THOMSON GEER
LAWYERS

ADVICE | TRANSACTIONS | DISPUTES
Domestic & Cross Border

GAMING & LEISURE ALERT
INDUSTRY UPDATE: APRIL 2014

NSW SPORTS BETTING BILL

On 10 June 2011, a National Policy on Match-Fixing in Sport was endorsed by all Australian sports ministers in an effort to combat match-fixing and associated undesirable sports betting activities in Australia. A National Operational Sports Betting Model was then agreed to by the various State and Territory sports ministers on 30 September 2011 (**Model**). As a result, the *Racing Administration Amendment (Sports Betting National Operational Model) Bill 2014* (NSW) (**Sports Betting Bill**) was introduced in the Legislative Assembly on 19 March 2014. Its purpose is to implement the Model in NSW and regulate betting on sporting events.

The Sports Betting Bill proposes to make amendments to the *Racing Administration Act 1998* (NSW) as well as associated amendments to the *Greyhound Racing Act 2009* (NSW), *Harness Racing Act 2009* (NSW), *Thoroughbred Racing Act 1996* (NSW) and the *Unlawful Gambling Act 1998* (NSW). Briefly, it is envisaged that one person or body will be prescribed as the sports controlling body for each type of sport, and that betting service providers will be required to enter into integrity agreements with such bodies if they wish to offer betting services in relation to events occurring in that sport.

Thomson Geer intends to issue a separate more detailed alert on the Sports Betting Bill in due course. At present, the Sports Betting Bill is awaiting its second reading debate in the Legislative Assembly.

FEDERAL GOVERNMENT & GAMBLING

No Liberalisation of IGA

The Liberal government has made it clear that there will be no liberalisation of the existing federal restrictions on mobile / online gaming under the *Interactive Gambling Act 2001* (Cth) (**IGA**). Indeed it has expressed a clear intention to investigate the best methods of enforcing the IGA given the absence of any meaningful enforcement steps to date.

Labor Government Reforms Repealed

Various gambling reforms were introduced by the former Labor government in 2012 via the ***National Gambling Reform Act 2012*** (Cth) (NGA), as well as the *National Gambling Reform (Related Matters)* Act (No.1) 2012 (Cth) and National Gambling Reform (Related Matters) Act (No. 2) 2012 (Cth) (**Related Matters Acts**). Many of those measures have now been repealed by the *Social Services and Other Legislation Amendment Act 2014* (Cth) (**Amendment Act**) which was assented to on 31 March 2014.

Schedule 1 of the Amendment Act has amended the NGA (which is now called the *Gambling Measures Act 2012*) and repealed the Related Matters Acts. In doing so, the following measures introduced by the former Labor government have been abolished:

- Measures requiring automatic teller machines on gaming premises (except casinos) to prevent a person from withdrawing more than $250 cash using any one card in a 24 hour period. Now that they have been abolished, reports indicate that Ladbrokes Australia will introduce a card which will enable wins to be instantly withdrawn from any ATM or spent via Eftpos with a daily withdrawal limit of $1,000 or daily spend of $2,500 via Eftpos;
- Measures requiring manufacturers and importers of gaming machines to ensure that such machines are capable of providing for pre-commitment systems if they are manufactured or imported on or after 31 December 2014;
- Measures requiring approved pre-commitment systems to be put in place, and dynamic electronic warnings to be displayed, on gaming machines that are made available for use on and after 31 December 2018;
- Measures requiring the Productivity Commission to undertake reviews; and
- Measures providing for the National Gambling Regulator, supervisory levy and gaming machine regulation levy.

In addition, provisions relating to the controversial mandatory pre-commitment scheme for gaming machines scheduled to be trialled in the Australian Capital Territory have also been repealed by the Amendment Act. Mandatory systems require all people who use gaming machines to set a limit before they can commence play.

Voluntary Pre-Commitment for EGMs

The Liberal government has however expressed its support for "voluntary pre-commitment on gaming machines in venues nationally" as part of its broader plan to encourage "responsible gambling by all gamblers", notwithstanding the above repeals. Voluntary pre-commitment allows (rather than requires) a player of a gaming machine to set a limit on the amount that the player is prepared to lose, and assists the player to keep to the limit. Moving forwards, the Amendment Act indicates that the Commonwealth will work with the State and Territory Governments, the gaming industry, academics and the community sector to develop a "realistic timetable" for implementing a voluntary pre-commitment scheme. It will also develop a "realistic timetable" for ensuring that all gaming machines are actually capable of supporting a venue based voluntary pre-commitment scheme in conjunction with the State and Territory Governments as well as the gaming industry itself. Further, it will work with the State and Territory Governments on the most appropriate way of administering the scheme.

Separately from the above development, various States and Territories are already advanced in implementing such schemes.

