

Australian Government
Department of Social Services

REVIEW OF ILLEGAL OFFSHORE WAGERING

Submission from
Harness Racing Australia



16 November 2015

HARNESS RACING AUSTRALIA
SUBMISSION TO THE AUSTRALIAN GOVERNMENT
DEPARTMENT OF SOCIAL SERVICES
REVIEW OF ILLEGAL OFFSHORE WAGERING

Harness Racing Australia (HRA) welcomes the opportunity to contribute to the Australian Government Department of Social Services (the Department) review of illegal offshore wagering (the Review) to investigate methods to strengthen enforcement of the *Interactive Gambling Act 2001* (Cth) and ensure Australians are protected from illegal offshore wagering operators.

HRA is the peak national body for the sport and business of harness racing in Australia.

HRA represents more than 48,400 individuals who are involved in the process of producing and preparing standardbreds for racing in Australia. Of these, there are 24,000 owners of standardbred racehorses who provide significant capital investment into the industry, over 5,900 trainers and drivers and more than 5,500 breeders. The process of producing and preparing standardbred racehorses to compete in the industry is worth more than half a billion dollars in direct expenditure alone to the Australian economy. The majority of this is spent in regional Australia.¹

HRA wishes to raise the following points for consideration:

- Wagering must continue to be exempt from the Interactive Gambling Act 2001.
- The need for a national approach to dealing with unauthorised and unregulated offshore wagering operators.
- The need for a national regulatory regime and enforcement.

1. Wagering must continue to be exempt from the Interactive Gambling Act 2001

When it was enacted in 2001, wagering was specifically exempted from the Interactive Gambling Act (IGA). HRA supports this continuing exemption, but only on the basis it cannot be exploited by internationally “footloose”² wagering providers. This term was used by the Productivity Commission in its 2010 report to describe the practice of bookmakers relocating their businesses away from established jurisdictions to avoid paying tax or contributing to the controlling body on whose product they are wagering.

It is essential that all betting providers which seek to profit on Australian racing or sporting events, regardless of where they are located, comply with strict integrity and financial standards. In this regard, the IGA should be strengthened to allow the blocking of ISPs from internationally “footloose” wagering providers.

HRA also recommends the IGA be strengthened with amendments to prohibit financial

¹ Size & Scope of the Harness Racing Industry in Australia, IER Pty Ltd, May 2013.

² Productivity Commission 2010, *Gambling*, Report no.50, Canberra, p15.1

institutions from processing transactions from non-approved online gambling sites. Whilst the IGA currently provides a mechanism for regulations to be made relating to financial agreements involving illegal gambling services, to date there have not been any regulations made.

The United States Federal Government has led the way in this area, with the *Unlawful Internet Gambling Enforcement Act 2006*, while France followed suit in 2012. The incorporation of similar provisions in the IGA would enhance Australia's ability to ensure that punters deal with betting providers who have been approved by the appropriate regulatory body. This would ensure punters are dealing with betting providers who meet minimum integrity, harm minimisation and problem gambling standards.

2. The need for a national approach to dealing with unauthorised offshore wagering operators.

HRA strongly supports intervention to ensure adequate and effective measures are taken to deal with unlicensed, offshore wagering operators. The Commonwealth's ability to make laws in respect of telecommunications provides it with the opportunity to arrest the revenue leakage away from Australia as well as providing protective measures to ensure Australians do not fall victims to financial losses via unscrupulous practices by offshore operators in the future (as some have done in the past - eg BetJack).

This issue has been the subject of review by the Joint Select Committee on Gambling Reform in 2011 and the Department of Broadband, Communications and the Digital Economy in its review of the *Interactive Gambling Act 2001* (the IGA) in 2012. In the Department's Interim Report dated 29 May 2012 and Final Report dated 12 March 2013, the following recommendations were made outlining measures the Australian Government can take to prohibit overseas based wagering operators accessing Australian customers.

Recommendation 9: Subject to further consultation with industry, the IGA should be amended to provide a 'safe-harbour' allowing financial institutions that choose to voluntarily block financial transactions between Australian consumers and unlicensed online gambling service providers (or any intermediaries involved in such transactions) as part of their services to customers. The list of prohibited gambling service providers identified and published by the ACMA should be drawn to the attention of financial institutions by the department.

Recommendation 10: The department and Treasury should continue to monitor developments overseas in the use of financial payment blocking to prohibited gambling sites and draw relevant developments to the attention of Australian financial industry bodies.

Recommendation 11: Online gambling service providers that are confirmed by the ACMA as providing prohibited services in contravention of the IGA should continue to be included on the ACMA's list of prohibited URLs and/or websites that are subject to blocking by vendors of PC filters on the Internet Industry Association's (IIA) family-friendly filter scheme. The IIA should also expand its family-friendly filter scheme to include all popular filters used by Australians.³

³ Department of Broadband, Communications and the Digital Economy, Review of the Interactive Gambling Act 2001, Final Report, 12 March 2013.

