

# Report on the review of Part 2B of the *Interactive Gambling Act 2001* – Credit betting prohibitions

AUGUST 2021

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# Glossary

Abbreviation	Meaning
ABA	Australian Bookmakers' Association
ACMA	Australian Communications and Media Authority
ACMA's consultation paper	The Australian Communication and Media Authority's <i>Review of Part 2B of the Interactive Gambling Act 2001 – Credit betting prohibitions</i> , February 2021
Betfair	Betfair Pty Ltd
DSS	Department of Social Services
Entain	Entain Group Pty Ltd
GRSA	Greyhound Racing South Australia
IGA	<i>Interactive Gambling Act 2001</i>
Minister	Minister for Communications, Urban Infrastructure, Cities and the Arts
NCPF	National Consumer Protection Framework for Online Wagering
NTRC	Northern Territory Racing Commission
POLi	POLi Payments
RA	Relationships Australia
RGF	NSW Responsible Gambling Fund
RWA	Responsible Wagering Australia
TAB	Tabcorp Holdings Limited
Uniting Church	Uniting Church in Australia, Synod of Victoria and Tasmania
VBA	Victorian Bookmakers' Association
VRGF	Victorian Responsible Gambling Foundation

# Executive summary

The Australian Communications and Media Authority's (ACMA) review found that the credit betting prohibitions in the *Interactive Gambling Act 2001* (IGA) are generally operating effectively.

However, the review makes a number of recommendations aimed at further supporting the harm minimisation objectives of the IGA and assisting with the enforcement of the prohibitions.

So-called 'credit betting' prohibitions were implemented by amendments to the IGA and commenced in 2018. They prohibit most interactive wagering operators from providing, offering to provide, or facilitating the provision of credit to customers, or prospective customers, who are physically in Australia.

The prohibitions are intended to reduce the risk of credit being provided to individuals who gamble beyond their capacity to pay. They are key measures to protect Australians and reduce the harm of online wagering.

## ***The review of the credit betting prohibitions***

Section 15G of the IGA requires the ACMA to undertake a review of the credit betting prohibitions after the first 3 years of their operation.

The review focuses on the operational effectiveness and efficiency of the credit betting prohibitions, taking into account the objects intended by the Parliament in amending the IGA. In particular, the ACMA looked at whether the provisions could be simpler, clearer or easier to understand or enforce.

The ACMA published a consultation paper on 17 February 2021. Twelve submissions were received.

## ***The submissions received were divided***

The 12 submissions received reflected opposing positions:

- > Wagering operators generally did not support any substantial change to the existing provisions.
- > Other submitters, including responsible gambling bodies, supported changes to strengthen the protections provided by the prohibitions.

The submissions also discussed the changing landscape since the prohibitions were introduced, with the impact of COVID-19 resulting in an increase of on-course bookmakers operating online and the developments in technology for payment processing.

## ***There are opportunities to minimise the risks for individuals who gamble beyond their capacity to pay***

The ACMA's recommendations are targeted at reducing the risks for individuals who gamble beyond their capacity to pay by:

- > amending the evidentiary requirements, thereby providing clarity to industry, consumers and the ACMA
- > clarifying the way in which a deposit can be made to a customer's betting account and how withdrawals are to be managed
- > identifying, for review, certain exclusions and exceptions in the IGA that could be strengthened or removed.

# Recommendations

<b>Recommendation 1</b>	The ACMA recommends that the definition of credit in the IGA be amended to remove the requirement to prove the existence of a contract, arrangement or understanding between the parties.
<b>Recommendation 2</b>	The ACMA recommends that the IGA be amended to require wagering operators to have received funds from a customer prior to them being available for the customer to bet with or, if funds have been transferred from a financial institution or via a payment processor, it has verified the customer has sufficient funds to cover the transfer.
<b>Recommendation 3</b>	The ACMA recommends that the IGA be amended to prohibit a wagering operator from allowing a customer to reverse a withdrawal from their betting account.
<b>Recommendation 4</b>	The ACMA recommends that the government review the necessity and effectiveness of any requirement to exempt on-course bookmakers from credit betting prohibitions
<b>Recommendation 5</b>	The ACMA recommends that the IGA be amended to prohibit wagering operators that are permitted to accept credit bets by telephone from passing through those bets, in full or part, to another wagering operator.
<b>Recommendation 6</b>	The ACMA recommends that the IGA be amended to include enforceable undertakings and remedial directions as enforcement options.

# Findings

<b>Finding 1</b>	The ACMA finds no evidence at this time to support amending the credit betting exclusion for customers not known to be physically present in Australia.
<b>Finding 2</b>	The ACMA finds no evidence that change is warranted to the exception from credit betting prohibitions for a customer who is a gambling service provider.
<b>Finding 3</b>	The ACMA finds that definitions of a 'related company group', 'wagering service' and 'wagering turnover' continue to remain appropriate and no change is required at this time.



