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GAMING & LEISURE ALERT

RACING ADMINISTRATION AMENDMENT (SPORTS BETTING NATIONAL OPERATIONAL MODEL) ACT 2014 (NSW)

5 JUNE 2014

NATIONAL FRAMEWORK

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**).

NSW SPORTS ACT

The *Racing Administration Amendment (Sports Betting National Operational Model) Act 2014* (NSW) (**NSW Sports Act**) has been passed by both houses and is currently awaiting assent. The NSW Sports Act will commence on a date (or dates) to be determined by the Minister. The NSW Sports Act purports to implement the Model in NSW and to this end makes some significant amendments to the *Racing Administration Act 1998* (NSW), which will be renamed the "*Betting and Racing Act 1998*" (**RAA**). It also makes 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) (**UGA**).

The primary object of the NSW Sports Act is to regulate betting on "*sporting events*" in line with the Model. Such events include individual events as well as classes of events (for example, the Australian Open Tennis Championships and NRL games). It does not however include greyhound, harness, or horse races, nor any event related to racing.

MAINTENANCE OF EXISTING REGIMES

Many aspects of the current regime will remain unchanged. For example:

- Licensed bookmakers may still be authorised by the Minister to take bets on "*declared betting events*" (and the requirements in section 9 of the UGA which provide that such bookmakers must not carry on bookmaking except at a licensed racecourse etc, also remain unchanged); and
- The Minister may also still prescribe an event or class of events (including sporting events as well as events related to racing) as a "*declared betting event*".

GRANDFATHERING

In addition, existing arrangements will be grandfathered as follows:

- Any declared betting event authorisation currently issued under s.19 of the RAA to a licensed bookmaker will continue to be valid and will be taken to be a declared betting event authority when the NSW Sports Act comes into force. Such an authority will be subject to its existing conditions (but only to the extent that they do not conflict with any new conditions that apply to declared betting authorities under the NSW Sports Act);
- All existing prescribed betting events will continue to be declared betting events under the NSW Sports Act; and
- All bet types currently approved in relation to a declared betting event will also continue to be permitted unless revoked.

A current schedule of declared betting events and approved bet types published by the Office of Liquor Gaming and Racing can be accessed [here](#).

KEY CHANGES

Some of the key changes include:

Sports controlling bodies

1. The Minister will be empowered to prescribe one person or body as the “*sports controlling body*” for each sporting event. We note the second reading debate in the Legislative Assembly (**Lower House Debate**) envisaged that a process for mutual recognition of interstate sports controlling bodies will be included in the regulations accompanying the NSW Sports Act. It is not entirely clear at this stage what that process will entail as those regulations are not available.

Integrity agreements

2. Bookmakers, tote, and betting exchange operators will be prohibited from offering betting services (in New South Wales or elsewhere) in relation to sporting events, unless (a) such betting services providers are appropriately licensed in a State or Territory and (b) they enter into an integrity agreement (**IA**) with the sports controlling bodies responsible for those sports upon which they accept bets, subject to the exemptions outlined below.

Each IA must:

(a) set out the measures that will be deployed¹ to “*prevent, investigate, and assist in the prosecution of any match fixing or other corrupt behaviour related to betting on the sporting event*”;

(b) provide for “*funding*² to go to the sports controlling body for the purposes of implementing some or all of those measures (unless the sports controlling body does not want any such funding)”;

¹Although certain presumptions can be made, it does not appear clear as to who must comply with these obligations.

²Such “*funding*” appears to be potentially broad in scope, given the purposes. We note the second reading debate in the Legislative Assembly in which it was stated that arrangements were expected for the provision of financial return to sports from betting service providers and that the NSW Sports Act enables sporting bodies to receive a share of the revenues that accrue from approved betting. The second reading in the Legislative Council also indicated that such funding may recognise both the value of the sporting product itself and the integrity-related costs incurred by sporting bodies as a direct result of evolving sports betting markets.

(c) provide for the "*sharing of information...*"; and

(d) provide for a consultation process of the nature referred to at paragraph 3 (a) below.

