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5 November 2012

Mr Robert Chappell  
Director  
Independent Gambling Authority  
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RUNDLE MALL SA 5000

By Email: [review.2011@iga.sa.gov.au](mailto:review.2011@iga.sa.gov.au)

## **SUBMISSION TO THE SOUTH AUSTRALIAN INDEPENDENT GAMBLING AUTHORITY REVIEW OF CODES OF PRACTICE**

Dear Mr Chappell,

The Australian Wagering Council (AWC) is the peak industry body representing the interests of the wagering industry (including betting exchange) in Australia. This submission is written on behalf of all members of the AWC. The AWC appreciates the opportunity to provide this submission to the Independent Gambling Authority (IGA) in relation to the Codes of Practice Review.

Currently, seven prominent independently operating companies in Australia are members of the AWC. The companies are:

- Betfair
- Bet365
- Betchoice (operating as Unibet)
- Alan Eskander's Betstar
- Sportsbet (including its subsidiary IASbet.com)
- Sportingbet Group Australia (which includes Sportingbet and Centrebet)
- Tom Waterhouse.com

Gambling is an important and accepted part of Australia's cultural heritage. Wagering in particular has long been an accepted part of the fabric of Australian society and while the delivery mechanisms have changed over time, the interest of the public has stayed much the same. The challenge for regulators, administrators and industry is how to adapt to the new technological landscape.

The AWC's members' market share of wagering revenue was 14% in 2011.<sup>1</sup> The Productivity Commission Report on Gambling 2010 estimated that wagering was responsible for 15% of Australia's legal gambling market in 2008/09.<sup>2</sup>

Across the entire market, the real dollar per capita spend on wagering declined in the period FY1989 to FY2004 and showed only minimal growth between FY2004 and FY2009.

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<sup>1</sup> Based on industry estimates.

<sup>2</sup> Productivity Commission (2010), *Inquiry Report Gambling, Overview*, p.7

Between FY2009 and FY2011, annualised real gambling spend per capita increased 4.1%.<sup>3</sup>

Despite the relative stability of the overall wagering spend, there are two key structural shifts which have occurred in recent times:

- Corporate bookmakers have increased their market share at the expense of traditional TAB providers. This is due to the increased competition, innovation and enhanced product offering which corporate bookmakers have brought to the market; and
- An increasing proportion of wagering spend has been spent online at the expense of traditional channels such as on-course, retail and phone. Online growth in wagering turnover increased by 31.5% between 2007 and 2011.<sup>4</sup>

The online wagering industry employs more than 1,000 Australians, has nearly 2 million Australian customers, pays in excess of \$100 million in product fees per annum and over \$100 million per annum in taxes.

It should also be noted that while the Productivity Commission estimated Australians spent nearly \$800 million a year on unregulated overseas poker and casino websites, H2 Global Capital estimates that around 14% of wagering online is with offshore websites.

To effectively address the important social issue of problem gambling and curb the growing number of Australians who gamble through unregulated, foreign websites, the AWC strongly supports the national harmonisation of gambling laws to prevent duplication and inconsistencies that are inappropriate and confusing for a national market.

The IGA has to a certain extent recognised this need for a nationally consistent framework. The AWC appreciates this recognition. The AWC believes that national harmonisation of regulatory frameworks and limiting duplication between jurisdictions with regard to interactive betting and wagering is the most commonsense way to deal with regulation of the industry.

The AWC supports the development of a national standard for harm minimisation and consumer protection. The AWC is supportive of the need for national standards across all jurisdictions that cover responsible gambling, advertising, licensing requirements, and probity standards based on evidence-based research.

In developing these national standards for harm minimisation and consumer protection, the AWC maintains that any new measures must be applied to all forms of wagering in Australia and should acknowledge the benefits of account-based betting from an integrity-management and problem gambling perspective.

These standards should be based on a number of fundamental principles to ensure its effectiveness in protecting Australian's undertaking gambling activities. They should:

- Demonstrate through robust research measures to be effective in improving harm minimisation and consumer protection;
- Not create an overly burdensome regulatory regime which will be detrimental to the competitiveness of licensed domestic wagering providers and only serve to drive even more Australians to gamble online with illegal unregulated foreign offshore operators who do not comply with Australian standards and have little or no consumer protection; and
- Be reasonably achievable from an operational and technical perspective so that implementing any change should not be too expensive or burdensome as it will have a detrimental ability for licensed bookmakers to compete.

