

## Australian Regulatory Update

A review of regulatory developments in Australia's gaming and wagering industries in 2003 and issues for 2004.

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## 2003 IN REVIEW

### Gaming machines

Arguably the biggest single regulatory development for 2003 was Tasmania's Federal Hotels and Resorts securing an extension to 2018 of its monopoly licence to operate gaming machines throughout the state.

The extended exclusivity period formed part of a package of measures including extended and varied casino arrangements (see *Casinos*), gaming tax changes, a new statewide cap on machine numbers and contributions to Tasmanian tourism facilities. From 2018 the gaming licence has a rolling 5 year term, renewable annually.

For gaming policy analysts the greatest interest lies in the significance of the decision as the first major decision to grant or extend an exclusivity in gambling industries since the 1995 introduction of National Competition Policy.\*

Competing for greatest significance was the continued wave of smoking bans for gaming venues, with each of Tasmania, ACT and SA in late 2003 announcing bans to take full effect in December 2004, December 2006 and December 2007 respectively. 2003 saw a full year of Victoria's smoking limitations with a significant effect on gaming revenue (although the impact appears to have "bottomed").

SA has led the jurisdictions in terms of the strength of "problem gambling" inspired steps. Following an extension of its freeze on machine numbers for a further year from May 2003, the SA Independent Gambling Authority released the results of an 18 month review in December 2003, recommending a 20% reduction in the actual number of the state's machines. The SA Premier announced legislation to implement the recommendation in February 2004.

In NSW IPART began a major review in July of harm minimisation measures and gambling counselling services. A report is due to be given to the Government in May 2004.

As well as a range of previously legislated harm minimisation measures beginning to take effect (eg. loyalty scheme regulation in Victoria), an array of further regulatory measures continued to be progressively announced by different jurisdictions.

Queensland legislated for trading and re-allocation of machine entitlements within its statewide cap. NSW also fine-tuned its re-allocation scheme and gave its Liquor Administration Board power to approve 3 hour shut down periods in lieu of 6 hours.

Changes to NSW, ACT and Tasmanian tax rates are noted below (*Taxation*).

ACT prolonged its cap on machine numbers and introduced a ban on political donations by EGM operators (clubs), becoming only the second state or territory to do so.

Unpassed private members bills proposing limits on alcohol service and bet rates and limits on the approval of game types remain before the SA Parliament.

Version 6.01 of the ANZ Gaming Machine National Standards became effective in all jurisdictions by late 2003.

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\* Anthony Seyfort advised and acted for Federal in these matters over 2002-2003

### **Wagering**

Each of NSW and Queensland passed legislation in late 2003 to facilitate either of the TABCORP – TAB or TAB – UNiTAB mergers. In each case shareholding restrictions to 10% have been altered, together with other provisions affecting governance and control and, in the case of NSW, cross-ownership restrictions regarding Sydney casino. In each case some ongoing requirements would apply to the prevailing new group of entities. Certain additional NSW Government requirements would apply to a TABCORP – TAB merger, including a divestment of TAB's EGM central monitoring system business and a withdrawal of TAB's "investment licence" for EGM ownership and profit-sharing.

SA has created a new class of betting licence for 24 hour telephone sportsbetting. The SA Minister is now empowered to give binding directions to the SA Liquor and Gambling Commissioner as to conditions to attach to bookmaker's permits.

TAB WA will be abolished and subsumed into the new Racing and Wagering Western Australia. Various amendments have been made to WA wagering rules, mostly consequential upon the major overhaul of racing governance and off-course betting arrangements in 2003 (see *Racing Reform* below). The Gaming Commission of WA has become the Gaming and Wagering Commission of WA.

### **Casinos**

Triennial reviews of the casino operator and licence were completed and released in 2003 by each of the NSW Casino Control Authority and the Victorian Casino and Gaming Authority. The suitability of Star City Pty Ltd and Crown Limited as licensees was affirmed and the continuity of the Sydney and Melbourne casino licences was found to be in the public interest.

Star City and its parent TABCORP were commended for addressing the issues raised in the previous NSW triennial review. The VCGA was able to find a few more quibbles with Crown and its parent Publishing and Broadcasting Limited, related to corporate governance issues and consistency of physical presentation of the venue.

Legislation was passed in WA to effect the previously announced regulatory changes for Burswood, including changes to casino tax rates and a removal of the shareholding limit (replaced by a probity approval requirement).

Federal's casino licences for Wrestpoint and the Launceston Country Club were extended in line with its gaming licence and tax rates on table games were reduced.

### **Interactive gambling**

2003 was a quiet year for developments in domestic interactive gambling regulation.

