



Independent Gambling Authority

A.B.N. 13 916 836 475

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Dear Mr Della Torre

Regulation of the bookmaking industry

I refer to Stuart Hocking's minute dated 20 March 2008, enclosing the issues paper on the regulation of the booking industry, and thank the Department for providing the opportunity to participate in the formation of policy relating to the regulation of bookmakers.

This response is structured around the questions posed in the issues paper, followed by some comments of a general nature:

Issues paper questions

Is it appropriate to make the Authorised Betting Operations Act consistent with the Gaming Machines Act 1992 in relation to criminal intelligence?

The Authority is conscious that the criminal intelligence provisions in the Gaming Machines Act circumscribe certain general administrative law principles. Those principles afford a person "natural justice" in dealing with adverse matters in respect of the exercise of statutory discretion.

These Gaming Machines Act provisions are uniform with other provisions applying in respect of the casino, the liquor industry and the security industry. Parliament was apparently satisfied that the enacting of these provisions was justified by the risks to the community.

The same risks apply, in principle, to other forms of gambling. These risks apply particularly with respect to the bookmaking industry, noting that most transactions are cash transactions and that the industry participants are sole proprietors operating what are, relative to the gambling industry, small businesses.

The Authority would support the application of provisions similar to those in section 12 of the Gaming Machines Act to approvals of persons in respect of all of the licences under the Authorised Betting Operations Act.

Does the licensing process create undue administrative burden, please provide examples?

Are there any other matters relating to licensing that could be changed to reduce administrative burden?

The Authority is not aware of any example where the separation of licensing and disciplinary functions has given rise to a difficulty. The Authority would, of course, expedite processes in relation to any licensee who, in the opinion of the Liquor and Gambling Commissioner, posed an immediate threat to the integrity of the bookmaking industry.

The Authority does not agree that 12 month licensing is necessary. When the Authority was the licensing body for bookmakers, licences were renewed into a three year rolling cycle, thereby enabling time for detailed probity examinations prior to renewal.

The Authority also notes that, in the event that the Commissioner was concerned that a bookmaker should cease operation immediately, it is open to the Commissioner to cancel all current permits.

The Authority supports the requirement for bookmakers to report annually on their finances, and would encourage greater rigour in the financial examination of bookmakers.

Is a permit system in legislation required?

If so, what advantages in terms of consumer protection and probity does it offer?

The Authority is aware that the present legislated permit system provides the starting point for identifying where bookmakers will be operating, so that they can be inspected and so that betting sheets and other returns can be anticipated. However, there are other ways of obtaining this information (such as a notification obligation in the Bookmakers Licensing Rules).

The legislated permit system does provide an instant means of suspending a bookmaker's operations should there be a probity concern. However, there may be other ways of achieving this, such as legislating specifically for a limited power of suspension of licence or by the establishment under principal legislation or the Bookmakers Licensing Rules of a power to cease operations pending an investigation.

What commercial arrangements relating to the approval of bookmakers to field are appropriate for the racing industry?

The response to this question depends on whether it is important, as a matter of Government policy, to have a process to ensure that a bookmaker fixed odds betting service is available provided at all race meetings.

If that is a Government policy objective, then the permit system provides a means for encouraging bookmakers to field at less desirable race meetings in exchange for the opportunity to field at more desirable race meetings. If that policy position were adopted, it should be written in to the principal legislation and become a statutory criterion for the grant of permits.

If the permit system is to be an effective means for encouraging licensees to stand at the less desirable meetings, on the basis that this will ultimately give them entree to the more desirable meetings, the permit system should not only bind the bookmakers but also the racing clubs (that is, a permit would guarantee access to the racecourse and the betting ring).

If that were done, the application for review provisions, as presently enacted, would entitle a racing club to a review of an unwelcome decision to award a permit to a bookmaker.

On the other hand, if Government policy does not comprehend ensuring that there is a bookmaker fixed-odds betting service at as many race meetings as possible, the allocation of bookmakers to race meetings should be able to be managed effectively between the industry participants.

The Authority is aware that there are restrictions in the present licensing arrangements which impair the bookmakers' negotiating position. Most bookmaker activity is conducted on racecourses, giving the racing clubs the unilateral capacity to decline them access to their livelihood. In addition, bookmakers' raceday profitability is dependent on the capacity of the racing club to attract patrons to the course.

The Authority understands that these restrictions play a role in ensuring the probity of the licensed activity, and also in enabling the government to fulfil its exclusivity promises to the holder of the major betting operations licence.