The attached submission outlines the AWC's comments and views with regard to the matters raised in the three issues papers that are of the most relevance to its members.

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<sup>3</sup> Frontier Economics (2011), *Sportsbet submission to the Joint Select Committee on Gambling Reform, Economic Overview of Selected Issues*

<sup>4</sup> Industry Estimates

They are:

- Issues paper 1 – Sportsbetting Advertising
- Issues Paper 2 – Mandatory Warning Messages
- Issues paper 3 – Inducements

If you or your staff require further information please do not hesitate to contact me.

Yours sincerely,

Chris Downy  
Chief Executive Officer

# SUBMISSION TO INDEPENDENT GAMBLING AUTHORITY REVIEW OF SOUTH AUSTRALIAN GAMBLING CODE OF CONDUCT

## ISSUES PAPER 1 – SPORTSBETTING ADVERTISING

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### 1. Background Information

Each state and territory has differing codes of conduct and legislation.

Concern is expressed by the AWC of the difficulty for operators who are advertising in a number of jurisdictions, through paid TV and online advertisements (which include Responsible Gambling messages) to meet the specific requirements of each jurisdiction.

The AWC maintains that advertising standards should be based on a number of fundamental principles to ensure their effectiveness in protecting Australians undertaking gambling activities. They should:

- Be shown through robust research measures to be effective in improving harm minimization and consumer protection;
- Not create an overly burdensome regulatory regime that would serve to drive even more Australians to gamble online with illegal unregulated offshore operators who do not comply with Australian standards and have little or no consumer protection; and
- Be reasonably achievable from an operational and technical perspective so that implementing any change should not be too expensive or burdensome as it will have a detrimental ability for licensed bookmakers to compete.

#### *i. Unintended consequences of proposed changes:*

The AWC believes that if the IGA's proposed changes affecting advertising by its members were to be adopted then there would be advertising restrictions placed on interstate and overseas competitions if they were to be viewed by South Australian residents.

The AWC is most concerned that the impact of the proposed changes affecting sportsbetting advertising could have an unintended consequence of restricting television stations and other advertising media from broadcasting an event or any associated news reports if they are watched by South Australians because of non-compliance by sporting codes and sporting teams with the South Australian codes.

The AWC's members make a significant investment in the Australian economy and into Australian racing and sports through their sponsorship of various sporting teams, sporting codes and race clubs. Broadcasting of events which advertise sponsorships will be impacted by the proposed IGA changes. The sporting teams, sporting codes and racing clubs that AWC members sponsor are varied. They include, for example, Sportingbet (Brisbane Broncos NRL Club and Carlton AFL Club), Betfair (Cricket Australia, West Tigers, Super Rugby, St.George Queensland Reds, Waratahs. Greyhound Racing NSW and various Racing Clubs) and Unibet (Newcastle Greyhound track which was previously named The Gardens, but is now Unibet Gardens).

Difficulties may also arise for the IGA when considering the impact of advertising by Australian licensed operators who operate internationally. For example, Bet365's name and logo appears on English Premier League team Stoke City's shirts. Games involving teams sponsored by Australian licensed operators who operate internationally are shown extensively on Australian TV and it would be impossible and impractical to attempt to regulate messaging.

In addition, the AWC seeks clarification from the IGA as to how it proposes to require wagering operators, who are not Australian yet have their advertising shown here (for example, William Hill and [888.com](http://888.com)) to include messaging when they are not even licensed in Australia.

## **2. Specific comments in relation to Issues Paper 1 – Sportsbetting Advertising**

- a. The AWC agrees with and supports the work that has been done at a national level to implement uniform advertising requirements regarding consumer protection. The AWC is of the view that the IGA should not pre-empt the work being undertaken at the Commonwealth level regarding advertising by implementing changes to the South Australian position at this time. The Department of Broadband Communications and the Digital Economy (DCBDE) Report into the Interactive Gambling Act will, it is understood, focus on a nationally consistent harm minimisation regime that would need to be implemented across all jurisdictions. **(paragraph 1.2)**
- b. The AWC agrees that any South Australia specific obligations that are over and above the requirements in other jurisdictions be removed. **(paragraph 3.3.7)**
- c. The AWC again stresses that a national framework is required to ensure a consistent regulatory approach across all Australian Territories and States in relation to inducements and advertising. The AWC believes that inducements to customers to open accounts should be permitted, provided that they are reasonable in the circumstances. The AWC's position on inducements is dealt with more fully in the response to Issues Paper 3. The AWC also believes that any changes in relation to inducement and advertising should be based on evidence and that they should equally be applied to cash-based and account-based wagering operators alike. **(paragraph 3.3.8)**
- d. With regard to the issue of live odds **(paragraph 3.5.8)** the AWC would urge the IGA to defer to the DCBDE review of the Interactive Gambling Act as this matter has been dealt with at the national level. The AWC supports a national approach to this issue.
- e. With regard to Direct Marketing Activity **(paragraph 3.6.1)** this is already subject to strict Commonwealth legislation. Wagering operators are required to comply with extensive obligations under the SPAM Act, as well as the Privacy Act and National Privacy Principles to ensure that customers are protected from receiving unsolicited communications. These obligations already require direct marketers to establish and publicise easy processes to remove people from their mailing and will-call lists.