The review of the federal *Interactive Gambling Act* 2003, which the Act itself required to occur mid-year, began late and was unreleased, probably incomplete, at year end. 42 written submissions were received by the relevant Department, and Allen Consulting Group undertook work for the review. A change of federal Minister in October would have contributed to the delay, as well as the Government's typical practice of releasing reports simultaneously with announcing any decided action arising from them. Little if any change is expected, with the area of greatest scope being a tightening of the "exempt wagering" provisions for the benefit of locally licensed sportsbetting businesses.

The Australian Broadcasting Authority ("ABA") has deferred a review of the Internet Industry Association's Interactive Gambling Code of Practice which is registered with the ABA under

the Act. The review was scheduled for 2003 but will now occur after the review of the Act is completed.

### **Lotteries**

NSW made notable amendments to its lotteries legislation for community-based lotteries, raffles, bingo and similar competitions. Among a range of changes which reduced barriers to conduct of such forms of minor gambling was a general removal of the prohibition on the advertising and sale of interstate lottery tickets (if NSW's standards are met).

The maximum prize value for instant lotteries in Victoria and SA was increased to \$5,000, in line with other states. Otherwise, only minor administrative changes were made to lottery and bingo regulation in 2003, the most notable being the conferring of strong statutory powers on lottery inspectors in SA.

### **Racing reform**

Western Australia joined the ranks of some other states which have reformed racing industry governance over recent years. Racing and Wagering Western Australia ("RWVA") has been established as the new single controlling authority of the WA racing industry and for the conduct of off-course wagering. WATC, WATA and WAGRA have relinquished principal club status and various other statutory bodies including TAB WA have been or will be abolished.

State and territory Racing Ministers met several times in 2003 and proposed action on introducing a "product fee" payable to racing bodies by off-course bookmakers and sportsbetting businesses, and a federal ban on betting exchanges which are not domestically licensed. In the latter case the expressed concerns included the implications for the integrity of racing of allowing persons to bet on a loss.

A proposed overhaul of Tasmanian racing legislation has commenced with a suite of bills introduced into the Tasmanian Parliament in October 2003. Upon completion of new detailed regulations for TOTE Tasmania, the package should be passed into law in early to mid 2004.

Minor clarifying amendments to racing legislation were made in Queensland.

### **National Competition Policy**

The National Competition Council ("NCC") made another annual assessment of states' and territories' progress in reviewing gambling legislation and removing unjustified restrictions on competition, in the context of its reviews of all types of legislation in each jurisdiction. It again found instances of unsatisfactory review outcomes and, with greater incidence, still incomplete reviews despite the then year old deadline under COAG agreements. Significantly, the NCC made no recommendations for the specific withholding of Federal Government grants ("competition payments") based on jurisdictions' non-compliance regarding gambling legislation. The NCC did, however, recommend a general partial withholding of funds based on each jurisdiction's unfinished state of business across all types of legislation (not just gambling).

While progress will be reviewed again in 2004, it is most likely that we have seen the end of National Competition Policy inspired gambling law reform (most of which occurred in 2001 and 2002 in racing and wagering). Interestingly, at the time of the NCC's assessment the Tasmanian monopoly extension decision was announced but not legislated. The NCC issued a warning about it, but a definitive reaction based on the actual legislation will be an issue for 2004.

**Application of competition law**

No gambling businesses experienced any reported strife with the Australian Competition and Consumer Commission ("ACCC") in 2003.

The ACCC announced in December that it would not oppose either a TABCORP – TAB merger or a UNITAB – TAB merger. Consistent with previous NCC analysis of the wagering market, the ACCC would not see either merger as substantially lessening competition in relevant markets.

The ACCC also gave some "authorisations" for collective negotiations within the industry (giving immunity from any legal action based on anti-competitive concerns). The authorisations related to NSW hotels collectively bargaining with TAB Limited and Sky Channel and to Queensland lottery agents' negotiations with Golden Casket.

**Investor protection**

A number of ASX listed gambling businesses grappled with the difficult application of the continuous disclosure regime for listed companies and a few had more intense than usual dealings with the ASX.

Aristocrat had a number of ASX inspired updates for the market on its trading performance. Ainsworth Game Technology experienced both a brief suspension from quotation on the ASX for late lodgement of an annual report and an ASX request for further information relating to its financial reporting. IASBet requested a trading half prior to advising the market about issues relating to a client's use of embezzled money (see *Proceeds of Crime* below).

In November 2003 Aristocrat was served with class action proceedings in the Supreme Court of Victoria on behalf of shareholders who acquired shares in late 2002 and early 2003, alleging breaches of investor protection laws (including the ASX listing rules) in relation to announcements made by Aristocrat.

A few small ASX listed gambling businesses underwent some form of business change or restructure, in some cases requiring shareholder approval.

