

Explanatory Statement

Interactive Gambling Act 2001

Interactive Gambling (Sporting Events and Excluded Wagering Services) Determination 2017

Issued by the Authority of the Minister for Communications

Purpose

The *Interactive Gambling (Sporting Events and Excluded Wagering Services) Determination 2017* (Determination) is made by the Minister for Communications (Minister) under subsections 8A(4), 10A(2) and 10A(3) of the *Interactive Gambling Act 2001* (IGA).

The purpose of the Determination is to permit betting between each day of play of a multiple-day cricket match, a multiple-day golf tournament and a multiple-day cycling race. Betting is intended to be permitted during the overnight period from the close of play or racing on one day, to the commencement of play or racing the next day.

Background

The IGA regulates the types of interactive gambling services that can be provided and advertised to Australian residents, subject to certain conditions, and the types that are prohibited. Prohibited interactive gambling services are those provided to customers in the course of carrying on a business using certain specified communications services. However, certain categories of service are not prohibited, including ‘excluded wagering services’.

Under subsection 8A(3) of the IGA, a service will be an excluded wagering service (section 8A) where it is related to betting on sporting events, or a series of sporting events, to the extent that the service is not an in-play betting service and so long as any other conditions determined by the Minister under subsection 8A(4) have been satisfied. An in-play betting service (section 10B) includes any gambling service that relates to betting on the outcome of a sporting event, or a contingency that may or may not occur during that event, where the bets are placed, made, received or accepted after the beginning of the event, even if the bets are taken during a scheduled break (e.g. between days of play of a cricket test match).

The prohibition on in-play betting services aims to protect individuals from rapid style betting during play which could lead to problem gambling. Permitting bets on multi-day sporting events between days of play, when circumstances and odds are not frequently changing, is not likely to lead to negative gambling behaviours.

Section 10A of the IGA enables the Minister, by legislative instrument, to determine that a specific thing is, or is not, a sporting event, or that a specified thing is a sporting event but that the outcome of that thing is not a contingency for the purposes of paragraph 10B(b).

The Determination specifies that the following things are sporting events for the purposes of the IGA:

- each day of play of a multiple-day cricket match (where ‘multiple-day cricket match’ is defined to mean a cricket match that occurs on more than one day);

- each day of play of a multiple-day golf tournament (where ‘multiple-day golf tournament’ is defined to mean a golf tournament that occurs on more than one day); and
- each day of racing of a multiple-day cycling race (where ‘multiple-day cycling race’ is defined to mean a race that occurs on more than one day).

It also specifies that the following things are *not* sporting events for the purposes of the IGA:

- a multiple-day cricket match;
- a multiple-day golf tournament; and
- a multiple-day cycling race.

The effect of these provisions is to permit bets to be placed, made, received or accepted between days of play or racing, i.e. the overnight period from the close of play or racing on one day to the commencement of play or racing the next day, in a multiple-day cricket match, a multiple-day golf tournament and a multiple-day cycling race.

The in-play betting service prohibition in the IGA will still apply during each day of play. It will therefore continue to be prohibited to place, make, receive or accept bets on the outcome of those things which will be taken to be a sporting event as a result of the instrument (such as a day of cricket) during a day of play (or racing) of a multiple-day cricket match, golf tournament or cycling race.

The definitions of multiple-day cricket match, golf tournament and cycling race clarify that references to a ‘particular day’ or ‘day’ refer to a day in the local time where the cricket match, golf tournament or cycling race occurs.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

Regulation Impact Statement

The Office of Best Practice Regulation has confirmed that the preparation of a Regulation Impact Statement is not necessary, as the Determination has a nil or low impact on business or the economy or individuals.

Statement of compatibility with Human Rights

This Determination is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. It does not raise any human rights issues.

Consultation

Comments were sought from selected industry stakeholders, government agencies and sporting organisations and their feedback has been used to inform the development of this Determination.

Notes on Sections

Part 1—Introduction

Section 1—Name

This section provides that the name of the instrument is the *Interactive Gambling (Sporting Events and Excluded Wagering Services) Determination 2017*.

