

AUSTRALIAN REGULATORY UPDATE

A review of regulatory developments in Australia's **gaming and wagering** industries in 2005 and issues for 2006.

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2005 IN REVIEW

MAJOR ISSUES AND THEMES ACROSS INDUSTRIES

Introduction

As forecast last year, 2005 has not been a year of widespread momentum regulatory reform, but rather dominated by a few key issues – betting exchanges, racing product dissemination and the eventual release of proposals for new anti-money laundering legislation. Around these issues and a number of policy reviews and debates, however, circumstances are developing which provide the potential for fundamental change to the competitive landscape for gambling in Australia over the remainder of the decade.

Sharing the racing and sport “product”

The licensing of the Betfair betting exchange by the Tasmanian Government has raised the stakes in the nationwide campaign by racing and sporting bodies, supported to some extent by some governments, to gain a share of betting turnover, revenue or profit, based on their product. Ingredients in the turmoil include initiatives by some state governments to hinder wagering operators’ access to race field data, “sponsorship” and “licence fee” deals between the Australian Football League and each of Tabcorp and Betfair, and the formation of the Coalition of Major Professional Sports (COMPS) to seek government assistance in major sports’ quest to gain a revenue stream from sportsbetting.

While it is relatively easy to conceive a range of economically justifiable outcomes, the possible paths to a rationale outcome are each quite difficult. Pressure will increase, not ease, in coming years with various government policy making processes underway, meaning that one way or another these issues will dominate the regulatory agenda for some time.

Shift of regulatory focus from consumers to producers

While smaller initiatives have continued from state to state in the field of “harm minimisation”, there is diminishing substantive impact in the debate and efforts concerned with problem gambling.

Much of the focus of gambling “law reform” in 2005 was on business efficiency (and ease of supervision). Some states have also made significant regulatory decisions supporting providers (for example about increased gaming machine numbers) which would not have been anticipated in recent years.

Moreover, the agenda for regulatory review or change is increasingly moving to the competitive position of providers and the interface between previously parallel gambling products. Policy makers, most notably in Victoria in 2006, will be increasingly concerned with how many providers can provide products and within what ambit.

Recent industry consolidation, and the scope for yet more rationalisation, will see most issues being national issues or having national repercussions.

Waning influences

As anticipated, influences of recent years which have caused a fast pace of regulatory change have not featured significantly in 2005: NCP, new technology, industry rationalisation and political pressures about problem gambling. Legislation and regulation has been considerably modernised throughout Australia, leaving the

likely biggest influence on regulatory change to be major policy decisions (of the sort noted above).

Taxation

The trend in gambling taxation is still upward, although initiatives in 2005 only slightly increased the overall tax burden (and some minor simplification occurred in some limited circumstances).

Investor issues

There were no major issues for investor protection or disclosure in 2005, after 2004's spate of sector consolidation.

DEVELOPMENTS IN PARTICULAR INDUSTRIES

Casinos

After very little regulatory change in 2004, the casino sector saw more action in 2005.

NSW gave Star City statutory power to eject smokers, and introduced an array of harm-minimisation initiatives (also applying to EGMs elsewhere in the state) such as new offences relating to inducements, failing to arrange the availability of problem gambling counselling services and failing to display certain notices.

Victoria approved a raft of regulatory changes including easing Crown's "single purpose" company restriction and other historical company-specific regulations which owed their existence more to Crown's developmental phase than its current status as a mature business. Reviews of the suitability of a casino licensee will no longer be "triennial reviews", but occur five-yearly with slight changes in approach. The police's power to give exclusion orders has been extended to the whole casino complex, not just the actual casino.

The ACT has introduced proposed legislation into its Parliament (passed February 2006) to re-write the Territory's Casino Control Act following a review the existing legislation by the ACT Gambling and Racing Commission. Apart from a few minor harm minimisation initiatives, the new Bill is generally aimed at increasing the efficiency of casino operations and regulatory supervision.

