



SUBMISSION TO SENATE COMMUNITY AFFAIRS REFERENCES COMMITTEE

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INTERACTIVE AND ONLINE GAMBLING IN AUSTRALIA

Wesley Community Legal Service is a N.S.W. community legal centre established in 1994 that now provides a specialist gambling legal service for consumers. Our role is:

- To provide legal advice, information and support to problem gamblers, families and others affected by problem gambling;
- To provide court representation for persons charged with gambling-related crimes;
- To provide education and training to relevant service providers such as RGF-funded problem gambling services on legal issues relating to problem gambling;
- To provide advice and advocacy on regulatory issues relevant to problem gambling.

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Changes in the gambling industry

It is often said that Australians are a nation of gamblers, but this overlooks the fact that gambling is increasingly popular throughout the world. Australia has been a leader in the liberalisation of land-based gambling activities, particularly electronic gaming machines (pokies), totalisator wagering and lotteries.

Now these land-based forms of gambling are in the process of becoming obsolete, being replaced or adapted to the new technology and internationalisation.

The ability of legislators and regulators to control gambling is fast diminishing as the old boundary fences are hurdled by new communications. The contribution to the community by way of taxation is also shrinking, as the gambling industry lobbies and manipulates governments to lower taxes, by holding a sort of auction in which the winner is the jurisdiction with the lowest tax and weakest regulatory structure. At some time in the future historians will review the path of gambling liberalisation and seek explanations as to why our society could be so foolish in failing to regulate such a harmful product.

Problem gambling represents the harmful side of gambling. The fortunes that are now being made in the new gambling industry are not the result of anything productive or worthwhile but as a result of the transfer of assets from those who gamble to those who provide the gambling. There is an enormous cost in human suffering. The new technology makes it possible for problem gamblers to lose more money, and faster, in the privacy of their own homes or anywhere where they are not observed. Young people are the main demographic group accessing the new gambling and in many cases their lives will be ruined.

Online wagering and interactive sports betting

Bookmakers have been allowed to provide credit for gambling since racing was the sport of kings. Now bookmaking is targeting everyone and the provision of credit is an undesirable aspect of punting. In the case of *SportsBet Pty Ltd v Stephen Moraitis*¹, the well-known Northern Territory bookmaker advanced \$3,867.846 to the punter and took legal action when the debt was not paid. The defendant alleged that the bookmaker had contravened its own Responsible Gambling Code of Conduct by allowing the defendant, a known problem gambler, to re-register as a gambler after previously self-excluding. The Australian online bookmakers have a history of dubious conduct which is outlined in some of the more spectacular cases.

Case study: Spread betting

Mr A applied to an Australian online bookmaker for a credit limit of \$2,000. He then engaged in a high risk form of sports betting called spread betting in which he bet on the number of runs certain batsmen would make in a cricket match. He was unsuccessful in his betting and lost \$10,000 in one day. He

successfully applied to the NSW Consumer Trader and Tenancy Tribunal for relief from the debt on the grounds that the bookmaker had misrepresented the nature of the credit limit. However the bookmaker appealed to the Supreme Court and was successful in overturning the decision on jurisdictional grounds.

Online gaming

The Productivity Commission in its report on Gambling (at 12.26), discusses the merits of ACMA or some other national body in regulating a legalised online gaming industry. Clearly the Productivity Commission missed the key points, which are (1) that online gaming is already available to Australian citizens; (2) that legalising online gaming will probably not result in a significant growth of an Australian online gaming industry, but rather growth in Australians gambling on offshore websites; and (3) that legalising online gaming will result in widespread advertising of gaming products.

The experience of the now defunct Lasseter's Online was that an Australian-regulated product is not going to be able to compete with offshore competitors unless it can offer the same level of inducements to gamble as the competitors².

Case study: Online Poker

Ms B started playing poker at hotels and clubs after she saw an episode on 'A Current Affair' about a woman who made money playing poker. She soon felt that she was good at it and decided to try online poker. She gambled on her home computer on offshore sites such as Party Poker. Occasionally she tried the slot machines on Party Casino. Unfortunately she was not successful as an online poker player and to fund her gambling she started borrowing money. Her loss-chasing intensified and she began stealing money from work. Unfortunately she worked as a loans manager in the finance industry and started stealing from her employer, using a series of fraudulent loans. By the time her employer discovered the fraud, she had stolen over \$500,000. None of this could be recovered from the offshore gaming companies. Ms B was very remorseful for her crime and initially intended to end her life, but fortunately decided to face the consequences. She has recently been released from prison and remains on parole.

New technologies

Interactive gambling increasingly involves the mobile phone and now can use digital television. This enables gambling to occur anywhere, at any time.

Marketing of online gambling is very rudimentary, but consumer tracking technologies will increasingly enable gambling operators to target suitable customers with a range of very tempting inducements to get them to start gambling.

