DBCDE 2012 Review of the IGA²¹:

- ACMA should publish and regularly update on the ACMA website the list of known prohibited gambling operators, accompanied by clear information discouraging Australians from using these sites because of the risks they would be taking; and
- the deterrence impact of the IGA could also be increased if operators of prohibited services were aware that law enforcement bodies may be monitoring any attempts by them to enter Australia. They may potentially be implemented through use of a Movement Alert List, administered by the Department of Immigration.

Reform 2: Adopt a platform-neutral approach to in-play betting

Strengthening the deterrence and enforcement capacity of the ACMA alone will not address the various harms and challenges outlined above. Sportsbet recommends the Government adopt a platform-neutral approach to in-play betting in line with consecutive independent reports and leading international regulatory regimes for the benefit of Australian punters who enjoy this globally popular form of wagering, and in turn enhance the integrity of sport and ease the regulatory burden on industry in contrast to offshore wagering operators, and help further grow Australia's important digital economy.

This is essential to recognise the significant technological advancements and convergence of digital platforms which has occurred since the IGA came into operation in 2001.

The inconsistent treatment of in-play betting conducted online is the result of a single provision in section 8A(2) of the IGA, which takes this type of in-play betting outside the scope of the general exception that otherwise would apply for services for betting on sporting events.

It would be straight-forward to amend the IGA to remove this inconsistency, as it would simply be a matter of deleting section 8A(2). Following this change, the same rules would apply to online in-play betting on sporting events as currently apply for betting on horse, harness and greyhound races, telephone bets and in retail TAB venues²².

The in-play restriction in the IGA is not working and there is strong support for a platform neutral approach among policy makers, gambling research academics and Australia's major sports controlling bodies

There is overwhelming evidence that the IGA has been grossly ineffective in preventing offshore-based gambling operators from providing prohibited services to Australians. This includes the:

- 2015 *Harper Competition Policy Review* which noted the AWC's contentions in relation to the anti-competitive nature of the IGA and agreed that gambling regulations should be included in a new round of regulation reviews to ensure that they are not unduly restricting competition;
- 2014 *Interactive Gambling Report*, commissioned by Gambling Research Australia, which found the IGA lacks effectiveness, illustrated in particular by high participation rates by Australians on prohibited overseas-based online services and is out of step with international regulatory best practice;

²¹ See discussion at pages 70-72, including Recommendations 6 and 7.

²² There would be no need to make any additional changes to the IGA, and the deletion of section 8A(2) would not adversely affect the remaining provisions of the IGA.

- 2012 DBCDE Review of the IGA which acknowledged that while the primary objective of the IGA is to reduce harm to problem gamblers and to those at risk of becoming problem gamblers, evidence suggests that it is making only a very minor contribution to this objective and that the IGA may in fact be exacerbating the risk of harm because of the high level of usage by Australians of prohibited services which may not have the same protections that Australian licensed online gambling providers are required to have²³; and
- 2010 Productivity Commission *Inquiry Report into Gambling* which recommended that Australian licensed operators be allowed to offer online in-play betting to Australian customers.

The recommendation in the 2012 Review of the IGA to update the IGA to remove the in-play restriction on licensed Australian wagering service providers is also strongly supported by leading Australian gambling researcher and academic, Dr Sally Gainsbury, who states:

'The DBCDE recommendation to adopt a 'platform neutral' approach that makes no distinction in the way that bets are placed is an important step for consistent gambling policy. Regulation of in-play wagering should be consistent across online operators, via telephone and land-based outlets. This is consistent with the recommendations of the Joint Select Senate Committee on Gambling Reform.

*The recommendation to permit in-play betting on the final outcome of sports events and on exotic bets (that is pre-defined events within an event) is appropriate given that these types of bets are currently permitted over the telephone and at physical venues. Given the substantial in-play betting market held by offshore operators, legalising this form of betting in Australia is essential in encouraging operators to become regulated within Australia. This regulatory change is also important to enable legal wagering sites to compete with offshore operators and operators that have land-based venues.'*²⁴

It is imperative that the Government take account of how Australians interact with the global online market because if a wagering product or service is or becomes prohibited or unviable for domestic operators to offer, Australians will still be able to, and do, readily access the same products online through unregulated overseas websites which do not meet Australia's stringent regulatory requirements for consumer protection and harm minimisation, nor contribute to protecting the integrity of Australian sport and racing.