These restrictions justify there being some avenue for dispute resolution between bookmakers and racing clubs (hopefully invoked only in exceptional circumstances). Such an avenue for dispute resolution could be legislated in principal legislation. Alternatively, it could be mandated as a condition of the on-course totalisator betting licences for which the Authority is the licensing body.

If the permit system is replaced with a licence condition authority for telephone and internet bookmaking, what criteria should apply to the granting of that authority?

The processes, systems and equipment for internet and telephone bookmaking are already regulated under the Bookmakers Licensing Rules. Essentially, bookmakers are required to procure the Commissioner's approval of those process, etc. This scheme follows the legislated scheme in relation to the major betting operations licence and racing club licences.

It would appear that conditions of licences, or provisions in the rules, would be equally appropriate to impose general controls over internet and telephone bookmaking. It may be, as a matter of policy, that no further control is required.

If, as a matter of policy, it is desired to regulate the days and times on which bookmakers are able to accept bets by telephone or over the internet, this could be achieved by a statutory power of direction, or by amendments to the Bookmakers Licensing Rules.

The rule-making powers set out in section 62 of the Authorised Betting Operations Act would appear to be broad enough to enable any necessary matters to be regulated under the rules. If, as a matter of policy, it is determined that particular sorts of rules should be made by the Authority, there should be an appropriate amendment to section 62 to give the necessary direction to the Authority.

It should be noted that there are Australian licensed bookmakers and wagering companies which operate on a 7-day per week basis with essentially unrestricted hours. It would therefore serve no harm minimisation purpose to restrict bookmakers' telephone or internet betting hours.

Is the scope of the Independent Gambling Authority's rule making powers appropriate? If not please provide examples.

Are there any particular rules that cause undue administrative burden?

Are there any rules that could be revoked because they are no longer required?

Should the system of security be administered at all or should it be administered by the industry or continue to be administered by the OLGC?

If security is to be administered by the industry, what are the key parameters of an industry scheme?

The rule-making powers set out in section 62 of the Authorised Betting Operations Act are narrower than those set out in section 124 of the now repealed *Racing Act 1976*.

The present rules were initially made under section 124 of the Racing Act and reflected the wider heads of power. While it may be that some of the continuing rules (upon which reliance is placed) are no longer supported by the head of power, there have been no cases in which an objection has been raised.

The rule making powers should be reviewed, in conjunction with the existing rules and the existing conditions of licences, to ensure that the Authority is fully able to regulate the activity of all participants in bookmaking operations, including the holders of agents' licences and other, non-licensed, employees of bookmakers.

Some of the complexity of the provisions of Part 12 of the Bookmakers Licensing Rules (relating to bookmaker securities) is a direct result of the framing of section 62(1)(b). An amendment to this section would enable simplification of the bookmaker security provisions.

The Authority has always been prepared to respond to individual examples of difficulty with the rules in a timely way once those matters have been raised.

However, there are known to be individual rules which should be revoked because they are practically redundant or impenetrably worded¹. The Authority is prepared to undertake a review of the rules, both for redundancy and for administrative burden.

This present review of bookmaker regulation could provide the impetus for the sort of highly focused input which would be necessary for a comprehensive rules review. (This input would need to come not only from the Authority, but also from the Office of the Liquor and Gambling Commissioner, from bookmakers and their staff and from representatives of the racing industry.)

The Authority believes it is appropriate for there to be a system of bookmaker security and that the principal rationale for this system should be the protection of bookmakers' customers.

The Authority has a preference for the retention of the present system of individual bookmaker securities, set at an appropriate level. The rules presently enable the Commissioner to fix levels on a licensee-by-licensee. As presently worded, this intended to be an exception based activity, with the majority of bookmakers falling within a fixed default levels of bonding.

The present rules do allow for the establishment of a fidelity fund model, in that they allow a body such as the South Australian Bookmakers' League to be approved as the guarantor or security provider for bookmakers' obligations.

The Authority's present position on an industry scheme is that the vast majority of industry participants must be comfortable with what is proposed. The Authority makes this observation in the context of the experiences of other fidelity funds where large defalcations have meant that compliant operators have suffered.

¹ Consider rule 127:

127. Greyhound racing—application to heats

The preceding rules of betting, so far as they are applicable, shall apply to greyhound racing events which are decided by the running of two greyhound heats, except in so far as they are inconsistent with this rule which shall apply only to bets on greyhound racing events which are decided by the running of two greyhound heats—

- (a) all bets at long odds go with the stake and in the event of one or more greyhound having won a heat more than any other greyhound or greyhounds, then bets shall be calculated in accordance with the division of the stake in such circumstances;
- (b) all bets at long odds made on the day of the event become all-in bets when once the greyhound has, subsequent to the bet, been slipped to a lure;

...