# Introduction

## The National Consumer Protection Framework

The National Consumer Protection Framework<sup>1</sup> (NCPF) for online wagering aims to reduce the harm of online wagering to Australian consumers. The NCPF, which was agreed to by the Commonwealth and state and territory governments, sets out 10 nationally consistent minimum protection measures for consumers of interactive wagering services licensed in Australia.

Two of these measures relate to credit betting. The measures ban online wagering operators from providing credit to Australian customers or facilitating the provision of credit via third parties. They are intended to reduce the risk that the availability of credit may present to individuals who gamble beyond their capacity to pay.

## Credit betting prohibitions

The ACMA administers the *Interactive Gambling Act 2001* (IGA). The objective of the IGA is to protect Australians from harms associated with online gambling. Among other matters, the IGA prohibits 'credit betting'.

Section 15C of the IGA prohibits a wagering operator from:

- (a) providing, or offering to provide, credit; or
- (b) facilitating or promoting the provision of credit (other than by way of an independently-issued credit card) by a third person;

in connection with their wagering service, to customers or prospective customers, who are physically present in Australia.

Subsection 15C(1) sets out when a person commits a criminal offence for contravening this provision, and subsection 15C(3) provides that a contravention of this provision attracts civil penalties.

Exceptions to the credit-related prohibitions apply to:

- > A provider of a telephone betting service where the service provider (or related company group) had wagering turnover of less than \$30 million in the previous financial year or, in the absence of data for the previous year, is reasonably likely to have turnover less than \$30 million in the current financial year.<sup>2</sup>

The operator also must have provided wagering services at a racecourse in Australia during the whole or part of the previous financial year.<sup>3</sup>

- > A customer that is a gambling service provider.<sup>4</sup>

The credit betting prohibitions do not extend to the use of independently-issued credit cards as they are explicitly excluded from the offence provisions in section 15C of the IGA.<sup>5</sup>

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<sup>1</sup> Department of Social Services (DSS), [National Consumer Protection Framework for Online Wagering](#), DSS website, 2020, accessed 15 July 2021.

<sup>2</sup> Paragraphs 15D(1)(a) – (g) of the IGA.

<sup>3</sup> Paragraphs 15D(1)(h) and (i) of the IGA.

<sup>4</sup> Section 15E of the IGA.

<sup>5</sup> Subparagraph 15C(1)(b)(ii) and paragraph 15C(3)(b).

## Review of the credit betting prohibition

The credit betting prohibitions commenced on 17 February 2018. The IGA requires the ACMA to conduct a statutory review of the credit betting rules and other provisions of the IGA as they relate to credit betting, after the first 3 years of their operation.

The review is required to include public consultation and the ACMA must give the minister a report of the review within 6 months after the 3-year period of operation of the prohibitions.

In accordance with these requirements, the ACMA published a [consultation paper](#) on 17 February 2021.

The consultation ran from 17 February 2021 to 31 March 2021. Twelve submissions were received.

### Key topics identified in the consultation paper

The key topics identified in the consultation paper and further discussed in this report were:

<b>1. The definition of credit</b>
<b>2. Withdrawal of funds from customer accounts</b>
<b>3. Exclusion for customers not known by the wagering operator to be in Australia</b>
<b>4. Exception – providers of telephone betting services with an annual wagering turnover less than \$30 million and an on-course presence</b>
<b>5. Exception – customer is a gambling service provider</b>
<b>6. Definitions of ‘a related company group’, ‘wagering service’ and ‘wagering turnover’</b>
<b>7. Complaints, investigations and enforcement framework</b>

# Consideration of issues

Full names of submitters and other acronyms can be found in the *Glossary* at the start of this report.

## Issue 1: Definition of credit

### Background

Credit is defined under section 11A of the IGA as:

For the purposes of this Act, credit is provided by a person (the creditor) to another person (the debtor) if, under a contract, arrangement or understanding:

- > payment of a debt owed by the debtor to the creditor is deferred; or
- > the debtor incurs a deferred debt to the creditor.

The consultation paper included the ACMA's observations on the practical application of this definition based on our experience in investigating compliance with the rules by wagering operators. In particular, we noted that it can be difficult to establish that parties have a mutual intention through a contract, arrangement or understanding, and thereby support a finding that credit has been provided.

In the absence of some explicit agreement or documented exchanges, it becomes necessary to look for other indicators or patterns of behaviour sufficient to establish this mutual intention.