The international experience strongly points to the fact that the jurisdictions that implement a strict regulatory regime for the provision of online gambling services have been more effective in protecting consumers than those that have imposed a blanket ban on online in-play wagering. Many Governments in major western countries over the past decade including the UK, Italy, France and Denmark have decided that in order to protect their citizens from the perils of problem gambling and preserve the integrity of sport, the most effective public policy measure is to permit this form of wagering under a regulated onshore licensing regime.

Sportsbet contends that removing the in-play restriction will not only reap the Government benefits in terms of minimising growing GST leakage (by permitting punters to place wagers with Australian licenced wagering service providers rather than illegal offshore wagering operators who do not pay GST) and product and wagering fees, but address a serious regulatory burden for Australian online WSPs. It is imperative that the Government provides a regulatory framework for wagering that encourages Australian consumers to interact with Australian WSPs.

²³ Final Report of the Review of the Interactive Gambling Act 2001, p6

²⁴ Submission by Dr Gainsbury from the Centre for Gambling Education and Research, Southern Cross University to the Department in response to the Department's Interim Report on the review of the IGA dated 25 June 2012, pp 25-26.

Public policy benefits of removing the in-play restriction

Sportsbet considers that removing the in-play restriction will have four material benefits from a public policy perspective, each of which are discussed below.

1. Mitigating potential harms to Australian consumers

At the outset, it must be recognised that there is no evidence that online in-play betting poses a specific, identifiable risk to problem gambling as opposed to other forms of betting²⁵. Indeed, as mentioned above, the urgent need for a platform neutral approach is supported by some of Australia's leading gambling academics, such as Dr Sally Gainsbury.

Adopting a platform neutral approach to in-play betting will aid the millions of Australian consumers who enjoy a 'punt' (wager) in their leisure time - particularly those at-risk of problem gambling, in so far as it will enable them with a choice to bet with Australian-based licensed wagering service providers (rather than forcing them to bet with black market offshore wagering operators) and receive the benefit of the robust harm minimisation and consumer protection measures that Australian licensed wagering service providers are required to have in Australia's highly regulated environment.

2. Protecting and enhancing the integrity of Australian sport

For many years, Australian-based wagering companies such as Sportsbet have worked closely with major sporting bodies to protect and enhance the integrity of sport and to mitigate the risk of gambling-related corruption. The cornerstone of this ongoing relationship (and protecting the integrity of the sport generally) is the integrity and information-sharing agreements between Australian-based wagering companies and major sporting bodies, which is enshrined in State legislation²⁶. These agreements mean that as soon as any suspicious gambling behaviour is detected by wagering companies, it is immediately reported to the relevant sporting body. In addition, Sportsbet also works closely with law enforcement and, where appropriate, shares betting information with relevant agencies.

A critical component to protecting the integrity of Australian sport is to ensure that, to the extent possible, all wagers placed on Australian sport occur through licensed and regulated Australian-based wagering companies which are party to these integrity agreements. For this aim to be achieved, it is vital that Australian wagering companies are able to offer similar products and services to those offered by offshore wagering operators, specifically online in-play betting.

For example, several Gibraltar-based websites offer online in-play betting on Australian major professional sports such as AFL and NRL, which illustrates such sites are specifically targeting Australian customers. This also shows that as online sports-betting is a global industry, a blanket ban on Australian companies offering mainstream globally popular services simply doesn't work because Australians are still legally able to and do access these services through the many thousands of unregulated or illegal overseas-based sports-betting websites.

In stark contrast, unregulated offshore operators are not required to share information regarding suspicious betting activity with the major Australian sporting bodies, nor do they contribute any product fees or sponsorship to Australian sports.