Section 2—Commencement

This section provides that the instrument will commence on the day after it is registered.

Section 3—Authority

This section provides that the instrument is made under subsections 8A(4), 10A(2) and 10A(3) of the *Interactive Gambling Act 2001*.

Section 4—Definitions

This section sets out a number of definitions for the purposes of the Determination.

Act means *Interactive Gambling Act 2001*.

day of play, in relation to a multiple-day cricket match, means the part, or all of the parts, of the match that occur on a particular day (in the local time where the match occurs); and in relation to a multiple-day golf tournament, means the part, or all of the parts, of the tournament that occur on a particular day (in the local time where the tournament occurs).

day of racing, in relation to a multiple-day cycling race, means the part, or all of the parts, of the race that occur on a particular day (in the local time where the race occurs).

References to a part, or all of the parts, of a golf-tournament or cycling race that occur on a particular day are intended to include, for example, all rounds or stages, or parts of rounds or stages, that occur on that particular day, even if those rounds or stages are discrete from one another. For example, if part of the first round of a golf tournament were played on a particular day, and the entire second round were also played on that same day, both the part of the first round and the entire second round would form part of the ‘day of play’ occurring on that particular day. Similarly, if two discrete stages of a cycling race occurred on a single day, those stages would both form part of the ‘day of racing’ for that particular day.

multiple-day cricket match means a cricket match that occurs on more than day (in the local time where the match occurs).

multiple-day cycling race means a cycling race that occurs on more than one day (in the local time where the race occurs).

multiple-day golf tournament means a golf tournament that consists of rounds, where each round of the tournament occurs on a different day (in the local time where the tournament occurs).

The references in parentheses to the local time where the match, race or tournament occurs are intended to clarify that the references to a ‘particular day’ (in relation to a day of play of a multiple-day cricket match or multiple-day golf tournament), and ‘one day’ (in relation to a multiple-day cycling race and multiple-day golf tournament) means a day in the local time where event is occurring. This is intended to deal with a situation where, for the purposes of Australian time, a relevant part or parts of a multiple-day cricket match, stage of a cycling race, or round or a golf tournament would occur across two days.

For example, if a multiple-day cricket match were occurring in London, ‘day of play’ would mean the part, or all parts, of that match that occur on a particular day in the local time in London. Further, if a golf tournament were occurring in London, if that tournament occurred on more than one day in the local time in London, such a tournament would be a ‘multiple-day golf tournament’ within the above definition. In both instances, this would be the case regardless of whether the relevant part or parts of the cricket match, race, or tournament took place partially on one day and partially on the next day in Australian time.

These references to the local time where the match, race or tournament occurs are intended to override the default rule in section 37 of the *Acts Interpretation Act 1901* that a reference in an Act or instrument to time shall, unless otherwise specifically stated, be deemed in each State or part of the Commonwealth to mean the legal time in that State or part of the Commonwealth.

The note to section 4 informs the reader that a number of expressions used in the instrument are defined in the Act, including *bet*, *excluded wagering service* and *sporting event*.

Part 2—Sporting Events

Part 2 of the Determination specifies certain things that are, or are not, taken to be a *sporting event* for the purposes of the Act.

Subsection 5(1) of the Act provides that, for the purposes of the Act, a *prohibited interactive gambling service* is a service where the service is provided to customers in the course of carrying on a business using one of the specified types of communications services. However, subsection 5(3) provides that, for the purposes of the Act, certain services are not a *prohibited interactive gambling service*. This includes an *excluded wagering service* (paragraph 5(3)(aa)).

Subsection 8A(3) relevantly provides that, for the purposes of the Act, a service is an *excluded wagering service* to the extent to which the service relates on betting on, or on a series of *sporting events*, and to the extent to which the service is not an *in-play betting service*, so long as any other conditions determined under subsection 8A(4) have been satisfied.

