CrownBet Pty Limited / Betfair Pty Limited

Submission to the Senate Environment and Communications Legislation Committee

Inquiry into the Interactive Gambling Amendment (Sports Betting Reform) Bill 2015

February 2016

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Executive Summary

CrownBet welcomes the opportunity to make this submission to the Senate Environment and Communication Legislation Committee's (**Committee**) inquiry into the draft Interactive Gambling Amendment (Sports Betting Reform) Bill 2015 (**Draft Bill**).

As the Committee is well aware, the Federal Government is currently considering a report prepared by Mr Barry O'Farrell (**O'Farrell Review**) into the growing problem of Australian consumers who wager online with over 2,300 illegal offshore operators.[1] The offshore wagering market is estimated to be worth $480m per annum in unregulated and untaxed revenue 'leakage' from the Australian economy, which is forecast to grow to $2.3b by 2020 under the current regulatory framework.[2] The accessibility of offshore wagering operators remains the fundamental consumer protection risk to Australians that engage in online wagering as well as posing an integrity risk to the Australian sports.

The O'Farrell Review has been specifically tasked with advising the Federal Government on potential approaches to protect Australian consumers that wager online.[3] **We therefore consider that this is a entirely inappropriate time for the Draft Bill to be formulated and considered.** Any legislative reform pertaining to interactive wagering will have broad reaching social and economic impacts for the wagering industry and Australian citizens more generally. It is therefore of utmost importance that the O'Farrell Review and the Federal Government's response must be released publically prior to any legislation being introduced to Parliament.

CrownBet firmly believes that Australian federal, state and territory governments must now act to:

(a) prohibit unlicensed, offshore operators from offering their services to Australian consumers and take steps to enforce that prohibition;

(b) remove the product imbalance that is allowing offshore operators to thrive. Australian-licensed operators must be permitted to compete on a level playing field with their illegal offshore counterparts with respect to the ability to offer in-play sports betting online (excluding micro betting); and

(c) create a nationally-consistent, best-practice regulatory framework to allow those who choose to engage in wagering to do so in a safe, secure manner that mitigates against the risk of gambling-related harm.

[1] The Joint Select Committee on Gambling Reform (2011) suggested more than 2,000 gambling websites were available to Australians, figures backed up by the 2014 Interactive Gambling Report, which indicated a figure in excess of 2,300 illegal operators.
[2] Australian Offshore Interactive Wagering Independent Report, H2 Gambling Capital, November 2015.
[3] See the terms of reference for the O'Farrell Review.

Reproduced at **Annexure A** to this submission is a copy of CrownBet's key recommendations for achieving these three important objectives.

Whilst broadly supportive of the consumer protection themes emanating from the Draft Bill, CrownBet has a number of concerns with the rationale behind, and the terms of, the Draft Bill. These concerns include:

(a) the Draft Bill has been introduced prematurely given the Federal Government's ongoing, active consideration of the O'Farrell Review;

(b) the majority of the issues outlined for regulation in the Draft Bill are already the subject of appropriate regulation and oversight by state and territory based gambling regulators. Rather than overriding that regulation federally, CrownBet considers a nationally-consistent approach to these important matters is best driven by an agreement between the states and territories to adopt standardised, consistent legislation;

(c) the creation of a federal Interactive Gambling Regulator is a complex and unnecessary expense. We consider that responsibility for compliance monitoring and enforcement of nationally-consistent legislation should reside with the existing state and territory based gambling regulators. These authorities have significant expertise and experience in these areas and should therefore continue to act in this important role;

(d) the provisions do not extend beyond online account based wagering to anonymous non-account cash-based wagering which occurs in retail premises (**Retail Wagering**). Retail Wagering continues to constitute the majority of racing and sports betting in Australia, and customers with a preference to wager in this manner are being afforded a substantially lower standard of protection under the Draft Bill; and

(e) certain of the substantive amendments adopt a broad-sweeping prohibition approach, which is likely to encounter similar enforcement issues to the current provisions in the *Interactive Gambling Act 2001* (Cth) (**IGA**). Customers with a desire to obtain credit or access promotional offers will be forced to wager with illegal offshore operators, where none of the Australian standard consumer protection measures are in place.

For the above reasons, we respectfully consider that the Committee should not support the Draft Bill. We urge the Committee to defer consideration of these important matters until the Federal Government releases the O'Farrell Review and confirms its position on the relevant recommendations.

The current Australian consumer protection and harm minimisation regime

In considering whether further legislative interference is warranted, it is important that the Committee understands the current regulatory framework for regulating wagering is comprehensive, functional and respected by the domestic wagering industry. Despite some commentary to the contrary, the States and Territories currently have in place effective wagering regulations and we detail these below for the Committee's reference.

Consumer Protection and Harm Minimisation

The extensive harm minimisation and consumer protection requirements contained in various state regulations are outlined below:

(a) Operators must provide information to customers on their websites, including clear terms and conditions, information about responsible gambling and links to Gambler's Help support services.

(b) All customer facing staff must be provided with training in the responsible service of gambling in order to ensure that staff can provide responsible gambling information to customers and to promote and facilitate the operator's pre-commitment and exclusion tools. The training must be provided within 3 months of an employee commencing with the operator and must be refreshed on an annual basis.

(c) Operators are required to have in place self-exclusion facilitates (via website and telephone) and must action customer requests for exclusion. The Northern Territory RSG Code will also establish a cross-operator self-exclusion scheme, which will allow customers to elect to exclude from all Northern Territory licensed operators by submitting a single request.

(d) Operators are required to have in place harm minimisation measures, including but not limited to voluntary pre-commitment facilities. Customers are able to elect to set a deposit limit and/or a loss limit and can obtain information regarding time spent on a particular website. Strict requirements are imposed mandating "cooling-off" periods for any customer requests to increase a limit.

(e) Customers must be able to access their activity statements, which clearly outline the customer's transaction history.

(f) Operators are required to have systems in place to prevent minors accessing their websites and using their services. This includes requirements to promote filtering software and to conduct thorough 100-point equivalent identity verification checks within 45 days of an account being opened.

These have largely been codified by a revised Northern Territory Code of Practice for Responsible Online Gambling (**Northern Territory RSG Code**) which is effective from 1 March 2016 and applies to the majority of Australia's wagering operators.