As the Government's announcement on the establishment of the *Illegal Offshore Wagering Working Group* mentions, annual turnover by Australian punters with illegitimate offshore operators who target Australian

²⁵ See also report conducted by the UK Gambling Commission, 2009.

²⁶ See Part 5, *Gambling Regulation Act 2003 (Vic)* and discussion at page 13 of this submission.

racing and sports is in the hundreds of millions of dollars. For a portion of this turnover to be redirected to licensed and regulated Australian wagering service providers, the ban on online in-play betting needs to be removed.

In relation to in-play betting with illegal or offshore wagering operators, the CEO of Cricket Australia, James Sutherland said:

*'It's very significant. The first thing for us is all about integrity. It's all about making sure that the public's faith in the game, the confidence in the game about it being a fair contest is the absolute priority and that's what we are focused on. When you talk about in-play betting, one of things that perhaps isn't so well understood is that people can bet in-play in Australia, but they do it offshore. So it follows that if it is something that people are able to do here in Australia, then we should create some sort of framework around it to make it protected and protect it from those who want to get to the game in a way that be inappropriate or reduce that faith in the fair contest. That's where COMPPS has come to a position of supporting in-play betting and working down that path with government and others to get the end result.'*²⁷

There are laws already in place in Australia that protect possible integrity risks of in-play betting. These existing protections apply irrespective of the platform on which the relevant betting services are offered, and will apply to in-play betting that takes place online in the same way as they currently apply.

For example, Part 5 of the *Gambling Regulation Act 2003 (Vic) (GRA)* establishes a platform-neutral regime to control the types of bets that can be offered by bookmakers on sporting events in connection with Victoria and to facilitate information sharing between these bookmakers and relevant sports controlling bodies in order to help guard against potential threats to sports integrity. The net effect of the Victorian regime is that Australian licensed betting operators are precluded from offering any markets (or bet types) on major sports unless they are specifically approved by the sports controlling body, based on its expert assessment of any risks the relevant market or bet type may pose to the integrity of the sport.

The GRA regime has received strong support from professional sporting bodies around Australia and a substantially similar regime is pending Ministerial approval in New South Wales (through the *Racing Administration Amendment (Sports Betting National Operational Model) Act 2014 (NSW)* and proposed accompanying regulations).

Notwithstanding that the GRA regime has not yet been enacted in all Australian jurisdictions, testament to the strong commitment and co-operation between licensed Australian wagering companies and Australia's major sports controlling bodies, Sportsbet understands that Australian wagering companies do not offer wagering markets on events in States outside of Victoria unless they have in fact been approved as events which can be bet on, by the applicable sports controlling body.

A summary of the key elements of the GRA regime is set out in **Annexure 3**.

3. Growing Australia's digital economy and benefits for Government

Removing the in-play restriction would significantly contribute to a sizable portion of the \$400 million in margins currently being achieved annually by offshore wagering operators in respect of amounts being wagered by Australians being redirected to Australian licensed wagering service providers with the attendant economic benefits for Government in the form of GST and income tax and the attendant community benefits.

²⁷ James Sutherland, CEO Cricket Australia, 12 June 2012

This reform would contribute to a strong and prosperous digital economy in keeping with the Government's 2015 Budget commitments.

4. A platform neutral approach to in-play betting will ease a significant regulatory burden on the Australian online wagering sector and enhance competition

The Government has committed to cutting the regulatory burden on Australian businesses and is seeing significant results with decisions to remove red tape resulting in estimated savings to Australian businesses of around \$2.45 billion.²⁸

The online in-play restriction imposes a significant regulatory and administrative burden and costs on Sportsbet (and the Australian online wagering industry more widely), including:

1. **Increased operational costs** – telephone bets represent significant additional costs relating to labour, training, infrastructure, call recording technology (all telephone calls, 24/7) and call recording storage. Allowing in-play bets online would reduce operating costs by approximately \$3.5m per year for Sportsbet.
2. **Betting slip disputes** – telephone bets result in increased costs associated with the investigation and resolution of betting slip disputes with customers; and
3. **Bet abandonment** – Sportsbet is forced to abandon approximately 2% of telephone bets due to the waiting time to place a bet, and as there is no online alternative for in-play bets, this represents revenue leakage and a poor customer experience. From January to July 2015, Sportsbet's customers spent a total of approximately 2,467 hours waiting to talk to an operator regarding an in-play bet.