Gaming machines

In a first in Australia for many years, Queensland has increased the statewide cap on machine numbers from 18,843 to 20,000 (from 1 July 2006) citing population growth and consumer demand, but made the decision in a state budgetary context along with a decision to increase the levy payable on machines.

Despite initiatives in recent years to reduce the presence and availability of EGMs, SA has allowed the establishment of 5 "super pokie venues" for sporting clubs each with 40 machines, an increase on the existing venue limit of 33 machines.

Victoria, by contract, has begun the process to introduce new regional caps on machine numbers.

The ACT has made some changes to simplify the calculation and administration of its tax on gaming machines. Small change to tax rates have also been made with a small lift in machines' tax free threshold, but also small increases in the top two marginal tax rates to apply from 1 July 2007. Victoria almost doubled a "health" levy

on each EGM in the state (including the casino) from \$1,533 to \$3,033 per annum, with effect from 1 July.

2005 was yet another year of tinkering with the detail of gaming machine legislation or regulations in most jurisdictions, although no changes were momentous. In each of SA, NSW (see 2.1) and Queensland regulation has become more prescriptive, but Queensland's changes also included some minor steps aimed at business efficiency. ACT has corrected some unintended changes in the law made by its 2004 re-write of its gaming machine legislation.

Victoria's review of the post-2012 licensing and regulatory arrangements for EGMs (notably the continuation or otherwise of the operator duopoly) did not commence as previously promised, but will kick-off in early 2006 (pushing a conclusion until after the state's November 2006 election).

SA's Independent Gambling Authority released its report supporting the introduction of smartcards for EGM play (no action taken). In December the Authority completed its report reviewing the progress toward implementation of the state-wide reduction of machine numbers and its machine entitlement trading system (to be published early 2006).

Version 8.0 of the Australian and New Zealand Gaming Machine National Standard is now generally in force in Australia.

The National Ministerial Council on Gambling made little progress in 2005 on acceleration of research or agreed unanimous harm minimisation initiatives (for example failing to agree to a national approach on regulation of ATM withdrawals).

Racing and wagering

2005's biggest development was Tasmania's enactment of a licensing and regulatory regime for online betting exchanges and the licensing (in January 2006) of the Australian arm of Betfair. The continuing campaign against betting exchanges in the mainland jurisdictions has seen yet more tinkering with legislation about race-field information and administrative action to frustrate unlicensed wagering businesses. An as-yet unexplained curiosity was Victoria's passage of amending legislation through both houses of Parliament but the deferring of presenting it to the Governor for Royal Assent.

The ongoing legal and commercial battle between Tabcorp's Sky Channel and ThoroughVision for distribution of race broadcasts has increased anxiety in the racing industry, among venues and with consumers and has had a negative impact on wagering turnover.

The NSW Government rejected Tabcorp's proposal to merge its NSW (TAB Limited) and Victorian (Supertab) totalizator pools.

Queensland has made yet more changes to the governance and funding arrangements for regional and country racing, and made minor amendments to wagering regulation.

Tasmania has made some "consumer protection" changes to bookmaking rules and has allowed changes, including some ongoing increases, in TOTE Tasmania's commission. Tasmanian racing and TOTE Tasmania have each also benefited from assistance and concessions from mainland racing and totalizator operators (given in the lead-up to Tasmania's decision on betting exchanges).

In Victoria, Racing Victoria Limited issued a number of new sportsbookmaking licences late in 2005 and the Government deferred to early 2006 the commencement of its policy review about post 2012 wagering licence arrangements

(notably the monopoly totalizator licence held by Tabcorp) and possible reform of racing industry funding mechanisms. Victoria Police now have the power to ban alleged criminals from Victorian race tracks.

Public lotteries

The Victorian Government concluded its review of the licensing and regulatory regime for public lotteries in Victoria, and invited applications for selection as a licensee for the 10 year period from 1 July 2007. The Government has left open the possibility of selecting up to 3 licensees, and otherwise made only minor changes to the legislation governing lotteries. A selection decision is not due until early to mid 2006.

NSW has yet to make any announcements about the post 1 July 2007 licensing arrangements for major lotteries, making a decision other than an extension of NSW Lotteries' monopoly licence unlikely.