Several cases illustrated the difficulties in obtaining sufficient evidence to establish the required existence of a contract, arrangement or understanding. They also raised questions about whether the facilitation of betting by customers, notably through funds advanced by bank transfer, is consistent with the objects of the credit betting prohibitions.

For example, some wagering operators had advanced funds to a customer's betting account where the customer provided evidence to the operator that a transfer of funds to the operator had been made through a third-party payment processor. This allowed the customer to place bets immediately, even though there was some delay before the funds were actually received into the operator's bank account, or not received at all.

**We invited comments on whether an alternative approach to the definition of credit would be more appropriate and effective given the policy objectives of the credit betting provisions.**

### Summary of submissions

Each of the 12 submissions to the ACMA's consultation paper addressed the definition of credit. Most focused on the issue of whether funds should be allocated to a customer's wagering account before a payment had actually been received into the wagering operator's bank account.

- > RWA and most wagering operators considered there should be no change to the existing definition. RWA submitted that a change to the definition requiring operators to have received funds from a customer into its bank account before funding their wagering account would render most wagering products unworkable due to delays in payment processing by third parties such as banking institutions.

- > The VBA did not support a strict requirement for wagering operators to have receipt of payment as there are many instances, especially with the use of POLi, where a customer executes a transfer, and the funds are irrevocably debited from the customer's account before the transaction is notified to the bookmaker.
- > Similarly, Betfair submitted that if there is a change to the definition, bank transfers via POLi should be an exception, as it is a 'debit only' transaction and requires funds to be available within the customer's bank account for the transaction to be approved. This meant that there are no responsible gambling risks associated with the POLi deposit method.
- > The ABA provided limited support to a change in the definition to require a wagering operator to have received the funds, while noting that the practicalities of such a policy had the potential to alter the current operations of bookmakers. As an example, the ABA noted that some bookmakers' software accepts notifications from POLi, however the actual funds may not be received into the bookmaker's bank account until a batch deposit is made later that day or the next business day by POLi.
- > TAB noted that there may be an opportunity to strengthen some of the current provisions to close any potential loopholes where funds could be allocated to a customer's account before they have cleared, or the funds later withdrawn.
- > Other submissions supported a change to the existing definition to require a wagering operator to have received the customer's funds before a deposit was made to their betting account.
- > The VRGF noted that delayed payments now only occur with older systems like BPAY and other bank transfers or cheques. Nonetheless, a ban of the practices (identified in the consultation paper) was likely to cause little inconvenience to those who gamble and do not experience harm but will strengthen the protection the credit prohibition provides to people that do experience harm, while also simplifying the law and its enforcement.
- > The Uniting Church stated that the examples given in the consultation paper demonstrate that some wagering businesses are undermining the current prohibition. It provided the view that these operators seek to fuel impulse gambling by allowing people to keep gambling when they do not have funds in their wagering account by not delaying the acceptance of bets until the funds are in the wagering business' bank account.
- > The RGF noted that the current definition allows customers to wager with money that has not yet been received by the wagering operator, where customers can gamble with funds that have effectively been credited or advanced by the wagering operator.
- > In relation to the part of the definition requiring the parties to have a mutual intention, Entain stated that it is critical that there be a contract, arrangement or understanding between the parties to provide certainty. It also advised that expanding the definition or creating exceptions was likely to cause greater uncertainty about what constitutes credit betting without any corresponding benefit.
- > RA suggested that an extended credit definition could perhaps be further fortified by statutory presumptions of mutual intention to provide credit, to facilitate proof of existence of credit agreements.

## **ACMA response**

### ***Requirement to establish mutual intention***

The ACMA acknowledges that there are differing views about changing the definition of credit.

The definition of credit in the IGA is in similar terms to the definition of credit in subsection 3(1) of the *National Credit Code*, which applies to credit contracts entered into on or after 1 July 2010 where the lender is in the business of providing credit and a charge is made for the provision of credit.

However, an arrangement, in whatever form, for the provision of credit through a credit contract is likely to be substantially different to an arrangement between a wagering operator and a customer. The credit contract is a formal, transparent contract, around which there are a range of related regulatory protections for consumers. In contrast, a credit arrangement between a wagering operator and a customer may be contrary to the law and is most likely to be achieved informally, generally through a telephone conversation or face-to-face meeting. Importantly, the prohibition on the provision of credit is the substance of the protection for online gambling consumers.

Any informality in an arrangement between a wagering operator and customer creates uncertainty in the scope of the regulatory prohibition and may make it more difficult to administer.

It is the ACMA's view that the removal of this requirement will enhance the regulation of the prohibition, thus providing further safeguards for vulnerable consumers.

**Recommendation 1:** The ACMA recommends that the definition of credit in the IGA be amended to remove the requirement to prove the existence of a contract, arrangement or understanding between the parties.

