



Strong banks – strong Australia

17 February 2016

Ms Christine McDonald
Committee Secretary
Senate Standing Committees on Environment and Communications
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Dear Ms McDonald

Inquiry into the Interactive Gambling Amendment (Sports Betting Reform) Bill 2015

The Australian Bankers' Association (**ABA**) appreciates the opportunity to make a submission to the inquiry into the *Interactive Gambling Amendment (Sports Betting Reform) Bill 2015 (the Bill)*.

With the active participation of 25 member banks in Australia, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services.

The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy, and to ensure Australia's banking customers continue to benefit from a stable, competitive accessible banking industry.

Previous submissions

The ABA has recently made a submission to the Government's review of illegal offshore wagering¹. In addition, in 2012, the ABA made a number of submissions to the then Department of Broadband, Communication and the Digital Economy as part of the review of the *Interactive Gambling Act 2001 (the Act)*.

We would be pleased to provide the Committee with copies of these submissions, which provide further details and explanations about the potential implications for imposing restrictions on financial transactions across the banking and payments system.

Introductory comments

The ABA acknowledges the Government's overall commitment to addressing problem gambling as a social policy concern, particularly in relation to online sports betting.

The Australian economy and financial system is facing new opportunities and challenges as a result of the growing impact of technology. There is no doubt that digital technology has revolutionised and is playing an ever-more central role in the lives of all Australians. According to Roy Morgan research², in the year to June 2014, 207,000 adult Australians placed at least one sports bet via the internet in an average three months, almost four times the number who placed their sports bet at a TAB agency in the same period.

¹ <https://engage.dss.gov.au/review-impact-of-illegal-offshore-wagering/>

² <http://www.roymorgan.com/findings/5817-internet-sports-betting-more-popular-than-tab-201409212307>



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In light of this research, illustrating an increase in participation in online sports betting which carries with it the potential increased risk of people developing gambling addictions, the ABA strongly supports encouraging socially responsible programs and developing effective and workable strategies for addressing problem gambling.

The ABA notes that the Bill sets out to make a number of changes, including the following:

- Inserting a new definition (known as 'restricted wagering services') into the Act which encompasses websites through which individuals can place bets on sporting events.
- Establishing an Interactive Gambling Regulator (**IGR**) who will monitor and enforce restricted wagering services' compliance with the Act.
- Setting up a National Self-exclusion Register for those who wish to bar themselves from accessing online sports betting.
- Implementing harm minimisation measures to help individuals who are engaged in online sports betting better control their gambling.

Specific comments

For the purposes of our submission, we will be limiting our comments to addressing the potential implications for the banking and payments system that will arise as a result of the proposed new injunction power, and discussing the implementation of harm minimisation measures.

Division 4 Part 3 – the 'injunction power'

The Bill introduces a new division (Division 4) into Part 3 of the Act. This Division contains section 31A which relates to injunctions for the purpose of transaction blocking, with the following subsections:

- (1) The Federal Circuit Court of Australia may, on application by the Regulator, grant an injunction referred to in subsection (2) if the Court is satisfied that:
 - a. An ADI (within the meaning of the *Banking Act 1959*) facilitates transactions in relation to a gambling service; and
 - b. The gambling service is a prohibited internet gambling service.
- (2) The injunction is to require the Authorised Deposit-Taking Institution (**ADI**) is to take reasonable steps to prohibit transactions in relation to the prohibited internet gambling service.

The ability for the IGR to apply to the Court for an injunction of this kind is necessary in order to block money being sent to and accepted by prohibited internet gambling services, despite the fact it is illegal under the Act for them to offer their services to residents of Australia.

The electronic payments system operates through all participants committing to meet the standards and obligations set across the system, which includes making sure all lawful payment instructions are met. This trust among participants is essential to the functioning of the system. An injunction power would provide certainty that a participant is unable, in Australia, to execute the transaction.

However, we are very concerned about the proposed new injunction power being applied to banks and other ADIs and the implications of such an approach across the banking and payments system and the impact on all customers and all transactions. The injunction power might operate more effectively and efficiently through an alternative approach.

Intervention in the banking and payments system

There have been a number of reviews looking at intervention in the banking and payments system as a mechanism to address problem gambling. To date, a case has not been made to use the banking and payments system to regulate these services with alternative responses deemed as more appropriate.



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The ABA has previously outlined our concerns with interventions aimed at restricting or prohibiting financial transactions in our previous submissions, however, we reiterate a number of these points below, predominantly in relation to the introduction of the new injunction power.