Paragraph 10B of the Act provides that a gambling service is an *in-play betting service* to the extent to which the service relates to: betting on the outcome of a sporting event, where bets are placed, made, received or accepted after the beginning of the event (paragraph 10B(a)); or, betting on a contingency that may or may not happen in the course of a sporting event, where bets are placed, made, received or accepted after the beginning of the event (paragraph 10B(b)). Section 10B does not deal with betting on a series of sporting events.

Subsection 10A(2) of the Act provides that the Minister may, by legislative instrument, determine that a specified thing is taken to be a *sporting event* for the purposes of the Act, but

the outcome of that thing is taken not to be a contingency for the purposes of paragraph 10B(b) of the Act. Subsection 10A(3) also provides that the Minister may, by legislative instrument, determine that a specified thing is taken not to be a *sporting event* for the purposes of the Act.

Part 2 of the Determination specifies certain things for the purposes of subsections 10A(2) and (3) of the Act, which would affect the operation of subsection 8A(3) and section 10B in relation to services which relate to betting on those things.

Section 5—Things which are taken not to be sporting events

Section 6—Things which are taken to be sporting events

Section 5 of the Determination provides that, for the purposes of subsection 10A(3) of the Act, each of a multiple-day cricket match, a multiple-day cycling race, and a multiple-day golf tournament, are taken not to be a sporting event.

Section 6 of the Determination provides that, for the purposes of subsection 10A(2) of the Act, each of a day of play of a multiple-day cricket match, a stage of a multiple-day cycling race, and a round of a multiple-day golf tournament, are taken to be a sporting event; and, the outcome of each of a day of play, stage of a multiple-day cycling race, and a round of a multiple-day golf tournament is taken not to be a contingency for the purposes of paragraph 10B(b) of the Act.

The notes following section 6 clarify that, due to the operation of sections 5 and 6:

- a day of play of a multiple-day cricket match, a stage of a multiple-day cycling race and a round of a multiple-day golf tournament are each a sporting event in their own right; and
- a multiple-day cricket match, a multiple-day cycling race, and a multiple-day golf tournament are each a series of sporting events (rather than a single sporting event).

Noting that subsection 8A(3) of the Act applies to services that relate to betting on both a single sporting event, and a series of sporting events, while section 10B deals only with a service for betting on single sporting events, the effect of sections 5 and 6 of the Determination taken together is that:

- to the extent that a service provides, after the commencement of a day of play of a multiple-day cricket match or multiple-day golf tournament, or day of racing of a multiple-day cycling event, for betting on the outcome of that day of play or racing (or a contingency that may or may not occur during that day), then such a service would be an in-play betting service for the purposes of section 10B of the Act;
- to the extent that a service provides for betting on the outcome of a multiple-day cricket match, a multiple-day cycling race or multiple-day golf tournament (or a contingency that may or may not occur during such a match / race / tournament), then the service would not be an in-play betting service for the purposes of section 10B of the Act, regardless of when bets were made, placed, accepted or received;
- a service relating to betting on a day of play of a multiple-day cricket match or multiple-day golf tournament, or day of racing of a multiple-day cycling race, that is not an in-play betting service would be an excluded wagering service for the purposes of subsection 8A(3), as long as any conditions determined by the Minister for the purposes of subsection 8A(4) are met (see below in relation to section 7);

- a service relating to betting on a multiple-day cricket match, multiple-day cycling race or multiple-day golf tournament would be an excluded wagering service for the purposes of subsection 8A(3), as long as any conditions determined for the purposes of subsection 8A(4) are met (see below in relation to section 7).

The status of a series of multiple-day cricket matches, multiple-day cycling races, or multiple-day golf tournaments as a larger ‘series of sporting events’, such as the Ashes Test cricket series, and the ability for a service to provide for betting on those series as an *excluded wagering service* under subsection 8A(3) of the Act is not intended to be affected by this instrument.

Part 3—Excluded wagering services

Section 7—Conditions

Subsection 7(1) of the instrument notes that section 7 determines a number of conditions under subsection 8A(4) for the purposes of subsection 8A(3). In order for a service to be an excluded wagering service for the purposes of subsection 8A(3) of the Act, that service would be required to comply with the conditions set out in this section 7.