### ***Deposit methods***

The current framework does not, in effect, prohibit gambling in all circumstances before funds have been received into the wagering operator's account. This raises a broad question of whether facilitating immediate betting is consistent with the objectives of the prohibitions. It may also complicate the ACMA's investigations process.

The ACMA recognises that it is in the commercial interests of a wagering operator for a customer's funds to be deposited to their betting account as soon as possible to facilitate the placing of bets by the customer. Under the current definition of credit in the IGA, the deposit methods generally used by wagering operators are not likely to constitute the provision of credit.

However, the ACMA also acknowledges the concerns expressed in a number of submissions that certain types of deposits pose an additional and therefore increased risk for problem gamblers, particularly in cases where it has not been verified that a customer has sufficient funds in their bank account before a deposit is made to their wagering account and bets are placed.

The newer forms of depositing funds such as POLi facilitate the availability of funds before the transfer is made, and those funds are irrevocably debited from the customer's account before the transaction is notified to the wagering operator. In such cases, the potential harm to customers is limited.

However, there remain different types of deposit methods with varying timeframes for the deposits to be made to a customer's betting account. For example, a BPAY transaction usually takes 1 to 3 days to be deposited to a wagering operator's bank account. Similarly, there are different models under which the funds are collected from the customer. As an example, payments made by customers via PayPal are transferred to wagering operators and deposited to the customer's betting account in real time, while PayPal collects the funds from the customer at a later time.

The ACMA notes the differences in the deposit methods but considers there should be an underlying requirement, regardless of the method used, which ensures a customer has available funds before a transfer of a customer's funds by a financial institution or payment processor to a wagering operator. This will ensure that the customer is only placing bets with available funds.

**Recommendation 2:** The ACMA recommends that the IGA be amended to require wagering operators to have received funds from a customer prior to them being available for the customer to bet with or, if funds have been transferred from a financial institution or via a payment processor, it has verified the customer has sufficient funds to cover the transfer.

## Issue 2: Withdrawal of funds from customer accounts

### Background

Credit betting investigations have identified a business practice where some operators allow customers to reverse a withdrawal of funds after it has been processed on the customer's betting account.

This is facilitated because some withdrawals are not processed through the banking system until the next business day. For example, if a customer requests a withdrawal on a Saturday, the funds may not be transferred to the customer's bank account until the following Monday. Some operators provide customers an opportunity to reverse their withdrawals, in full or part, in the intervening period.

The delay in processing withdrawals can create a situation where a customer decides to reverse the withdrawal, and then places bets against those funds, with the potential to lose money that the customer had already decided should be withdrawn.

This process has also led to challenges in the ACMA's investigations, as customer accounts have gone into debit once bets were placed after a withdrawal was processed. Some operators have explained to the ACMA that the customers had been permitted to reverse their withdrawals, so that in 'real time', the customer accounts were never actually in debit.

**We invited comments on whether wagering operators should be prevented from allowing a customer to reverse a withdrawal after it has been lodged and accepted by the operator.**

### Summary of submissions

Each of the 12 submissions received addressed this matter.

- > RWA, wagering operators (except TAB), GRSA and VBA submitted that withdrawals should be allowed to be reversed. RWA noted that any prohibition on withdrawal reversals would have minimal impact on consumer protection goals agreed under the NCPF but would have significant impact on the ability of operators to offer the 'popular option to customers'.

- > Entain noted that reversing of withdrawals can be a responsible gambling issue and processes are in place to deal with this. For example, a customer can turn off their ability to cancel withdrawals. It also stated that in its experience, some customers rely on the ability to cancel withdrawals as an account management tool; for example, cancelling a withdrawal rather than depositing new funds.

The remaining submissions provided some support for a prohibition on withdrawal reversals. TAB noted that if changes are to be made, there should be flexibility that ensures in circumstances where there was either customer or technological errors, the withdrawal could be reversed.

- > The VRGF offered the view that from a preventing gambling harm perspective, a decision to withdraw money has been a deliberate one. The literature on spending would indicate that this reversal is an easier and less deliberate decision than to make a new deposit. It is likely that a great number of those who are seeking reversals are people on the gambling harm spectrum.
- > RGF advised that research has shown that reversing a withdrawal of funds is associated with problem gambling behaviour.
- > The NTRC provided a similar view and stated that in a number of betting disputes considered by the Commission, it has found that multiple reversals of withdrawal requests are capable of constituting red flag indicators of problem gambling.

#### **Additional information**

Emerging payments options on new payments platforms (NPPs) such as Osko<sup>6</sup> mean that withdrawals from customers may be able to be processed in a timelier manner and not be reliant on waiting until the next business day.