It is important to understand that there are differences in how financial transactions are executed across the electronic payments systems (depending on the type of transaction) and consequently how these transactions would need to be prohibited by banks and other ADIs.

Financial transactions

Financial transactions can be made in a number of ways including a direct debit from a bank account, the use of a debit or credit card, and the use of alternative payment methods.

An electronic transaction that directly debits a bank customer's account is a transaction which is authorised by the customer to transfer their monies to make a payment for a good or service (known as a direct electronic funds transfer). This payment is made instantaneously and the customer's bank account debited according to the instruction given by their customer.³

A transaction conducted via scheme debit or credit cards are processed through a proprietary network, such as Visa, MasterCard and American Express ('card schemes'). This payment involves a customer providing a merchant (or service provider) with the 16 digital card number, expiry date and security code (where required) to make the transaction.

With all financial transactions, the customer initiates and authorises the transaction. For unauthorised transactions, there are processes to recover money transferred. A financial transaction cannot be reversed or a 'charge back' requested if the transactions details are correct, the payment authorised, and/or and where the customer changes their mind.

Prohibiting financial transactions

Blocking, suspending, cancelling or otherwise prohibiting financial transactions from a bank or other financial institution to a prohibited internet gambling service is problematic.

The following outlines a number of technical and practical problems the banking industry will encounter with such a proposed injunction power requiring an ADI to take reasonable steps to prohibit transactions in relation to the prohibited internet gambling service:

- **Funds transfers** – Prohibiting transactions based on a name alone is not possible. Banks would need account number(s) and/or beneficiary details supplied along with any legal obligation associated with the application of an injunction. For example, even if there is a list of names of certain internet gambling services that are published for blocking, this data would not assist in blocking transactions. Data used across the domestic and international systems would need to be provided to banks and other ADIs.
- **Confirmation of matches** – Unless specific account number(s) and/or beneficiary details are provided, it will be operationally difficult to confirm whether or not banks and other ADIs have the correct information to block a transaction. Banks do not decline based on partial matches as there would be a large number of false positives which would be significantly disruptive across the banking and payments system.

³ Domestic transactions require the customer to provide bank and account details, not names, to facilitate the transaction. Payment instructions for a direct electronic funds transfer in Australia are based on industry standard codes and transaction data set by the Australian Payments Clearing Association (APCA). International money transfers are generally executed via the SWIFT platform. SWIFT financial messages contain data to ensure the correct transfer of monies takes place between the customer and their beneficiary.



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- **Obfuscation on the part of gambling companies** – The internet gambling services may create and maintain accounts in multiple names, including different trading names and merchant ID numbers, in order to limit the effectiveness of blocking without the ongoing provision of all specific account number(s) and/or beneficiary details.
- **Technology and operational impact** – Implementation of a new compliance obligation to block transactions from a customer's bank account would involve significant systems development by all banks and other ADIs, and consequently will impact on the cost and efficiency of the banking and payments system for all transactions and customers. A technology solution would be needed for domestic transactions and international money transfers, and this assumes that account number(s) and/or beneficiary details are used as the basis. If names of certain internet gambling services are used, this would require re-engineering the entire banking and payments system. Furthermore, if transactions are required to be blocked using incomplete data, the immediate impact would be that customers will be calling their bank to understand why the transaction was declined. It is likely that other financial transactions from other customers could also be caught where a response is not based on account number(s) and/or beneficiary details. This would result in a substantial impact on bank-customer relations, such as an increase in declined transactions and inbound calls to banks and other ADIs to resolve transaction issues.
- **Other companies** – The application of a control to only banks and other ADIs would mean that other financial institutions, credit card issuers and alternative payments providers would not be required to meet the same legal obligations. Apart from regulatory arbitrage, this means there is a significant gap in consumer protection. Customers and internet gambling providers are likely to shift their financial transactions and payments preferences to providers not caught under the Act.
- **Role of card schemes** – The card schemes would be a central place to apply a control as opposed to every participant in these schemes. Blocking a merchant category code (MCC) would mean that customers attempting to use their debit or credit card for the transaction would be blocked, irrespective of whether the card is issued by a bank or other ADI. It is understood that a technology solution exists for the card schemes to differentiate between legal and illegal gambling services in the United States which adopts this approach.

