

SUBMISSION TO THE SENATE ENVIRONMENT AND COMMUNICATIONS LEGISLATIVE COMMITTEE ON THE INTERACTIVE GAMBLING AMENDMENT BILL 2016 (**IGA BILL**)

INTRODUCTION

We are pleased to make this submission to the Australian Senate Inquiry on the IGA Bill.

eCOGRA (eCommerce on-line Gaming Regulation and Assurance) is a London based independent organisation established in 2003 to provide self-regulation for members of the on-line gambling industry. Its objective is to assist in ensuring players are properly protected and that on-line operators behave responsibly. It does this by providing internationally approved player protections and testing services. eCOGRA is an approved testing house with several on-line gaming jurisdictions including Spain, Italy, United Kingdom, Denmark, Isle of Man and Gibraltar. It provides compliance services to leading operators and software suppliers including Unibet Group Plc, 888 Holdings Plc, Ladbrokes International Plc, Bwin Group and Alands Penningautomatforening (PAF). It has performed more than 500 worldwide compliance reviews and is accredited in the UK with ISO Accreditation ISO/IEC 17025:205.

Among eCOGRA's policy objectives are:

- the protection of vulnerable customers
- the prevention of underage gambling
- responsible marketing

eCOGRA is entirely independent from an ownership and operational perspective from on-line operators and software suppliers.

Further details are available at the link <http://www.ecogra.org>

Experience in on-line gaming regulation

eCOGRA has in the 13 years since its establishment acquired significant knowledge and experience in relation to the regulation of on-line gaming and the overall effectiveness of the different approaches adopted on a worldwide basis.

For this reason, it believes that its views might be of interest to members of the Senate Committee considering the IGA Bill.

SUMMARY OF SUBMISSION

If the measures in the IGA Bill are to be effective then they need to be complemented by:

- the introduction of a national licensing scheme and conditions and national supervision of licence holders.
- the implementation of national harm minimisation measures and consumer protection arrangements.

This is because:

- If an operator is only required to obtain a licence in one State or Territory to operate nationally (as provided in the IGA Bill) then the likely consequence is that a licence will be obtained in the State or Territory with the lowest fees, fewest probity requirements and lowest levels of supervision and regulation. It will encourage jurisdiction shopping. Furthermore, there is no agreement on information sharing between jurisdictions. These are undesirable policy outcomes.
- If there is a national licensing arrangement agreed then as a condition of obtaining a licence common conditions can be imposed. This might include conditions relating to deferred settlement betting (or credit betting) and compliance with a national self-exclusion register. In this way, the scheme can achieve national coverage and common standards rather than rely on the currently fragmented and inconsistent system of State and Territory regulation. There is relevant experience of this in Denmark. The Register of Voluntary Excluded Players is a system administered by the Danish Gambling Authority which permits temporary or permanent exclusion. A similar system is in place in Spain and implementation is underway in the UK.
- A strengthening of the prohibition model adopted by the current IGA, which is not at the same time supported by compulsory harm minimisation measures and enhanced consumer protection, is likely to fail to achieve an objective of reducing problem gambling. In fact, the likelihood is that when the IGA Bill becomes law that consumers will be forced to less scrupulous overseas operators (with enhanced offerings such as in-play betting and better odds) and there will be none of the usual harm minimisation measures in place whether on-shore or off-shore.

The experience in the UK is that through the establishment of a national licensing scheme and compulsory harm minimisation requirements more operators are brought within the protective regulatory net and problem gambling is better addressed. This is evidenced by the substantial, and growing, number of licences issued.

The above might be achieved by the inclusion in the IGA of a national standard for harm minimisation and consumer protection measures. The States and Territories would then enforce these through the licensing regimes.

We suggest that once the above is in place then the matter of in-play betting can be considered in light of the controls in place (in this regard we agree with Recommendation 3

of the O'Farrell Report). Our experience is that demand for in-play betting has grown significantly and is likely to continue to grow. History shows that legislative and policing attempts at prohibition of a product which is in high consumer demand, are unlikely to be effective and will be very costly. This is especially the case with the current proposals in Australia which are piecemeal and not platform neutral (i.e. telephone betting is not prohibited). In an environment of budget constraints, the revenues to be derived from imposing taxes on on-line betting and utilising the proceeds for research and enforcement seems a more attractive model.