However, the use of new technology can vary across operators and some systems that provide the opportunity for withdrawals to be reversed may remain in place.

The reversal of withdrawals itself does not constitute the provision of credit under the IGA. However, as explained above, the ACMA's credit betting investigations have revealed that this process, combined with the placing of bets, can result in accounts going into debit, which on face value signals the provision of credit.

#### **ACMA response**

The ACMA acknowledges that there is general support, among wagering operators, for the continuation of this business practice as a service to consumers and that there is an option for consumers to opt out of this function.

However, as well as presenting difficulties during credit betting investigations, the practice of allowing a withdrawal to be reversed goes to the intent of both the IGA and the NCPF of minimising harm to those who gamble online.

A consumer must make deliberate decisions in using their betting accounts, whether it be the amount to deposit, the details of any bet placed or a decision on when to withdraw funds. Wagering operators will generally not allow a deposit or bet to be reversed once transacted (unless there is clear evidence of a mistake being made), but some operators allow customers to reverse a withdrawal after the decision has been made by the customer.

The delay in processing withdrawals can lead to a situation where a customer decides to reverse the withdrawal, then places bets against those funds, resulting in

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<sup>6</sup> Osko by BPAY, [Osko](#) [website], n.d., accessed 15 July 2021.

the potential to lose money that the customer had already decided should be withdrawn.

The ACMA acknowledges there may be circumstances where a technical issue has caused a withdrawal to be made erroneously. Any prohibition on wagering operators reversing a withdrawal could include some flexibility to allow for such circumstances.

However, the ACMA notes the serious concerns expressed in several submissions that reversing a withdrawal of funds can be associated with problem gambling behaviour and supports measures which minimise harm to consumers.

**Recommendation 3:** The ACMA recommends that the IGA be amended to prohibit a wagering operator from allowing a customer to reverse a withdrawal from their betting account.

## Issue 3: Exclusion for customers not known to be in Australia

### Background

Under subsection 15C(5) of the IGA, the credit betting prohibitions in subsections 15C(1) and (3) do not apply if the wagering operator that engaged in the contravening conduct did not know, and could not, with reasonable diligence, have ascertained, that the relevant customer, or prospective customer, as the case may be, was physically present in Australia.

The following matters are considered to decide if this exclusion applies<sup>7</sup>:

- > whether the customer, or prospective customer, was informed by the wagering operator that Australian law prohibits the provision of credit to customers, or prospective customers, who are physically present in Australia
- > whether the wagering operator required customers to provide personal details and, if so, whether those details suggested that the customer was not physically present in Australia
- > whether the wagering operator had network data that indicated that customers were physically present outside Australia:
  - > when the relevant customer account was opened
  - > throughout the period when the service was provided to the customer
- > any other relevant matters.

**We invited stakeholder views on the effectiveness of this exclusion.**

### Summary of submissions

The ACMA received 4 submissions that addressed this issue.

- > While the consultation paper sought views on the effectiveness of the exclusion, these submissions addressed the question of whether wagering operators should be permitted to provide credit to any Australian, regardless of location.
- > The VRGF considered the current exclusion and was of the view that should it remain, due diligence should require a reasonable level of effort by operators to identify the location of customers, which would include steps to

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<sup>7</sup> See subsection 15C(6) of the IGA.



identify where virtual private networks (VPNs) are used to mask a customer's true location.

### **Additional information**

One of the measures in the NCPF (no.3) is 'Customer Verification', which is described as:

Online wagering operators will have to verify their customer's identity within 14 days of their registration, instead of the current 90 days. This reduced timeframe for customer verification will help to ensure underage and self-excluded customers, and those operating under assumed names, do not access online wagering.

### **ACMA response**

All Australian licensed wagering operators are required to identify and verify new customers under the Anti-Money Laundering and Counter Terrorism Financing (AML/CTF) Rules as part of 'Know your Customer' obligations. This enables wagering operators to ascertain if the customer is a resident of Australia. However, the ACMA acknowledges that the use of VPNs by some customers to mask their true location can create difficulties for operators in determining if the customer was physically present in Australia at a particular point in time.

The ACMA has not identified circumstances, in its investigations, where a wagering operator has sought to use the exclusion under subsection 15C(5), although it has been established that some operators have customers based overseas.

While noting the views expressed in the submissions, the ACMA has not seen evidence, either through its investigations or complaints received, which would indicate the exclusion is not operating as expected. Further, the ACMA notes the requirements in the IGA for operators to use reasonable diligence<sup>8</sup> to establish whether a customer, or prospective customer, is physically present in Australia.