## **ISSUES PAPER 2 – MANDATORY WARNING MESSAGES**

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### **1. Background Information**

The AWC is of the view that all state and territory regulators together with the Commonwealth should be working together to ensure that the recommendations of the DCBDE Report regarding the implementation of a nationally consistent harm minimisation regime to apply on a harmonised basis across all online wagering operators in Australia is implemented. The IGA is proposing a number of measures that are significantly more onerous on operators than all other gambling regulators in Australia.

All members of the AWC already provide significant information regarding responsible gambling on their websites. The AWC is supportive of considering the prominence of this information, with the objective of ensuring that customers who wish to access this information in order to assess their own circumstances are easily able to do so. This should be the ultimate goal of any responsible gambling information.

The AWC, however, would caution against making this messaging requirement too onerous on licensed Australian wagering operators as this would be inconsistent with the fundamental principles of harm minimisation measures. It would not achieve any additional benefit in terms of ensuring customers with a gambling problem or those at risk of developing a problem have access to the information they need. In addition, it may limit the ability of licensed Australian wagering operators to promote their products and ensure their

websites are efficient for use by the overwhelming majority of our customers who do not have a problem with gambling. This would inhibit the ability of licenced providers to compete with illegal offshore providers and drive even more Australians to gamble with overseas websites.

## **2. Specific comments in relation to Issues Paper 2 – Mandatory Warning Messages**

- a. In **paragraph 3.2** the IGA makes the point that the Codes presently allow providers to use the “condensed” message “Gamble Responsibly” in circumstances where it is “not reasonable or practicable to use the expanded warning message”. The AWC considers that this should provide sufficient guidance to operators as to the correct messaging to be included.
- b. With regard to **paragraph 3.3** the AWC does not support the suggestion that the IGA should include procedural requirements into the Codes requiring a narrative to be documented for uses of the condensed message. The AWC does not oppose the provision of further guidance by the IGA as to what it considers reasonable and practical (including examples) and would be happy to consult further with the IGA in this regard.
- c. The AWC agrees that the prominence of mandatory warning messages in print advertising is a matter of common sense (**paragraph 3.4**) and not increased regulation. In circumstances where the IGA considers that responsible gambling messages are of insufficient size or prominence, the AWC would urge the IGA to contact the operator and seek to educate them as to what is considered reasonable. A highly prescriptive approach, including audits, would be extremely heavy-handed and not commensurate with the nature of the issue.
- d. The AWC agrees (**paragraph 3.5**) that there are practical issues regarding warning messages in respect of some advertising in public places (e.g. LED perimeter signage, race track signage, sporting uniforms). The IGA must also accept that the signage on all South Australian TAB outlets, racetracks and hotels/pubs signage also poses similar risks and should be subject to the same regime. Clearly, the prohibition of all such forms of advertising is not supported by the AWC. Further, in circumstances where only an operator’s brand is visible (with little or no supporting narrative or images), the AWC considers that the inclusion of a warning message serves little purpose and that the IGA should not take any action in this regard.
- e. In relation to **paragraph 3.5.9**, we refer again to the AWC’s serious concerns about the impact that the proposed changes affecting sportsbetting advertising could have the unfortunate consequence of restricting television stations and other advertising media from broadcasting an event or any associated news reports if they are watched by South Australians.
- f. In **paragraph 3.6** the IGA again needs to be cognizant of the fact that the majority of television advertising occurs on a national basis and therefore a prescriptive regime that applies only to South Australia is likely to be out of step with the requirements of other jurisdictions. The AWC notes that there already exists requirements under the industry codes of practice (to which all AWC members are bound) for commercial television regarding advertising content and specifically in relation to size, positioning and duration of disclaimer text, which should appear on screen for a minimum of 0.2 seconds per word (including all text on screen at the same time as any disclaimer). This is likely to ensure that the relevant message would appear on screen for close to 5 seconds as suggested by the IGA.
- g. With regard to the issue of social media (**paragraph 3.9**), there is conjecture whether the use of social media constitutes “advertising”. Social media requires a consumer to actively opt in to receive the information and it is not being delivered to the wider public as normal forms of advertising are. The IGA would be taking an extreme step should it attempt to prohibit operators from utilising social media – given the significant cross jurisdictional issues that exist. AWC members contain the condensed warning message