According to the second reading debate in the Legislative Council (**Upper House Debate**) the IA's will be deemed to be commercial in confidence and not available to the public. The legislative basis for this statement is not clear.

The RAA contains similar provisions to those found in Victoria³, including that the prohibition will not apply to sporting events that are held wholly outside of New South Wales (or in the case of a class of sporting events, if each sporting event in that class is held wholly outside of New South Wales). We note that a "*class*" of sporting events is not defined. However we presume, for example in the case of national sporting leagues, that provisions in the IA and/or in the regulations will deal with potential multiple payment/compliance anomalies which may arise across State/Territory borders.

The prohibition will also not apply at any time during which there is no prescribed sports controlling body, or during the period of 6 months after the prescription of a sports controlling body for the relevant sporting event⁴.

The maximum penalty in the case of an offence by a corporation is 100 penalty units (i.e. \$11,000⁵). For an individual it is 50 penalty units (i.e. \$5,500) or imprisonment for 12 months (or both).

Process for declaration of new events and bets

3. Pursuant to s.18 (4) of the RAA, before the Minister may prescribe a declared betting event (or permit a new type of bet to be made on a declared betting event), an application must be made to the Minister by a "*licensed bookmaker*" who holds a declared betting event authority, or a licensed NSW tote operator (e.g. TAB).

The Minister must be satisfied that either of the following applies to such applicant:

- (a) If there is a sports controlling body for the relevant sporting event, the applicant has entered into a compliant IA, has consulted the sports controlling body in respect of the making of the application, and the sports controlling body does not oppose the making of the order.
- (b) If there is no relevant sports controlling body, the applicant has taken reasonable steps to consult with key persons or bodies involved in the administration of the sporting event. In determining whether or not to prescribe the event and/or bet type, the Minister must consider the public interest, any potential impact on the integrity of the sporting event and if the sporting event takes place in Australia any views of the key persons or bodies involved in its administration.

When the Minister prescribes a declared betting event, he or she must also at the same time prescribe the types of bets that are permitted in respect of the relevant declared betting event.

³s.4.5.22 of the *Gambling Regulation Act 2003* (Vic)

⁴To allow existing operators time to put the IA in place.

⁵Pursuant to s.17 *Crimes (Sentencing Procedure) Act 1999* (NSW)

Right of veto

4. The relevant sports controlling bodies will have the ability to oppose such applications. They will also be able to make an application to the Minister to remove the types of bets that can be made on the sporting events which they administer (which the Minister must give effect to unless the Minister considers it is not in the public interest to do so).

SOME PRACTICAL CONSIDERATIONS

- The purported extraterritorial reach of the RAA raises potential complex questions. In some respects, these will be similar to the application of racefields legislation.
- Any betting service providers who offer betting services in relation to sporting events (including classes of event which are not held wholly outside of New South Wales) should be prepared to enter into an IA and, where relevant, re-evaluate any existing arrangements with sports controlling bodies in this context.
- Betting service providers will need to carefully monitor the prescription of the relevant sports controlling bodies under the RAA from time to time in respect of sporting events upon which they accept bets given the 6 month grace period commences from prescription.
- The Lower House Debate indicates that whilst the NSW Sports Act forces potential parties to an IA to the negotiating table, the outcome of the negotiations as to the contents of the IA will be left to the parties, and will be conducted at arms length from government. This again potentially raises many complex questions for both sides.
- The requirement that IA's must provide for "*funding*" to go to the sports controlling body appears to be potentially broad in scope, given the stated purposes of such funding.
- As noted in the Upper House Debate, sports controlling bodies will retain the right to decline an IA, thereby rendering relevant betting unlawful under the RAA. This appears to place such bodies in a strong negotiating position. We note however that the regulations may prescribe certain parameters including regarding fees and other IA provisions. It is not clear in the absence of further regulation what redress a betting service provider may have if agreement cannot be reached. In this regard, the mediation regime envisaged by the Model has not been reflected in the RAA.

Thomson Geer's Gaming & Leisure team have extensive experience in the industry, including the negotiation and drafting of arrangements between sporting bodies and wagering operators, and can assist parties in respect of the above matters. For details of this experience, please visit our [website](#) or contact Tony Rein.

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