Advertising

Australian licensed and regulated wagering operators must meet the regulatory requirements in each of the States and Territories in which they advertise their services. Whilst the regimes are inconsistent, there exists strict regulations applying to the content of advertising, particularly the offering of "inducements" to wager. These requirements include:

(a) Only operators with a wagering licence issued by an Australian State or Territory are permitted to advertise in Australia. Offshore operators are prohibited from advertising their services under the IGA and various state laws.

(b) All television advertising is legally reviewed by Free TV Australia (Commercials Advice). In circumstances where Free TV Australia is of the view that an advertisement is non-compliant with any regulation of an Australian State or Territory, it will not permit the advertiser to broadcast the advertisement.

(c) Whilst inconsistency applies across jurisdictions, gambling legislation in each State contains advertising standards for the advertising of wagering services, including regulation of promotional offers.

(d) The *Competition and Consumer Act 2010* (Cth) applies to all wagering conducted by Australian wagering operators and contains minimum standards as regards misleading and deceptive conduct and misleading representations.

(e) Advertising must not:

i. portray children as participating in betting or gambling;

ii. portray betting or gambling as a family activity;

iii. make exaggerated claims;

iv. mislead or deceive;

v. promote betting or gambling as a way to success or achievement; and

vi. associate betting with the consumption of alcohol.

(f) All advertising must include a responsible gambling warning message and contact details for Gambler's Help services and be socially responsible in nature.

(g) Wagering operators are prohibited from advertising "live odds" on television after the commencement of an event or forming part of commentary teams on radio or television.

(h) Wagering operators are prohibited from advertising between 4.30pm and 7.30pm (Monday-Friday) on television, with exemptions applying to dedicated sports/racing broadcasts.

Deferred Settlement Facilities (Credit)

Wagering operators licensed in the Northern Territory are permitted to offer Deferred Settlement Facilities (**DSF**) to their clients. The Northern Territory Code of Practice for Deferred Settlement Facilities (**Northern Territory DSF Code**) imposes the following requirements on this practice:

(a) Customers must make an application for a DSF, which must not be offered by an operator on an unsolicited basis. Operators must not offer any promotions or incentives to encourage a customer to implement a DSF. Other than on its website, operators must not advertise the existence of DSF facilities.

(b) Prior to establishing a DSF for a customer, the operator must undertake an appropriate credit assessment, which must include verification of the customer's identity and assessment of credit worthiness via third party reports, and establishment of source of funds/income. This process is similar to that which is followed by commercial lenders.

(c) Settlement of the DSF must only occur on a weekly or monthly basis and no interest or other fees may be charged by the operator.

(d) In circumstances where a customer does not meet a scheduled repayment on a DSF, the operator must review the limit to ensure that it remains appropriate. Where it is not satisfied, the limit must be reduced.

(e) Operators must maintain a register of all customers that have a DSF in place, with the Northern Territory Racing Commission (**NTRC**) reserving the right to review the register for compliance with the Northern Territory DSF Code.

Addressing the key terms of the Draft Bill

The Draft Bill focuses on the same four key areas that formed part of CrownBet's submission to the O'Farrell Review. Therefore, we address each of the proposed provisions of the Draft Bill under the following headings:

(a) Limit the supply of online wagering by offshore providers into Australia;

(b) Encourage Australians to wager only with Australian licensed operators by eliminating the product imbalance that is allowing offshore operators to thrive;

(c) Regulatory responsibility for oversight and enforcement of wagering regulations;

(d) Enhance the regulatory framework for harm minimisation and consumer protection.

Limit the supply of online wagering by offshore providers into Australia

The starting point for limiting the supply of online wagering by offshore providers must be a prohibition in the IGA on operators accepting bets from Australian residents without an Australian wagering licence.

The prohibition must be accompanied by a number of measures to ensure that the proposed new offences are capable of being enforced and the legislative intent given effect. There are a number of steps open to the government to improve the effectiveness of the IGA. Whilst CrownBet is of the strong view that none of these solutions will, in isolation, be entirely effective (and indeed some may be impractical), the government should consider taking steps to which may collectively ameliorate the problem of illegal offshore wagering.

1. Court ordered blocking of payments to illegal wagering operators (proposed section 31A)

CrownBet considers there are significant issues associated with efforts to block payments being made to offshore wagering operators. Whilst we are supportive of the concept in theory, this is likely to be a costly and difficult solution and – in line with the international evidence – is unlikely to be effective.

Both the Joint Select Committee and the Department of Broadband, Communications and the Digital Economy (**DBCDE**) in their reviews of online gambling have examined the option of payment blocking regimes and declined to recommend their adoption. In submissions provided to the inquiries, the Australian Bankers' Association (**ABA**) and Visa raised serious concerns about the effectiveness of payment blocking and the onerous burden to administer it.

The ABA noted that:

> *The technology and payment systems infrastructure for a card issuer to approve or decline a transaction at the point the merchant seeks authorization for a transaction is not currently available and to put it in place would be operationally complicated, administratively costly and legally convoluted.*[4]

Both the ABA and Visa noted that offshore gambling service providers would be constantly updating their payment details and identifications and therefore it would be difficult for an accurate list of gambling providers and their merchant codes to be maintained.

The two major jurisdictions to introduce payment blocking legislation are the United States and Norway. Both have introduced laws which make it an offence for a financial institution to process a transfer from a citizen to companies who offer prohibited gambling services.

In respect of the United States, despite a prohibition on gambling being in place (except in a handful of States and predominately via retail), it remains the world's largest gambling nation with an estimated $100 billion in revenue.[5] Since the introduction of the prohibition on payment blocking in 2006, online gambling revenues have been constant at approximately $6 billion per year as offshore operators have found ways to circumvent the laws.[6] This is despite a compliance cost of close to $90 million for financial institutions in abiding by the laws.[7] The Norway experience has seen similar results with the gaming authority reporting that they have not seen any significant change in the number of players gambling on illegal offshore online gaming sites.

One of the key drawbacks with payment blocking in an online environment is the rapid expansion of alternative payment mechanisms, which continue to see a decline in wagering accounts funded by traditional means (such as bank transfers and to a lesser extent, credit cards). There is now a significant number of e-wallets such as PayPal, Skrill and Moneybookers that allow customers to transfer funds to and from their wagering accounts. A number of these organisations operate outside of Australia's regulatory requirements and would therefore be unlikely to submit to a court order to Australia.