in their social media profiles, which are readily viewable by their audience. The AWC considers that this is sufficient to comply with the Code and that no further regulation is necessary at the present time.

- h. The AWC believes that the IGA should not take an overly onerous approach to regulating content that is contained on the websites of gambling operators not licensed in SA (**Paragraph 3.10**). It is far from settled that all material on such sites constitutes advertising and therefore extend beyond the scope of the Codes. Provided that the operator's responsible gambling policy and messaging are contained on the website, then the requirements of the Code should be satisfied. All AWC members are strictly licensed and regulated by their respective regulator. Should the IGA have specific concerns, it should work with operators and regulators to address those concerns rather than attempt to override and/or duplicate the work of regulators in other States.

## ISSUES PAPER 3 – INDUCEMENTS

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### 1. Background Information

Wagering operators, like any other legal business, have the right to advertise their services responsibly.

The AWC submits that the word “Inducement” is an overly broad term that provides little assistance in developing good policy. For instance, inducements:

- cover a wide range of business practices (lower prices, rebates, free trials, gifts, satisfaction guarantees, endorsements etc);
- can occur in a variety of media (including an official website, third party website, email newsletter, third party email direct mail, newspaper/magazine, trade publication, billboard, radio, television etc); and
- may be targeted at widely differing groups (existing customers, customer of competitors, new customers).

A prohibition on all inducements would, if taken literally, extend to preventing operators from lowering prices to respond to competitive pressures or to pass on operating cost savings. It makes no sense in a liberalised environment, such as wagering, to prevent so broad a range of standard business practices. This is especially the case when the role of inducements in fostering competition and improving customer experience is considered.

The offering of inducements is common practice for all types of businesses and as such, operators in what is a highly competitive market should be permitted to offer inducements to open a betting account providing such offerings are reasonable.

The AWC reiterates comments elsewhere in this submission about the benefits of account-based betting from an integrity-management and problem gambling perspective. There are a number of issues, which must be considered with regards to inducements:

***i. There is a need for a nationally consistent approach to the issue of inducements:***

As noted in the Productivity Commission report a nationally consistent approach to inducements is warranted as the current inter-state discrepancy disadvantages some wagering operators when competing for market share in jurisdictions that permit these practices.<sup>5</sup>

***ii. Inducements provide enhanced competition between wagering operators:***

Inducements can assist in lowering costs to consumers of changing providers which enhances competition. According to the *'Productivity Commission: Finding 16.5: Offering inducements to wager through discounted prices to new customers is not necessarily*

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<sup>5</sup> Productivity Commission (2010), *Inquiry Report Gambling*, p.16.58

*harmful, it may primarily serve to reduce switching costs between incumbent wagering operators and new entrants, enhancing competition*<sup>6</sup>

Inducements have facilitated the growth in the market share of internet wagering operators but have not driven a material increase in wagering spend by Australians with real dollar per capita spend on wagering in Australia showing only minimal growth over the last decade;

There is no evidence that indicates that the availability of inducements to customers encourages or has increased the prevalence of problem gambling; and

Continued prohibition on the offering of inducements to “establish a betting account” favours retail based operators and distorts a competitive wagering market.

When consideration is given to the lack of increase in real wagering spend per capita since the introduction of corporate bookmakers and the lifting of advertising prohibitions, it is clear that consumers are better off as a result of these events.

Frontier Economics, in the Sportsbet submission to a Joint Select Committee Inquiry, noted:

*“Promotional activities by new entrants will be pro-competitive, if undertaken on a sufficient scale. The Productivity Commission found that inducements may serve primarily to reduce the cost to consumers of switching from incumbents to new entrants, and could therefore be pro-competitive”.*<sup>7</sup>

### **iii. Broad Prohibitions of Inducements Are Not An Appropriate Solution:**

While the AWC recognises the potential risk that inducements offer to those persons in the community susceptible to problem gambling behaviours, the AWC submits that broad prohibitions against wagering inducements are not an appropriate solution given the low risk that wagering presents. Rather, the AWC suggests that a better approach would be a requirement that, in circumstances where advertising is reaching a broad audience, it be a condition that wagering operators:

- Comply with consistent advertising standards (the current system differs from State to State); and
- Employ appropriate harm minimisation measures.

