Submission to Review of Impacts of Illegal Offshore Wagering - by the **Australian Bookmakers’ Association (‘ABA’)**

The Australian Bookmakers’ Association (‘ABA’) is the representative body for Australia’s approximately 550 *on-course* bookmakers on matters of national impact, our board being comprised of the Chairmen from each of the State’s Bookmaking Associations.

Whilst being a large group of wagering operators the combined share of the Australian wagering market held by our members is estimated (based on latest Racing Australia statistics) to be less than 2%. Our members’ share of the wagering market, along with their overall betting turnovers, have been in decline for approximately 2 decades due primarily to structural and competitive changes within the racing and wagering industries.

Nevertheless our members continue to play a vital role in the racing industry in direct support of racing clubs and their efforts to attract racegoers and promote the on-course experience as an entertaining sporting and leisure experience.

We trust that the following comments will assist with the Government’s review of this issue. Our submission follows the suggested Q&A format provided in your ‘Make a Submission’ guide.

Any further enquiries or questions concerning the content of this submission should be initially referred to:

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# Key Points in our Submission

* **There is strong evidence that Australian wagering customers are increasingly using illegal offshore wagering channels to transact bets on Australian Racing and Sporting events**
* **This trend puts at grave risk the integrity of Australian Racing and Sporting events and compromises Australia’s carefully established consumer protection, problem gambling harm minimisation and industry & government revenue platforms**
* **Only strong Federal Government actions (legislative and enforcement) can combat the accessibility and attractiveness of offshore wagering to Australian gamblers**
* **Extreme care needs to be taken in respect of such Government actions so as to not (further) competitively disadvantage Australian-licensed wagering operators**
* **On-course bookmaking is a minor but unique sector of the Australian wagering market and as such should not be subject to ‘one size fits all’ regulatory interventions that may be applicable to larger corporate gambling operators. For example, any ban on credit based settlement options historically available to our members would be unwarranted and would have unintended negative consequences.**

## Q1. What are the factors that lead people to use illegal offshore wagering operators?

These factors are primarily as follows:

* Higher gambling returns (via better odds and rebates etc.) due to commercial competitive advantages surrounding evasion of taxes, sport product fees and other onshore costs
* Privacy of gambling due to non-disclosure of customer identification and transactions data
* Ease of access to gambling and funds movement via modern technologies and financial services
* Greater opportunities to gamble via an unrestricted product range and absence of consumer protection and problem gambling harm minimisation regulations
* Attraction to aggressive marketing and inducements tactics by operators, avoiding onshore regulatory controls
* Confusion by consumers about relevant licensing jurisdiction and operator bona fides, which is often unclear on websites and/or in any Terms & Conditions and may provide an impression of Australian based licensing and regulation.

## Q2. What do you consider are the impacts of illegal offshore wagering and associate financial transactions on the Australian economy, legitimate Australian wagering businesses, sporting organisations and the integrity of Australian sport and consumers?

The major impacts on these institutions and groups are as follows:

* ‘Leakage’ of wagering by Australians to offshore operators provides for a loss of onshore employment, business revenues and related government taxes that would have otherwise accrued to the local economy via Australian licensed operators
* Legitimate Australian wagering businesses incur lower turnovers, revenues, nett profits and loss of business scale as a result of this leakage
* Sporting organisations including the Racing Industry lose product fee revenues and similar revenue sharing entitlements when leakage occurs
* A primary concern is the loss of Australian sport and racing event integrity controls when betting is conducted with illegal offshore operators. Transparency of betting transactions is the key to successful integrity regimes. This is heavily compromised by illegal and non-transparent offshore operations
* Protections for Australian gambling consumers are also depleted under illegal offshore wagering operations. Carefully constructed onshore consumer protection and problem gambling harm minimisation controls are not applicable to illegal offshore operations
* The unregulated activities of illegal offshore operations arguably also have a ‘compounding’ effect on the activities of some legal onshore operators who may in certain cases feel compelled to attempt to emulate some of their more aggressive and inappropriate marketing and inducements related tactics to attract and retain Australian customers.

## Q3. What measures could be implemented to improve the enforcement of the Interactive Gambling Act 2001 and any other relevant legislation including any enhancements to presently existing prosecution, investigation and complaints handling processes? What legislative, prosecutorial, investigative or complaint handling measures have been implemented in international jurisdictions that may work in the Australian context?

The current Interactive Gambling Act (‘IGA’) has been proven ineffective in deterring Australians from gambling with offshore wagering operators. Factors contributing to this failure include:

* Lack of clarity in the legislation as to whether any illegality occurs in the context of online *wagering* when Australians gamble with an offshore operator
* An apparent ‘lack of interest / priority’ by the Australian Media & Telecommunications Authority (‘ACMA’) and the Australian Federal Police in monitoring and enforcement of reported or potential illegal activities
* Ambiguity in the legislation concerning certain offences such as ‘betting in the run’ and related technologies that enable same
* Apparent lack of cohesion and co-ordination between Federal and State & Territory agencies in relation to the legislation and its ‘counterpart’ unlawful gambling legislation at State / Territory level.