Subsection 7(2) of the instrument provides that it is a condition of a service mentioned in subsection 8A(3) of the Act that the service does not relate to betting on the outcome of, or a contingency that may or may not happen during the course of a multiple-day cricket match (paragraph 7(2)(a)), or a day of play of the multiple-day cricket match (paragraph 7(2)(b)), where the bets are placed, made, received or accepted during a period: beginning at the start of any day of play of the match (paragraph 7(2)(c)); and, ending at the conclusion of that day of play (paragraph 7(2)(d)).

Subsection 7(3) of the instrument provides that it is a condition of a service mentioned in subsection 8A(3) of the Act that the service does not relate to betting on the outcome of, or a contingency that may or may not happen during the course of a multiple-day cycling race (paragraph 7(3)(a)), or a day of racing of the race (paragraph 7(3)(b)), where the bets are placed, made, received or accepted during a period: beginning at the start of any day of racing of the race (paragraph 7(3)(c)); and, ending at the conclusion of that day (paragraph 7(3)(d)).

Subsection 7(4) of the instrument provides that it is a condition of a service mentioned in subsection 8A(3) of the Act that the service does not relate to betting on the outcome of, or a contingency that may or may not happen during the course of a multiple-day golf tournament (paragraph 7(4)(a)), or a day of play of the tournament (paragraph 7(4)(b)), where the bets are placed, made, received or accepted during a period: beginning at the start of any day of play of the tournament (paragraph 7(4)(c)); and, ending at the conclusion of that day (paragraph 7(4)(d)).

The period referred to in paragraphs (c)-(d) of each of subsection 8A(2)-(4) is intended to include both actual progress of the day of play, stage or round, as well as any breaks. For example, in relation to a day of play of a multiple-day cricket match, the period beginning at the start of any day of play of the match and ending at the conclusion of that day of play would include all of the sessions of play on a particular day, as well as any breaks between those sessions (e.g. lunch, drinks, tea and rain breaks).

In relation to a day of play of a multiple-day golf tournament or a day of racing of a multiple day cycling race, it may be the case that there may be more than one round or stage of such a tournament or race which occurs in part or in full on a particular day. For example, a golf tournament that consists of four rounds may be scheduled to occur over four days, with each round scheduled to be played on a different day. However, if for example, round one could not be completed on the first scheduled day of play due to rain, the remainder round one may be played on the second scheduled day of play, followed by round two shortly after on that same day. In that case, it is intended that the period beginning at the start of that day of play of the tournament and ending at the conclusion of that day of play in relation to that particular day would be the period from the recommencement of round one until the conclusion of round two, including any break between those rounds.

The effect of section 7 of the instrument, in conjunction with sections 5 and 6 (see above), is that betting on the outcome of a multiple-day cricket match, multiple-day cycling race, and multiple-day golf tournament, or a contingency that may or may not occur in the course of those things, is permitted after those things have commenced, but only during extended scheduled overnight breaks in play. Further, betting on the outcome of any day of play of a multiple-day cricket match or multiple-day golf tournament, or day of racing of a multiple-day cycling race, as well as contingencies which may occur in the course of those things, is also permitted until the commencement of the relevant day. The effect of section 7 of the instrument, in conjunction with sections 5 and 6 (see above), is that betting on the outcome of a multiple-day cricket match, multiple-day cycling race, and multiple-day golf tournament, or a contingency that may or may not occur in the course of those things, is permitted after those things have commenced, but only during extended scheduled overnight breaks in play. Further, betting on the outcome of any day of play of a multiple-day cricket match or multiple-day golf tournament, or day of racing of a multiple-day cycling race, as well as contingencies which may occur in the course of those things, is also permitted until the commencement of the relevant day.

The ability to bet on the outcome of an event, or part of an event, after that event has commenced but only during extended periods where the event is not actively progressing is consistent with the policy intention of the in-play betting restriction in section 10B of the Act to prevent high-volume ‘frenzy’ type betting that could lead to problem gambling.