Removing the in-play restriction will also enable Australian based online wagering service providers to compete with offshore wagering operators who offer this established and globally popular product.

With the above in mind, Table 2 below illustrates the fundamental negative consumer harms, social, integrity and financial impacts offshore illegal wagering operators have on Australia and serves to highlight the importance of appropriate wagering regulatory reforms to ensure the millions of Australians who enjoy having a punt are channelled to bet with Australian licensed wagering service providers in our Australia's highly regulated environment.

²⁸ Warren Entsch MP, *Coalition decisions to cut red tape now total \$2.45 billion*, Media Release, 18 March 2015

Table 2 – Comparison between Australian licensed wagering service providers and illegal offshore wagering operators

Online regulatory wagering landscape	Australian licensed online wagering service providers	Illegal Offshore Wagering Operators
<i>Harm Minimisation and Consumer Protections</i>		
Offer sophisticated and comprehensive responsible gambling measures and programs	✓	✗
Offer consumer protection measures and programs	✓	✗
<i>Social Impacts</i>		
Promote employment in Australia	✓	✗
Contribute to the community through sponsorships across Australia	✓	✗
Share wagering information with Australian racing and sports controlling bodies to protect and enhance the integrity of sport	✓	✗
<i>Economic Impacts</i>		
Pay taxes to Australian Government (e.g. GST, income tax)	✓	✗
Pay product fees to Australian racing and sports controlling bodies	✓	✗
Pay State & Territory licensing fees in Australia	✓	✗
Invest heavily in developing new and innovative technology and products in Australia	✓	✗

Enhancing the regulatory performance of the ACMA

An important feature of this review is to assess the ACMA’s current regulatory performance. Sportsbet submits that by the Government adopting the above key reforms it will ensure the ACMA remains relevant in its role of administering the IGA and arm it with the necessary ‘tools’ to reduce the ‘harms’ it aims to deter. Specifically, the reforms identified should enable the ACMA to tackle the scourge of thousands of illegal offshore gambling operators targeting Australian residents by offering prohibited interactive gambling services.

Concluding remarks

The Department and Government has a real opportunity through this review of the ACMA to implement meaningful updates to the regulatory regime put in place by the IGA to reflect leading international regulatory practice including a platform neutral approach to in-play betting and strengthening the deterrence and enforcement capacity of the ACMA to enhance its regulatory performance.

These reforms will have wide reaching benefits for (1) the millions of Australian consumer who enjoy wagering in their leisure time, (2) the integrity of Australian sport, (3) growth in Australia’s digital economy,

and (4) removing regulatory burden on the Australian licensed online wagering sector which is out of step with international regulatory practice

Sportsbet thanks the Department for the opportunity to make this submission and looks forward to working with the Department and the ACMA to assist in the matters raised in this submission.

Annexure 1 - Sportsbet and our strong commitment to responsible gambling and consumer protection

About Sportsbet

Sportsbet invests tens of millions of dollars each year developing new and innovative technology and products and supporting budding new web, program and app designers. We're leading the digital development of world class IT solutions including recent initiatives such as:

- **Live streaming of Victorian thoroughbred racing:** In March 2015 Sportsbet launched a groundbreaking initiative with Racing Victoria whereby Sportsbet streams live all Victorian thoroughbred races across Sportsbet's digital platforms to drive revenue for the sustainability of the Victorian thoroughbred racing industry and allow our customers to watch live racing on their devices, anywhere, anytime.
- **Cash Card:** In November 2014, Sportsbet launched a *Sportsbet Cash card* that allows customers to immediately transfer their winnings onto their Sportsbet Cash card via our digital platforms to enable our customers to access their winnings faster.

