

Punting on the Law: In Play Betting

Martin Ross and Mark Lebbon provide an overview of the operation of the Interactive Gambling Act 2001 (Cth) and consider the scope of the recently announced review into the Act and the implications for online in play betting.

In early September the Federal Government announced a review into the *Interactive Gambling Act 2001* (Cth) (**Act**). Although the review has been established to address illegal offshore wagering, the terms of reference have been left deliberately broad. This should allow the review to look more generally at the provisions of the Act in the context of the various technological advancements which have occurred since the Act first came into force.

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PROHIBITION ON IN PLAY BETTING

The Act regulates access to gambling via a number of platforms, including the internet. More specifically, the Act makes it an offence to provide an 'interactive gambling service' to customers in Australia.¹

Under the Act, online wagering on sporting events, by registered wagering service providers, is generally allowed as a form of 'excluded wagering service'.² However online wagering is not permitted on 'in play' or live aspects of a sporting event. That is, betting online is not allowed on the outcome of, or contingency in, a sporting event where the bets are placed, made, received or accepted after the beginning of the event.³

Therefore, a person cannot provide a service offering gambling (online) on any aspect of a sporting event after the event has begun.

For example, an interactive gambling service that enables a bet to be placed on the result of a cricket match after the first ball has been bowled would be prohibited under the Act, as would placing a bet on the player who is going to serve the next ace in a tennis match which has already begun. However, the prohibition would not prevent online bets being placed on the outcome of a tournament or series of matches after the first match within that tournament or series has begun.⁴

The distinction between wagering on the result prior to the commencement of the sporting event and in play was made on the basis that in play betting 'could evolve into highly addictive and easily accessible forms of interactive gambling'.⁵

Importantly, the definition of 'interactive gambling service' also specifically excludes telephone betting services, meaning that in play betting over the telephone is allowed.⁶

The maximum penalty for offering an interactive gambling service is \$360,000, however a person who contravenes the prohibition is guilty of a separate offence for each day during which the contravention continues, meaning fines could run into the millions of dollars for breaches over a sustained period of time.⁷

It is also an offence to publish an advertisement for a prohibited interactive gambling service.⁸ However, this does not mean the publication of 'live odds' online is prohibited in Australia. Live odds can be published online to allow non-online live wagering on sporting events. For example, during a sporting event, the website of a wagering service provider can display the live odds for that match to facilitate wagering by telephone services.

IN PLAY BETTING OVER THE INTERNET

The distinction made in the Act between betting over the internet and betting by telephone is controversial.

1 Section 15 of the *Interactive Gambling Act 2001* (Cth).

2 Sections 5(3)(aa) and 8A of the *Interactive Gambling Act 2001* (Cth).

3 Section 8A(2) of the *Interactive Gambling Act 2001* (Cth).

4 Supplementary Explanatory Memorandum, *Interactive Gambling Bill 2001* (Cth) 11.

5 Supplementary Explanatory Memorandum, *Interactive Gambling Bill 2001* (Cth) 10.

6 Section 5(3) of the *Interactive Gambling Act 2001* (Cth).

7 Section 15(2) of the *Interactive Gambling Act 2001* (Cth).

8 Section 61EA of the *Interactive Gambling Act 2001* (Cth).

9 *Betfair Pty Ltd v Racing New South Wales and Another* (2010) 268 ALR 723, [56].

Justice Perram, of the Federal Court, has noted that '[f]or reasons which are not altogether clear the Interactive Gambling Act 2001 (Cth) prohibits betting on events which are "in play"...where the bets are placed via the internet but not where they are placed via the telephone'.⁹

William Hill has recently introduced a product which allows customers placing in play bets using a form of internet technology. William Hill's product (which had previously been branded as "Click to call") allows punters to place bets via automated voice technology without having to make a phone call in the traditional sense. The technology allows customers to place a bet with the click of their mouse, with the only requirement being that the microphone on the customer's computer or mobile device is switched on.

An investigation was undertaken into the way William Hill conducts wagering on live sport by the Australian Communications and Media Authority (ACMA) who referred the matter to the Australian Federal Police (AFP). While the AFP declined to investigate, ACMA has stated that it 'remains concerned about the potentially prohibited internet gambling content

complained of'.¹⁰ William Hill maintains that its service does not breach the provisions of the Act.¹¹

REVIEW

The Federal Government's current review is likely to consider whether the Act should allow punters to place in play bets via the internet, as well as over the telephone. Hopefully the review will provide some clear direction about the future legality of online in play betting.

The recommendations of the review are expected to be provided to the Federal Government in mid-December.

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10 Perry Williams, 'Tom Waterhouse wins betting battle with regulators', *The Sydney Morning Herald* (Sydney), 28 October 2015 <www.smh.com.au/business/tom-waterhouse-wins-betting-battle-with-regulators-20151028-gkkkri.html>

11 Marc Moncrief, 'In-play betting: is the law being broker and how much will it cost', *The Age* (Melbourne), 17 September 2015 <www.theage.com.au/victoria/inplay-betting-is-the-law-being-broken-and-how-much-will-it-cost-20150917-gjou6r.html>.

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