**Finding 1:** The ACMA finds no evidence at this time to support amending the credit betting exclusion for customers not known to be physically present in Australia,

## **Issue 4: Exception – providers of telephone betting services with annual wagering turnover less than \$30 million and an on-course presence**

### **Background**

Section 15D of the IGA provides an exception to the credit betting prohibition provisions for a provider of a telephone betting service with a wagering turnover (including that of a related company group, if applicable) of less than \$30 million, provided that at least one employee of the provider had duties that involved the provision of wagering services on a racecourse during the relevant financial year.

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<sup>8</sup> See subsection 15(C)5 of the IGA

The Supplementary Explanatory Memorandum<sup>9</sup> to the Interactive Gambling Amendment Bill 2016 noted that:

The amendments to the Bill will prohibit wagering operators from providing or offering lines of credit either directly, or via a third party, to persons present in Australia. An exemption will be provided to allow on-course bookmakers earning less than \$30 million in annual wagering turnover to continue to provide credit via the telephone. The amendments will not affect purely face-to-face operations, which are outside the scope of the IGA.

**We invited views on whether this exception and the \$30 million threshold, with an on-course presence, continues to be appropriate.**

### Summary of submissions

The ACMA received 4 submissions that addressed this matter.

- > The ABA advocated a review and increase in the threshold, noting that ‘various bookmakers’ are presently experiencing significant online turnover growth and the current limitations may result in a restriction of business in the future.
  - > GRSA noted that while it is not clear that any exception needs to apply, to remove the provision would ‘foreseeably be regressive’. GRSA also noted that no obvious reason existed for the threshold to be increased.
  - > The VRGF considered that the exemption should be removed for all but on-course customers.<sup>10</sup> This will ensure customers and bookmakers on-course do not need to carry large amounts of cash.
  - > The VBA identified concerns with the wording of the exclusion as it has been made aware of circumstances that suggest bookmakers are circumventing the \$30 million threshold. This occurs when a bookmaker to whom the threshold applies accepts credit bets by telephone and then bets back all or substantially all of the bets with operators that do not have the exclusion. This allows the other wagering operators to ‘artificially inflate their limits for acceptance of credit bets’.
- The VBA suggested amendments should be made to negate the ability of bookmakers to undermine the primary purpose of the legislation. The amendment should prohibit bookmakers acting as ‘agents’ for the purpose of ‘pass-through’ credit betting.

### Additional information

In September 2019, the ACMA conducted a review of on-course bookmakers to determine if their turnover remained at less than \$30 million, which would allow them to meet the exception under section 15D, as set out above.

The ABA and various state-based bookmaker associations assisted the review and identified 6 bookmakers that were close to, or above, the \$30 million threshold. We contacted each of these bookmakers seeking further information about their wagering turnover in the 2018–19 financial year.<sup>11</sup> We found that 5 of the 6 bookmakers reported to be under the threshold, and 4 of these had provided credit via telephone (which is permitted under section 15D).

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<sup>9</sup> The Parliament of the Commonwealth of Australia, [Interactive Gambling Amendment Bill: Supplementary Explanatory Memorandum \[PDF 250KB\]](#), 2016–17, accessed 15 July 2021.

<sup>10</sup> The IGA does not prohibit credit being provided in face-to-face transactions.

<sup>11</sup> In the case where an operator was not a wagering service provider in FY2018–19, we requested information on whether their likely turnover will exceed \$30 million in the next financial year (2019–20).

The one operator that reported to be above the threshold had only one Australian customer, who had not been provided credit.

### **ACMA response**

The Supplementary Explanatory Memorandum for the Bill states that the \$30 million threshold is targeted at supporting bookmakers that provide face-to-face services at race meetings, the vast majority of which are small businesses.

The ACMA has met with the ABA on a number of occasions and at those meetings, the ABA has outlined the declining number of on-course bookmakers, and the increased difficulty they have competing with online wagering operators.

Since the onset of the COVID-19 restrictions, the ACMA has been advised by the ABA and VBA that a number of their members have also set up online operations. This is reflected in the ACMA's Register of licensed interactive gambling providers<sup>12</sup>, which shows an increase in the number of on-course bookmakers setting up online operations with new trading names.

In its submission, the ABA advocated for an increase in the threshold, noting that 'various bookmakers' are presently experiencing significant online turnover growth. This indicates that a number of on-course bookmakers may be approaching, or have exceeded, the \$30 million threshold.

The ACMA acknowledges the particular impact of COVID-19 on the operations of on-course bookmakers with a shift from face-to-face customers to increased online betting.

Given evolving business models, the ACMA considers that the credit betting prohibition exemption for on-course bookmakers should be reviewed to determine if it continues to be appropriate.