We make a solid contribution to the Australian economy through the employment of over 600 highly skilled professionals across our Melbourne, Sydney and Darwin offices. We're consistently adding 70-80 new staff a year and have budgeted for similar growth over the next three years. We are also acquiring additional office space at our Melbourne and Sydney offices to accommodate this growth.

Sportsbet pays State and Federal taxes on the same basis as other Australian bricks and mortar and digital businesses, namely, GST, fringe benefit tax, payroll tax and income tax. Between 2011 and 2014 these taxes totalled \$91.4m, which amounts to around 15% of revenue.

Combined with product fee contributions to Australian racing and sports controlling bodies (see below in this section), this brings Sportsbet's total product fee and tax contribution to \$188m during this period. Taken together, this amounts to around 30% of revenue.

In addition to taxes and product fees, Sportsbet is responsible for significant economic activity in the form of:

- Over six hundred jobs and hundreds of third party supplier engagements
- State and Territory licensing fees
- Significant advertising spend including across multiple digital platforms; and
- Hundreds of thousands of dollars in sponsorships from regional thoroughbred race clubs such as the Ballarat Turf Club, Devonport and the Gawler and Barossa Jockey Club to main stream professional sporting clubs such as the NRL as well as NRL clubs the Sydney City Roosters and Newcastle Knights, and AFL Clubs Richmond and Collingwood.

In Australia, WSPs are legally obliged to pay race fields' fees and other product fees to each peak racing body across Australia and sporting code in return for the right to offer wagering services on those events. Product Fee Agreements are at the cornerstone of protecting and enhancing the integrity of the Australian racing industry and sport, and operate to ensure the financial viability of those codes. They have several key benefits, including:

- providing a significant, multi-million dollar source of funding to the racing industry and Australian sporting codes;
- sharing information on any unusual or suspicious betting activity and assisting in the development of integrity programs which combat the risk of corruption and race/match fixing; and
- significantly easing the financial contribution required by State Governments to fund these important community activities and industries.

Sportsbet has made a significant contribution in product fees to the racing codes and sports controlling bodies between 2011 and 2014 (4 years) of \$96.6m across Australia, comprising:

- \$90.8m to racing bodies; and
- \$5.8m to sports controlling bodies.

Sportsbet's strong commitment to responsible gambling and consumer protection

Sportsbet is strongly committed to responsible gambling and people gambling within their means. We use a wide range of responsible gambling measures which go over and above the obligations imposed on Australian licensed WSPs under state and territory-based laws, regulations, codes of practice and advertising standards.

These measures include:

- *Voluntary pre-commitment* - where customers can set a daily, weekly or monthly deposit limits when opening an account and update this at any time – subject to a cooling-off period before a change to increase a betting limit. Voluntary pre-commitment encourages responsible gambling by ensuring customers spend within their means up to a maximum amount which they have pre-determined.
- *Self-exclusion* - Customers can self-exclude for a nominated period. Sportsbet customers have the ability to self-exclude themselves from betting with Sportsbet, which enables persons who may be at risk of problem gambling to take proactive steps to ensure Sportsbet closes their account and does not take bets from them.
- *Spend-tracking facilities* - Sportsbet customers can track their wagering spend via their account statements, which ensure that customers can access this information at any time in order to monitor their wagering activities to ensure it is within their limits.
- Specialised responsible gambling officers and the implementation of mandatory training on responsible gambling practices for all staff.
- Responsible marketing of gambling, including compliance with the AANA Code of Ethics.
- Support for industry self-regulation and restrictions such as the ban on broadcasting of live odds and advertisements during play and the ban on online pokies, and strongly advocates for an industry-wide self-exclusion database.
- The implementation of a cash withdrawal card so that customers can immediately withdraw money from their account, removing any hindrance or restrictions for customers to access their funds.
- 'Cash out' betting feature – Sportsbet now offers customers the choice to 'cash out' of their bet before the end result if they are inclined to take either a handsome profit if the odds of their original bet have shortened (improved) but they're inclined not to take any chances or, alternatively, to take

a portion of their original bet back if they change their mind or don't like the way the outcome of their bet is looking.