Each of Victoria, NSW and WA made minor amendments to its lotteries legislation or regulations, NSW changing the rules about unclaimed prizes. The SA Parliament is contemplating raising the minimum age for purchase of a lottery ticket from 16 to 18 however the necessary legislation has not been passed. No proposed legislation has yet been released or introduced to Parliament in the ACT to act upon the December 2004 recommendations from the Territory's review of its lotteries legislation (on which consultation occurred in 2005).

Interactive gambling

Tasmania has established a regulatory regime for online betting exchanges and has licensed Betfair. Steps have been taken in some jurisdictions to strengthen measures to make unapproved online wagering more difficult, for example by further restricting publication of race field information.

The new Australian Communications and Media Authority (which has replaced the ABA) has not announced any steps toward the overdue review of the Internet Industry Association's Interactive Gambling Code of Practice which is registered under the Act. Neither the Authority nor the Australian Federal Police has taken any publicly discernible enforcement action for offences against the Act.

Minor gaming

Very little change of substance occurred in 2005 in relation to minor gaming. Notably South Australia moved to restrict the playing of two-up on Anzac Day, but NSW expanded the number of "commemorative" days when it is lawfully available.

In broadranging proposed amending legislation to its omnibus Gambling Regulation Act 2003, Victoria has announced multiple administrative amendments to existing provisions, many of which are designed to strengthen regulation of trade promotion lotteries, bingo centres, commercial raffle organisers and community and charitable organisations. The Bill is expected to pass in early 2006.

DEVELOPMENTS FROM BROADER REGULATORY REGIMES

AUSTRAC

The long running work of the Australian Transaction Reports and Analysis Centre (AUSTRAC) and the Federal Attorney-General's Department on an enhanced anti-money laundering regime finally culminated in the release of an exposure draft bill and extracts of draft rules in December 2005. The legislation involves a number of issues which the gambling industry will seek to address over 2006. Finalisation and

enactment of the legislation, let alone commencement of the eventual regime, will take some time.

ACCC

The Australian Competition and Consumer Commission has given two “authorisations” under the Trade Practices Act to allow small market players to collectively negotiate with large providers of wagering and race broadcasting services:

- Australian Hotels Association divisions and members to negotiate with Sky Channel, ThoroughVision and the various totalizator operators;
- WA TAB agents to negotiate with Racing and Wagering WA.

ATO

No particularly notable Australian Taxation Office rulings or actions emerged in 2005. TAB Limited, however, was successful in obtaining Federal Court declarations approving the exclusion of totalizator refunds from GST calculations and recognising tote dividends at the time of declaration rather than payment (contrary to the ATO view).

Privacy Commissioner

No privacy codes applicable to gambling industries have been approved in 2005, with the Australian Casino Association’s draft code still awaiting approval. Gambling businesses have not featured specifically in the Commissioner’s educative, complaint handling or enforcement activities in 2005.

COURTS

Gambling in the Courts

In *Neurizon Pty Ltd v Jupiters Ltd* [2005] FCA 1177 a patentor was successful in defending an action by Jupiters that claimed that the invention lacked the “inventive step” necessary to allow patenting. Jupiters claimed they had developed a system in relation to a method of awarding prizes in a gaming system that “anticipated” the invention made by Neurizon. The court held, however, that there was not sufficient evidence from Jupiters about the development of their invention and Neurizon therefore did not lack an “inventive step” to allow patenting.

Tabcorp’s Sky Channel successfully obtained an injunction in the NSW Supreme Court in August against ThoroughVision and pay TV carrier AUSTAR relating to AUSTAR’s proposed broadcast of the TVN service (in breach of contract with Sky Channel).

A problem gambling group based in NSW attempted to invoke the assistance of the courts in accessing information from a variety of gambling businesses, with little joy.

A number of other notorious but not legally significant matters involving gambling businesses or identities consumed some attention of the courts, ranging from the ongoing matter of International All Sports and the CBA to Len Ainsworth bringing defamation proceedings against a former NSW policeman relating to communications with the Nevada Gaming Commission and others in 1993.