CrownBet supports the implementation of evidence-based measures to reduce the prevalence of Australian consumers engaging with illegal offshore wagering operators. We therefore advocate for in favor of an internet blocking regime, which would afford the Australian Communications and Media Authority (**ACMA**) with the ability to serve notice on Australian licensed internet service providers to block a website which the ACMA considers is offering

[4] Australian Bankers Association, submission to the Department of Broadband, Communications and the Digital Economy review of the ***Interactive Gambling Act***, p15
[5] International Centre for Sports Security and Sorbonne University 'Protecting the Integrity of Sports Competitions: The Last Bet for Modern Sport' (2015)
[6] European Gaming and Betting Association 'Fact Sheet: Financial and ISP Blocking'. Available at: www.egba.eu/media/FACTSHEET_FINANCIALISP**BLOCKING**S.pdf
[7] iBus Media Limited, Submission to the Joint Select Committee on Gambling Reform (2012), p45

wagering services in contravention of the IGA. We do not see the same merit in a payment blocking regime and therefore do not support this element of the Draft Bill.

Encourage Australians to wager only with Australian licensed operators by eliminating the product balance allowing offshore operators to thrive

Offshore operators which choose to ignore the IGA (and other Australian laws) are able to offer a more fulsome and competitive suite of wagering products to Australian residents. The most obvious example is that offshore operators freely offer in-play sports wagering online, which contravenes the prohibition in the IGA. The popularity of in-play sports betting globally is undeniable. International bookmaking firm Bet365 reported that 75% of its global wagering turnover in the 2015 financial year related to in-play wagering.[8]

Accordingly, we urge that an important step in encouraging Australian consumers to migrate their betting from offshore operators to the Australian domestic market is to create a viable and attractive regulatory regime for online wagering in Australia. This must involve the creation of wagering product parity between Australian operators and their offshore counterparts.

2. Prohibition on offering and accepting "micro betting" (proposed section 61GC)

At the outset, it is important to note that CrownBet does not offer micro betting (as the term is broadly understood to mean) and does not advocate for micro betting to be permitted. CrownBet's key concern with this proposed provision is that it seeks to prohibit a wide range of betting products that are not what are generally understood to constitute "micro betting".

The proposed definition of "micro betting" in the Draft Bill is so expansive it would capture (and therefore prohibit):

(a) **micro betting:** generally understood to mean wagering on repetitive, high-frequency contingencies, such as betting on the outcome of the next ball in a game of cricket or the next point in a tennis match. The DBCDE, in its 2012 Final Report into the Interactive Gambling Act defined micro-bets as having the following characteristics:

- the placing, making, receiving or the acceptance of bets on particular events occurs during a session of a match or game;
- the betting opportunity is repetitive, of a high frequency and is part of a structured component of the match or game (for example, ball-by-ball betting in a game of cricket; point-by-point betting in tennis);

[8] See, for example, the 2015 annual accounts of Bet 365 for the financial year ended March 2015. Available at: https://beta.companieshouse.gov.uk/company/04241161/filing-history

- a bet is placed on one of a limited number of outcomes, although the number of possible outcomes may be more than two (for example, whether the next serve will be a fault; whether the next ball will be a no ball); and
- the time between placing a bet and knowing the outcome is very short (usually less than five minutes, excepting appeals, intervals and interruptions).

(b) **wagering on all 'in game' contingencies that are not micro-bets:** the definition would also capture in-game contingencies that do not meet the DBCDE definition of micro-bets. This would include bets on which team would lead the match at half time in a football match, the highest runscorer in a game of cricket or the first try scorer in a rugby match. The definition would prohibit wagers on these contingencies regardless of whether those bets were placed **before** or **after** the commencement of the relevant sporting event;

(c) **in-play betting on the outcome of a match or race:** somewhat counterintuitively, the definition of micro-betting would also apply to wagers on the outcome of a match or race, in circumstances where those bets were placed after the commencement of the event. This represents a significant extension of the current prohibition on in-play sports betting contained in the IGA, by extending the prohibition to racing events and telephone betting on sports, which is currently permitted under the IGA.

A specific prohibition on micro-betting (as defined by the DBCDE and amounting to limb (a) of the proposed definition) should be maintained on an ongoing basis. However, no Australian racing or sports body authorizes any form of micro betting under their Product Fee and Integrity Agreements with Australian wagering operators. Nor do Australian operators seek to offer micro betting.

CrownBet has significant concerns with the inclusion of limbs (b) and (c) outlined in the proposed definition of micro betting in the Draft Bill, which seeks to prohibit a number of legitimate products that have been offered legally to Australian residents since the IGA came into force some 15 years ago in 2001. There does not exist evidence supporting such a prohibition from either a harm minimisation or a sporting integrity perspective.

Further restrictions placed on the product suite that can be offered by domestically licensed operators will only enhance the attractiveness of unregulated, offshore wagering operators to Australian consumers. Accordingly, we urge that an important step in encouraging Australian consumers to migrate their betting from offshore operators to the Australian domestic market is to create a viable and attractive regulatory regime for online wagering in Australia. This must involve the creation of wagering product parity between Australian operators and their offshore counterparts, rather than taking steps to the contrary.

Review regulatory responsibility for oversight and enforcement of wagering regulations

It is CrownBet's strong view that responsibility for oversight of the IGA, and the proposed national policy framework, also requires urgent consideration. The current situation has proven to be sub-optimal and has contributed to the ineffectiveness of the IGA.

3. Establishment of an Interactive Gambling Regulator (proposed Part 7D)

Responsibility for regulatory oversight of the IGA

We believe that an active federal regulator is required to enforce the IGA against offshore operators. That agency (which should remain the ACMA) must have a clear direction to be active in monitoring and enforcing compliance and must have the necessary experience, expertise and resources to discharge their regulatory obligations.

The IGA presently establishes a curious investigation process for Australian hosted content. It mandates that any complaints be made to the ACMA but then provides that the ACMA must not investigate those complaints. The Act then goes on to require the ACMA to form a view as to whether the complaint should be referred to the AFP. By definition, this requires some level of investigation by the ACMA, in apparent contradiction to the earlier restriction on the ACMA's ability to investigate. The AFP's Case Categorisation and Priority Model places further obligations on the ACMA before it is entitled to refer a matter to the AFP for investigation. In essence, the ACMA is therefore required to form a view as to whether a breach of the IGA has occurred in order to meet its statutory obligations.