**Taxation**

Gaming machine tax rates were increased in each of NSW, ACT and Tasmania. NSW's contentious changes, to be phased in from 2004 to 2010, will see an increase in the progressivity of the rate scales, with lower revenue rates falling by 0.91% but the top marginal rate increasing from 30.91% to 50%. ACT's top marginal rate increased from 25% to 27%. Tasmania's tax scale will change from 3 step to 2 steps, providing an increase in tax at the lower revenue range, and the community support levy for clubs will increase from 2% to 4% in line with that for hotels.

Tasmania's casino licence fees increase by \$1m (plus CPI) per annum but casino tax rates on table games will be reduced from 5.88% to 0.88% of gross profit. Burswood's previously announced tax changes (reductions on international revenue; increases otherwise) were legislated.

The ATO was relatively busy giving an array of rulings for gaming and wagering companies. None represented significant new developments in federal tax law.

## **Financial transactions reporting**

Recommendations made by a Federal Government taskforce in 2000 to introduce some efficiencies in the AUSTRAC legislation, the *Financial Transactions Reports Act 1988*, have continued to languish and look unlikely to be acted upon. Among recommendations which would benefit bookmakers and casinos were proposed changes to customer identification requirements, account opening requirements for overseas customers not involving transfers of funds, increases to “blocking” thresholds, exemptions of casino loyalty programs and hotel safety deposit boxes.

Most of the focus of reform in the framework for abating money laundering has focussed on harmonisation with emerging international standards, largely inspired by terrorism concerns, international co-operation and technological developments. Domestic business efficiency concerns appear to rank behind these priorities. Nonetheless AUSTRAC maintains that these issues will be further considered in an overhaul of the legislation in the coming year.

AUSTRAC’s Gaming Provider Advisory Group met only once in 2003.

## **Proceeds of crime**

IASBet found itself the subject of unwanted media and regulatory scrutiny because of a client’s expenditure with it of approximately \$19 million which was embezzled from the Commonwealth Bank. The relevant state police fraud squad made unarranged visits both to the office of the company and the residence of its Executive Chairman in January 2004. The NT Racing Commission’s late 2003 investigation concluded that on the material available to it it was unable to find any regulatory breach or “culpable shortcomings” in corporate governance.

## **Privacy**

Clubs Queensland remains the only gambling related organisation with a tailored privacy code registered with the federal Privacy Commissioner to apply in place of the national privacy principles (for clubs which adopt it). The Australian Casino Association’s draft privacy code remained unapproved at the end of 2003.

## **Other regulatory arrangements**

The Victorian Government has legislated to replace the Victorian Casino and Gaming Authority with a Commission for Gambling Regulation. The new Commission’s functions do not materially differ from the Authority, but it is a smaller body with altered governance arrangements.

At the same time as enacting the institutional changes, Victoria passed the 640 page *Gambling Regulation Act 2003* which replaced all gambling legislation in Victoria other than casino legislation. Disappointingly, the replacement of 8 pieces of legislation was a superficial amalgamation without any serious attempt at harmonisation, rewriting or simplification. For example the licences of Victoria’s two duopoly gaming operators – Tattersall’s and TABCORP – which were previously granted under separate Acts remain operative under different divisions of the new Act, still with different labels.

Changes to institutional arrangements in WA are noted above.

## **Gambling in the courts**

Some significant and interesting gambling industry cases were dealt with by Australia's courts in 2003.

Most newsworthy was *Sportsodds Systems Pty Ltd v NSW* (2003) 201 ALR 706 and 202 ALR 98. The Federal Court found invalid sections of NSW racing legislation which prevented out-of-state corporate bookmakers from obtaining a NSW bookmaking licence, on the grounds that the provisions were protectionist contrary to the *Commonwealth Constitution*. The Full Federal Court declined to extend findings of invalidity to arguably related statutory provisions preventing the advertising of betting information and services in NSW by interstate bookmakers.

There was the usual spate of actions in courts or administrative tribunals regarding gaming machine or venue licensing decisions. Some cases were inspired by freezes/numbers caps.

*NSW Thoroughbred Racing Board v Waterhouse* (2003) 56 NSWLR 691 was a Court of Appeal culmination of a saga from 2002 in which certain transactions were found not to be legitimate wagers. The court said that intention is the essence of a wagering contract which must have a bipartite character. Actions of a bookmaker in creating and recording transactions which were not genuine bets was misleading conduct and prejudicial to the image of racing under the Australian Rules of Racing. The court also recognised limits on the powers of the Racing Appeals Tribunal.

The Federal Court heard a case in 2003, *Ye v Crown Limited* [2004] FCAFC 8, in which Crown was successful in a contractual dispute which turned on different factual accounts of dealings between the high roller and the casino. Both at trial and on appeal the court criticised Crown for an "admitted failure to comply with statutory and regulatory requirements and to institute and maintain appropriate internal controls". The Full Court considered that "if the practices revealed by this evidence are widespread, there must be real doubt as to whether the legislative objectives [fraud, revenue loss and money laundering prevention] are being realised as the Victorian Parliament." The Court directed that its judgement be brought to the attention of the VCGA.