STATE BASED VOLUNTARY PRE-COMMITMENT

The *Gambling Regulation Amendment (Pre-commitment) Act 2014* (VIC) (**Victorian Act**) received Royal Assent on 11 February 2014. Accordingly, Victoria is the first Australian jurisdiction to legislatively require voluntary pre-commitment technology to be connected to gaming machines (from 1 December 2015 subject to a direction by the Minister). The Victorian pre-commitment system will also enable players to track their playing history and spending over time. Venue operators will be required to provide and maintain certain player account equipment to facilitate the operation of the pre-commitment system at their venues.

It is also to be noted that other jurisdictions, such as Queensland and South Australia, have had voluntary programs for gaming machines in place by agreement with venue operators for some time now.

CROWN RESORTS : BARANGAROO

The *Casino Control Amendment (Barangaroo Restricted Gaming Facility) Act 2013 No. 100* (NSW) (**Barangaroo Act**) was enacted on 27 November 2013 to enable Crown Resorts Limited to be granted a licence for its proposed $1.5 billion six star Crown Sydney Hotel Resort at Barangaroo, Sydney, which will include a VIP gaming facility. The Barangaroo Act provides that a restricted gaming licence may be granted to operate the Barangaroo gaming facility, and imposes various restrictions on gaming at the facility. It also makes related amendments to the *Casino Control Act 1992* (NSW) (**CCA**), the *Gaming Machines Act 2001* (NSW), and the U*nlawful Gambling Act 1998* (NSW).

The restrictions include:

- The gaming areas in the facility must not exceed 20,000 square meters;
- The installation or use of "poker machines" (as defined in s.22A of the CCA) is not lawful in the gaming facility. This does not include electronic versions of traditional table games, multi terminal games or multi-player games (such games must be approved by the Independent Liquor and Gaming Authority (**ILGA**)).
- The ILGA is prohibited from authorising the keeping of any gaming machines on any premises situated on the Barangaroo site outside the gaming facility itself. This could be seen as both a restriction upon and a protection for Crown, depending upon the ownership / leasing of the relevant site;
- The conduct or the playing of any game in the gaming facility is not lawful before 15 November 2019;
- Minimum bet limits will apply to any game in the gaming facility (for example, $30 for baccarat, $20 for blackjack, and $25 for roulette or such higher amount as may be determined by the ILGA). These are designed to limit patronage to premium or VIP customers and not mass market customers (although doubts have been expressed in the media as to whether such limits are high enough to deter local gamblers); and
- Only persons who, in accordance with the conditions of the licence, are members or guests of the gaming facility may participate in any gaming.

It is noted that the *Smoke-free Environment Act 2000* (NSW) will not apply

to gaming areas in the facility and therefore smoking will be permitted. However, air quality equipment that is of an international best practice standard must be installed, and must be tested quarterly with the results reported annually to the Minister of Health.

Crown has applied to the ILGA for approval to be issued with a restricted gaming facility licence at Barangaroo. In accordance with s.13A of the *Casino Control Act 1992* (NSW) the ILGA must now determine whether Crown, and each "close associate" of Crown, is a suitable person to be concerned in, or associated with, the management and operation of the Barangaroo restricted gaming facility. This process is already well underway.

NEW QUEENSLAND CASINO LICENCES

The Queensland government is offering up to three new casino licences across the state; one in Brisbane and two other regional licences. Licences are likely to only be offered as part of an integrated resort-style development.

Expressions of interest for the Brisbane licence were submitted by Crown Resorts Ltd, Echo Entertainment Group Ltd, Far East Consortium / Chow Tai Fook Enterprises Ltd, Lend Lease, SKYCITY Entertainment Group Ltd, and Greenland Investment Pty Ltd.

Applicants who submitted expressions of interest for the regional licences were as follows:

APPLICANT	REGION
Aquis at the Great Barrier Reef Pty Ltd	Yorkeys Knob, north of Cairns
China-Australia Entrepreneurs Consortium Pty Ltd	Airlie Beach
Fullshare International (Australia) Pty Ltd	26 kilometres south of Proserpine
GKI Resort Pty Ltd	Great Keppel Island
Eastern Success Group Pty Ltd	Nerang, Gold Coast
ASF Consortium Pty Ltd	Broadwater, Gold Coast

The Queensland government will be requesting detailed proposals from selected applicants in or around mid 2014.

QUEENSLAND RACING COMMISSION OF INQUIRY

On 23 May 2013 the Queensland Racing Commission of Inquiry (**Inquiry**) was established in response to allegations about the management of the thoroughbred, harness and greyhound racing industries in Queensland. Such allegations concerned Racing Queensland Limited (**RQL**) and its predecessors, Queensland Racing Limited, Greyhounds Queensland Limited and Queensland Harness Racing Limited as well as their controlled entities including Queensland Race Product Co Limited.