Responsibility for regulatory oversight of consumer protection and harm minimisation

We consider that given their expertise and experience, existing State and Territory based gambling regulators remain best-placed to monitor and enforce regulations relating to consumer protection and harm minimisation. This is the model that was adopted in the 2012 National Policy on Match Fixing, which operates in such a manner that an offence in relation to a sporting event conducted in a particular State, is dealt with by that State's gambling regulator.

In this context, where advertising was conducted by a licensed wagering service provider in Victoria for example, the investigation and enforcement responsibility would lie with the Victorian Commission for Gambling and Liquor Regulation, as opposed to the wagering service provider's licensing authority which may be in another Australian State or Territory. We consider this preferable to the creation of a new federal regulatory body, simply on the basis that the expertise and experience is currently available within each State and should therefore be utilised.

We consider that the establishment of a Federal Interactive Gambling Regulator is therefore an

unnecessary complexity and expense.

Enhanced regulation for harm minimisation and consumer protection

The current State-based system of gambling regulation in Australia is inconsistent and there is undoubtedly a need for a more co-operative and unified framework. There now exists extensive disparities between the various Australian jurisdictions, which has significantly increased the compliance burden and decreased certainty of investment and operation for wagering operators. In a number of instances operators are unable to differentiate between States in terms of advertising – this is particularly true as regards advertising online or on nationally broadcast subscription television.

It is CrownBet's view, given the cross border nature of online wagering and the disparities in State legislation, that a national policy framework for the regulation of online wagering is necessary. Whilst it remains appropriate that wagering operators are licensed in a particular Australian jurisdiction, all elements of consumer protection, harm minimisation requirements and advertising regulations must apply on a consistent, national basis.

We do not agree that the IGA is the appropriate vehicle by which to impose harm minimisation and consumer protection regulations. Rather, we consider that the national policy framework may be established by the implementation of nationally consistent legislation enacted by the States and Territories. In a similar vein to the 2012 Council of Australian Governments' (**COAG**) agreement on a national policy for the prevention of match-fixing in sport, a national policy framework may be agreed at the COAG level and implemented by way of consistent legislation in each State and Territory.

4. Offence for failing to provide appropriate employee training (proposed section 14A)

CrownBet agrees that there should be a nationally consistent approach to staff training. All employees (regardless of whether they are customer facing) must be provided with training in the responsible service of gambling in order to ensure that staff can provide responsible gambling information to customers and to promote and facilitate the operator's pre-commitment and exclusion tools.

The training should be provided in accordance with accredited standards and be approved by an appropriate gambling regulatory authority. We believe it appropriate that the training be provided within 3 months of an employee commencing with the operator and must be refreshed on an annual basis.

In this respect, we note that the Northern Territory RSG Code contains a thoughtful and comprehensive regime for staff training.[9] All client-facing employees must complete appropriate responsible gambling training within 3 months of commencing employment. The mandated

[9] See section 3 of the Northern Territory RSG Code.

training covers a broader range of topics than those suggested in the Draft Bill. Importantly, the training must be refreshed on an annual basis, which ensures employees are given up-to-date information at regular intervals.

Whilst we consider that a staff training requirement better fits into a nationally-consistent consumer protection framework, CrownBet considers the proposed provision in the Draft Bill appropriate and practical. However, we note that as drafted its application is limited to those wagering operators that are engaged in online wagering. It therefore does not extend to employees of corporations that conduct Retail Wagering which represent the majority of Australian wagering market. We consider this significantly undermines the potential effectiveness of the training requirement. The application of the proposed provision in the Draft Bill must be to any operator providing wagering services under the auspices of a wagering licence in an Australian territory.

5. Prohibition on credit being offered by wagering operators (proposed section 61GA)

CrownBet is presently permitted, under the terms of its wagering license, to offer DSFs to its customers. CrownBet takes its responsibilities in the offering of DSFs very seriously and has strict internal controls and procedures to ensure that facilities are only offered in appropriate circumstances. As many as 50% of all applications received are rejected based on the strict assessment criteria imposed by CrownBet, underlining our commitment to only offering a DSF where we consider the customer has the means to service the facility.

As noted above, the NTRC has implemented the Northern Territory DSF Code, which places a number of stringent controls on approved operators, including:

(a) Customers must make an application for a DSF, which must not be offered by an operator on an unsolicited basis. Operators must not offer any promotions or incentives to encourage a customer to implement a DSF. Other than on its website, operators must not advertise the existence of DSF facilities.

(b) Prior to establishing a DSF for a customer, the operator must undertake an appropriate credit assessment, which must include verification of the customer's identity and assessment of credit worthiness via third party reports, and establishment of source of funds/income.

(c) Settlement of the DSF must only occur on a weekly or monthly basis and no interest or other fees may be charged by the operator.

(d) In circumstances where a customer does not meet a scheduled repayment on a DSF, the operator must review the limit to ensure that it remains appropriate. Where it is not satisfied, the limit must be reduced.

(e) Operators must maintain a register of all customers that have a DSF in place, with the NTRC reserving the right to review the register for compliance with the Northern Territory DSF Code.

The South Australian Independent Gambling Authority is in the process of implementing a similar scheme, which will also prohibit unsolicited offers of credit and require a thorough due-diligence process to be completed prior to a facility being made available to a customer.

It is CrownBet's view that given the Northern Territory regulation only came into force in November 2015 and the South Australian scheme is yet to commence, those schemes should be given some time to determine their level of effectiveness. Should the evidence dictate that further regulation is necessary, the issue would appropriately be revisited at that time.

In this respect, it is again important to recognize that any prohibition or restriction on wagering operators being able to provide DSFs to their customers would have a number of negative social impacts, including that customers would continue to access credit from illegal offshore operators (which may also potentially adversely impact on the integrity of sport as suspicious betting patterns cannot be identified or bets tracked) or from less scrupulous operators, such as illegal SP bookmakers and loan sharks which have little regard for consumer protection or harm minimisation.