AHEAD IN 2006

The following regulatory developments can be expected in 2006:

- The result of Victoria’s public lottery licensee(s) selection process, to apply from 2007.
- A NSW policy decision on its public lottery licensing regime from 2007.
- Progress with Victoria’s major policy review on the post–2012 arrangements for EGM, wagering and Club Keno licensing in the state and racing industry funding.
- Development and probable enactment of the proposed new Anti-Money Laundering and Counter –Terrorism Financing (“AML/CTF”) legislation.
- A review of the ACT’s race and sports bookmaking legislation (discussion paper released January 2006).
- A review of the IIA Interactive Gambling Code of Practice (now well overdue).
- Further reviews of various gambling codes of practice and guidelines by SA’s Independent Gambling Authority.

2006 will see state elections in each of South Australia, Tasmania and Victoria (followed by others in 2007). To date it does not appear likely that gambling policy or concerns will feature prominently (as in some previous state elections), so these elections should not have significant implications for gambling regulation in Australia.

LANDER & ROGERS NATIONAL GAMING AND WAGERING PRACTICE

Anthony Seyfort heads the Lander & Rogers national gaming and wagering practice.

From 1993 to 1998 he was a foundation senior executive of Crown Limited, a period which included its establishment, float, opening of its temporary and permanent casinos and extensive dealings with Government, VCGA, AUSTRAC and other regulators.

Back in legal practice since 1998, Anthony has advised a state government, licensed owners and operators of all types of gambling products, offshore businesses, testers, software suppliers and a variety of related businesses.

Lander & Rogers also counts among its clients some leading racing and sports bodies, and related businesses.

Ian Fullagar was a director of the Australian Sports Commission 1997 to 2000 and is widely regarded as one of Australia's leading sports lawyers.

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PUBLICATIONS

Anthony Seyfort has published "Australian Regulatory Update" for 2000, 2001, 2002, 2003 and 2004, together with a variety of other publications and government submissions. Copies are available.

Lander & Rogers also maintains an email mailing list for periodic bulletins on new legal developments. To join the list, email kcrowther@landers.com.au.

FURTHER DETAILS

As you would expect, this document is necessarily brief (and does not constitute legal advice) but further details can be provided regarding any issue.

APPENDIX 1
GAMING AND WAGERING LEGISLATION PASSED IN 2005

Victoria

Casino Control (Amendment) Act 2005
Gambling Regulation (Public Lottery Licences) Act 2005
Racing and Gaming Acts (Police Powers) Act 2005
Racing and Gambling Acts (Amendment) Act 2005

Queensland

Gambling Legislation Amendment Act 2005
Racing Amendment Act 2005
Racing Venues Development Amendment Act 2005
Revenue Legislation Amendment Act 2005

New South Wales

Gaming Machines Amendment Act 2005
Gambling (Two-up) Amendment Act 2005

Australian Capital Territory

Gaming Machine Amendment Act 2005
Gaming Machine Amendment Act 2005 (No 2)

South Australia

Statutes Amendment (Liquor, Gambling and Security Industries) Act 2005

Tasmania

Gaming Control Amendment (Betting Exchange) Act 2005

Western Australia

Nil

Northern Territory

Nil

Commonwealth

Nil

APPENDIX 2
ASX LISTED GAMING AND WAGERING BUSINESSES

(ASX hotels, restaurants and leisure industry group)