Furthermore, the challenges from an investigative and enforcement perspective of the new offences created by the IGA Bill will be significant. This is especially in circumstances where the providers are based in countries where the services are legal and are a substantial source of tax revenue for that country. Although civil penalties have a lower burden of proof in Australia, they will generally be no more enforceable in an overseas court than a criminal penalty (as they for the most part are characterised as fines).

We appreciate the need by the Australian Government to respond promptly to community concerns and commercial interests of entrenched domestic operators. However, without:

- a comprehensive and holistic solution being agreed which involves all the States and Territories; and
- the adoption of national harm minimisation and consumer measures,

The current proposals for strengthening the prohibition model in Australia are likely to fail for much the same reasons as they are largely ineffective now.

We strongly recommend that in the short-term, focus and legislative attention is given to the agreement on the standards to apply as part of a national licensing regime.

DETAILED SUBMISSION

1. IGA Bill-Key Objectives

The key objectives of the IGA Bill are:

- To make more comprehensive the existing prohibition model with a particular focus on off-shore providers and to introduce a licensing regime;
- To prohibit "click to call" in-play betting; and
- To strengthen the current enforcement regime and increase penalties.

The regulatory response has therefore been to seek to make prohibition (being the existing regulatory model) more effective through the creation of new offences, higher penalties, wider enforcement powers and establishment of so-called white lists of

“approved” providers. This is despite the fact that the existing prohibition model is widely seen to have failed with rising levels of on-line gaming even though most on-line gaming has been prohibited by the IGA for 15 years. The question to consider is whether these measures will produce any meaningful change and what costs will be involved.

Our view is that a prohibition model is less effective than a regulated approach with significant harm minimisation measures in place which apply both to onshore and offshore providers.

The IGA Bill does not address in any material respect the issue of harm minimisation measures. Nor are such harm minimisation measures prescribed as part of a licensing regime.

It is necessary to view the on-line gambling market as a whole and not divide it between off-shore (to be prohibited) and on-shore (to be facilitated). Prohibition has proved to be a far from useful model in dealing with disruptive technological change. The ubiquity of the internet means that Australian consumers (whether we would prefer this to be the case or not) have access to a wide range of services. This includes opportunities to gamble. Prohibiting certain commerce utilising the internet is difficult for a variety of reasons including:

- *IP masking*: IP addresses can be used to identify a consumer’s physical location. A number of tools are now available which permit an individual to mask their IP address. This may allow an individual to access services that may ordinarily be unavailable due to jurisdictional restrictions.
- *Virtual Private Network (VPN)*: Consumers may connect to a VPN to disguise their activity. All traffic coming from their computer will be redirected over that VPN. This happens over an encrypted connection, the internet service provider, network operator, or government can only see that the consumer is operating over an encrypted VPN connection and not the activity.

2. Key Weaknesses in the IGA Bill

- *Licensing*. Having introduced a requirement for licensing, the IGA Bill then shifts responsibility for licensing to the States and Territories. However, State and Territory regulation in this area is not uniform or consistent and, in some cases, does not exist. The IGA Bill attempts to deal with this by providing that obtaining a licence in one State or Territory will be sufficient to operate Australia wide. Therefore, the clear incentive for on-line providers will be to obtain a licence in a place with the lowest levels of fees, the fewest probity requirements and the least supervision and regulation. The licensing model may therefore somewhat perversely direct operators to the place where the lowest common denominator applies. This hardly seems like a desirable policy outcome given the objectives of the IGA Bill.

In addition, there is no provision for information sharing between the States and Territories. If, for instance, a licence is obtained in the Northern Territory what information sharing arrangements will there be between it and sporting bodies in Victoria. If the concern is addressing match fixing then having a single State/Territory licensing regime is an odd regulatory framework with which to achieve it.

- *White list.* It is proposed to establish a list of Australian licensed wagering sites. It will be clear either expressly or impliedly that sites not listed are to be avoided. This applies even if the site has licences elsewhere in the world. The key criteria for listing appears to be the holding of a licence. However, as discussed in the previous paragraph, the licence holding qualifications are likely to vary around Australia and be minimalist. Arguably before including a name on such a list the Commonwealth should undertake its own probity inquiries. The failure to do so may expose the Commonwealth to the risk of legal action by gamblers relying on the list despite the Commonwealth's attempt to exclude its liability.
- *In-play betting.* We recognise that in Australia various government inquiries have reached different conclusions on whether in-play betting should be prohibited. The Productivity Commission in 2010 and the Department of Broadband, Communications and the Digital Economy in 2012 recommended that the prohibition be lifted while the O'Farrell Review in 2015 recommended that it be retained and strengthened. We comment below on the experience in the United Kingdom where on-line gambling is regulated rather than prohibited.