It appears clear that the Draft Bill intends to prohibit only instances of credit being offered by a wagering operator to their customers, as opposed to the use of credit cards by customers to fund their accounts. Australians have a clear preference for using credit cards for a wide array of online transactions, not merely online wagering. There is no tangible evidence that would support any restrictions being imposed on the ability of Australians to use credit cards when depositing funds in a licensed Australian online wagering account. Furthermore, any credit card restrictions placed on licensed Australian operators would be inconvenient for domestic consumers, and would only exacerbate the growth of custom towards unaffected illegal offshore operators.

6. Prohibition on inducements being offered by wagering operators (proposed section 61GB)

Wagering operators, like any other legal business, have the right to advertise their services, provided they do so responsibly. The offering of inducements (typically known as "promotions" in industry parlance) is common place and legitimate for all types of businesses and as such,

operators should be permitted to offer inducements to attract customers - provided such offerings are responsible.

Inducements offered by wagering operators are presently regulated on a State-by-State basis and CrownBet strongly advocates for a nationally consistent approach to this issue. A key element of CrownBet's proposed national framework is a prohibition on the advertising of sign-up offers and a limit on the value of promotions (to $50) advertised by operators.

The provision in the Draft Bill is both confusing and uncertain in its application. All advertising, by its very nature, attempts to illicit a response from potential customers and effectively induce them to consider purchasing a particular good or service. Accordingly, a prohibition on wagering operators "inducing" potential customers is patently unclear, incapable of having a clear application and may even be tantamount to a blanket prohibition on advertising wagering services.

Should the Committee endorse such a provision, CrownBet is very concerned that its application may be construed to extend to advertising the benefits of membership of a wagering operator, which would have the effect of prohibiting the vast majority of all gambling advertising. For example, it is conceivable that each of the following may constitute an inducement:

(a) advertising the availability of live sports/racing streaming on an operator's website;

(b) the ability of customers to withdraw using a cash card;

(c) a "cash out" feature;

(d) the fact that an operator's odds are better than the competition;

(e) the existence, benefits, terms and conditions of a loyalty program;

(f) the ability to participate in member only competitions; and

(g) even the very existence of an operator's odds, products and services.

It is CrownBet's strong view that each of the above are appropriately characterised as being intrinsically linked to the membership of a particular wagering operator, as opposed to any ancillary inducement.

CrownBet implores the Committee to reject this provision and to develop a coherent national framework for the offering of "promotional style" inducements by wagering operators, which reflects both the wagering operators' right to advertise and the importance of promoting wagering in a responsible manner.

7. Mandatory details must be provided to open a wagering account (proposed section 61GD)

CrownBet does not allow an individual to wager with it unless they have completed CrownBet's account opening process. In order to create an account, the individual must provide the personal information necessary to allow such an account to be created, which also includes a 100-point identification equivalent process to occur within 45 days of account establishment or prior to a funds withdrawal. CrownBet therefore agrees with the proposed requirement for all wagering operators to obtain personal information from customers prior to allowing them to wager. We consider that this requirement should also be extended to Retail Wagering, which continues to allow customers to wager on an anonymous basis.

8. Verification of identity of account holder prior to account creation (propose section 61GE)

CrownBet seeks to highlight the importance of stringent measures to limit the access of online gambling services to minors. It is for this reason, as well as for probity, to ensure that customers' identity and age are verified as quickly as possible after registration. We note that the conditions of a Northern Territory wagering licence mandate a 45-day period for verification to take place, which significantly improves on the 90 days offered under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth). CrownBet places significant restrictions on accounts that are unverified. An unverified customer is unable to withdraw funds from the account, which limits the ability of any fraudulent customer or minor to profit from registering an account in the name of a third-party.

Given the advanced electronic verification systems that are employed by Australian account-based wagering operators, CrownBet's submission to the O'Farrell Review suggested that the time period allowed may be further reduced from a period of 45 days to 7 days. Following the expiry of that period, CrownBet proposes that the account should be suspended such that no further transactions (betting, deposits, and withdrawals) can occur until such time that the customer has successfully verified their identity.

CrownBet does not agree that verification must take place prior to an account being established. Provided that there are appropriate controls on the account (e.g. no withdrawals, limits on amounts that can be deposited) prior to verification, CrownBet does not consider that further regulation is warranted and it may also have adverse consequences from a consumer protection perspective.

A restriction of this nature would further enhance the competitiveness of offshore wagering operators, which would ignore the law requiring up-front customer verification. As such, customers who are unable to be immediately verified by a domestic operator (which can be up to 25% of all customers), will simply open an account with an offshore operator that will allow them to open the account and place wagers immediately. Obviously, the offshore operator exists

outside of Australia's regulatory net and therefore the consumer protection and harm minimization measures mandated of Australian licensed operators will not apply.

9. National Self-Exclusion Register (proposed sections 61GF and 61GH)

Self-exclusion is an important tool in the promotion and maintenance of responsible gambling, as it involves the identification and recognition that an individual is experiencing problems with their gambling and wishes to address that, in part, by abstaining from gambling for a defined period or permanently. CrownBet strongly agrees that a self-exclusion register should be enshrined in nationally consistent legislation, however we consider that it should be overseen by State gambling regulators (see our comments above as regards the creation of a federal Interactive Gambling Regulator). A broad-based self-exclusion register will significantly increase the effectiveness of self-exclusion, affording customers with a greater deal of protection against harm.

Currently, if an individual wishes to self-exclude from wagering, they must do so with every operator with which they hold an account, or might gamble with in the future. The ease with which a customer who has self-excluded from one operator but may then bet with another operator undermines the overall effectiveness of self-exclusion. The development of a more resilient method of self-exclusion presents as a clear and immediate opportunity to further reduce the potential harm from problem gambling.

Consideration must be given to determining whether it is feasible to include Retail Wagering operators as part of the national scheme. A failure to do so will necessarily undermine its effectiveness as a harm minimisation tool as consumers will retain the ability to wager with certain operators that represent the majority of local market.

CrownBet is supportive of the mechanics of the proposed scheme in the Draft Bill as one that is capable of operating practically and in a manner that will afford the appropriate protections to its participants.

CrownBet suggests that, in addition to the features of the proposed scheme, a consumer should be able to request entry of their name on the national register where they process an exclusion with a particular wagering operator. This would negate the need for the individual to access the register themselves and would shift the onus to wagering operators to ensure adequate reporting was in place to add individuals to the register.