**Recommendation 4:** The ACMA recommends that the government review the necessity and effectiveness of any requirement to exempt on-course bookmakers from credit betting prohibitions.

The issue raised by the VBA in relation to some bookmakers acting as 'agents' for the purpose of 'pass-through' credit betting, is of concern. Any mechanism that circumvents the intent of the legislation should be addressed to provide clarity for all operators.

This could be achieved by amending the IGA to prohibit wagering operators that are permitted to accept credit bets by telephone from passing through those bets, in full or part, to another wagering operator.

**Recommendation 5:** The ACMA recommends that the IGA be amended to prohibit wagering operators that are permitted to accept credit bets by telephone from passing through those bets, in full or part, to another wagering operator.

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<sup>12</sup> Australian Communications and Media Authority (ACMA), [Check if a gambling operator is legal](#), ACMA website, July 2021, accessed 15 July 2021.

## Issue 5: Exception – customer is a gambling service provider

### Background

Under section 15E of the IGA, the credit betting prohibitions in section 15C do not apply in circumstances where the customer, or prospective customer, of a regulated interactive gambling service is itself a gambling service provider.

This exception is intended to permit wagering operators to conduct business-to-business credit dealings; for example, by offering credit to other wagering companies to offset risk.

We are aware of a number of operators that provide credit facilities to other gambling service providers. The facility is generally in place for operators to 'bet back' some of their potential liabilities with other gambling operators.

**We invited views on whether the exception for a customer that is a gambling service provider continues to be appropriate.**

### Summary of submissions

The ACMA received 7 submissions that addressed this matter, each supporting the retention of this exception:

- > Betfair noted that by offering this service, it supports the continued operation of other wagering service providers, 'which plays a crucial role in the wider wagering ecosystem'. Other gambling providers can use Betfair to reduce their liability by either backing or laying a particular selection.
- > The ABA noted that the exception assists with 'laying off' large bets, which may arise during major racing carnivals.
- > Entain advised that the exception continues to be appropriate as it creates commercial flexibility and ease for business-to-business bet-back transactions.
- > RWA also supported the exception and observed that should it be removed, there is a risk that smaller bookmakers may turn to illegal offshore bookmakers for credit, providing both a risk to the industry and an increased burden on Australian enforcement officials.

### Additional Information

In the credit betting investigations undertaken to date, we have observed that accounts of other wagering operators are easily identifiable in account information provided by operators. Some of those accounts are provided credit and operate with a debit balance.

### ACMA response

The ACMA notes the information provided in submissions that the use of credit for other wagering providers is an important part of the business model of operators. As we have not identified any issues in regulating this exception, we do not consider there is any need for change.

**Finding 2:** The ACMA finds no evidence that change is warranted to the exception from credit betting prohibitions for a customer who is a gambling service provider.

## Issue 6: Definitions of ‘a related company group’, ‘wagering service’ and ‘wagering turnover’

### Background

Amendments made to the IGA by the *Interactive Gambling Amendment Act 2017* inserted definitions for ‘related company groups’, ‘wagering service’ and ‘wagering turnover’ into section 4. In summary:

- > *related company group* means a group of 2 or more bodies corporate, where each member of the group is related to each other member. Whether bodies corporate are related is determined in the same manner as under the *Corporations Act 2001*. This definition is relevant to the calculation of a provider’s annual wagering turnover for the exception in section 15D.
- > *wagering service* means a service covered by paragraph (a) or (b) of the definition of gambling service in the IGA. This is a service that: (a) is for the placing, making, receiving or acceptance of bets; or (b) the sole or dominant purpose of which is to introduce individuals who wish to make or place bets to individuals who are willing to receive or accept those bets. Only these types of gambling services are subject to the credit betting prohibitions. A person who provides a wagering service is a ‘wagering service provider’ for the purposes of Part 2B of the IGA.
- > *wagering turnover* means the turnover of a person for a financial year that is attributable to the provision of wagering services. This definition is relevant to the exception in subsection 15D(1), which is assessed, in part, on the basis of annual wagering turnover. The phrase ‘wagering turnover’ is intended to capture all amounts bet by customers of wagering service providers, less any refunds. It is not intended to refer to bets received less expenses or winnings paid to customers (that is, net revenue). It is also not intended to capture revenue arising from sources unrelated to the provision of wagering services.<sup>13</sup>

**We invited views on whether the definitions relating to a related company group, wagering service and wagering turnover are operational and effective.**

### Summary of submissions

The ACMA received 2 submissions that addressed this matter, each supporting the existing definitions.

### ACMA response

The ACMA has not identified any issues or constraints in the interpretation or administration of the definitions and therefore does not consider there is any need for change.