Regulatory frameworks

Historically, governments have a pattern of avoiding the issue of gambling, then swaying to pressure from the gambling industry and finally suffering an electoral backlash as a result of electoral disappointment with the liberalisation of gambling. Examples abound, but include the Kennett government's legalisation of poker machines in Victoria, the various developments in South Australia and the reaction in England to the plans for casino expansion.

Gaming is one of the most heavily regulated industries in the world. Over time, gaming regulation in nearly all places has increased in both quantity and complexity.

The first wave of government regulation was largely aimed at squeezing out criminal elements. This has been achieved with great success in most Western nations who have followed the lead of the State of Nevada in varying degrees. Gaming industry operators are required to have their professional and personal lives scrutinized in detail. Those with criminal links are excluded from the industry.

Growth of a country's gaming industry can be expected to pick up once criminal elements are removed and the industry begins to develop a clean reputation. Criminal elements remain an issue in some parts of Eastern Europe and Asia. (e.g. Macau)

The second wave of government regulation is focused on maximising and protecting government revenue from gaming. Most Western nations are currently undergoing this process. Governments change their attitude towards gaming tax revenue. In the early stages governments treat gaming tax as an unexpected bonus which may be directed towards worthwhile projects such as hospitals or specific public works. Later governments develop an expectation that gaming taxes will be maximised and form part of their general income. At this stage governments legislate to reduce the amount of revenue that may be lost or hidden from them, and may also expand the range of gambling forms that are available. They may also privatise government owned gambling concerns.

The result is a squeeze on gaming industry profits, as the industry is faced with competition from new competitors and an increased tax burden. The industry response is to increase advertising and marketing activities to try to protect its revenue base.

The third wave may be broadly considered to deal with consumer protection. As the gaming industry matures, competition intensifies, and marketing and promotion of gambling increase. Sections of the community become concerned and vocal about the increase in gambling and rise in problem gambling. Media interest develops.

As gambling becomes a public issue, it also becomes a political football. We have seen high profile court cases commenced in the US, Canada and

Australia by disgruntled gamblers. Debate over the growth or restriction of gambling becomes a hot issue in parliament. For some it becomes a vote winner. In South Australia, a politician was elected on the single issue of opposing the growth of the gaming machine industry.

In response to this sort of pressure, the government looks to see what steps the gaming industry has taken to provide responsible gambling. If the government is not satisfied by what the industry has achieved voluntarily, the government legislates to impose a responsible gambling regime.

Legislative prohibition of some forms of online gambling has not prevented Australians being able to participate in them. However, the inadequacies of prohibition do not necessarily add up to a case for legalisation. The failure of governments to prevent the widespread use of cannabis by younger Australian adults does not mean that cannabis production and use should be legalised.

Rather, an appropriate range of sanctions and warnings should apply, based on a public health approach. Online gambling can cause significant financial losses, resulting in a range of other personal harms, as identified by the Productivity Commission. It is important that consumers who choose to gamble online with offshore providers understand:

1. that they are participating in an activity that is prohibited in Australia
2. that there are numerous alternative forms of gambling that are legal in Australia that are government regulated and provide some level of consumer protection
3. that there are serious risks of harm attached to online gambling
4. that the government is unable to control offshore gambling operations, and cannot offer any consumer protections or redress for consumers who get into trouble
5. that help for problem gambling is available in Australia

In the longer term, the Australian government should work with the international community to see if a relatively safe international online gambling framework can be established. In our opinion, Australia should not open the door to offshore online gambling until there are means to control the activities of offshore online gambling providers. By legalising online gaming in Australia, we lose the ability to argue against consumers also gambling with unregulated offshore casinos.

A number of overseas gambling operators have sought third party certification of the operations to boost their image as being trustworthy. For example the English GamCare organisation provides GamCare Certification to online companies. To achieve Gamcare certification, gambling companies must implement:

- ☐ age verification systems
- ☐ customer led controls for spend and session play
- ☐ self-exclusion options
- ☐ reality checks within games screen
- ☐ social responsibility content and sources of help

- customer service training

Another English gambling counselling service is GamAid which offers a rival form of certification. There are also certification programs run by eCogra and Global Gaming Guidance Group.

Our concern with all of these certification programs is that they are businesses that rely on being paid by the companies they certify as “responsible”. The concept of ‘responsible gambling’ is often described as an oxymoron, and responsible gambling programs vary from worthless tokenism to programs that genuinely endeavour to restrict the incidence of problem gambling.

Online payment for gambling

The primary factor inhibiting growth of the online and remote gambling industries is the lack of a universally trusted, efficient and low-cost means of online payment, particularly payment of small amounts of money.

Credit cards are currently the most commonly utilized payment mechanism. However, concerns about fraud, as well as the fees involved, mean that many people are unwilling, or hesitant to provide their credit card details online or by telephone. Once a better and more trustworthy method is available, then the level of online gambling will increase tenfold.