The detailed 488 page report of the commissioner, the Hon Margaret White AO, was issued on 7 February 2014 (**Report**).

The primary focus of the Inquiry was the operations of the various entities during the period 1 January 2007 to 30 April 2012. The terms of reference of the inquiry are summarised in the Report under eight broad headings:

1. Procurement, Contract Management and Financial Accountability;
2. Management and Culture;
3. RQL Corporate Governance;

4. Governance Oversight;
5. Employment Contracts of Executives;
6. Tattsbet – Race Fields Information[1];
7. Funds Transfer[2]; and
8. Future Governance and Other Matters.

A number of recommendations were made in the Report including that the conduct of various individuals should be examined further by ASIC to determine whether they breached their duties as directors. In addition, the Report recommends that executive government:

- consider amalgamating the policy and compliance functions of the Office of Racing with another established and compatible government regulator such as the Office of Liquor and Gaming Regulation, avoiding creating any separate racing industry business unit and ensuring compliance functions and skills are transferrable across other industries within the regulator;
- investigate whether the interests of racing integrity require the Racing Science Centre (**RSC**) to be a dedicated scientific facility within government and consider the advantages of absorption within a larger organisation such as a university or of outsourcing the scientific work now carried out by the RSC;
- consider making changes to section 9AL(1) of the *Racing Act 2002* (Qld) (**Racing Act**), at a time appropriate for the good governance of the board, to require the chairperson of the Queensland All Codes Racing Industry Board (**QACRIB**) to be one of the two other members of the board mentioned in section 9AI(1)(d) of the Racing Act;
- review the suitability and efficacy of the present model of QACRIB as a statutory authority assisted by the three codes boards, and the position of the Integrity Commissioner, to meet the needs and best interests of the three codes of racing and the stakeholders in the racing industry in Queensland but not before the second anniversary of commencement, that is, after 1 May 2015; and
- initiate a consultative review, including to identify a sustainable financial model to support the three codes of racing in Queensland to reduce reliance on direct government funding, and in so doing to consider the desirability of a national regulatory body for wagering.

INQUIRY INTO GREYHOUND RACING IN NEW SOUTH WALES

At the instigation of Senator Kaye of the NSW Senate, an inquiry into the NSW greyhound racing industry commenced on 27 August 2013 (**Inquiry**). More than 2000 submissions were made to the Inquiry. A public forum and initial public hearing took place on 15 November 2013. Further hearings took place on 5 February 2014 and 6 February 2014.

The terms of reference for the Inquiry included matters such as the economic viability of the industry, the financial performance and conduct of the industry and of Greyhound Racing NSW, government initiatives and assistance measures to support the industry, and the welfare of animals in the industry.

---

[1] This involves Queensland Race Product Co Limited (**QRP**), a company established to act as agent for the Queensland racing industry in 1999 in its relationship with Tatts Group Limited. The issue of fees payable by Tattsbet Limited (a wholly owned subsidiary of Tatts Group Limited) for race fields information provided by QRP is reportedly the subject of a pending case in the Supreme Court.

[2] This concerns the transfer of funds by the former Queensland government to RQL's infrastructure trust account in February and March 2012. The Report concludes that no improper influence was exerted by a director of RQL and that no impropriety has been revealed.

The first report of the Select Committee on Greyhound Racing in New South Wales (**Committee**) was tabled on 28 March 2014 in which the Committee made a number of recommendations. In particular, the Committee found that with its current structure and sources of revenue, the greyhound racing industry in NSW may be unsustainable and that the current management and operational model under which the industry operates needs substantial review and restructure.

In a media release dated 28 March 2014, the Hon Robert Borsak MLC stated, amongst other things, that:

- "...the economic viability of racing greyhounds is in decline for the average owner or trainer in New South Wales";
- "...part of the sport's difficulties derive from revenue agreements which do not reward performance or innovation by racing codes in this State";
- "We found that the incidence of greyhound cruelty and neglect is minimal, and believe that on the whole, greyhound owners and trainers take great care and pride in their dogs"; and
- "We consider that action needs to be taken to improve the ongoing viability of greyhound racing in this State and reinvigorate the industry, but we believe that further analysis of some of the proposed solutions needs to be conducted".

The second and final report of the select committee is due by 30 June 2014 and will include "financial modelling of the economic impacts of a number of proposals put forward by industry participants" as well as further recommendations to the Government.

UK REMOTE GAMBLING REFORMS / PLACE OF CONSUMPTION TAX

As mentioned in our May 2013 update, the UK is currently proposing online / remote gambling reforms. Currently, gambling operators are subject to UK tax if their gambling activities are supplied from the UK. However, various online gaming providers have based their operations outside of the UK in tax friendly jurisdictions such as Gibraltar.