NAME	ASX Code	Principal activities	Website
Ainsworth Game Technology Limited	AGI	Gaming machine / software design and manufacture	www.ainsworth.com.au
Aristocrat Leisure Limited	ALL	Gaming machine / software design and manufacture	www.aristocrat.com.au
Betcorp Limited	BCL	World Wide Tele Sports (Antigua)	www.betcorp.com.au
Ebet Limited	EBT	Gaming systems and technology, and internet arm of NZ TAB	www.ebetonline.com
International All Sports Limited	IAS	Internet wagering and UK online poker	www.iasbet.com.au
Lasseters Corporation Limited	LAS	Internet casino	www.lasseters.com.au
National Leisure and Gaming Limited	NLG	Operation of hotels with EGMs in Queensland	www.nationaleisure.com.au
Reef Casino Trust	RCT	Cairns casino	www.reefcasino.com.au
Stargames Limited*	SGS	Design and manufacture of game types (eg. Rapid Roulette) and EGMs	www.stargames.com.au
Sky City Entertainment Group Limited	SKC	NZ, Adelaide & Darwin casinos	www.skycity.co.nz
Unitab Limited	UTB	Wagering inc former QLD, SA & NT TABs	www.tabonline.com.au
Tabcorp Holdings Limited	TAH	Wagering business (inc Vic and NSW TABs), Victorian duopoly EGM operator and Sydney, Brisbane, Gold Coast and Townsville casinos	www.tabcorp.com.au

*To be delisted following an early 2006 takeover by Shuffle Master Inc (USA)

(Other listed companies in other industry groups with significant gaming exposure)

NAME	ASX Code	Principal activities	Website
Publishing and Broadcasting Limited	PBL	Crown and Burswood casinos (Melbourne and Perth) and investment in Macau	www.pbl.com.au
Woolworths Limited	WOW	Hotels with EGMs in Queensland, NSW, Victoria and SA (including ALH and Taverner businesses)	www.woolworthslimited.com.au

APPENDIX 3
MAJOR DEVELOPMENTS IN RECENT YEARS

<p>2005 (14 Acts)</p>	<p>Exposure draft of new Anti-Money Laundering and Counter Terrorism Financing Bill released for comment*. Tasmania establishes a regulatory regime for betting exchanges and licences Betfair. Campaigns by racing and sports for product fees gather pace. Queensland increases statewide number of EGMs.</p>
<p>2004 (21 Acts)</p>	<p>SA 20% statewide reduction in EGM numbers. Release of Federal Government’s review of its interactive gambling legislation (no change)*. Legislation to facilitate industry consolidation and restructuring. Victorian public lotteries licensing and regulatory policy review*. NSW IPART and other states’ analyses of harm minimisation measures released.</p>
<p>2003 (22 Acts)</p>	<p>Federal Hotels and Resorts’ extension to its monopoly casino and EGM licences in Tasmania*. Smoking bans in gaming venues. A multitude of EGM harm minimisation measures.* Increased EGM taxation in various jurisdictions. Racing Ministers’ campaign against betting exchanges. Constitutional challenge to validity of NSW bookmaker legislation.</p>
<p>2002 (24 Acts)</p>	<p>Multitude of new EGM and casino harm minimisation initiatives in most jurisdictions.* Removal of Burswood Casino shareholding restrictions. Significant reform of racing and bookmaker regulation in various jurisdictions. Victorian Ombudsman’s adverse report on VOGR investigation fee.</p>
<p>2001 (23 Acts)</p>	<p>Federal legislation banning interactive gaming.* Multitude of new EGM harm minimisation initiatives including freezes and caps on machine numbers. Continued notable impact of NCP on legislative reform across jurisdictions and industries. Privatisation of SA TAB (redesign of regulatory regime in 2000**). Significant governance reforms in Victorian racing. Privacy laws affect business practices.*</p>
<p>2000 (28 Acts)</p>	<p>Federal intervention – interactive gaming moratorium.* EGM harm minimisation initiatives including Victoria’s regional caps and other Victorian and NSW measures (followed by other states in following years). New Victorian AFL footy tipping competition (Tipstar) approved. Critical triennial review report on aspects of Star City casino’s practices. Proprietary racing in SA to be allowed. Major governance and procedural changes for VCGA. Review of AUSTRAC legislation recommends major changes to benefit gambling industries (never enacted). NCC’s gambling issues paper released. Privatisation of NT TAB. Sky City enters Australian gambling industries.</p>

*Anthony Seyfort was involved, for industry participant clients, in these matters.

** Anthony Seyfort was involved, for a government client, in this matter