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## AHEAD IN 2004

### In the pipeline

Continuing work which has been underway in 2003, and in some cases from an earlier date, 2004's "agenda" of regulatory change includes the following items:

- Results of reviews of gaming machine harm minimisation measures in NSW and Victoria;
- Success or failure of SA legislation to reduce gaming machine numbers;
- Non-smoking laws in various jurisdictions;
- National or, failing that, state action against betting exchanges;
- Outcomes of the review of the federal interactive gambling law;
- A review of the IIA Interactive Gambling Code of Practice;
- Possible racing product fees payable by wagering businesses;
- New Tasmanian racing and wagering legislation;
- New financial transactions reporting legislation;
- The ACA casino privacy code in force;
- Other previously foreshadowed legislative overhauls (particularly for ACT gaming machines).

### Of interest

The NCC's 2004 assessment of NCP reforms and gambling legislation might be interesting, both in terms of whether NCP inspired reforms are now exhausted (likely) and the final reaction to developments in Tasmania.

2004 should give a clearer picture of the strength of any continuing policy pressures for further gambling harm minimisation initiatives and government attitudes to major gambling policy issues of the next few years. Apart from the permissible extent of interactive wagering, the big issues will be the future of Victoria's EGM duopoly and major lotteries licenses in Victoria, NSW, Tasmania, ACT and NT after 2006.

Any further prospects for industry consolidation subsequent to the imminent TAB merger and the Sky City acquisition of Darwin casino might test the limits of ACCC tolerance, particularly in light of business moves offshore and possible further inhibition of inbound offshore competition.

## 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 and 2002, 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](mailto:kcrowther@landers.com.au).

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**APPENDIX 1**

**Gaming and wagering legislation passed in 2003**

**New South Wales**

Lotteries and Art Unions Amendment Act 2003  
Gaming Machines Amendment (Miscellaneous) Act 2003  
Gaming Machines Amendment (Shutdown Periods) Act 2003  
State Revenue Legislation Amendment Act 2003  
Totalizator Legislation Amendment Act 2003

**Western Australia**

Casino (Burswood Island) Agreement Amendment Act 2003  
Racing and Wagering Western Australia Act 2003  
Racing and Wagering Western Australia Tax Act 2003  
Racing Restriction Act 2003  
Racing and Gambling Legislation Amendment and Repeal Act 2003

**South Australia**

Authorised Betting Operations (Licence and Permit Conditions) Amendment Act 2003  
Gaming Machines (Extension of Freeze on Gaming Machines) Amendment Act 2003  
Gaming Machines (Roosters Club Incorporated Licence) Amendment Act 2003  
Lottery and Gaming (Lottery Inspectors) Amendment Act 2003

**Queensland**

Gaming Machine and Other Legislation Amendment Act 2003  
Tourism, Racing and Fair Trading (Miscellaneous Provisions) Act 2003  
TAB Queensland Limited Privatisation Amendment Act 2003

**Tasmania**

Gaming Control Amendment Act 2003  
Repeal of Racing Regulation Regulations Postponement Act 2003

**ACT**

Gaming Machine (Cap) Amendment Act 2003  
Revenue Legislation Amendment Act (No. 2) 2003

**Victoria**

Gambling Regulation Act 2003

**NT**

Nil

**Commonwealth**

Nil

**APPENDIX 2**  
**ASX listed gaming and wagering businesses**

**(ASX hotels, restaurants and leisure industry group)**

<b>Name</b>	<b>ASX Code</b>	<b>Principal activities</b>	<b>Website</b>
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
Australian Leisure & Hospitality Group Limited	ALH	Gaming venue operator VIC, NSW, QLD, SA	www.alhgroup.com
Betcorp Limited	BCL	World Wide Tele Sports (Antigua) and Sportsbet (NT) telephone and internet wagering	www.betcorp.com.au
Burswood Limited	BIR	Burswood casino	www.burswood.com.au
Canbet Limited	CBT	Internet sports wagering (UK)	www.canbet.com.au
Casinos Austria International Limited	CAI	Casino interests including Canberra and Cairns	www.casinosaustria.com
Euraust Limited	EUR	Internet lotteries	www.eurast.com.au
Ebet Limited	EBT	Gaming systems and technology, and internet arm of NZ TAB	www.ebetonline.com
IASbet Limited	IAS	Internet wagering	www.iasbet.com.au
Lasseters Corporation Limited	LAS	Alice Springs casino and internet casino	www.lasseters.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 TAB), Victorian duopoly EGM operator and Sydney, Brisbane, Gold Coast and Townsville casinos	www.tabcorp.com.au
Tab Limited	TAB	Off-course and on-course wagering business	www.tablimited.com.au