**Finding 3:** The ACMA finds that definitions of a ‘related company group’, ‘wagering service’ and ‘wagering turnover’ continue to remain appropriate, and no change is required at this time.

<sup>13</sup> The Parliament of the Commonwealth of Australia, [Interactive Gambling Amendment Bill: Supplementary Explanatory Memorandum \[PDF 250KB\]](#), 2016–17, accessed 15 July 2021, p. 4.

## Issue 7: Complaints, investigations and enforcement regimes

### Background

#### ***Complaints and investigations***

The amendments to the IGA expanded the types of matters that individuals may complain to the ACMA about (section 16) – and matters the ACMA may investigate (paragraph 21(1)(a)) – to include whether a person has contravened the prohibition on credit betting.

#### ***Enforcement***

The amendments also introduced a civil penalty regime for the IGA, including the credit betting provisions. This enables the ACMA to apply a graduated range of enforcement options to deal with contravening conduct and encourage and support improved compliance. Enforcement options include administrative remedies empowering the ACMA to give formal warnings and infringement notices. These administrative remedies do not currently extend to enforceable undertakings or remedial directions aimed at requiring behavioural change. The ACMA may also institute court proceedings to seek civil penalties and injunctions.

Some of the IGA provisions may be enforced as criminal offences, and the ACMA may refer these matters and complaints to an Australian police force.

**We invited views on whether the complaints, investigations and enforcement frameworks are operational and effective.**

### Summary of submissions to this review

The ACMA received 4 submissions that addressed this matter, each supporting the current frameworks.

#### ***Additional information***

The ACMA has an online complaints system that enables consumers to make complaints about the provision of credit, and other forms of illegal gambling. We have received very few credit betting complaints since the prohibition was introduced.

To date, we have conducted 7 investigations into whether a wagering service contravened Part 2B of the IGA, by providing, or offering to provide, credit to Australian customers or facilitating or promoting the provision of credit by third parties. Of those credit betting investigations:

- > 6 resulted in a no contravention finding
- > one resulted in a finding of contraventions of the credit betting prohibitions. A formal warning was issued to the provider of the contravening service.

In addition, the ACMA conducted a review of wagering operators' terms and conditions in September 2018, which identified that a number of operators continued to promote the provision of credit on their website. We sought explanations from these operators, who subsequently took prompt action to update their terms and conditions to remove the reference to the provision of credit.

## ACMA response

The ACMA's investigations of online gambling since the amendments to the IGA reveal a dynamic online gambling environment. Specifically in respect of credit betting, a number of submissions have shown a shift to provide online services by traditional on-course bookmakers in circumstances where those activities fall within the reach of the credit betting provisions.

Given that there may be a wider range of operators that are potentially subject to the credit betting provisions in the IGA a broader suite of enforcement options may be useful to facilitate the most appropriate outcomes in cases of future contraventions of the rules. Specifically, it would provide a valuable aid to the ACMA's compliance efforts if it were able to secure behavioural commitments and obligations through administrative remedies. Under the current enforcement options, the ACMA may only achieve behavioural change by the service providers taking voluntary action or by seeking court orders.

The ACMA considers that the addition of enforceable undertakings and remedial directions to the enforcement options available for breaches of the IGA would serve this purpose. These options would provide greater flexibility to elicit behavioural change for services that have been found to contravene the credit betting prohibitions, and may provide more cost-effective and timely remedies than court action.

An enforceable undertaking is a legally binding commitment voluntarily given by a person or entity to the ACMA that the ACMA may accept. Once accepted by the ACMA, an undertaking can be enforced in court by the ACMA. An enforceable undertaking is a formal promise to act, or refrain from acting, in a particular manner. This provides a flexible and effective remedy, in addition to, or in substitution for, other formal enforcement options that may be available to the ACMA. It allows the person or entity to offer to commit to action as a way of addressing the ACMA's concerns about contravening conduct. This is a valuable enforcement tool as it is more cost-effective and timely compared to litigation, it can be tailored to the issues of concern to the ACMA and gives the regulated person the opportunity to be involved in the resolution of the matter.

The power to give a remedial direction would allow the ACMA to give a direction in writing to a person or entity requiring them to take specified action aimed at ensuring compliance with the statutory provision that was contravened. This can include action to remedy past conduct as well as action to ensure that similar conduct does not recur. As with enforceable undertakings, this is also a timely and cost-effective remedy that can be used to address some or all of the issues or matters of concern to the ACMA without the need to take court action.

The ACMA considers that these administrative remedies, which it has in the context of other legislation it administers, are relevant to and would facilitate the administration of the IGA, including the credit betting provisions.

**Recommendation 6:** The ACMA recommends that the IGA be amended to include enforceable undertakings and remedial directions as enforcement options.