10. Requirement to make available a pre-commitment facility (proposed section 61GG)

One of the key advantages of online account-based wagering is the ability to make use of customer driven pre-commitment tools, which allow customers to configure a wide variety of measures to ensure that they gamble in a manner consistent with their intentions. CrownBet

already has a suite of measures to allow customers to elect to impose financial limits on a daily, weekly or monthly basis, however, there is no Australian industry standard, which means that customers may not be offered a consistent level of protection across the domestically regulated industry.

We therefore agree with the provisions of the Draft Bill that seek to standardize and enhance the range of pre-commitment measures offered by wagering operators, and agree it is a sensible and logical step in protecting Australian customers. CrownBet proposes that as part of the national policy framework it must be a requirement to make available voluntary pre-commitment tools to customers both at the point of registration and on an ongoing basis.

A range of limits should be offered, including:

(a) funds that they wish to deposit in a given period;

(b) funds that they may lose in a given period; and

(c) the amount of time that they may spend on a particular website.

Operators must be required to act on requests to add or reduce limits immediately. Standards are also required to establish cooling-off periods and dealing with customers that may seek to remove or increase previously imposed limits.

We do not agree with the provision in the Draft Bill that would permit individuals to increase their pre-commitment limit only once in a 12-month period. CrownBet is concerned that restrictions of this nature are likely to lower participation rates in the use of pre-commitment facilities or a shift in activity by the consumer to another operator where they are dissatisfied with the limit they have in place with a certain operator. We believe that cooling-off periods and a requirement for wagering operators to make contact with those customers who seek to increase frequently are more appropriate and practical safeguards.

11. Requirement to provide customers with a transaction history (proposed section 61GL)

Another key advantage of account-based betting is that transaction histories are immediately available to customers via the click of a button.

Provided that the requirements on providing statements are reasonable (i.e. statements can be delivered online, statements are only provided where a customer has entered into transactions of a certain number/value), CrownBet does not have any substantive comments on this provision.

12. Restriction on use and disclosure of personal information (proposed section 61GM)

CrownBet considers that the proposed clause 61GM in the Draft Bill merely restates the existing obligations of all Australian corporations under the *Privacy Act 1998* (Cth). On this basis, the proposed provisions are redundant and unnecessary.

13. Restrictions on television advertising (proposed section 61GO)

There exists a considerable level of concern within the Australian community regarding the level of gambling and wagering advertising – particularly that advertising which is associated with sport and that which is readily viewable by minors.

Given the current climate, CrownBet acknowledges there is a need for a reduction in the volume and a review of the content of wagering advertising to ensure that Australian licensed and regulated wagering operators are undertaking socially responsible wagering advertising.

CrownBet agrees that further regulation should be applied to wagering advertising across all forms of media. CrownBet advocates a range of meaningful measures to reduce the volume of wagering advertising and to impose more stringent regulation on the content of that advertising. Such measures include:

(a) Significant restrictions on all public-facing outdoor advertising, due to the risk of exposure to children.

(b) A national prohibition on advertising sign-up offers and a limit on the value of promotions (to $50) advertised by operators.

(c) Nationally consistent and standardised responsible gambling messages to be included on all advertising, regardless of whether that advertising is conducted online or via traditional methods.

(d) Clear and simple opportunities for account holders to opt-out of marketing material generally, or material that contains promotions and offers specifically.

(e) Following the South Australian Responsible Gambling Code of Practice, operators should be able to advertise loyalty programs, but only where the program meets the following conditions, which ensures the program is conducted in a responsible manner:

I. the loyalty program is a structured program conducted in accordance with the published terms and conditions;

II. the loyalty program offers rewards proportionate to the member's wagering activity, including non-monetary privileges attached to tiers in a stepped reward system; and

III. the loyalty program offers members the ability to obtain regular player activity statements and set expenditure pre-commitment and deposit limit options.

However, CrownBet does not consider it appropriate or necessary for a prohibition to apply to wagering advertising shown during a televised sporting event. Rather, we favour the implementation of codes of practice by free-to-air and subscription television broadcasters which would place limits (for example, no more than 6 advertisements) on the volume of wagering advertising that may be shown during a sports broadcast.

Conclusion

CrownBet welcomes the opportunity to make a submission to the Committee's inquiry into the Draft Bill. Whilst we are supportive of the introduction of further harm minimisation and consumer protection measures, we reiterate that the O'Farrell Review has been specifically tasked with advising the Federal Government on potential approaches to protect Australian consumers that wager online.

We therefore consider that this is an entirely inappropriate time for the Draft Bill to be formulated and considered. Any legislative reform pertaining to interactive wagering will have broad reaching social and economic impacts for the wagering industry and Australian citizens more generally. It is therefore of utmost importance that the O'Farrell Review and the Federal Government's response must be released publically prior to any legislation being introduced and considered by the Parliament.

We would welcome any opportunity to address the Committee and believe we can make a significant contribution to any discussions about the future of online wagering in Australia.

Annexure A: CrownBet's recommendations for reform of Australia's wagering laws

This summary, which formed part of the O'Farrell Submission, provides an outline of how CrownBet considers that legislative and non-legislative measures can meaningfully address the social and economic impacts of offshore wagering and ensure that a national policy framework for regulating online wagering is robust, clear and capable of protecting Australian consumers that elect to wager online.

Limit the supply of online wagering by offshore providers to Australian consumers

1. Prohibit offshore operators from offering wagering services to Australian residents

At present, the biggest failing of the Australian regulatory regime is that the IGA does not prohibit operators from offering wagering services to Australian residents without an Australian wagering licence. These operators are not illegal under the IGA (though they may be for other reasons) and are therefore referred to throughout this paper as "offshore" or "unlicensed" wagering operators.

It is CrownBet's view that the establishment of a broad based prohibition on accepting bets from Australians without an Australian wagering licence will act as an effective deterrent to a large proportion of the unlicensed operators presently accepting custom from Australia.

Those operators that are licensed in a reputable jurisdiction would be expected to obtain an Australian licence or take steps to prevent access to their services by Australian residents, as is the case for residents of other prohibited jurisdictions, most notably the United States.

2. Impose penalties for associates, affiliates and agents of operators that breach the IGA

Affiliates, agents and associates are a key gateway for Australian customers seeking to access offshore, unlicensed wagering websites, particularly those that operate in a manner that seeks to limit their audit trail and minimise transparency around their operations.