The AWC believe this would encourage all operators to provide services in a responsible manner. These measures, such as a requirement to identify account holders and offer pre-commitment limits, would make this a far better targeted, and thus more effective solution for those at risk of problem gambling.

### **iv. Any regulatory path must be evidence-based:**

Whichever regulatory path is chosen in relation to inducements it should be based on evidence<sup>8</sup>.

### **v. Limiting Inducements is not necessarily the solution:**

Any limitation on the ability of licensed Australian wagering operators to use inducements will significantly impact the ability of domestic operators to compete with illegal offshore wagering operators. This would mean more Australians gambling through unregulated offshore sites, not less. As noted, inducements serve to lower switching costs for customers, so if Australian wagering operators are placed at a competitive disadvantage to illegal offshore operators, Australian consumers are likely to be enticed to switch to these offshore operators. If this occurs they will face significant risk in terms of adequate harm minimisation measures and fraud.

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<sup>6</sup> Productivity Commission (2010), *Inquiry Report Gambling*, p. 16.59

<sup>7</sup> Frontier Economics (2011), *Sportsbet Submission to the Joint Select Committee on Gambling Reform, Economic Overview of Selected Issues*.

<sup>8</sup> Productivity Commission (2010), *Inquiry Report Gambling*, p. 16.58



**vi. Regulations must apply to all wagering operators:**

There is no present regulation of inducements in relation to forms of wagering which do not require the establishment of an account (inducements to bet by cash based operators). The AWC does not consider that there is any justifiable policy reason for continuing to exclude these operators from the inducements regime. Any move to exempt state-based TAB retail monopolies would be anti-competitive and counterproductive as a harm minimisation measure.

**2. Specific responses to addressing the IGA Issues Paper No 3 in relation to Betting Inducements**

- a. With regard to **paragraph 3.3.9**, the IGA states that is concerned by punters being at risk of losing the value of an inducement because some operators impose terms and conditions for the punter to ‘turn over’ a certain amount of money before they can close their account.

The AWC agrees with the IGA’s observation that:

*‘protection of punters is paramount and ensuring terms and conditions are clear and easily understood in relation to inducements is important.’*

To this end, the AWC fully supports close scrutiny and sanctioning of any operators who seek to attract customers through inducements who do not accurately or clearly identify any relevant terms or conditions accompanying the offering of that inducement. However, it is important to remember that a customer is not bound to accept any such inducement and there are a variety of means by which the customer may seek recourse against an operator who unlawfully misleads customers by way of an inducement (eg. complaint to the operator or subsequently the operator’s licensed regulator; or through consumer protection bodies such as Consumer Affairs or the Australian Competition and Consumer Commission).

However, as long as the terms and conditions accompanying a promotion (or inducement) offered by an operator are clear and legal, the AWC considers it inappropriate for the IGA to seek to introduce further prescriptive measures which, among other things, may prohibit operators from imposing a condition that, for example, a promotion which sees a customer offered a free \$20 bet, requires that customer to ‘turn over’ (bet through) that amount; rather than being able to close their account and take that money as part of the balance of funds in their account.

Indeed, there are many somewhat analogous promotions run by retailers where, for example, to be eligible for a store 20% discount, the consumer must either for example, spend over \$200 or have a company loyalty card (with attendant annual fee).

- b. The AWC notes that the IGA is aware (**paragraph 3.4.1**) that there is no present regulation of inducements in relation to forms of wagering which don’t require the establishment of an account (inducements to bet by cash based operators). The AWC does not consider that there is any justifiable policy reason for continuing to exclude these operators from regulation of inducements.
- c. The AWC agrees that any offers made to premium players should always have regard to a risk analysis of the individual and that such inducements should not be excessive. The AWC, therefore, does not consider that there is any need to “develop a model loyalty program” regarding licensed bookmakers purely in relation to an operator’s South Australian customers (**Paragraph 3.5.7**). Further, it is impractical for the IGA to do so on the basis that it will impact only on South Australian customers of the operator. Such concerns are best addressed (if at all) on a national basis.