In May 2013, the *Gambling (Licensing and Advertising) Bill 2013-14* (**Gambling Bill**) was introduced into the House of Commons in the United Kingdom. The Gambling Bill seeks to extend the scope of the regulatory regime governing remote gambling under the *Gambling Act 2005* (**GA**) by, amongst other things, requiring overseas based operators to obtain a remote operating licence (**ROL**) if:

- at least one piece of remote gambling equipment used in the provision of the facilities for remote gambling is situated in Great Britain; or
- no such equipment is situated in Great Britain but the facilities for remote gambling are used there. In this regard, if the person providing the facilities "knows or should know that the facilities are being used, or are likely to be used, in Great Britain" then the person commits an offence under s.33 of the GA and may be liable to a fine and/or imprisonment[3].

During the debate of the Gambling Bill in the House of Lords on 4 March 2014, it was disclosed that the UK Gambling Commission had reached an

[3] This purports to capture, for example, an overseas-based operator that makes remote gambling facilities available on the internet if their website is used in Great Britain and the operator knows, or should know, that the facilities are being used or are likely to be used in Great Britain. It is suggested in the explanatory notes to the Gambling Bill that such overseas-based operators will need to block their website in Great Britain to prevent it being used by consumers there in order to avoid having to obtain a licence.

agreement with major payment systems organisations to work together to block financial transactions with unlicensed operators.

In addition, an amendment to the Gambling Bill was proposed by the House of Lords (which has now been approved) which enables the Secretary of State to make regulations to ensure that the bookmakers to whom the horse race betting levy under s.27 of the *Betting, Gaming and Lotteries Act 1963* is payable include those bookmakers who are required to hold an ROL under the GA. This represents a potential additional cost for overseas based operators.

Currently, the Gambling Bill is awaiting Royal Assent however a date has not yet been set for this to take place.

It is also proposed that remote gambling operators, no matter where they are located, will be required to register with HM Revenue & Customs' proposed Gambling Tax Online system and pay either a remote gaming duty, general betting duty, or pool betting duty at a rate of 15% on profits or receipts from "UK persons[4]". The reforms to gambling taxation are contained in the F*inance (No.2) Bill 2013-14* (**FB**) and it is anticipated that such reforms will be implemented on 1 December 2014. Enforcement measures under the FB include a fine, imprisonment and the cancellation of the relevant operator's ROL in certain circumstances.

The FB was introduced to the House of Commons on 25 March 2014 and will next be considered by the Public Bill Committee on 29 April 2014.

Thomson Geer will continue to monitor all of the above developments.

THOMSON GEER GAMING & LEISURE TEAM RECOGNISED

Chambers Partners, who publish the most highly regarded and competitive global guides to the legal profession, have released their rankings for 2014. Tony Rein and Brett Boon have been individually ranked as leading lawyers in Band 1 and Band 2 respectively for Gaming & Gambling in the Asia Pacific Region, Tony has also been ranked in the Global Edition. In addition, Thomson Geer has been successfully chosen as the Client Choice winner of the 2014 Corporate Intl Magazine Global Award: Gaming Law - Law Firm of the Year in Australia. Finally, Tony Rein has also been recognised in the International Who's Who of Sport and Entertainment Lawyers 2014.

WRITTEN BY:

Tony Rein | Partner | +61 2 8248 3438 | trein@tglaw.com.au
Christopher Chang | Lawyer | +61 2 8248 3479 | cchang@tglaw.com.au

For further information, please click here to contact our national Gaming & Leisure team or contact our office directly:

SYDNEY
Level 25
1 O'Connell Street
Sydney NSW 2000
+61 2 8248 5800

MELBOURNE
Level 39
Rialto South Tower
525 Collins Street
Melbourne VIC 3000
+61 3 8080 3500

MELBOURNE
Level 20
385 Bourke Street
Melbourne VIC 3000
+61 3 9670 6123

BRISBANE
Level 16
Waterfront Place,
1 Eagle Street
Brisbane QLD 4000
+61 7 3338 7500

ADELAIDE
Level 7
19 Gouger Street
Adelaide SA 5000
+61 8 8236 1300

www.tglaw.com.au

[4] Pursuant to s.179 of the FB, a UK person means an individual who "usually lives" in the United Kingdom or a body corporate which is legally constituted in the United Kingdom. HM Revenue & Customs has indicated that customers will need to be asked whether or not they usually live in the UK, and identification will need to collected and analyzed to verify what customers tell operators.

This Alert is produced by Thomson Geer. It is intended to provide general information in summary form on legal topics, current at the time of publication. The contents do not constitute legal advice and should not be relied upon as such. Formal legal advice should be sought in particular matters. Liability limited by a scheme approved under Professional Standards Legislation.