Annexure 2 – Central provisions of the IGA relating to the prohibition on ‘interactive gambling services’ and permitted wagering services

15 Offence of providing an interactive gambling service to customers in Australia

- (1) A person is guilty of an offence if:
- (a) the person intentionally provides an interactive gambling service; and
 - (b) the service has an Australian-customer link (see section 8).

Penalty: 2,000 penalty units.

5 Interactive gambling services

- (1) For the purposes of this Act, an **interactive gambling service** is a gambling service, where:
- (a) the service is provided in the course of carrying on a business; and
 - (b) the service is provided to customers using any of the following:
 - (i) an internet carriage service;
 - (ii) any other listed carriage service;
 - (iii) a broadcasting service;
 - (iv) any other content service;
 - (v) a datacasting service.

Note: This definition relates to the offences created by section 15 and Part 7A.

- (2) Subsection (1) has effect subject to subsection (3).

Excluded services

- (3) For the purposes of this Act, none of the following services is an **interactive gambling service**:
- (a) a telephone betting service;
 - (aa) an excluded wagering service (see section 8A);
 - (ab) an excluded gaming service (see section 8B);
 - (ac) a service that has a designated broadcasting link (see section 8C);
 - (ad) a service that has a designated datacasting link (see section 8C);
 - (ae) an excluded lottery service (see section 8D);
 - (b) a service to the extent to which it relates to the entering into of contracts that are financial products within the meaning of Chapter 7 of the *Corporations Act 2001*;
 - (c) an exempt service (see section 10).

8A Excluded wagering service

- (1) For the purposes of this Act, an **excluded wagering service** is:
- (a) a service to the extent to which it relates to betting on, or on a series of, any or all of the following:
 - (i) a horse race;
 - (ii) a harness race;
 - (iii) a greyhound race;
 - (iv) a sporting event;
 - (b) a service to the extent to which it relates to betting on:
 - (i) an event; or

- (ii) a series of events; or
 - (iii) a contingency;
- that is not covered by paragraph (a).

- (1A) Subsection (1) does not apply to a service unless such other conditions (if any) as are specified in the regulations have been satisfied.
- (2) Paragraphs (1)(a) and (b) do not apply to a service to the extent to which:
- (a) the service relates to betting on the outcome of a sporting event, where the bets are placed, made, received or accepted after the beginning of the event; or
 - (b) the service relates to betting on a contingency that may or may not happen in the course of a sporting event, where the bets are placed, made, received or accepted after the beginning of the event.

Annexure 3 – The GRA regime

Outline of the GRA regime

In brief, the key elements of the GRA regime are as follows:

- a power for the Victorian Commission for Gambling and Liquor Regulation (**VCGLR**) to approve a sporting event (or class of events) in Victoria for betting purposes. The VCGLR must take a variety of factors into account when deciding whether or not to issue an approval, including matters such as whether the event is exposed to unmanageable integrity risks and whether betting on the event would be offensive or contrary to public interest;
- a prohibition on sports betting providers offering a betting service on an approved sporting event in Victoria unless they have an agreement in place with the sports controlling body approved by the VCGLR for that sporting event (or, in the absence of an agreement, where the VCGLR has made a determination allowing the relevant provider to offer a betting service on the relevant sporting event). Sports controlling bodies must be approved by the VCGLR, and in deciding on whether or not to issue an approval the VCGLR must, among other things, take into account whether the applicant has the expertise, resources and authority necessary to protect the integrity of the relevant sporting event; and
- a power for the VCGLR to prohibit betting on a particular contingency relating to an approved sporting event in connection with Victoria. Again, the VCGLR can take a variety of factors into account when exercising this power, including whether allowing betting on the relevant contingency would expose the relevant sporting event to unmanageable integrity risk or would be offensive or contrary to the public interest. The advantage of prohibiting select bet types by exception is more efficient as it allows regulatory resources to be targeted at specific activities that are considered undesirable.