The IGA should be amended to prohibit the operation of services that support the provision of a prohibited online gambling service in Australia, whether by way of personal referrals or internet websites that direct Australian customers to unlicensed wagering services, as well as those with a physical presence in Australia. The relevant offences should apply on a strict liability basis to ensure their enforceability.

3. Introduce website (or ISP) blocking

Recent amendments have been made to the *Copyright Act 1968* (Cth), which will enable copyright owners to apply for a court order requiring internet service providers (**ISPs**) to block access to an online location that exists outside of Australia and facilitates the infringement of copyright. A similar scheme

should be implemented to provide a mechanism by which ISPs can be directed to block access to offshore wagering websites that offer their services to Australians in contravention of the IGA.

It is CrownBet's view that that the ACMA (appropriately directed and resourced) should be afforded the authority to determine whether an online wagering operator is offering services to Australian residents without holding a valid Australian wagering licence. In circumstances where the ACMA is satisfied that a website is in breach of the IGA it would issue a notice to all Australian based ISPs requiring the ISP to take steps to prevent Australian residents (those with an Australian based IP address) from accessing the website.

Whilst internet filtering can be circumvented by determined consumers without access to a competitive domestic service offering (principally through customers' use of VPN and/or wagering operators shift their IP addresses), website blocking would greatly reduce the potential for customers to unwittingly interact with illegal offshore operators. It would also prevent access to those larger, reputable offshore operators, who elect to ignore Australian laws. As is the case in the context of copyright infringement, the blocking scheme will remain ineffective against website operators that take steps to change domain names and URLs in an attempt to avoid a regulatory response like this.

Encourage Australian consumers to wager with Australian licensed and regulated operators

4. Eliminate the product imbalance that is allowing offshore operators to thrive

Offshore operators which choose to ignore the IGA (and other Australian laws) are able to offer a more fulsome and competitive suite of wagering products to Australian residents. The most obvious example is that offshore operators freely offer in-play sports wagering online, which contravenes the prohibition in the IGA. The popularity of in-play sports betting globally is undeniable. European bookmakers, which are permitted to offer in-play betting, report that between 60-80% of all sports betting activity occurs following the commencement of an event.

Accordingly, an important step in encouraging Australian consumers to migrate their betting from offshore operators to the Australian domestic market is to create a viable and attractive regulatory regime for online wagering in Australia. This must involve the creation of wagering product parity between Australian operators and their offshore counterparts.

A key outcome of the Review therefore should be that Australian licensed and regulated operators are able to offer online in-play wagering on sports in order to eliminate the competitive advantage enjoyed by offshore operators and address the imbalance that is presently driving Australians to wager offshore.

This approach will ensure that Australian consumers are able to wager on their favoured products and obtain the benefits of the proposed enhanced consumer protection and harm minimisation framework outlined below. It will also have the obvious effect of diverting revenues and taxation back to Australia

and providing sports governing bodies with greater transparency over betting on their game to aid in integrity management.

CrownBet considers that a managed liberalisation of in-play wagering is the preferred approach and will allow government to ensure that the proposed changes do not have any unintended consequences. We propose that for the first twelve months after the in-play restriction is lifted:

(a) operators be restricted from advertising the availability of online in-play wagering on free-to-air television and radio during sports broadcasts to ensure the product is not intensely advertised; and

(b) online in-play wagering be permitted only on contingencies that are tied to the outcome of a particular match (for example, the winner of the event, handicap and margin betting) in order to mitigate concerns that highly repetitive forms of wagering (known as "micro betting") would be offered.

A specific prohibition on micro-betting should be maintained on an ongoing basis.[10] It should be noted that there exists a further level of protection against micro-betting, in that sports governing bodies are able to enforce a list of permitted bet-types against Australian wagering operators. Where a sport has an integrity or social concern about a particular bet-type, the sport has the legally enforceable right to prevent the wagering operator from offering that betting. We believe that a prohibition in the IGA on micro-betting and this structure that affords sporting bodies with the important right of veto provides significant comfort from both a social and integrity management perspective.

A national policy framework for regulating online wagering

5. Create a national policy framework to regulate online wagering

The current State-based system of gambling regulation in Australia is inconsistent and there is undoubtedly a need for a more co-operative and unified framework. There now exists extensive disparities between the various Australian jurisdictions, which has significantly increased the compliance burden and decreased certainty of investment and operation for wagering operators. In a number of instances operators are unable to differentiate between States in terms of advertising – this is particularly true as regards advertising online or on subscription television.

It is CrownBet's view, given the cross border nature of online wagering and the disparities in State legislation, that a national policy framework for the regulation of online wagering is necessary. Whilst it remains appropriate that wagering operators are licensed in a particular Australian jurisdiction, all

[10] On identical terms to the definition of that term in the 2012 DBCDE report.

elements of consumer protection, harm minimisation requirements and advertising regulations must apply on a consistent, national basis.

A national policy framework may be established by:

(a) **Federal legislation by way of the IGA:** the IGA already contains provisions that prohibit the advertising of interactive gambling services. Provisions regulating the advertising of "excluded wagering services" (which largely covers the field in relation to online wagering) would be a natural fit; or

(b) **Nationally consistent legislation enacted by the States:** in a similar vein to the 2012 Council of Australian Governments' (**COAG**) agreement on a national policy for the prevention of match-fixing in sport, a national policy framework may be agreed at the COAG level and implemented by way of consistent legislation in each State and Territory.

6. Review regulatory responsibility for oversight and enforcement of wagering regulations

It is CrownBet's strong view that responsibility for oversight of the IGA, and the proposed national policy framework, requires consideration as part of the Review. The current situation has proven to be ineffective and has contributed to the ineffectiveness of the IGA.

We believe that an active federal regulator is required to enforce the IGA against offshore operators. That agency (which should remain the ACMA) must have a clear direction to be active in monitoring and enforcing compliance and must have the necessary experience, expertise and resources to discharge their regulatory obligations.

In relation to the proposed national policy framework for domestic operators, we consider that given their expertise and experience, existing State based gambling regulators remain best-placed to monitor and enforce the regulation. This is the model that was adopted in the 2012 National Policy on Match Fixing, which operates in such a manner that an offence in relation to a sporting event conducted in a particular State, is dealt with by that State's gambling regulator.