Would a transfer of the disciplinary function for bookmakers from the IGA to the Commissioner reduce administrative and regulatory burden for bookmakers?

Would a transfer of the disciplinary function for bookmakers from the IGA to the Commissioner impact on consumer protection and the integrity of racing and wagering?

The Authority does not support the transfer of disciplinary functions for bookmakers to the Liquor and Gambling Commissioner.

It is unreasonable to expect any licensee to be happy with being disciplined. The Authority is certain that the approach it has taken has been proportionate to the seriousness of the observed breaches.

In questions of serious impropriety, the Authority has conducted extensive inquiry hearings before coming to conclusions. Those inquiry processes have revealed, in relation to the individuals concerned, a poor understanding by licensees of their obligations, of the importance of probity, and of the roles of the regulators.

In relation to what might be described as low impact systemic non-compliances, the Authority has adopted an approach which has given the licensees the opportunity to expiate, or alternatively to seek exoneration through a formal process.

The Authority is satisfied that its activities have improved awareness for the need for compliance among licensees.

It is a necessary incident of enforcement, compliance and disciplinary functions that they impose administrative and regulatory burden. The policy question is whether the burden is justified. There may exist opportunities, across the offices of both the Commissioner and the Authority, for streamlining process but these would not appear to hinge on who it is who exercises the ultimate disciplinary power.

One advantage that the Authority brings to the disciplinary function is of being a multi-member body. It is able to apply a collegiate approach to the determination of public expectations and the standards to which bookmakers should be held.

Would it change in the frequency of the payment of unclaimed winnings to the treasurer from weekly to a less frequent basis assist in reducing the administrative and regulatory burden for bookmakers?

The answer to this question, in principle, is affirmative.

However, a change is contra-indicated by the Authority's recent disciplinary experience. There has been more than one case of bookmakers failing to pay in their unclaimed winnings.

The systemic factors underlying these failures would be made worse by a change to a less frequent payment pattern.

Would a transfer of responsibility for the approval for the communication of certain information as to racing or betting from the Commissioner to the three racing controlling authorities assist in reducing the administrative and regulatory burden for bookmakers?

On the basis of information available to the Authority, such a transfer would be burden-neutral to bookmakers, although it would significantly reduce burden as upon the Office of the Liquor and Gambling Commissioner.

Post the High Court decision in *Betfair Pty Ltd v Western Australia & Ors*, the facility of this form of regulation might be called in to question.

The Authority has become aware that the Australian Prices Network service has recently become available on-line. It is this which is more likely to benefit bookmakers.

General comments

Bookmakers' turnover and regulation

There has been a real decline in bookmaker turnover over time. In the Authority's view, this is unrelated to the nature or level of regulation and there are no affirmative regulatory actions which could usefully be taken to improve bookmakers' turnover.

Resource intensity of the regulated activity

Regulation of bookmakers is, both for the Authority and for the Liquor and Gambling Commissioner, more resource intensive than regulation of SA TAB and licensed racing clubs, relative to the licensees' levels of turnover. This reflects the requirements in the Authorised Betting Operations Act that bookmaking businesses be conducted by licensed individuals or by small groups of licensed individuals. There is a cost associated with requiring the licensed activity to be conducted in this way.

Exercise of statutory discretions

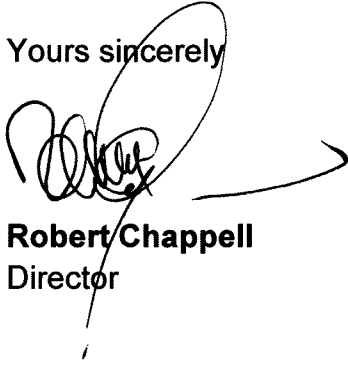
As a matter of principle, statutory discretions should be exercised only by statutory bodies or officers.

Rules review

If, following consideration of responses to the issues paper, the Government determines that the Authority should continue to have a rule-making role, the Authority will commit time and resources to a thorough review of the Bookmakers Licensing Rules as part of a broader review of the regulation of the bookmaking industry.

Please let me know if there is any other contribution the Authority can make.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Robert Chappell', with a long horizontal flourish extending to the right.

Robert Chappell
Director