The IGA Bill adopts the position that on-line in-play betting is to be prohibited. However, having adopted this position it is not platform neutral as in-play betting is not prohibited if undertaken by telephone connected to an operator or on-site. In our experience, it is far easier to implement harm minimisation steps such as self-exclusion and harm warnings on-line than in other electronic mediums. We agree with the observation made by the Productivity Commission in its Report that “[t]he capacity for online gaming to provide sophisticated harm minimisation means that regulatory alternatives may be superior to a ban” (at para. 15.1).

In addition, on-line operators will have greater awareness of betting patterns and are able to monitor betting activity. The rationale for the telephone betting exclusion that contact with an operator is likely to inhibit betting more than through a computer terminal is not supported by research of which we are aware. Common sense would indicate that there is little commercial interest in telephone operators for major domestic gambling service providers dissuading potential clients from placing in-play bets. In fact, as the Productivity Commission noted most internet gaming takes place in people's homes (rather than at work or at venues) (at section 15.9). This means that on-line gamblers are in close proximity to partners and family members with an interest in their activities and with a motivation to intervene and seek outside help. This compares to staff at a gambling venue or a telephone

operator. The adopted approach seems to be more driven by the commercial interest of domestic incumbent providers reliant on telephone betting and the desire to maximise tax revenues than by evidence-based policy.

- *Lack of harm minimisation measures.* The heavy focus in the IGA Bill on prohibition and enforcement and in effectively directing customers to monopoly providers in Australia has meant that the usual harm minimisation measures utilised worldwide are not satisfactorily addressed. These include managing of deposits limits, control of deposit frequency, enforced break periods, reality checks and voluntary session suspension (described further below). Interestingly, in our experience, these measures are especially effective in the on-line environment.
- *Credit or deferred settlement facilities.* The availability of these facilities to gamblers can allow them to bet in excess of their capacity to pay and be a cause of problem gambling. Currently regulation in this area in Australia is fragmented. Potentially consumer protection measures could be included as part of the licensing scheme. However, because the licensing regime itself is State and Territory based, this will not necessarily be implemented uniformly and consistently.
- *Enforcement.* While the battery of new enforcement powers included will provide a greater deterrent to some, it is likely that they will continue to prove largely ineffective internationally and will most likely result in greater numbers of rogue operators targeting Australian customers. The difficulty of enforcement principally arises because of the difficulty of enforcing judgments outside Australia (and this difficulty remains even if adding civil offences makes matters of proof simpler). We query whether this is an effective use of police resources and justifies the significant costs which would be involved in shutting down one operator (which is then likely to re-emerge elsewhere under another guise). The enforcement task is also complicated by many of the operators being licensed or otherwise operating legally in the jurisdiction in which they are based and paying substantial taxes in those jurisdictions. The tax raised from licensed operators in the UK is set out below:

General Betting Duty is a duty charged on bets made with a UK-based bookmaker, other than on-course betting. General betting duty is charged on money received for bets, less

out for
(‘gross

Calendar Year	General Betting Duty (£ 000) ¹
2011	317,978
2012	354,850
2013	393,160
2014	391,746
2015	377,907

money paid
winnings
profits’).

¹ HM Revenue and Customs Statistics [Betting & Gaming Bulletin](#) - September 2016.

Remote Gaming Duty refers to participation in a game of chance for a prize by remote communication, such as the internet, telephone or television. Duty is paid by the provider of the remote service and is calculated on the amount of money received less any paid out as winnings ('gross profits').

Month	Remote Gaming Duty Receipts (£ 000) ²
Jul-15	59,472
Aug-15	16,832
Sep-15	6,469
Oct-15	31,088
Nov-15	41,923
Dec-15	5,108
Jan-16	34,333
Feb-16	44,643
Mar-16	7,342
Apr-16	42,476
May-16	40,757
Jun-16	3,369
Jul-16	58,021
Aug-16	27,955
Sep-16	4,272
Calendar Year 2015	£249,978,000
Financial Year 2015-16	£336,297,000

Source: HM Revenue and Customs Statistics [Betting & Gaming Bulletin](#) - September 2016

3. Our Experience

eCOGRA is accredited as a testing house by a number of regulatory bodies around the world. Having undertaken over 500 reviews to ensure operators comply with each jurisdiction's respective regulatory requirements we have seen firsthand how effective a regulatory framework can be. We thought that the Committee may be interested in some of the more recent research relating to the licensing regime in place in the United Kingdom.