In this context, where advertising was conducted by a domestic wagering operator in Victoria for example, the investigation and enforcement responsibility would lie with the Victorian Commission for Gambling and Liquor Regulation, as opposed to the wagering service provider's licensing authority which may be in another Australian State or Territory. We consider this preferable to the creation of a new federal regulatory body, simply on the basis that the expertise and experience is currently available within each State and should therefore be utilised.

7. Establish a national self-exclusion register underpinned by legislation

Self-exclusion is an important tool in the promotion and maintenance of responsible gambling, as it involves the identification and recognition that an individual is experiencing problems with their gambling and wishes to address that, in part, by abstaining from gambling for a defined period or permanently.

CrownBet proposes that a key element of the national policy framework must be a national self-exclusion register that is enshrined in nationally consistent legislation and overseen by State gambling regulators. A voluntary code of conduct is insufficient.

Currently, if an individual wishes to self-exclude from wagering, they must do so with every operator with which they hold an account, or might gamble with in the future. The ease with which a customer who has self-excluded from one operator may bet with another operator undermines the overall effectiveness of self-exclusion. The development of a more resilient method of self-exclusion presents as a clear and immediate opportunity to further reduce the potential harm from problem gambling.

CrownBet has previously advocated the implementation of a self-exclusion scheme which would enable consumers to exclude from all Northern Territory licensed bookmakers by submitting a single application to the NTRC. The NTRC currently regulates twelve wagering service providers representing the majority of licensed online corporate bookmakers in Australia.

The scheme has been embraced by the NTRC and will form part of the *Northern Territory Code of Practice for Responsible Online Gambling* which will commence from 1 March 2016. Whilst CrownBet believes that a national self-exclusion register must be the ultimate goal, the Northern Territory scheme represents an effective first step in providing protection for customers and garnering broader support for the development of a national scheme. A broad-based self-exclusion register will significantly increase the effectiveness of self-exclusion, affording customers with a greater deal of protection against harm.

Consideration must be given to determining whether it is feasible to include non-account cash based wagering operators as part of the national scheme. A failure to do so will necessarily undermine its effectiveness as a harm minimisation tool as consumers will retain the ability to wager with certain operators that form part of the locally regulated industry.

8. Require all wagering operators to make available voluntary pre-commitment tools

One of the key advantages of online account-based wagering is the ability to make use of customer driven pre-commitment tools, which allow customers to configure a wide variety of measures to ensure that they gamble in a manner consistent with their intentions. CrownBet already has a suite of measures to allow customers to elect to impose financial limits on a daily, weekly or monthly basis, however, there

is no Australian industry standard, which means that customers may not be offered a consistent level of protection across the domestically regulated industry.

We consider that standardising and enhancing the range of pre-commitment measures offered by wagering operators is a sensible and logical step in protecting Australian customers. CrownBet proposes that as part of the national policy framework it must be a requirement to make available voluntary pre-commitment tools to customers at the point of registration and on an ongoing basis.

A range of limits should be offered, including:

(a) funds that they wish to deposit in a given period;

(b) funds that they may lose in a given period; and

(c) the amount of time that they may spend on a particular website.

Operators must be required to act on requests to add or reduce limits immediately. Standards are also required to establish cooling-off periods and dealing with customers that may seek to remove or increase previously imposed limits.

9. Introduce nationally consistent controls on wagering advertising

There exists a considerable level of concern within the Australian community regarding the level of gambling and wagering advertising – particularly that advertising which is associated with sport and that which is readily viewable by minors.

Given the current climate, CrownBet acknowledges there is a need for a reduction in the volume and a review of the content of wagering advertising to ensure that Australian licensed and regulated wagering operators are undertaking socially responsible wagering advertising.

CrownBet considers that further regulation should be applied to wagering advertising across all forms of media. CrownBet advocates a range of meaningful measures to reduce the volume of wagering advertising and to impose more stringent regulation on the content of that advertising. Such measures include:

(f) Significant restrictions on all public-facing outdoor advertising, due to the risk of exposure to children.

(g) A national prohibition on advertising sign-up offers and a limit on the value of promotions (to $50) advertised by operators.

(h) Nationally consistent and standardised responsible gambling messages to be included on all advertising, regardless of whether that advertising is conducted online or via traditional methods.

(i) Clear and simple opportunities for account holders to opt-out of marketing material generally, or material that contains promotions and offers specifically.

(j) Following the South Australian Responsible Gambling Code of Practice, operators should be able to advertise loyalty programs, but only where the program meets the following conditions, which ensures the program is conducted in a responsible manner:

IV. the loyalty program is a structured program conducted in accordance with the published terms and conditions;

V. the loyalty program offers rewards proportionate to the member's wagering activity, including non-monetary privileges attached to tiers in a stepped reward system; and

VI. the loyalty program offers members the ability to obtain regular player activity statements and set expenditure pre-commitment and deposit limit options.

10. Impose more stringent timeframes for age and identity verification

CrownBet seeks to highlight the importance of stringent measures to limit the access of online gambling services to minors. It is for this reason, as well as for probity, to ensure that customers' identity and age are verified as quickly as possible after registration. We note that the conditions of a Northern Territory wagering licence mandate a 45-day period for verification to take place, which significantly improves on the 90 days offered under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth). CrownBet places significant restrictions on accounts that are unverified. An unverified customer is unable to withdraw funds from the account, which limits the ability of any fraudulent customer or minor to profit from registering an account in the name of a third-party.

Given the advanced electronic verification systems that are employed by Australian account-based wagering operators, CrownBet considers that the time period allowed may be further reduced from a period of 45 days to 7 days. Following the expiry of that period, CrownBet proposes that the account should be suspended such that no further transactions (betting, deposits, and withdrawals) can occur until such time that the customer has successfully verified their identity.

11. Require mandatory staff training in the responsible provision of wagering

There should be a nationally consistent approach to staff training. All employees (regardless of whether they are customer facing) must be provided with training in the responsible service of gambling in order

to ensure that staff can provide responsible gambling information to customers and to promote and facilitate the operator's pre-commitment and exclusion tools.

The training should be provided in accordance with accredited standards, be approved by an appropriate gambling regulatory authority. We believe it appropriate that the training be provided within 3 months of an employee commencing with the operator and must be refreshed on an annual basis.