HRA supports these recommendations, as outlined in both its original submission dated 21 October 2011 to the Department and its response to the draft report dated June 2012. HRA also notes the strong stance taken on these issues by the State and Territory Ministers at the 2012 Conference of Australasian Racing Ministers. In the official Communiqué from the Conference, it was resolved:

The Ministers agreed to write to the Federal Government seeking urgent support for legislation to protect Australian racing from unauthorised offshore wagering operators. The Ministers will be recommending the following action:

- *make it illegal for a telecommunication service provider to facilitate the transactions of a bet with a wagering service provider unless that wagering service provider is authorised by the relevant racing controlling body, and*
- *prevent financial institutions from processing betting transactions with a wagering service provider unless they are so authorised.*⁴

HRA notes that the Government of Quebec has introduced new legislation that requires internet service providers to block access to unlicensed online gambling sites. The Bill provides that “an internet service provider may not give access to an online gambling site whose operation is not authorized under Québec law.” The government’s lottery commission will establish the list of banned websites:

“The Société des loteries du Québec shall oversee the accessibility of online gambling. It shall draw up a list of unauthorized online gambling sites and provide the list to the Régie des alcools, des courses et des jeux, which shall send it to Internet service providers by registered mail.”

According to the law:

“An Internet service provider that receives the list of unauthorized online gambling sites in accordance with section 260.35 shall, within 30 days after receiving the list, block access to those sites.”

This mandated blocking legislation is unprecedented.

HRA urges the Department to progress these initiatives in the best interests of the Federal and State Governments and the billion dollar racing industry

3. The need for a national regulatory regime and enforcement

The regulation of wagering on racing has traditionally been the domain of the states and territories. For over one hundred years, this proved successful, particularly when each State Government owned and controlled its own TAB, with bookmakers permitted to operate only when situated on a racecourse and arrangements existed between states regarding betting on each other’s racing product.

The privatisation of TABs, the emergence of telephone, online and smart phone betting and

⁴ Australasian Racing Ministers’ Conference, 11 May 2012, Government Media Statement. Accessed at http://www.premier.tas.gov.au/media_room/media_releases/australasian_racing_ministers_conference

the changes associated with globalisation, has irrevocably altered the wagering landscape. No longer are state and territory borders relevant and the protectionist policies of past decades have gone, replaced with an emphasis on competition and free trade. The result is inconsistent regulation being imposed by states and territories, including different taxation rates. For the racing controlling bodies, the prevalence of 'free-riding' bookmakers, located in small jurisdictions, paying little or no tax to the local government and providing minimal or no return to the racing controlling bodies, has had a detrimental effect.

A national regime would not only rectify the 'free-riding' problem but also allow the Government to mandate a consistent approach to issues such as problem gambling, money laundering and taxation – the very issues of particular interest which go to the heart of this review.

HRA would support the establishment of a national gambling regulator. Its powers could include:

- licensing of betting providers including adherence to strict integrity, advertising, problem gambling, harm minimisation and financial measures
- reviewing a sports capability (and this includes racing), particularly with respect to integrity standards, to enter into arrangements with betting providers
- banning unscrupulous operators including international betting operators who do not adhere to integrity or financial standards

HRA believes, however, that even in a national regulatory system, the producer of the product – albeit the racing or sports controlling bodies – must retain the right to determine:

- which betting providers are permitted to bet on their product
- which bet types they offer
- what product fee they pay the industry in return

With the exception of Tasmania and Western Australia, States and Territories have recently introduced measures in their respective criminal laws which prohibit cheating at gambling - with high profile success in Victoria.

The respective legislation is applauded, however, a lack of uniformity, experience, resources, capability and or prioritisation among law enforcement agencies is a concern. Legislative consistency and cooperation across all States and Territories would eliminate soft target jurisdictions in a world which no longer knows borders or time limits.

Any opportunity that this uniform approach extend to Federal criminal law (with the co-operation of the States) would be applauded by HRA, removing any potential enforcement power or investigative gaps for the Australian Federal Police (AFP).

Further, HRA submits that success in this area would only be possible with a properly resourced and funded AFP responsible for investigating IGA breaches and enforcement of cheating at gambling legislation where international and or cross border sports match and/or race fixing activities are taking place.

A national regulatory body would also allow the Government to promote measures to best address any concerns arising from the social and economic impacts of gambling.

HRA also requests the Department explore opportunities for a national approach to integrity standards and practices, with an eye to strengthen the role and functions of the National Integrity of Sport Unit (NISU) to meet contemporary practices including the sharing of sensitive information and data from various agencies among approved racing and sporting bodies.

Conclusion

Unlike other sports, the racing industry is dependent on wagering. As a result, the industry is heavily regulated, commanding the highest standards of integrity. It achieves this by devoting substantial resources to integrity and by providing broad powers to Stewards, including bet monitoring.

Given the increase in gambling by Australian by unauthorised wagering operators, including off shore operators, it is imperative that a regulatory and enforcement regime underpin both industry and government efforts to protect (and enhance) the economy of racing and the wider public.

The creation of a national gambling regulator with appropriate legislative powers will ensure that minimum standards are met by both racing control bodies and by the betting operators.

A national regulatory body would also allow the Government to promote measures to best address any concerns arising from the social and economic impacts of gambling.

HRA encourages the Department to use this review to implement these important reforms.