In terms of international experiences with controlling offshore-provided online gambling, a number of countries have more successfully managed the issue. These include:

* The USA where strong enforcement (offshore gaming executives were detained and imprisoned in some instances) of internet gambling laws, backed up by banking controls that prohibit funds movements via financial institutions
* Hong Kong, Singapore and a number of other countries where laws were introduced making it an offence for any offshore organisation to accept bets from local residents.

Whilst no single measure will provide a ‘silver bullet’ solution to this issue, a combination of the following measures by the Federal Government in co-operation with the States & Territories would in our view deter the majority of illegal offshore wagering activity:

* Clear and consistent (with States / Territories) Federal legislation that prohibit defined offshore wagering activities at both the ‘operator’ and ‘consumer’ ends
* Clear and consistent advertising laws that prohibit the marketing in any way of such activities by any means to Australian residents
* Legislation prohibiting Australian and Australian-linked financial institutions from processing funds transfers related to illegal offshore wagering activities
* Creation of a formal gambling industry based advisory committee that can directly alert, advise and assist relevant government agencies in relation to illegal activities encountered by the industry and its consumers

Q4. Are there non-legislative options, such as technological and financial innovations, that could be implemented to limit the access to illegal offshore wagering sites by Australian-based customers?

Legislation and related rigorous enforcement measures appear to be necessary to effectively manage this issue. Nevertheless other complimentary actions could include:

* Legislation-backed website / ISP blocking actions as have now been implemented by the Federal Government for protection of the entertainment industry
* Code of Conduct based measures that require racing and sporting organisations and legal gambling operators to report perceived illegal offshore gambling activities encountered in the course of their businesses.

Q5. What approaches could be implemented to encourage offshore wagering providers to comply with Australian laws, and would this require measures to assist in ensuring domestic providers would not be operating at a disadvantage to offshore providers?

It is considered unlikely that current offshore operators would find it attractive to comply with Australian laws, as avoidance of costs (including taxes and product fees) and consumer protection & harm minimisation controls are a key motivation to remain offshore.

Australian licensed operators already run their businesses under unfavourable competitive terms as compared with these offshore ventures.

Irrespective of whether more effective legislation and enforcement measures are introduced by Government there should be a policy focus on ensuring that the Australian wagering industry remains competitive and viable, both in an international context and within the Australian economy.

Wagering is regarded by most Australians as a legitimate, socially acceptable and valuable (to them) entertainment option. As such they expect to be able to take part on terms that are fair in the context of the cost of participation as well as attractive in terms of product range and ease of access.

Most Australian consumers of *online* wagering services are particularly aware of the costs of participation (reflected in comparative betting odds returns) and available product range and services in respect of the many international gambling operations that are known to them.

It is therefore vital to the future of the Australian based industry that a high degree of price and product competitiveness is retained under any new legislative / regulatory arrangements.

In particular the following measures need to ensure that there is no significant perceived disadvantage in wagering with Australian operators:

* Taxes and Product fees comparable with licensed / legitimate offshore based operations
* A comparable wagering (racing and sports) product range with such offshore operators
* No unnecessary barriers to participation (other than proven consumer protection controls)
* No unwinding of longstanding services valued by Australian customers, such as delayed settlement arrangements for select clients of on-course bookmakers

## Q6. Are there education and awareness initiatives that could be implemented by industry, consumer groups or government to alert Australians to the risks associated with offshore gambling operators?

Yes. Education and awareness initiatives are recommended given that many consumers do not appear to understand current licensing, regulatory and consumer protection arrangements onshore versus offshore.

In this respect our various State Association offices have experienced numbers of enquiries and complaints from wagering consumers who have experienced difficulties in their dealings with offshore operators. These have included fraud, theft of account funds, non-payment of winnings and unfair determinations about betting transactions and related disputes.

In many of these cases the consumers in question advised that they had been *unaware* that the wagering operator was not licensed in Australia. This is not unexpected as offshore websites are often purposely designed to look like Australian licensed sites, and are often promoted and administered by Australian resident employees, in many cases from offices located within Australia.

In addition, many consumers will not wade through pages of terms and conditions (if there are any) to establish the jurisdiction of license.

Education and awareness campaigns can therefore play a productive role in reducing the risks for Australian consumers.

One measure which appears worthy of consideration is the adoption of a “Licensed in Australia” brand seal or similar for prominent display on wagering websites, along with the promotion / advertising of this identifier to Australian consumers.

A further measure could be the public release by authorities on a regular basis of a list of ‘approved’ wagering operators. Similar listings are currently made available by South Australian government authorities.

## Q7. What initiatives could be used to alert offshore gambling providers to Australian interactive gambling provisions?

Initiatives could include the following:

* Direct notifications to offshore companies / operators via confirmed registered receipt means, using lists provided by relevant Australian regulatory authorities in conjunction with advice by Australian gambling industry representative bodies
* Advice to relevant government authorities in the home jurisdictions of the identified offshore entities concerned
* Advice to relevant racing and sports controlling bodies in the home jurisdictions of the identified offshore entities concerned
* Advice to both Australian and overseas financial institutions identified as being involved in funds processing in respect of the offshore entities involved.