In the UK, legal and regulated on-line gambling sites are allowed which offer online services to customers located in the United Kingdom. It does not prohibit off-shore gambling and is focused on the effective implementation of harm minimisation measures.

The *Gambling (Licensing and Advertising) Act 2014* which came into force in November 2014 has had a significant impact on the UK's gambling landscape. The most significant

² Ibid.

was the point of consumption legislation which required all remote gambling operators to obtain a licence from the UK Gambling Commission (**UKGC**) and also introduced a 15% Point of Consumption (**POC**) tax on offshore gambling operators from profits generated from UK customers.

The UKGC received 176 licence applications in total prior to the introduction of the regime, and a further 152 applications for gambling software licences were received before March 31 2015.

In a period of 12 months, the UKGC moved from regulating less than 15% of online activity by UK consumers, to regulating the whole market. The UKGC now licenses the entire UK facing online gambling market, including operators that do not have remote gambling equipment in Britain.

The UK model has been perceived as an effective gambling regime with stringent and effective social responsibility measures that has also been able to successfully capture a very high proportion of the market.

3.1 Licensing Measures

Through the regulatory regime, measures that operators are obliged to have in place include consumer safeguards such as security of player funds and providing a means of redress for complaints and disputes. In addition to financial contribution to research, education and the treatment of problem gambling, as well as strict measures to prevent underage and problem gambling and the reporting of suspicious activities to the UKGC or the Serious Organised Crime Agency.

A few examples of these measures are described below:

3.2 National Self-Exclusion Scheme

In February 2016 the UKGC announced that it would be introducing a requirement for online operators to participate in a multi-operator self-exclusion scheme. The UKGC is working with industry to develop a comprehensive system. Once created it will mean that an individual will be able to self-exclude from all UKGC-licensed operators through a single request.

3.3 Research, education and treatment (RET) of problem gambling

All licensed operators in the UK are required to make a financial contribution which addresses all three aspects of RET as specified in the Licence Conditions and Codes of Practice. A contribution is required for each year that the licence is held which will benefit research into the prevention and treatment of gambling-related harm, develop harm prevention approaches and fund treatment to those harmed by gambling.

3.4 Reality Checks

Gambling systems are required to provide accessible facilities to allow customers to set and receive 'reality checks' within a gaming session. Reality checks would display the

time elapsed since the session began and the player must acknowledge the reality check for it to be removed from the screen. In addition, these checks must offer the facility to exit the gambling session and provide a link to the customer's account history.

3.5 Deposit Limits

Another requirement on gambling systems is to provide players with a facility to allow them to impose their own financial limits and be given the opportunity to set this as part of the registration process. In addition, customer-led limits are only increased at the player's request and only after a cooling-off period of 24 hours has elapsed.

In addition to the UK approach outlined, the paper published by the European Commission 'Towards a comprehensive European framework for online gambling'³ recognises that measures to protect consumers should not have an adverse effect of diverting players to more attractive offers on unregulated offerings.

4. Alternative Approach

A comprehensive approach is required to address on-line gaming whether provided domestically or off-shore.

An alternative approach may involve:

- Developing a common licensing regime to apply across all the States and Territories. This would have common eligibility and suitability requirements and probity rules. It would promote information sharing between the States and Territories.
- To introduce the desired harm minimisation measures *concurrently* with the amendments to the IGA. The regulation of on-line gaming needs to be comprehensive rather than piecemeal. There is no point penalising the provider and failing to prevent harm to the customer. The most effective solution is end-to end.
- To work effectively the harm minimisation measures must operate on a national basis, across all channels. For example, self-exclusion by gamblers only works if the exclusion operates nationally and is delivered via a single request, otherwise it is too easy for the gambler to circumvent the exclusion.
- Once the appropriate harm minimisation measures are in place, to re-consider the prohibition on in-play gambling. This is consistent with recommendation 3 from the O'Farrell Committee.

³ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52012DC0596>

In conclusion we believe that the implementation of a coherent Australia wide licensing framework which focuses upon harm minimisation and player protection in a fair market place will create a solid and enforceable regime.

Should you have any questions, please do not hesitate to contact me. eCOGRA welcomes any opportunity to share our extensive experience in regulated online gambling markets.