Demand for a better means of payment is by no means restricted to the online and remote gambling industries. There is a plethora of low cost products available online and all of the vendors of such products would welcome a better means of payment than credit card.

The most likely contender for low value online payments is electronic money, (also known as digital cash³). Electronic money will permit gamblers to make casual bets for small sums at a very low cost and with a high degree of safety. Payments will be able to be made via the gambler’s computer or phone.

Banks have been reluctant to consider developing systems for electronic money because of the risks involved and because electronic money is unlikely to be as profitable as credit cards. However, the technology is currently available and the cost of introducing a national (or international) system of electronic money is becoming increasingly affordable with advances in technology.

Online Lotteries

Change in the structure of the gambling industry will result in an increased rate of return to the gambler. Products such as lotteries provide a low rate of return, typically around 60% and the rest is taken by government as tax, or kept by the operator for costs and profit. The online purchase of lottery products removes most of the costly administrative expenses and the internationalisation of lotteries will place downward pressure on tax rates. We

predict that within a decade, lottery products purchased online will achieve an average rate of return to the gambler of 90%. With international competition for online lotteries, it is feasible that lotteries will be drawn daily or even more frequently, so that lotteries will become increasingly like Keno or other forms of gambling based on random number selection.

Repeal of the Interactive Gambling Act

A government that repeals the prohibition on internet gaming will take on the responsibility of ensuring that the legalised product is safe for consumers. This will be a considerable challenge due to the jurisdictional difficulties. Consumers in Australia who lawfully gambling online will expect the same level of consumer protection as is now provided in similar high-risk activities.

If the Interactive Gambling Act is repealed, will online gaming on all international sites be legalised, or only gaming on Australian websites? If gamblers are only legally allowed to gamble on Australian websites, then the government will need to provide some means to enable consumers to easily identify which sites are legal. Then there is the issue of protectionism.

Perhaps Australia could seek to co-operate with the European nations that permit online gaming to develop some international standards of probity and consumer protection. Then online gaming companies would be required to meet those standards to be labelled as acceptable. The current approach of self-regulation by organisations such as eCogra are dubious, as their standards are pretty low and they lack an effective independent audit process.

Online pokies

Pokies are mindlessly dull without the experience of winning money. Although there are plenty of gaming websites that offer virtual pokies, they have so far been unable to capture the imagination of Australian pokie players. Sitting at home (or at work, or on the bus) playing a virtual pokie just does not have the same feel as playing one in a pokie parlour. However the online gaming industry is no doubt looking for a better way to simulate the experience of winning money on a pokie.

Gambling with an element of skill

It is not easy to develop a popular gambling product that combines both luck and skill. Games which involve an element of skill tend to favour the players with the highest skill level. New players need to be attracted to the game by the possibility of big wins at a low skill level. This is where luck is important.

The game of blackjack is a highly successful gambling product because it is easy to learn, and even a beginner can win. Once a player knows the correct strategy, they can play as well as an 'expert', even though both believe that an expert has an edge. So winning at blackjack primarily depends on luck, with an illusion of skill.

Creating an illusion of skill, or an illusion of luck is one key to problem gambling. Many problem gamblers (but not all) believe that they can beat the odds by being lucky or skilful.

New gambling products

Electronic gaming machines are old technology and appeal to an aging market. There is now a wider range of gambling products available in Australia than just about anywhere else in the world. And the potential for new, enticing and addictive gambling products is limitless.

Look at the huge range of online and home gaming that is tremendously popular. Try to imagine what would happen if cash prizes were offered in association with those games in addition to the simple thrill of winning. The technology is available, it is simply a question of developing the products and making them available online from some sunny Caribbean island.

Research

Research indicates that online and interactive gambling participation is growing rapidly from a small base⁴.

Conclusions

Australians will gamble increasingly online and interactively whether or not the government repeals the Interactive Gambling Act. However, the impacts of problem gambling will rise, while taxation revenue and gambling industry employment falls. As the gambling market becomes truly transnational, there will be a growing currency flow overseas as online and interactive gambling operations are established in low cost and low regulation jurisdictions. By repealing the Interactive Gambling Act, the government will take on the responsibility of providing consumer protection and responding to growing consumer concerns.

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¹ Sportsbet Pty Ltd v Moraitis [2008] NTSC 54

² <http://www.theage.com.au/business/online-casino-to-spin-into-history-20081003-4tk4.html>

³ Tyree A, Digital Cash, Butterworths 1997

⁴ Wood R.T. & Williams R.J. Internet Gambling: Prevalence, Patterns, Problems and Policy Options, Ontario Problem Gambling Research Centre 2009; Williams R.J. & Wood R.T. Internet Gambling: A Comprehensive Review and Synthesis of the Literature, 2007