In addition to the above considerations which will require further consideration by the Committee, the ABA considers that the Bill is silent on a number of issues:

- The Bill states that ADI's must take 'reasonable steps' to prohibit transactions with limited commentary and guidance offered to clarify what consists of 'reasonable steps' to implement such a proposed injunction. This could be interpreted widely and we are concerned that legal uncertainty and ambiguity in the terminology could create challenges for banks and other ADIs in ensuring compliance.
- There is also limited commentary and guidance surrounding the ADI's liability if they fail to comply, which is further emphasised by the ambiguity in the definition of 'reasonable steps'.
- The Bill will need to ensure that in seeking an injunction, the ICR identifies all relevant account number(s), beneficiary details and trading names of a prohibited internet gambling service.



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- The Bill does not propose to regulate or impose additional legal obligations across all participants in the payments system. Despite the substantial impact across the banking and payments system the proposed injunction would cause, customers would continue to be able to make financial transactions using other payments, especially utilising credit provided by non-banks and other ADIs.
- The Bill does not consider the role of card schemes in controlling transactions and the potential approaches used overseas to address illegal gambling services and problem gambling.

The ABA believes that the Bill should be amended to:

- Remove the legal obligation for ADIs to take reasonable steps to prohibit transactions in relation to a prohibited internet gambling service, and
- Following further consultation with the card schemes, impose an obligation on the card schemes to block transactions to illegal gambling services using the MCC to identify those providers. This approach would not require substantial technology and operational changes across the banking and payments system as it will utilise existing technology globally (where this is available).

Harm minimisation measures

The banking industry believes gambling can have serious detrimental consequences, not only to those who experience financial and emotional deterioration through a gambling addiction, but also on their families and the community more broadly. We strongly support strategies with the greatest likelihood of having a real impact on addressing the incidence of problem gambling.

The establishment of a National Self-exclusion Register under section 61HA of the Bill will allow individuals who are experiencing difficulties controlling their gambling to self-exclude from being able to bet. It is understood that a gambler's willingness to alter behaviour usually precedes self-exclusion, and this will likely result in individuals seeking treatment and other forms of support and assistance.

While we support the establishment of the Register, the ABA believes this should be coupled with a focus on providing problem gamblers with effective tools to manage their own gambling expenditure, gambling counselling services, and gambling support programs. This should not only be limited to online sports betting, but rather all forms of gambling. Furthermore, we believe that the Government should consider a national approach to developing education and support programs to target problem gamblers and address the wider consequences of problem gambling, including on individual and family relationships, social inclusion, and mental health and so on. Any further actions should be adopted through a shared response from government, the community, and businesses, and in particular, providers of gambling services.

Specifically, the ABA supports further consideration of comprehensive responses which focus on assisting individuals with a gambling addiction, by providing information, education and support programs. Banks provide a number of programs which assist their customers better manage their money or support them if they are experiencing financial difficulties, including as a consequence of problem gambling. These programs include:

- **Financial literacy** – The banking industry offers assistance to their customers and others to help them get a clear picture of their financial situation and develop some strategies to help them get back in control of their money or address a financial crisis caused by gambling. The ABA and our member banks have published a variety of financial literacy resources and provided financial capability education programs to help consumers effectively manage and take control of their own financial affairs.⁴

⁴ For more information, see <http://www.bankers.asn.au/Consumers/Financial-Literacy>



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- **Financial hardship** – The banking industry recognises that gambling addiction and its financial consequences can result in financial hardship. Banks have financial hardship programs to support their customers experiencing financial difficulties.⁵
- **Restrictions on accounts** – Banks are able to provide assistance to their customers who are struggling with managing their finances, including debts and gambling expenditure. For example, banks have implemented various policies and procedures to enable their customers, upon request and instruction from their customer, to place restrictions on their accounts. These include, lowering the maximum daily withdrawal limit on their deposit accounts, lowering the credit limit on their credit cards, and limiting overdraft facilities.

Conclusion

The ABA recommends the:

- Committee recognise the challenges that the banking industry (all banks and other ADIs) will encounter in complying with such a new injunction power as well as the associated technical and practical limitations.
- Committee consult further with the card schemes. The injunction power may be targeted through card scheme networks more effectively and efficiently without causing significant disruption across the banking and payments system, particularly given that a large number of transactions will pass through the card scheme networks.

The ABA does not support intervention in the banking and payments system as a way to regulate online sports betting or address concerns with problem gambling in the form prescribed in Division 4, Part 3 of the Bill. However, we strongly support the development of harm minimisation measures and believe that Government should consider a national approach to developing education and support programs to target problem gamblers.

The ABA would be happy to discuss any of the issues raised in this submission with you further. If you have any questions or would like to set up a meeting, please contact Lena Rizk, Policy Manager – Retail Policy

Yours sincerely

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⁵ For more information, see the ABA's Doing It Tough website at <http://doingittough.info/>